

**THE RESPONSIBILITY OF INTERNATIONAL ORGANISATION ON  
ENVIRONMENTAL DAMAGE DURING AN ARMED CONFLICT (Case  
Study of NATO Air Campaign against Kosovo in 1999)**

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**THE RESPONSIBILITY OF INTERNATIONAL ORGANISATION ON  
ENVIRONMENTAL DAMAGE DURING ARMED CONFLICT**

(Case Study of NATO Air Campaign against Kosovo in 1999)

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**ABSTRACT**

*The role of international organisations within international peace keeping and enforcements nowadays are increasingly high. Nevertheless, the provisions regarding their action and accountability entailed behind have not been settled yet by international law. Such concerning case is the involvement of NATO during Kosovo Conflict in 1999 where NATO conducted air campaign for 72 days. The targets of attacks are industrial facilities, oil refineries and other public infrastructure. The impact of the aerial bombardment caused the spilling tons of oil into rivers in Kosovo and some burned, causing severe air pollution over several times. Moreover, there is another issue of the use of Depleted Uranium during this armed conflict. These significant environmental impacts as the result of NATO's air strikes are not in accordance with the provisions and principles of international humanitarian law as well as the environmental law. However, due to the lack of an international legal instrument regulating international organisations responsibility for environmental damage during an armed conflict; in practice, it is not easy to claim the responsibility of international organisation.*

**Keyword:** Responsibility, Kosovo, NATO, armed conflict, environmental damage.

## A. INTRODUCTION

The issue of environmental protection during armed conflict was for the first time politicized in 1970.<sup>1</sup> Vietnam War is one of the trigger for environmental issue discussion during armed conflict, which is related to the use of herbicides by United States troops during the war. During the conflict between 1962 and 1970, a number of 5.0656 million hectares of forest were sprayed with herbicide, Agent Orange, White and Blue. The use of herbicides was considered as strategic interest for the Vietcong forces utilizing forest area as a hiding place from enemy attack. As a result of this action is the destruction of the land and civilian casualties, including farmers, as well as the death of livestock.<sup>2</sup>

Even though international humanitarian law and international environmental law have prohibited actions that may damage the environment, in fact, the damaging effects of armed conflict cannot be avoided. These problems become increasingly complex with the intervention of international organisations in armed conflict, which happened in Kosovo Case where NATO intervened and carried out air strikes on the territory of the Federation Republic of Yugoslavia.

Starting on March 24, 1999, after Serbs rejected the Rambouillet agreement, NATO started air combat (Operation Allied Forces) with the aim to stop Slobodan Milosevic and the Yugoslav government's human rights violations committed against Albanians, as well as efforts to stop the ethnic cleansing Albanians from Kosovo. The aerial bombardment has caused serious damage to infrastructure and large-scale environmental damage in the region of Yugoslavia. NATO forces attacked the main oil refineries, pharmaceutical plants, fertilizer-producing facilities and petrochemical plants.<sup>3</sup>

NATO attacks against Kosovo territory drew the attention of international community. Some issues concerning the position of NATO as a military alliance politics that intervened without the permission of the UN Security Council, which

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<sup>1</sup> Dieter Fleck (ed.), *The Handbook of International Humanitarian Law*, Oxford University Press, Oxford, 2013, hlm. 212.

<sup>2</sup> Frey-Wouters, Ellen, *Legacy of a War: The American Soldier in Vietnam*, M.E, Sharpe, New York, 1986, hlm. 211.

<sup>3</sup> Sinha, Manoj Kumar, *Protection of the Environment during Armed Conflicts: A Case Study of Kosovo* (online), <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/13.html>, 20 Februari 2014.

is considered for violating humanitarian law, also the issue of the use of Depleted Uranium in weaponry, as well as environmental damage caused thereafter.

