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# International Court of Justice

## Legality of Use of Force: Serbia and Montenegro vs. The Netherlands



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<b>Forum:</b>	International Court of Justice
<b>Issue:</b>	Legality of Use of Force: Serbia and Montenegro vs. The Netherlands
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## Introduction

This case is based on the acts of the Kingdom of the Netherlands under the command of the North American Treaty Organization (NATO). At the time of the campaign and attacks, the question of the effective control of the Netherlands' forces may be a contentious issue. Kosovo was looking for independence for their autonomous province, and Albanians in Kosovo created a nationalist army, the Kosovo Liberation Army (KLA), in order to achieve this. Serbia, active in defending the Kosovo Serbs living there at the time from the acts of the KLA, including plunder and rape, was accused of committing crimes against humanity, mainly the ethnic cleansing of the Kosovo Albanians.

In order to prevent these crimes from being committed in Kosovo, NATO issued an air campaign against the region, which was done without approval from the United Nations (UN) Security Council. Dutch aircraft made up a number of the planes involved in the airstrikes, and thus the Netherlands is directly related to the issue. This bombing destroyed cultural buildings, oil and chemical plants, alleged communications centers, and killed civilians. The legitimacy of these airstrikes is controversial, and questions of lawful and restrained use of force have arisen since the attack.

## Definition of Key Terms

### ICTY

International Criminal Tribunal for the Former Yugoslavia. Established by the UN to prosecute serious crimes conducted in the former Yugoslavia and to try their perpetrators.

### Ethnic cleansing

The systematic forced removal of ethnic or religious groups from a given territory. The acts of ethnic cleansing, including persecution and deportation of individuals of a certain race are crimes against humanity.

### **Genocide**

The deliberate killing, seriously harming physically or mentally, preventing of births, and forcible transfer of children of a large group of people belonging to a particular race or ethnicity.

### **UN peacekeepers**

Impartial, non-violent individuals sent to war torn countries to help them establish a long-term solution for a peaceful development. Peacekeepers

### **Unlawful Attacks**

Any attack conducted during war time has to have an immediate and direct military advantage to the attacker in order for this attack to be lawful. The collateral damage of civilians and other non-military targets must be less than the military advantage gained from the attack in order for this attack to be legitimate and proportionate.

### **NATO**

North Atlantic Treaty Organization creating an alliance between states who have ratified the treaty. It is a military organization created to protect member states from the Warsaw Pact.

### **Legitimate military targets**

From Article 52 of the Geneva convention: "Military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and offers a definite military advantage."

### **Non-combatants**

Innocent civilians or others persons who are not directly taking part in a conflict. This also includes people such as prisoners of war, soldiers who have fallen ill, and medical or religious personnel.

### **Law of war**

International law that dictates the correct justifications to partake in a war and the acceptable manner to do so.

### **Cluster bombs (Cluster Munitions)**

Any weapon or explosive which contains more explosives within it, or submunitions. These weapons have since been banned and the use of these is deemed unlawful.

### **Kosovo Liberation Army (KLA)**

Nationalist army which fought for the liberation of Kosovo from Yugoslavia in the 1990s.

## **General Overview**

### **Historical context**

In order to understand the basis of the case brought forward by Serbia and Montenegro against the Netherlands it is key to understand what occurred in the former Yugoslavia from the beginning of 1991 until 1999.

#### ***Yugoslavia prior 1990's***

Previously before the Former Yugoslavia existed and prior the 20th century it consisted of two separate empires. These empires were the Ottoman Empire and the Austro- Hungarian Empire, the boundaries between the two continued to shift however they both existed until after the First World War; it was then that small nations emerged. However on December 1st, they all became united as one monarchy after the Kingdom of Serbs, Croats and Slovenes announced their unity. Although the country broke up during World War 2 due to the Nazi Occupation, it was reunified by the end of the war when Josip Broz Tito liberated the nation. The former Yugoslavia, which will be discussed, and in which the conflict takes place, is named officially the 'Federal Republic of Yugoslavia' (FRY). The FRY existed from 1945 and ended in the beginning of the 1990s in the dissolution of various nations due to the conflicts that arose.

#### ***The dissolution of Yugoslavia***



It must be known that the basis to the Yugoslav issues lies in a conflict between ethnicities, the region of the Balkans has always been rich in diverse cultures and religions. One of the primary reasons that led to the breakup of Yugoslavia was this diversity of religious and cultural backgrounds which led to divisions amongst the nation. Some of the other varied reasons include the atrocities that were committed by both sides during World War 2 as well as nationalist forces. However it must be noted that the most prominent reason to the dissolution of Yugoslavia was the influence of a series of political events. Yugoslavia's former leader Tito established a constitution in 1974 and his death in 1980 soon led to his constitution being interpreted in other ways. This specifically meant that all real power was removed from the federal government and handed over to the republics and autonomous provinces in Serbia. This was done firstly by establishing eight representatives per province, and a federal government with limited control in policy making specifically economic, cultural and political. Furthermore external political factors led to the dissolution, due to the fact that communism collapsed in Eastern Europe at the end of the 1980's, as well as the reunification of Germany, incremented the instability of the politics with Yugoslavia. When Yugoslavia was no longer faced with the threat of the Soviets, they no longer had such a prominent incentive to work cooperatively with unity as their key objective.

