

## NATO's Violation of International Law in Afghanistan: A Critical Analysis

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### **Abstract**

*Afghanistan is a geopolitically important country which is currently facing issues like poor economy, limited resources, weak communication system, conflicts, civil wars and political unrest. In regard with these issues, this qualitative study has applied narrative design of research and aims to analyze the characteristics of residents and land of Afghanistan; it also aims to find out the causes and effects of USSR invasion of Afghanistan in 1978. The study is extensively focused on emergence of Taliban in Afghanistan, 9/11 incident, NATO's aggression and occupation of Afghanistan, which will result in details regarding NATO's violation in Afghanistan and its impacts on future global politics, international law and international organizations. Both primary and secondary data sources are employed for exploring 9/11 incident and NATO's attack on Afghanistan. The study possesses novelty based on the fact that it has addressed issues like USSR invasion of Afghanistan, 9/11 incident and NATO's attack on Afghanistan in context of its impacts on people and land of Afghanistan. Long lasted impacts of these incidents are highlighted by the study which tremendously adds significant historical information to the literature while relating it with the current conditions of Afghanistan. Moreover, this study has mentioned several issues, addressing which, the unrest in Afghanistan can be significantly reduced.*

**Keywords:** NATO, Violation International Law, Afghanistan, USSR Invasion, 9/11 Incident

### **1.0 Introduction**

The creation of the North Atlantic Treaty Organization (NATO) back on April 4, 1949, was initiated by the United States, who has been the leader of the alliance (Simon, 2014). NATO was developed as a collective defence alliance centered at deterring USSR (Soviet Union) to an internationally involved security alliance of 29 members (Belkin, 2019). The 1949 Treaty of Washington is a public document that has set the core values (free institutions, the rule of law, individual liberty and democracy) that the alliance will protect in a way consistent with the Charter of the United Nations (Rynning, 2011). In the outcome of the WW II, a framework was provided by the United States to design NATO for coordinating the US, Western European and Canadian defence against the possible menace from the Warsaw Pact and Soviet Union (Mastny and Byrne, 2005; Wallander, 2000). The opening mutual defence clause of NATO enshrined in its article (5) sought to avert both USSR's ability and Soviet expansion to break the alliance. Other key objective of the alliance was to involve the earlier belligerent Europeans nations (like UK, France, Italy, and most importantly West Germany) in a defence and security agreement for preventing the outbreak of possible hostilities between these states in the near future (Lindley-French, 2015). The development of NATO can be understood after analysing its purpose of creation. The historical development and advancement associated with NATO can be categorised into different periods (with a specific level of methodological explanations for the aim of this research) – 1949-1989 (Cold War Period), 1989-2001 (Post-Cold War Era), 2001-2014 (Post-911 period), and (2014-ongoing), Post Russian-Ukrainian War (Čížik and Novák, 2015).

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NATO has remained successful in its previously set objective of creating a binding between the European Nations and a robust security and defence alliance against the Soviet Union. It has carried out several missions, but one of the best examples of its operation beyond Europe was the ISAF (International Security Assistance Force (ISAF) launched in Afghanistan based on the UN Security Council Resolution 1386 in December 2001. Primarily, ISAF's mission was to neutralise the threat of Al-Qaeda due to their involvement in 9/11 attacks and to defeat the regime of the Taliban in Afghanistan. However, as time goes by, new missions were assigned, such as securing Kabul and other adjoining areas from Taliban and Al-Qaeda (Majer, 2013; Bátor, 2013). Apart from the development, progress and mission carried out by NATO, the alliance came under strong criticism due to its attack in 1999 Serbia. It was, according to Russia, a clear violation of the principles set in the Russia-NATO Founding Act, and also with the 2003 attack on Iraq led by the US, which violated the U.N Charter (Wivel and Paul, 2019).

Additionally, NATO, since its creation has faced criticism. One of the concerns of its critics in the US, and among few Members of Congress, has been the reliance on the US by the European Nations for security guarantees. These guarantees have created an unsustainable and imbalanced burden-sharing arrangement by which the US holds an unfair and unequal share of responsibility of ensuring the security of Europe (Belkin, 2019; Simón, 2014). Besides, NATO has also faced criticism for violating international law in many of its operations, including the one in Afghanistan (Lee, 2012).