It is inevitable that armed conflict gives impact on human, infrastructure and its surrounding environment. Casualties and damage due to the use of weapons during a conflict is reasonable consequence. In order to avoid the risks and harmful effects of a military attack, as well as reduce the damage it can inflict, the International Humanitarian Law introduces the basic principles in armed conflict and once again reviews the international rules on environmental problems as a result of armed conflict. Thus, the responsibility of parties of an armed conflict needs to be reassessed.

## **B. PROBLEM STATEMENTS**

1. Does international law regulate the responsibility of international organisation on environmental damage during an armed conflict?
2. Does NATO, as an international organisation, responsible for environmental damage during armed conflict in Kosovo?

## **C. ANALYSIS**

### **1. The Concept of responsibility of international organisation in international law**

International organisations such as the United Nations, the World Bank and the European Union play an increasingly influential role on the global stage. Such organisations employ staff, administer territories, impose sanctions and engage in military operations, directly impacting the lives of individuals.<sup>4</sup> Yet the mechanisms available to hold them accountable for alleged violations of their human rights obligations are relatively underdeveloped, and in some cases non-existent.

The regulations on the responsibility of international organisations are still underdeveloped compared to the theory of state responsibility. The authority and capacity of international organisations are not as broad as state. It is restricted by its charter and statutes. Therefore, an international

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<sup>4</sup> Beneyto, José María, *Accountability of International Organisations for Human Rights Violations*, (Report), 2013.

organisation needs international legal capacity and international legal personality to carry out its function and participating in international relationship.

Thereby, once the existence of an international personality recognized in international organisations, it is not difficult to conclude that, as well as organisations that can demand responsibility on the subject of international law since the organisation has a right under international law. Thus international organisations may also be responsible to the other subjects of international law due to of their obligations under international law. In its development, international organisations status in international relation is no longer questioned and the influence to the development of international law can not be avoided.

With the role of international organisations in the area of international relations, international organisations activities, as well as state, have broad enough scope to influence state of other subjects of international law, in the form of positive and negative. In other words, there is the possibility of a nation suffers a loss because the policy members of international organisations.

Reparation Case is one of case regarding international responsibilities associated with international organisation. In its Advisory Opinion, International Court of Justice (ICJ) decided that the United Nations, as an international organisation, has the capacity to make a claim for damage they suffered.

*“... The Court is authorized to assume that the damage suffered involves the responsibility of a State, and it is not called upon to express an opinion upon the various ways in which that responsibility might be engaged. Accordingly the question is whether the Organisation has capacity to bring a claim against the defendant State to recover reparation in respect of that damage or whether, on the contrary, the defendant State, not being a member, is justified in raising the objection that the Organisation lacks the capacity to bring an international claim. On this point, the Court's opinion is that fifty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an*

*entity possessing objective international personality, and not merely personality recognized by them alone, together with capacity to bring international claims..”*

This Advisory Opinion has become the basis of precedent that state can be held accountable for damages suffered by an organisation. Similarly, an Organisation may be responsible for harming a state, in which the loss arises from breach of an obligation of international organisations from the provisions of the agreements or the principles of customary international law.

In conclusion, an international organisation shall be responsible on their actions which violates international law or international customary norms, eventhough the exact and concrete regulation may not drafted yet.

## **2. NATO’ responsibility on environmental damage during Kosovo Case 1999**

### **a. The Legality of NATO Air Campaign According to International Humanitarian Law and International Environmental Law**

Operation Allied Force is NATO response to the atrocities conducted by Serb forces against ethnic Albanians as the majority population of Kosovo. NATO forces targeted the attack on what NATO officials had come to characterize as the four pillars of Milosevic’s power, the political machine, the media, the security forces, and the economic system. The targets list included national oil refineries, petroleum depots, and road and rail bridges over the Danube, railway lines, military communications sites, and factories capable of producing weapons and spare parts.

The form of NATO attack scrutinized by international forum is the bombing on industrial facilities and oil refineries. The air strikes against industrial facilities clearly have impact on the surrounding environment. Judging from the principle discriminate attack itself, whether industrial facilities including military object or not a parameter of the legality of the

attack. Principally, international humanitarian law prohibits the parties directly conflicted attacking civilians and civilian objects.

