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NATO's Legal Framework in the Context of International Law: Conflicts and Challenges

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ABSTRACT

This thesis explores the legal framework of North Atlantic Treaty Organisation (herein referred to as NATO) within the context of international law. It focuses on the conflicts and challenges the treaty faces in maintaining legitimacy and relevance in today's world. Beginning with the foundation and historical background of NATO, this thesis traces its original purpose during the Cold War and how its role changed in response to changing international relations post 1999.It examines whether the world still requires NATO's model of collective defense. The thesis also examines NATO's dependence on the United States, questioning whether the alliance could survive without US military and logistics dominance. Through this holistic exploration the study provides insights into the challenges NATO faces in adapting to changing security needs while still staying aligned with international legal standards. The paper revolves around questioning the relevance of NATO at present, if the alliance is causing more harm with its failed interventions or causing more good to the society by acting as a "shield" to the majority of European countries.

***Keywords**: NATO, collective defense, International politics, USA, interventions.*

I. INTRODUCTION

The North Atlantic Treaty Organisation, formed in 1949 is a bloc based on the concept of "collective defence". This treaty was signed by anti-communist countries to combat the "evil empire"- Russia[2]. In May of 1948, Arthur H. Vandenberg, the former Republican Senator of the USA proposed a resolution that would follow the principles of the United Nations charter, but outside of the official United Nations Security Council, wherein, The Soviet Union held the veto power[3]. This resolution was passed which resulted in the initiation of the NATO negotiations. This was amidst the unsettling events of the Cold war. Between 1948-1949, the Berlin crisis began. The Berlin crisis solidified the division of Europe, where the Soviet Union created a blockade between the divided Berlin, namely West Berlin, influenced by anti-

[1] Author is a student at Jindal Global University, India.
[2] Ronald Reagan, "evil empire speech", National Association of Evangelicals, 1983.
[3] U.S Department of State, https://1997-2001.state.gov/regions/eur/nato/vandenberg.html, (last visited 3 Oct,2024).

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communist ideologies and controlled by the U.S.A, and East Berlin, influenced by communist ideologies and controlled by the Soviet Union. The cold war separated several countries into two alliances, the division being based on two different ideologies. One, the Soviet Union, and other communist countries, like China; and the other, the USA, and other anti-communist countries like Canada. The founding nations of NATO were: The United States of America, United Kingdom, France, Italy, Canada, Norway, Netherlands, Belgium, Denmark, Portugal, Iceland and Luxemburg. At present, NATO has expanded to 32 member states[4]. The USA had a nuclear monopoly from 1945-1949[5].In 1949, the Soviet Union conducted its first successful nuclear test, codenamed "First Lightning"[6]. This instilled deeper fear and created a security dilemma between the USA and USSR. Mutually assured destruction was stated and the countries knew that direct attack on each other would be detrimental to both countries. This led to further alliances by both countries. Multiple wars started gaining momentum, like the civil wars in Korea and Vietnam. The USA supported the anti-communist parts of Korea and Vietnam, while the USSR, supported the communist parts of the same. This developed fear among other countries that had aligned themselves with similar ideologies, and the only way to secure themselves from a security breach was, NATO.

II. RELEVANCE OF NATO AFTER 1999

The USSR legally ceased to exist on December 31,1999. 15 independent states emerged and the Russian Federation became the successor of the Soviet Union. After the dissolution of The Soviet Union, the dominance, started declining. The GDP of Former Soviet Union (FSU) had fallen by roughly 50 per cent from its pre-recession level of 1989 In FSU states were severely affected by conflict (Armenia, Azerbaijan, Georgia, Moldova and Tajikistan)[7]. The relative power of the Soviet Union has drastically declined. Why is the threat of neighbouring countries to Russia, joining NATO such a big threat? Article 5 of NATO[8]. Article 5 of the NATO charter[9] states that "The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations[10], will assist the

