INTRODUCTION

From 24 March to 9 June 1999 the North Atlantic Treaty Organisation (NATO) intervened militarily in Kosovo to halt the alleged crimes being committed there by Serbian military forces and militia. The question of whether the intervention was permitted by the present corpus of international law, under the denominator "humanitarian intervention" or otherwise, is and remains a largely disputed one. In this article we will carefully examine the war, led by NATO, on Kosovo. The NATO intervened, among other reasons, to disrupt "the violent attacks being committed by the Serb Army and Special Police Forces and weakening their ability to cause further humanitarian catastrophe" and "to prevent more human suffering and more repression and violence against the civilian population of Kosovo".¹

In the subsequent, we will regard "humanitarian intervention" as

The threat or the use of force by a state, a group of states or a treaty organisation within the territory of another state, with the aim of halting or preventing large-scale, serious

violations of fundamental rights which are taking place or which appear imminent, such rights being in particular the right to life of individuals, regardless of nationality, in cases where the threat or use of force is carried out without the permission of the legitimate government of the country in the territory of which the intervention takes place.²

As we will see below, several international organisations, such as, inter alia, NATO, the UN and the Organisation for Security and Co-operation in Europe³ asserted that there were large-scale, serious violations of human rights. Important in this context is for instance the report by UN’s Secretary General Kofi Annan of 3 October 1998⁴ and the statement of NATO’s Secretary General at the dawn of the air campaign.⁵ They reported massive violations of human rights, both by the government of Yugoslavia and of Kosovo Liberation Army⁶ militants. For over nine weeks, NATO bombed many targets in Yugoslavia, without the approval of Yugoslavia’s government. So prima facie, NATO’s action is a clear instance of humanitarian intervention. Whether this humanitarian intervention is legal, or more importantly, whether an international rule is emerging, allowing states to intervene unilaterally in other states, is exactly the scope of this article.

³ Hereinafter referred to as “OSCE”.
⁴ See paragraph 5.1.
⁵ See footnote 1.
⁶ Hereinafter referred to as “KLA”.