*The parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian objects.*<sup>5</sup>

This obligation to distinguish between civilian objects and military, as well as the prohibition on attacking civilian objects applies to international conflicts and non-international. In international conflicts, the understanding of military objects described in Article 52 paragraph (2) AP I, which is limited to objects which by their nature, location, purpose or its use make an effective contribution to military action and whose destruction in whole or in part, or neutralization arrest, in the circumstances that existed at the time, giving a definite military advantage. Industrial facilities, in certain circumstances, can be considered as a military object due to its capability provides merit to a party of conflict.

While the status of the oil fields and oil drilling equipment, refineries, coal mines and other mineral extraction plant as if it is not tied to military production; in the final analysis, despite of its characteristic related to civilian, all of these objects can be regarded as a military-industrial infrastructure. In other word, oil installations of any kind are actually a legitimate military target open to destruction by any party of war.

In fact not only the oil industry were the targets during military air campaign in Kosovo; industrial complex (petrochemical plants, fertilizer and cars), bridge (with roads and pipes are installed together), and communication facilities were targeted. In plain view, the objects are naturally not a legitimate military target, but there are always exceptions in certain circumstances. Civilian objects may be attacked if it is proven to provide benefits or used for military purposes.

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<sup>5</sup> Rule 7 of Customary International Humanitarian Law

A supporting theory that certain facilities are military objectives is Rogers's list of military objectives. Using the definition of Protocol I and a review of the practices of the state, Major General APV Rogers, former Director of the British Army Legal Service has developed a tentative list of military objectives:<sup>6</sup>

*...military personnel and persons who take part in the fighting without being members of the armed forces, military facilities, military equipment, including military vehicles, weapons, munitions and stores of fuel, military works, including defensive works and fortifications, military depots and establishments, including War and Supply Ministries, works producing or developing military supplies and other supplies of military value, including metallurgical, engineering and chemical industries supporting the war effort; areas of land of military significance such as hills, defiles and bridgeheads; railways, ports, airfields, bridges, main roads as well as tunnels and canals; oil and other power installations; communications installations, including broadcasting and television stations and telephone and telegraph stations used for military communications.*

According to the list, engineering and chemical industries that is used for supporting the military effort, bridges, oil installations, or energy, communication installations (including installation of broadcasting, television stations and telephone, telegraph) were used for military communications can be a target of military attacks. Most of the facilities mentioned were the target of NATO air strikes. For the same reason that the objects were used for military advantage, the damage provides military advantage for NATO, it's legitimate to attack.

Despite NATO bombing targets can (in some circumstances) categorized as a military object, humanitarian law continue to ensure that an attack does not give excessive impact (collateral damage) and sustainable both for humans and its surrounding environment. Through the principles of necessity and proportionality, military attack not only must comply with the legality of the initial attack but the result of that will be caused later.

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<sup>6</sup> ICTY, *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia*, para. 38.



*Article 35-Basic Rules<sup>7</sup>*

*(3) It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.*

*Art 55. Protection of the natural environment*

*(1) Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.*

*(2) Attacks against the natural environment by way of reprisals are prohibited.*

During the Kosovo conflict, the oil spilled due to the damage and destruction of refineries in Pancevo has been polluting the Danube River. It is estimated that 80,000 tons of oil and oil products burned and 2100 tons of substances Ethylene Dichloride (EDC) leaked into the soil and sewage canal. While in Novi Sad 73,000 tonnes of crude oil and oil products are reported to have burned or leaked.<sup>8</sup> Local expert estimated that 90% burned, and the rest have been leaked to the wastewater collection lines or into the ground.<sup>9</sup> It was also reported that the Danube has been heavily polluted immediately after the air strike due to the flow of crude oil and oil products through the wastewater collection system. Environmental contamination that occurred classified as hazardous to the health and survival of terrestrial and aquatic biota; such effects possibly be categorized as collateral damage.