In this regard, the present research aims to assess NATO's violation of international law in Afghanistan. It specifically focuses on the case of Afghanistan post 9/11 and understands the relevance of international law in armed conflicts and its violation by defence and security alliance like NATO. The terrorist attacks on September 11, 2001, in the US, were a pivotal moment for the evolution of NATO. It was for the first time that Article (5) of NATO was invoked and military assistance was offered to the US in responding to the twin tower attacks. Over the years, the European allies and Canada joined the US in military operations in Afghanistan which has now become the most expansive and by far the longest operation in the history of NATO (Freedom, 2016; Count, 2009). The international law with regards to armed conflict is very clear, as it binds legal responsibilities among member states. One of the key principles of the international legal system is that states are independent actors and legally equal in the world community, and they usually assume legal responsibilities by agreeing affirmatively to do so. The international agreements are the effective instruments in the formation of international law, which can be both multilateral, and bilateral (Alston and Goodman, 2013).

In the context of armed conflict like that in Afghanistan, the law of war allows states involved in international armed conflict to use force to attack military targets of the enemy. It is also authorised by the UNSC (United Nations Security Council) to use force as listed in the U.N Charter (Watkin and Norris, 2012; Johnson, 1999). These general principles apply to internal humanitarian law violations. It was specifically set back in the Hague Convention (IV) in 1907 respecting the Customs and Law of War on Land. According to the article (3) of the Hague Convention, "*a belligerent state violating the provisions of the regulations shall, if the case demands, must be liable to pay compensation*" (Gillard, 2003).

Legal scholars like Olivier Corten believed that there was undisputed political opposition against the Taliban-led Afghan regime (Corten, 2010). However, despite strong opposition against the Taliban by states and different international organisation, change of regime is itself not enough to justify an invasion of a sovereign country. Therefore, the justification for the invention by the US and its NATO allies would

not be considered as permissible or credible under the principles and rules of international law. Also, Article 2 (3) of the Charter is important in this regard, which states that disputes of all kinds should be resolved peacefully so that global peace and security can be ensured (Fassbender, 2009). Under this article of the Charter, it appears that adequate efforts were not made to determine how the US wanted to achieve its objectives in Afghanistan. The aggression and threatening tone by the US when addressing this issue, along with the fact that only two weeks were given to Taliban to hand over the terrorists, propose that the article was overlooked in its totality (Corten and Koutroulis, 2013).

The US and the United Kingdom weeks after 9/11 attacks started Operation Enduring Freedom with aerial bombing, which caused 5,000 plus civilian casualties (Crawford, 2013). This act in the light on international law was not legitimate self-defence and was hence accepted in clear violation of the UN Charter (Innes, 2007). Considering the technicalities of international law related to the armed conflict, the aerial bombing and ground offences were not self-defence as non-state actors carried out 9/11 attacks, and not by a sovereign state. There was no such possible chance of armed attack after 9/11 on the US. If it were then, the US would not have waited for weeks before launching its bombing campaign (Street, 2015; Zurn, Nollkaemper, and Peerenboom, 2012). As per the agreed principles of international law, the need for self-defence must be 'overpowering, prompt, leaving no moment for discussion, and no choice of means (O'Brien, 1983; Cohn, 200; Shaw, 2003).

Additionally, the bombing on Afghanistan after 9/11 attacks violated the UN Charter, and the use of cluster bombs and depleted uranium violated the Geneva Convention Protocol I (Model, 2005). The question aroused among several foreign policy and international law experts that the US and its allies could have established the criminal tribunal in the Security Council, as it did for Rwanda and Yugoslavia (Miller, 2003; Carroll, 2000). Various anti-terrorism conventions could have been used in the tribunal, or Afghanistan could have been sued in ICJ (International Court of Justice) for protecting terrorists involved in the attacks on the US (Cohn, 2001). However, such considerations and peaceful means were not considered at all, rather military force was used against a country which could not even defend its territory, despite the fact that Afghanistan and its people had nothing to do with terrorist attacks on the US.