[4] NATO- Homepage, https://www.nato.int/cps/en/natohq/topics_52044.htm, (last visited 3 Oct, 2024).
[5] NATO- Homepage, https://www.nato.int/cps/en/natohq/declassified.htm, (last visited 3 Oct, 2024).
[6] Bill Streifer and Irek Sabitov, "The Shock of First Lightening": An Intelligence Failure?, 31, National Military Intelligence Foundation, 54-58, 2013.
[7] Vladimir Popov, Where do we Stand a Decade After the Collapse of the USSR?, angle autumn, 65, 2001.
[8] NATO- Homepage, https://www.nato.int/cps/en/natohq/topics_110496.htm, (last visited 3 Oct, 2024).
[9] *Id.* at 8.
[10] Welcome to the United Nations, https://legal.un.org/repertory/art51.shtml, (last visited 3 Oct, 2024).

Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area. In a situation of war, Russia will be out of allies, and will have to collectively guard against all 32 and expanding NATO member states. NATO has intervened in several civil wars, often resulting in breach of sovereignty and sometimes, damage to civilians. Following the fall of the Soviet Union, NATO transitioned from being a strictly defensive organisation to a broad-based security organisation. The fall of soviet union removed the purpose for which NATO was created as democratic values have assumed to conquer communism[11]. George Robertson, the former secretary general of NATO, announced that the "alliance's new mission" was "to build the Euro-Atlantic security environment of the future, where all states share peace and democracy, and uphold basic human rights"[12]. In 2011, the NATO-led coalition entered Libya's civil war to take down the dictator, Muammar al-Qaddafi. This intervention caused great distress around the world, where at least 72 civilians were killed, reportedly one-third of them being under the age of 18[13]. Libya and the 2011 NATO intervention have been described brutally, with failure, and disaster[14]. President Obama, describes this intervention as his "worst mistake" of his term as president[15]. Article 2(4) of the UN charter[16] defined the general prohibition on the use of force that all members of the state respect the sovereignty , territorial integrity and political independence of other states. On more such "humanitarian interventions" NATO has received immense backlash. In the Kosovo crisis 1999, NATO acted impulsively on the act of humanitarian emergency which was not authorised by the United Nations Security Council. During the crisis, NATO has violated the following international humanitarian law by these actions:[17]

- conducting air strikes using cluster bombs near populated areas,
- attacked targets of questionable military legitimacy ,
- not taking adequate precautions in warning civilian of attacks,
- caused excessive civilian casualties by not taking sufficient measures to verify that military targets did not have concentrations of civilians.

[11] Brookings, https://www.brookings.edu/wp-content/uploads/2016/06/reportch1.pdf, (last visited 3 Oct, 2024).
[12] NATO- Homepage, https://www.nato.int/cps/en/natohq/opinions_20556.htm?selectedLocale=en, (last visited 3 Oct, 2024).
[13] Brookings, https://www.brookings.edu/articles/everyone-says-the-libya-intervention-was-a-failure-theyre-wrong/ , (last visited 3 Oct, 2024).
[14] *Id.* at 13.
[15] *Id.* at 13.
[16] UN Charter, 1945, art. 2(4).
[17] Stanley Igwe, An Assessment of the Motivations for the 2011 Nato Intervention in Libya and Its Implications for Africa, 13, Canadian Social Science, 1, 2-4, (2017).

Thereby, from sufficient understanding, without the original purpose of NATO being actively present, the new mission of NATO has been in contradiction of the pre-existing international laws established by the UN. Hence, the relevance of NATO has been declining rapidly. The discussion about Ukraine joining NATO has been a driving factor to the ongoing war between Russia and Ukraine. Russia and Ukraine share a border with each other, this directly causes a security threat to both states if a war is struck. Especially if Ukraine joins hands with NATO, in case of invocation of article 5[18], Russia will not just be exposed to close European countries and the USA, but also a bordering country, Ukraine. According to the theory proposed by realists, this poses a major security threat. Volodymyr Zelenskyy has often expressed his interest in joining NATO publicly. Against this, Vladimir Putin, has opposing views. Joining NATO will boost Ukraine's defensive strength manifold, and so Russia wants an assurance its neighbour will never be allowed to become a member of the alliance. The two views contradict each other so immensely that Russia in fear of NATO's expansion declared war against Ukraine.