However, the principle of proportionality is related to the phrase widespread, long-term and severe damage, unregulated definition. The party will always be able to debate the standards of widespread damage, long-term and severe in question. Following this buffer reason, the NATO

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<sup>7</sup> Article 35 ayat (3) and 55 Additional Protocol I

<sup>8</sup> UNEP (final report), 1999, *The Kosovo Conflict: Consequences for the Environment and Human Settlement* (online), <http://postconflict.unep.ch/publications/finalreport.pdf> (22 Februari 2014)

<sup>9</sup> Ibid.

argued that the environmental damage that occurred in Kosovo during the air attack is felt not meet these elements and the impact in accordance with military necessity to be achieved. Not to mention the cumulative standard of collateral damage; which means that all elements must be fulfilled. As a consequence, it will be difficult to develop a prima facie case on the basis of these provisions.

To analyze the study of environmental damage during armed conflict can not be separated from the provisions of international environmental law. The idea that international humanitarian law international environmental law replaces the basic law during armed conflict is no longer the prevailing opinion of legal experts, including the International Law Commission. Thus, International environmental law can be applied to interpreting incomplete or unclear norms in international humanitarian law; and the provisions of multilateral environmental agreements (Multilateral Environmental Agreement / MEA) should be considered as legal basis during armed conflicts.

After the Kosovo conflict ended, Danube became one of the ecosystems which degraded significantly. The damage is particularly severe impacts on populations around the river. As one of international waters, pollution of the waters can be easily carried to the downstream countries of Bulgaria or Romania.

Associated with pollution in international waters, MEA has actually set up a similar regulation in 1992 Transboundary watercourses Convention. Based on Article 1 (1) of the Convention of 1992, the Danube is including transboundary waters, means taking all appropriate measures to prevent, control and reduce transboundary impact. This convention uses the polluter pays principle, so that the parties on the pollution of the waters of the impact on cross-border impact must pay. Although it does not mention that the convention applies during armed conflict, when the rules are applied and proved that the pollution in the Danube River affect other countries, then the NATO be held accountable for his actions. Unfortunately some NATO countries have not ratified the Convention,

including Canada, Iceland, England, and United State; Yugoslavia's own party has not ratified at the time of the conflict.

On the other hand, the European Union (EU have ratified the 1994 Danube River Protection Convention (DRPC) en bloc, and European Union member states, including the member states of NATO, be bound to the rules of the convention at the time of the attack Pancevo. Convention signed on June 29, 1994 in Sofia, Bulgaria, with eleven countries of the United Conservation Danube (Danube Riparian States, ie Austria, Bulgaria, Croatia, Czech Republic, Germany, Hungary, Moldova, Romania, Slovakia, Slovenia and Ukraine) and the European Community . DRPC entered into force Oktober1998, when the convention has been ratified by the ninth signatory. Primary objective of the Danube River Protection Convention (DRPC) is to ensure that surface water and groundwater within the Danube River Basin are managed and used sustainably and equitably. Subsequently, and as usually, the Convention since 1994 failed to address the issue of the application during armed conflict.

**b. The Responsibility of NATO, as International Organisation, on Environmental Damage during Kosovo Conflict**

The main case required by international organisations to have the capability to perform acts of international law is legal personality. There are two main theories related to legal personality of international organisations. The first theory is objective theory; that international law bestows legal personality when an organisation meets certain criteria, irrespective of the will of the member state. It is not the provision of the constitution or the intention of its framers which establish the international personality of an international organisation, but the objective fact of its existence. The second doctrine is subjective theory. This theory states that international organisations can have a personality as a status granted by its member states.

NATO, with unquestionable capability, as well as the magnitude of the role in international relations, objectively, has legal personality under

international law. So that NATO has an obligation in international law and in turn he has a responsibility when breaking these obligations. In other subjective theory, the member states of NATO has granted the personality onto this organisation.