Additionally, the role of NATO in its operations whether it was 1999 Yugoslavia bombing, 2001 Afghanistan war, or the 2003 Iraq war has been criticised strongly because of the violation of the US and international law. None of those operations was conducted with the approval of UNSC or prosecuted in self-defence. All these conflicts (Yugoslavia, Afghanistan and Iraq) were an act of aggression, and aggression is outlawed by Nuremberg Tribunal, and ICC (International Criminal Court) can prosecute the aggressor. The further forcible regime is considered illegal and barred by the International Covenant on Civil and Political Rights. Also, killing or targeting civilians is a serious breach of the Geneva Convention, and are prosecutable as a war crime (Cohn, 2004). The start of armed conflict by the US and its NATO allies against Afghanistan raises significant international humanitarian law (IHL) issues. It is known that IHL prohibits the use of weapons under conditions in which there is no discrimination found between civilian and military targets. The International Human Rights Watch showed their concern regarding the use of anti-personnel landmines and cluster bombs by NATO in Afghanistan under conditions that violated the standard of use of force set by IHL (Solis, 2016; (Schmitt, 2009). To be precise, it is established that Afghanistan's invasion by NATO is not considered legal under international law, because of the fact that resolutions passed by the UN after 9/11 did not specifically allow an aggressive approach in dealing with international terrorism. Article 2(4) and Article 2 (3) of the Charter are quoted in this regard, which was

not followed to as, as amicable means to resolve the conflict. Further, the US asserted that it was acting on the principle of self-defence as per the article (51) of the UN was highly argumentative (Khan, 2013).

## **1.2 Problem Statement**

Geopolitically Afghanistan is a very important country. It is an abode of Uzbek, Tajik and Pukton ethnic groups. It is the territory comprises low land and high land, and has mountains of twenty thousand feet heights. It is the primitive type tribal society going through the process of transformation. Afghanistan's economy is very poor. Its recourses are meagre and have week communication system (Ewans, 2002; Emadi, 2005). Afghanistan from the past four decades has been in constant turmoil, conflicts, civil wars, and continuing political and civil unrest. The Saur Revolution in 1978, followed by Soviet Invasion of Afghanistan in 1979 destabilised Afghanistan and the surrounding regions. The Soviet's presence in Afghanistan from 1979-1978 devastated the infrastructure, economy and livelihood of people, and started a long civil war among the mujahedeen fighting against the Red Army (Siddiqui and Butt, 2014). Followed by the civil war in Afghanistan, the Taliban (a fundamentalist military and political organisation) established an Islamic State in September 1996 (Ghufran, 2001). The 5-year rule of Taliban in Afghanistan helped them consolidate their power in the whole of Afghanistan. However, attacks on the US on September 11, 2001, from a militant group based in Afghanistan again led to the destabilisation of the country, when the US and NATO forces on October 2001 started bombing Afghanistan to end the Taliban led Kabul regime and to eliminate Al-Qaeda terrorist (Bajoria and Laub, 2011).

Nevertheless, a significant number of studies, books, scholarly literature publications, articles and journals are available covering war on terror and the US invasion in Afghanistan (Hussain, 2005; Biddle, 2005; Amoores and De Goede, 2008 Morelli, 2009; Webber, 2009; Hallams, 2009; Byrd, 2012; Small, 2014; Salt, 2018). Yet, there is limited empirical research available on the subject about the violation of international law by NATO in Afghanistan. Therefore, to provide empirical research and to contribute to the existing literature on NATO's violation of international law in Afghanistan, this research has an important standing.

## **3.0 Significance of the study**

Afghanistan has remained a path way of invaders to attack and rule India. Historically there are different opinions about Afghanistan, according to one “you can lease Afghanistan but cannot sale it”. According to another “It is a grave yard of great dynasties”, new one include super powers like USSR and USA.

It is a gate way to Asia, Middle East, South East and Central Asia. According this verse of Allma Iqbal “The war in Afghanistan will disturb Asia and peace in Afghanistan will prosper Asia”. [Persian verse].

کشاد او کشاد آسیا،

فساد او فساد آسیا.

On the basis of above statement present research study carries very high significance beyond guess and will indicate the dangerous trend of global village, therefore much needed also.

### **3.1 Research Objectives and Questions**

NATO's invasion of Afghanistan is seen in the context of self-defence and military assistance to the US after deadly attacks of 9/11. NATO has been under criticism for its operation beyond Europe, mainly for violating international law and protocol of the Geneva Convention. The example of Serbia and Yugoslavia are there in which NATO's action was criticised on the grounds of unlawful aggression. Likewise, NATO, along with the US, was also questioned regarding their bombing on Afghanistan, which, although from their perspective, was lawful following the UN resolution 1368. Nevertheless, international law in this regard is clear, and the act of aggression in the cover of self-defence on a sovereign state is still being questioned among scholars and legal experts. Therefore, to assess the international law violation by NATO in Afghanistan, the following are some the key objectives:

1. To assess the character of peoples and features of the land in Afghanistan
2. To examine the causes and assess the impact of the USSR invasion of Afghanistan in 1978.
3. To discuss the causes for the rise of the Taliban in Afghanistan.
4. To elaborate on the details of the 9/11 incident, its reaction, NATO's aggression and occupation of Afghanistan.
5. To discuss NATO's violation in Afghanistan its impact on future global politics, international law and international organisations.