III. NATO & UN

The UN and NATO were both established during the 1940s. When NATO invoked Article V[19] for the first time in its history—on September 12, 2001—Europeans conveyed their solidarity with the United States in a world in which geography and traditional territorial defence mattered less than unconventional, transnational threats[20]. The United Nations was formed on the principles of sovereignty, equality of each state, prohibition of use of force in international relations and settling international conflicts peacefully. The UN is a diplomatic body, while NATO is majorly based on military cooperation. NATO's core principle is that the attack on one member is an attack to all. This is the principle of collective defence, which is provided in article 5 of NATO[21].NATO and the U.N. are two organisations trying to work together despite the fact that they have very different philosophies: NATO is an organisation designed to fight war, if necessary, in order to defend peace; whereas the U.N. is an organisation designed to avoid war in order to maintain peace. Although the UN and NATO have formally been under a signed joint declaration since 2008, the alliance is still seen as a Cold War military machine and a US "tool-box" by parts of the UN bureaucracy[22]. The UN Security Council is the only body with the authority to legitimise the use of force in international relations. The only

[18] NATO, 1945, art. 5.
[19] *Id.*at 18.
[20] 76, James Goldgeier, The Future of NATO, 1-11, (IOS Press E-books 2010).
[21] NATO, 1945, art. 5.
[22] Michael F. Harsch, NATO and the UN, 51, Survival, 5, 5-6, (2009).

exception is provided by Article 51 of the UN Charter[23], which sets out the right of individual or collective self-defence. Despite collaborations and joint operations, NATO has essentially remained a military organisation while the UN focuses on peace-keeping through non-violent and diplomatic solutions. This inherent and fundamental gap between the two further widens the cohesiveness in adhering to international law norms.

(A) Would NATO survive without the United States of America?

The idea of NATO without the United States seems to be a science fiction idea[24]. During the early years of the formation of the treaty, the protection of Europe seemed to be secured by the hands of the United States. The US has often been referred to as the "offshore balancer", which has emerged from maintaining power balance through diplomacy and security dilemma. NATO has 3.39 million active military personnel[25]. The USA alone has 2.12 million military personnel[26]. This showcases the military and defence power the USA contains as compared to the entire NATO bloc. NATO's primary function as enshrined in Article 5[27] of the treaty is collective defence. The credibility and threat caused to other opposing countries via article 5[28] heavily relies on the military power of the US. NATO's deterrence is largely based on the nuclear umbrella provided by the US supported with the US nuclear triad[29]. According to the 2024 Global Firepower Military Strength Rankings, the US comes on top with the power index of 0.0712[30]. Without the US, NATO would lose a significant portion of its rapid response ability and military power, reducing its threat to potential aggressors. The US accounts for approximately 70% of NATO's total defence expenditure[31]. Despite the commitment of other members to increase budgets, they continue to spend less than 2% GDP target. The United States has played a key role in logistical functionality for NATO operations like Kosovo(1999), Afghanistan(2001) and even Libya(2011). NATO's reliance on airlift capacity is evident. The US has a large air force and a significant airlift capacity in NATO, including the Boeing Globemaster III C-17. Conclusively, NATO's operational effectiveness heavily banks upon US military infrastructure, logistics, political influence and other technological assets. Without

[23] UN Charter, 1945, art. 51.
[24] IGI- Global, https://www.igi-global.com/chapter/nato-without-the-usa/286732, (last visited 3 Oct, 2024).
[25] THE WEEK, https://theweek.com/news/defence/104574/nato-vs-russia-who-would-win, (last visited 3 Oct, 2024).
[26] USA Facts, https://usafacts.org/articles/how-many-people-are-in-the-us-military-a-demographic-overview/, (last visited 3 Oct, 2024).
[27] NATO,1949, art. 5.
[28] *Id.* at 27.
[29] U.S Department of Defense, https://www.defense.gov/Multimedia/Experience/Americas-Nuclear-Triad/, (last visited 3 Oct, 2024).
[30] Global Firepower, https://www.globalfirepower.com/countries-listing.php, (last visited 3 Oct, 2024).
[31] NATO- Homepage, https://www.nato.int/cps/en/natohq/topics_67655.htm, (last visited 3 Oct, 2024).