Nevertheless the question remains whether the terms and mechanisms of international law in force today can be implemented NATO case. In general, international organisations found guilty of relation to the damage caused from actions of employees or agents or any person or entity under their control, as well as armed forces. Whether international organisations can be held accountable for the actions of the armed forces under its control?

The question on the responsibility of this organisation has emerged especially in the case of the armed forces in UN operations. In some cases, in general the UN has accepted responsibility for the illegal acts that may have been committed by the armed forces (members) are acting under UN supervision. The United Nations recognizes the liability on the activities undertaken by the UNEF and ONUC.

The main problems that arise in such cases, in this case Kosovo are: (i) whether there is illegal conduct or act of omission, (ii) whether the conduct attributed to the responsibility of international organisations.

Regardless of the legitimacy of the NATO military intervention in Kosovo, during a military raid carried out in accordance to humanitarian law, then the claim would be hard-pressed responsibilities. As in the case where the UN refuses to take responsibility for damage caused by a legitimate military operations or arising out of military necessity; on the other hand, the UN accepts responsibility for any damages that are not justified by military necessity. Means ultimately demand responsibility for environmental damage back again on traditional issues relating to the principles of IHL habits. Thus NATO be held responsible for the wrongful act if Serbia can prove that NATO air strikes on certain facilities in Kosovo violate humanitarian principles as described in the previous subtitles.

In fact, liability for environmental damage during armed conflict (for violating the provisions of international law) is still not discussed thoroughly, even the concept of state responsibility. In the case of Iraq, for example, the Compensation Committee established by the Security Council did not make much progress in defining the criteria needed for a wrongful act. If it implicates the responsibility of international organisations which have not been developed, there is still a lot of blanks in legal instruments for holding the international organisation responsible for its actions during the armed conflict.

On the other hand there is no doubt that the environmental damage arising in Kosovo resulted in a loss not only to the government but also to the civilian. The destruction of industrial facilities in FRY affected the economy, as well as pollution caused adverse effects to the health of civil society. Through the principle of liability which does not require any element of fault, the compensation is reasonable as a form of responsibility based on the result. Although, once again, the lack of legal instruments related to international organisation responsibility to make this theory becomes vague.

Reconsidering the Iraq-Kuwait case, such as the state should be responsible to provide compensation for the damage caused, as well as to international organisations. To cope with the damage and environmental degradation caused by NATO military strikes, such as the cleaning and DU in FRY territory, it takes more than 220 days effective for cleaning operations at US \$ 1,479 million. It is obviously not possible for the Serbian authorities to do decontamination in such areas. Facing all these obstacles, it is clear that countries in conflict can not be expected to conduct a survey on the work environment of uranium weapons without the financial and technical support from the international community.

In this case, many obstacles in claiming responsibility are issues that always revolve around the non-state subject of international law. In the end, the state becomes the main subject in the topic of responsibility. Just

as in the case of Kosovo, the FRY filed suit in the ICJ for the actions of any use of force by NATO member states.

FRY stated that the NATO countries' joint responsibility for the actions of the military command structure of NATO ". Therefore, this case attached to the question pertaining to whether any NATO member states may be responsible for the actions of the organisation, although not all countries are directly involved in the bombings in question. This problem is related to the theory of international organisation has a personality separate from its member states. Measures taken by international organisations has been separated from the personality of the countries, thus problems related actions on behalf of international organisations should not over member states.

It does not mean that the member states entirely free from liability as a separate personality. *ILC Draft Articles on the Responsibility of International Organizations 2011* (ARIO) noted that member states of international organisations can be held accountable in certain circumstances on the part of five of the state's responsibility in respect to international organisations. Article 58 asserts the A State which aids or assists an international organization in the commission of an internationally wrongful act by the latter is internationally responsible for doing so. Article 59 stipulates that states that direct and control an international organisation in the implementation of the wrongful act is responsible for his actions; and Article 60 imposes A State which coerces an international organization to commit an act is internationally responsible for that act. Although, under normal circumstances, an international organisation is not acting under the control or the control of member states will separate because of the organisation is an important criterion separate personality.