In relevance to the aforementioned aim and objectives, the subsequent are the main questions of the research:

- Q1. What were the motives behind NATO's aggression and invasion of Afghanistan?
- Q2. Does the act of aggression and occupation under the principles of self-defence justified in accordance with international law?
- Q3. How NATO's violation in Afghanistan is impacting and will impact future global politics, international organisation and international law?

### **4.0 Hypothesis**

NATO's violation of international law in Afghanistan will change the course of global politics and damage international law and international organizations.

### **5.0 Research Methodology**

This study is descriptive approach. The reason for selecting this approach is that it is this research reviews literature related to an event and a case, hence the qualitative approach is more suitable in understanding and analyzing the overall case of this study. Besides, this approach is flexible and offers in comprehending the research issue in great detail. Further, the results or the conclusion drawn using this approach are likely to be in-depth. Hence, these characteristics allowed the researcher to consider a qualitative approach.

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### *5.1 Research Design*

In this research, a narrative design is selecting to acquire information and research material linked to our case, which is to assess NATO's violation of international law in Afghanistan. As this particular area of the subject has been investigated and studied comprehensively by scholars, and law experts, a narrative design is useful in describing or narrating the event, i.e. NATO's invasion.

### *5.2 Data Collection*

In the present research, both primary and secondary data are used for collecting relevant material for the topic of under investigation. In the case of primary data, scholar works and opinions of foreign policy, military and international law experts are included to enrich the understanding of this topic. Besides, books, U.N Charter, NATO Charter, and government documents of the US are also considered in primary sources. On the other hand, publications, articles, journals and credible online sources are used as secondary sources.

NATO allies were enthusiastic about the intra-Afghan peace negotiations which were announced at a ceremony on 12th September 2020 in Doha, Qatar. The NATO allies urged the Afghan government and the Taliban to accomplish the commitments towards a comprehensive peace agreement which puts a stop to the violence while building on the progress made in the last 19 years to uphold the rule of law, safeguard human rights, and ensuring that Afghanistan is never made a haven for terrorists again. Necessary adjustments are intended for RSM, and at the same time, the NATO allies remain committed to funding and training the Afghan army and institutions.

## **6.0 Conclusion**

Considering the current conditions and problems faced by the residents and land of Afghanistan, the research has focused on some of the many reasons that Afghanistan is facing problems of poor economy, limited resources, weak communication system, conflicts, civil wars and political unrest. The study had objectives to find out the causes and effects of USSR invasion of Afghanistan in 1978. The study is extensively focused on emergence of Taliban in Afghanistan, 9/11 incident, NATO's aggression and occupation of Afghanistan, which will result in details regarding NATO's violation in Afghanistan and its impacts on future global politics, international law and international organizations. This qualitative study has taken up a narrative design of research, whereas, the data was collected from both, the primary and the secondary sources. 9/11 incident and NATO attacks have been analyzed in detail, the study has extensively discussed the causes and effects of these incidents. NATO and Afghanistan's history has been explained based on the synthesis of previous literature, resulting in tremendous addition to the theoretical findings.

### **6.1 Implications of the study**

The study possesses significant implications in theoretical, practical and policy making sectors, based on the fact that it has addressed issues like USSR invasion of Afghanistan, 9/11 incident and NATO's attack on Afghanistan in context of its impacts on people and land of Afghanistan. This study has significantly contributed to the theoretical information regarding the major incidents that are impacting the well-being of Afghanistan. Practically, eliminating the peace threatening factors from Afghanistan, issues

of poor economy, limited resources, weak communication system, conflicts, civil wars and political unrest can be eliminated based on the results of this study, by implementing intact policies.

## 6.2 Limitations of this study

Despite of all of the significant implications, this study has following limitations:

1. The study has used both primary and secondary resources, whereas, most of the sources were secondary, primary sources can be enhanced to collect up to date data with enhanced authenticity.
2. The study has only targeted specific issues of Afghanistan that are mostly related to the history of Afghanistan, whereas, most of the current issues could have been addressed.

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