US participation NATO would lose its ability to perform complex, long range interventions. The reliance and dependence states how NATO's effectiveness and operational independence are fundamentally linked to the United States.

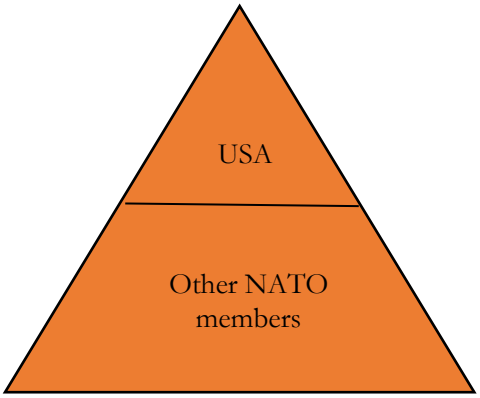

Fig- 1

Fig-2

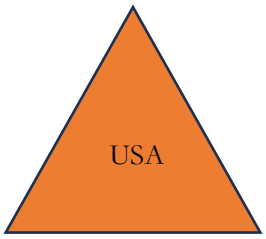

Fig-3

Through figures 1, 2, and 3, the relationship between NATO and the USA is shown in a diagrammatic manner. In Figure 1, we can see the whole NATO bloc, consisting of 32 members[32] including the US forming a complete and functional triangle. This figure stresses upon the completeness of NATO with all the members intact, depicting its rapid and effective functionality. However, when one removes the USA from NATO, two results are formed, figure 2 describes the condition of NATO, and figure 3 describes the condition of the USA. As we can see, figure 2 is unable to form a complete and functional triangle (depicting effectiveness and functionality). While, figure 3, even though separated from the entirety of NATO still forms a complete and functional triangle. By this method, one can understand the complex relation between the two entities (NATO and US) in a simplified manner.

IV. CONCLUDING REMARKS

As NATO evolved from its Cold War origins, its relevance has been constantly questioned due to the dissolution of the Soviet Union and subsequent dynamics in the realm of international relations. NATO's foundational principle, collective defence poses serious questions regarding its adherence to international law. The operations led by NATO in Kosovo and Libya surround questions of balance between "humanitarian emergency" and state sovereignty. Furthermore, NATO's excessive dependence on the military and global prowess of the US creates further complications. The subsequent expansion of NATO to include former soviet states, like Hungary, Poland, Latvia, etc. furthers tension between Europe and Russia. A middle path for an alliance like NATO is challenging, due to its very purpose to deter the Soviet Union. Due

[32] NATO- Homepage, https://www.nato.int/cps/en/natohq/topics_52044.htm, (last visited 3 Oct, 2024).

to changing dynamics, NATO keeps changing its role in the global world and assumes the role of a humanitarian saviour disguising other political agendas and conflicting laws when it comes to peace-keeping and non-violence measures. Despite a conflicting start of the UN and NATO relationship, they are now under a cooperation treaty, signed during the Brussels summit[33]. NATO's future depends on various factors, 1) US involvement, 2) cooperation with the UN and 3) adapting and changing its mission with a changing environment due to the absence of its original purpose. In between keeping friendly relations with other more accepted institutions and balance between violating sovereignty of each state, NATO has a wavering future with dynamic obstacles.

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[33] Michael F. Harsch, NATO and the UN, 51, Survival, 5, 5-6, (2009).