This responsibility can be imposed on member states if the state has accepted responsibility for the actions of the injured party; or the injured party to rely on the state's responsibility.

Principally, the state as the subject of the claim has obligations and responsibilities under international law brighter than NATO as an international organisation. Because countries are bound by international treaties that have been ratified and customary international law; as well as the original subject of international law, states can freely act under international law and litigation before the International Court of Justice.

The complexity of the application of the theory to account for these international organisations to make the principle of accountability began to receive attention for application in international law. This concept, previously described, is broader than the theory of responsibility and liability responsibilities. International Law Association (ILA) states that accountability is a phenomenon to a variety of forms. The form of accountability that arise will be determined by the particular circumstances surrounding the acts or omissions of international organisations, member states or third parties. This form may be legal, political, administrative or financial. Combinations of these four forms provide the best opportunity to achieve the required level of accountability.

Through the principle of accountability not only compensation that can be a claim, in terms of administrative NATO be held accountable by giving a report related actions during military operations in Kosovo, it is due to the nature of transparency which is part of the principle of accountability.

According to the principles of good governance full access to information is a fundamental element of the accountability function, although parties to the organisation whose interests are protected by the confidentiality requirements must first give permission for the provision of information to other parties. So when the international organisations involved in humanitarian operations, development or peacekeeping, the organisation must provide the appropriate communication channel for state or non-state entities concerned, and for groups and individuals whose interests are strongly influenced by the operation, so that the parties can perform actions based on personal views on time. The same thing applies,

that international organisations must provide a reason a decision on certain actions (e.g military operations) when needed for assessment related to accountability or liability incurred flawlessly and relevant. In this case, the participation of NATO in providing information related to military operations is less, so there is enough evidence that the investigation appears to be a violation of international law. The same is the reason inhibitor UNEP to monitor the use of DU during NATO military operations.

According to the Final Report of ILA, countries contributing to the humanitarian operations remain responsible for violations of humanitarian law, but international organisations assume responsibility over the coordinates of these countries to ensure that acts of state forces under the control or authority of an international organisation meets the principles humanitarian principles. Same basis used by the United Nations in the United Nations asserted responsibility for peace and security enforcement efforts. For example, liability for damage caused by a member of the UN forces during the military action will only be recognized by the United Nations in cases where the organisation has full control over his troops.

It can be concluded that NATO as an international organisation with international legal personality be held liable for his actions during the armed conflict. However, it is not possible to file charges by simply using the principle of responsibility, because it is not easy to prove that the military operations carried out by humanitarian reasons contrary to the principles of international humanitarian law as well as the environment.

Through the concept of accountability, international organisations can be held liable in the form of responsibility, compensation, politicization, and restoration for environmental damage caused by military operations.



#### **D. CONCLUSION**

1. International organisations play a very influential role in the world and continue to increase globally. After the advent advisory opinion on Case reparation, the international organisation having a real international legal personality, causing international organisations have the right and obligation, the capacity to perform legal actions and be held accountable for any action. Nevertheless, the theory of accountability by international organisations is not the same as the responsibility of developing countries. Still there is a legal vacuum regulating the responsibility of international organisations, both in peacetime and during armed conflict occurs.
2. NATO legal personality as an international organisation is not in doubt, but the lack of legal provisions regulating the environmental damage during armed conflict and the responsibility of international organisations make NATO can not be prosecuted for environmental damage that occurred in Kosovo, although such action including violations of international law.

#### **E. RECOMMENDATION**

1. To set the accountability of international organisations need specific legal instruments that governs them. Committee should have the agenda of international law to regulate the principles of responsibility of international organisations; not only in the private, but also that the public is particularly related to the armed conflict.
2. Given the development of security alliances and international organisations increasingly play a role in security and peace enforcement effort, one example is the NATO intervention in Libya and Ukraine later, it is necessary to monitor the activities of international organisations, especially with regard to its influence on the international community.

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