### *The KLA (Kosovo Liberation Army)*

As Yugoslavia began to break up, Slobodan Milosevic changed the Constitution of Serbia that would reduce the autonomy of Kosovo, resulting in the nation almost completely losing its independence. This created tension between the two ethnicities in the state, and as Kosovo Albanian workers were being expelled from civil and state institutions, a shadow government was formed and the Kosovo Albanian people elected scholar and pacifist Ibrahim Rugova as their president, although unofficial. To support the Kosovo Albanians in their campaign for the independence they formerly had, the KLA was formed. There was a UN arms embargo implemented on all states in Yugoslavia, meaning that this nationalist army was unable to be supported in this way by member states of the UN, and because of this there are many questions of who supplied the KLA with their arms.

The Serbian forces that were present in the area of Kosovo and the KLA frequently engaged in altercations, and the KLA was accused of pillaging, rape, killing and maiming many Kosovo Serbs in the region. The KLA has also admitted to sabotage of

many buildings of government authorities including targeting police buildings. This in turn resulted in a campaign of retribution, and Serbian paramilitary presence was heavily increased, resulting in counter attacks and the killing of many KLA and non-military targets. Serbian forces active there were also accused of the murder, rape and unlawful deportation of Kosovo Albanians, and later revealing the ultimate goal of the Kosovo Serbs to be to remove the entire population of Albanians from Kosovo.

## ICJ Case: Serbia and Montenegro vs. the Netherlands

### *The Netherlands' Role*

The Netherlands had ground troops present in Srebrenica who were there as Peacekeepers for the UN. Because tension had already risen between Serbia and UN members, the state did not appreciate these troops, and allegedly intercepted and closed off supplies from reaching the Dutch troops on the ground. The commander of the Bosnian Serb army put pressure on the troops from the Netherlands protecting the people of Srebrenica, whom eventually gave into this stress. This resulted in the killing of many villagers; the event became known as the Srebrenica Massacre, this killing was executed based solely on religion and sex specifically Muslim men and boys. Dutch UN forces were present on site however they did not prevent it. This made the Netherlands a greater target for abuse and persecution by other Yugoslavian states.

### *The NATO Campaign*

A number of UN Security Council resolutions were adopted, that asked for ceasefires in the Kosovo region, and as there was little to no change in the level of fighting occurring there, NATO announced an "Activation Warning". This followed with an increase in preparedness for different kinds of airstrikes that may be necessary. Relevant Yugoslavian figures including Milosevic and Rugova met to undergo peace negotiations, and after a brief ceasefire, attacks between Serb forces and the KLA ensued. Massacres and murders were becoming prevalent and it was at this time that NATO decided that the best solution to the firefights was to forcibly restrain the different sides of the conflict. NATO's articulated goal for their campaign and airstrikes in Kosovo was to end all violence carried out by Serb forces, and to force the withdrawal of all military forces from the Kosovo area. After this, NATO wanted to bring in UN peacekeepers, and return all the displaced Kosovo Albanians back to their homes. However, the airstrikes failed and resulted in large amounts of collateral

damage to civilians and civilian objects. There remains significant controversy over the legitimacy, necessity, and proportionality of the NATO airstrikes.

### *Serbia and Montenegro's applications to the ICJ*

On the 29th of April then still referred to by the UN as Yugoslavia, Serbia and Montenegro applied to the registry of the ICJ concerning the Legality of Use of Force against the Netherlands. It must also be noted that this was not the only case that Serbia and Montenegro brought forward to the court, there were in total 10 cases including the case against the Netherlands submitted by Yugoslavia (or Serbia and Montenegro), these were all based on the same issue as the case against the Netherlands the Legality of use of force, the other countries which they applied cases for in the court included, the U.S.A, France, Italy, Belgium, the United Kingdom, Spain and Portugal.

As can be read on the Application to the ICJ, the bombing of Kosovo and the fact that the Netherlands took part in the training and financing of the KSL, and the consequences of both on political, economic, cultural and on civilians are the two main aspects on their claim to the case. Their legal grounds are based both on Article 36 para 6 of the Statute of the ICJ (which the Netherlands has signed and ratified onto) and the 9th Article of the Geneva Convention on the Prevention and the Punishment of the crime of Genocide.

## **Major Parties Involved and Their Views**

### **Serbia and Montenegro**

Formerly part of the former republic of Yugoslavia, Serbia is the applicant of the case to be discussed. Serbia had a large impact on the conflicts that occurred in Yugoslavia at the time of the war.

### **The Netherlands**

The Netherlands is the respondent state in the case being discussed, due to the fact they have previously signed on to the ICJ statute. The Netherlands was present at the time of the Yugoslavia in various forms. They were present with UN peacekeepers in Srebrenica, and they were also present working under NATO's command in the form of aircraft.

## Kosovo

At the time, Kosovo was a territory, or province, within Serbia, but with near-full autonomy, however this changed as the dissolution of Yugoslavia commenced. A landlocked area, it is bordered by Albania and many Albanian people live and work in Kosovo and have for generations. Because of the mixture of Kosovo Albanians and Kosovo Serbs that lived there, the country was divided which resulted in tensions between the two different ethnicities.

## The International Court of Justice (ICJ)

The International Court of Justice is a UN body that was established to resolve conflicts between states rather than individuals. The ICJ is the primary judicial branch of the UN, and its role is to settle legal disputes, and to provide opinions and advice to various organizations, nations, and UN bodies. The court was erected with the UN Charter, which contained the Statute of the International Court of Justice, meaning that all UN members, while ratifying the UN Charter, have also ratified the Statute of the International Court of Justice.

## NATO

NATO (otherwise referred to as the North Atlantic Treaty Organization) was first created by the U.S., Canada and western European nations with the intent of serving as a military defensive alliance in case of an attack by the Soviet Union and its allies. Becoming involved in operations in Yugoslavia signaled a big change for NATO and for European-American relations. In Yugoslavia, NATO also conducted its first major combat operation.

## Timeline of Events

Date	Description of event
1989	The president of Serbia at the time, Slobodan Milosevic, alters the Serbian constitution in a way that greatly reduces the independence of Kosovo as a province of Serbia, causing large protests by Kosovo Albanians.
1991	The start of the disintegration of the FRY occurred when Slovenia and Croatia declared their independence. Kosovo Albanians conduct a secret vote and create their own Republic of Kosovo, led by professor and



	<p>pacifist Ibrahim Rugova. The Republic was not officially recognized by many nations, including the United States of America (USA). The dismissal of thousands of Kosovo Albanian jobs amplified the civil unrest already present in the region, creating more protests and general strikes.</p>
1993 - 1995	<p>Tension between the different ethnicities present in Kosovo continues to rise.</p>
1996	<p>The KLA was formed, and began being active in the area of Kosovo, attacking Serbian authorities. This caused Serbia to increase the oppression of the Kosovo Albanians in the country. Claims began developing which accused Serbia of ethnic cleansing the Kosovo Albanians, including the persecution and deportation of these individuals. Witnesses of this act report large populations of Kosovo Albanians were killed by Serbian forces, which began the NATO campaign against the Serbs.</p>
March 29th - June 10th 1999	<p>Despite warnings and displays of force by NATO to Milosevic, Serb, and Kosovo troops, the violence and climate of impunity continue, and NATO launches air strikes in order to prevent crimes against humanity from occurring in Kosovo, according to them. Aircraft from the Netherlands were said to have taken part in this air strike. Disputes arose with regards to the legitimacy of these airstrikes and whether the targets were legitimate military targets, and also the proportionality of these attacks (see Appendix III).</p>
April 29th of 1999	<p>Then still known and referred to as Yugoslavia, Serbia and Montenegro applied in the midst of the air strikes for the case for: Legality of use of force against the Netherlands to the International Court of the Hague, based in The Netherlands.</p>

## UN involvement, Relevant Resolutions and Treaties

### The United Nations involvement

Throughout all of the conflicts occurring in Yugoslavia, the UN was present in different forms. Originally the UN's response to the conflict was to send forces (in the form of

peacekeepers) to ensure previous cease-fire agreements and to provide humanitarian aid. However as the situation in Yugoslavia continued to develop it became evident that the situation was too dangerous and complicated for the unit operating beneath the UN. It must be taken into consideration that the units working under the UN flag are from nations who have volunteered them, therefore at times of conflict disagreements may rise between what the UN leadership wants and what the nations volunteering are able or willing to provide taking into consideration their own policies. At the time of the conflict in Bosnia, politics influenced the UN forces actions as they had to wait for situations to be settled within conference rooms much further away from their units, prior to taking action.

### Relevant Resolutions and treaties

- UN Geneva Convention for the prevention and punishment for the crime of Genocide, 9 December 1948 (No. 1021)
- Security Council Resolution condemning the Federal Republic of Yugoslavia's excessive use of force, and implementing an arms embargo, preventing the distributing and supplying of weapons in all regions in Yugoslavia, 31st March 1998, (No. 1160)

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## Appendix or Appendices



## Appendix I

Summary of the court case, published by the International Court of Justice:

<http://www.icj-cij.org/docket/index.php?sum=628&code=yne&p1=3&p2=3&case=110&k=51&p3=5>

## Appendix II

Former Prosecutor of the ICTY released a public report about the NATO bombing campaign in the FRY and why the bombings were not investigated:

<http://www.icty.org/sid/10052>

## Appendix III

Explanation of the law of proportionality in war:

[https://www.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter4\\_rule14](https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter4_rule14)