



3rd Place in the John Roberts Student Essay Competition 2010

To abolish war do we first need to abolish NATO?

Soumitra Subinaya, National Law University, Orissa, India

Definition of Terms

Definition: *Ex ante*, Latin for "beforehand". In models where there is uncertainty that is resolved during the course of events, the ex-ante values (e.g. of expected gain) are those that are calculated in advance of the resolution of uncertainty.

Definition: *Ex post*, Latin for "after the fact". In models where there is uncertainty that is resolved during the course of events, the ex-post values (e.g. of expected gain) are those that are calculated after the uncertainty has been resolved.

SUMMARY

Let me begin by advancing an interdisciplinary, innovative and creative approach to prove that, in the past, NATO has increased the frequency and severity of war and will continue to do so, if not checked by rule of law.

Arguing first on the basis of strong economic observations such as "Human beings respond to incentives" and incisive legal analysis using concepts such as *ex post* and *ex ante* with concrete historical examples, I contend that in avoiding prosecution in the International Criminal Court (ICC), NATO has provided incentives for the abuse of the rhetoric of humanitarian intervention.

The methodology I have adopted is doctrinaire and the reasoning essentially legal and economic. The objective of this essay is to provide insightful and practical solutions that will reform NATO. By aligning NATO interventions with international law, we can transform it into a non-violent and non-aggressive institution. In this essay, I have called the late John Roberts (see bio below) a Gandhian. Further, I have discovered similarities among the philosophies of Roberts, Mahatma Gandhi and Buddha and noted the influence of Gandhi and Buddha on the thoughts of Dr. Ian Davis, founding director of NATO Watch. As proposed by Gandhi and reinforced by Professor Roberts, I have urged

NATO to curb economic violence as a method of ending war. In addition, I have appealed to the United Nations (UN) to introduce a right-to-information convention, to be ratified by all NATO members that would make NATO actions subject to review by the International Court of Justice (ICJ). I conclude that a non-aggressive, law-abiding, accountable and transparent NATO could spell an end to war.

ESSAY

"A thief walks into a bank, puts a gun to the head of one of the customers, and announces he will shoot unless the teller hands over all the money in the drawer. The teller does nothing. The thief shoots the customer, runs off, and vanishes. The customer dies of his injuries. His estate brings a lawsuit against the bank. The complaint states that the teller should have given the money (let us imagine it was only \$5,000) to the thief. What should the court say?"¹

The court can base a judgment on either an *ex-post* or *ex-ante* argument. If the court follows an *ex-post* train of thought, it can say if the plaintiff (the deceased customer's estate) wins, the banks will have an incentive to hand over the money when thieves take hostages (to avoid paying in court again next time). Thus, thieves will have an incentive to take hostages, because of the economic rationale that human beings respond to incentives.² A problem arises. Allowing the customer's estate to win in such a case might cause future hostage-taking. The court will then propose an *ex-ante* argument and the bank must win the case. As the objective is to make the right rule for

¹ Ward Farnsworth, "The Legal Analyst", 2007, The University of Chicago Press, p.3.

² N. Gregory Mankiw, "The Principles of Microeconomics", p.5.

the future, the court would decide in favour of the bank.

Keeping this economic principle of incentives and the legal concepts of *ex post* and *ex ante* in mind, we might consider the following situations in three historical examples, the NATO bombing of Yugoslavia, and NATO interventions in both Iraq and Afghanistan.

In Yugoslavia during the 1990's, the Kosovo Liberation Army (KLA), a Kosovar Albanian organization, sought the separation of Kosovo from Federal Republic of Yugoslavia. The KLA campaign against Yugoslav security forces triggered a Yugoslav military response and the Kosovo War of 1998-1999. Military intervention by Yugoslav security forces led by Yugoslav president Slobodan Milosevic and Serb militias within Kosovo caused Kosovar Albanians to flee the area. NATO intervened in what was widely identified as a bloody campaign of "ethnic cleansing".

Following three NATO interventions, we could propose that NATO is dragged to the ICC. The Alliance justifies its use of violence on the grounds of genuine humanitarian reasons. If we assume the humanitarian reasons are founded and verified, we would find that NATO had used force without UN Security Council authorisation, and thereby violated Articles 2, 39, 41, 42, 51 of the UN Charter. We would also find NATO resorted to force before exhausting all peaceful, non-violent methods of conflict resolution. One NATO option was to deploy UN peacekeeping forces. As author John M. Swomley writes, "to stop the killing of Kosovars, the United States (U.S.) succeeded in securing the agreement of Slobodan Milosevic to pull back his troops and special police in Kosovo to 14,000." The author further writes that despite KLA protests, Milosevic also agreed to allow unimpeded NATO air surveillance over Kosovo and 2,000 unarmed verifiers on the ground. The KLA was later pressured to agree to an ultimatum in support of NATO's military takeover of Kosovo. Faced with a choice, NATO nevertheless chose a military solution.

Dr. Ian Davis criticises the war on Afghanistan because it was premature.³ John Roberts, in his article *NATO in Afghanistan*⁴ underscores its

³ Ian Davis, "Afghanistan 2010: 'Just War' or just more war?" Briefing Paper No.5, 8 January, 2010.

⁴ John Roberts, "NATO in Afghanistan", posted on JR mundalist blog on 1 June 2008.

illegality. "The illegal war against Iraq was first justified as preventing a threat from weapons of mass destruction. When these were not found, (the justification) changed, and was described as a means to rid the world of a dictator, one formerly helped by Britain and the U.S., to wage an aggressive war against another country. Today, Afghanistan is now being fought over by NATO for other purposes, while the vast Iraqi oil reserves are at last safely in the hands of the big oil companies. But the continued involvement of NATO forces, far away from Europe, is being justified on similarly specious grounds."⁵

The three wars in Kosovo, Iraq and Afghanistan have all resulted in heavy civilian casualties. The use of force in these wars was not at all proportional. Reports of the use of Depleted Uranium weaponry in these conflicts, if true, violated international conventions and laws.

In Afghanistan alone, as Dr. Davis says: "The US military has killed 12,000-32,000 civilians since the war's outbreak, compared to 1,000 U.S. casualties."⁶ NATO actions in taking unauthorized interventions violated the rule of law, as the law requires a government action to be "bound by rules fixed and announced beforehand."⁷

The law also requires equality, applying equally to all persons without prejudice.⁸ In acting in contravention of existing international laws, NATO created inequality. John Roberts writes: "Other armies that created refugees were not treated to such drastic reprisals, and the obloquy heaped upon Milosevic was not paralleled by American attitudes to South American dictators or other rulers, such as Soekarno in Indonesia or Saddam Hussein in Iraq – until the latter stopped attacking Iran and turned his unwelcome attention to Kuwait. Selective moral indignation, the hallmark of the partial judge, is suspect wherever it is observed."⁹ Thus, NATO has been partial and self-interested in its 'interventions'.

⁵ Ibid.

⁶ Ian Davis, "Afghanistan 2010: 'Just War' or just more war?" Briefing Paper No.5, 8 January 2010.

⁷ Todd J. Zywicki, "The rule of law, freedom and prosperity", Supreme Court Economic Review, Vol.10, 2003.

⁸ Ibid.

⁹ John Roberts, "The wrong world governments", posted on JR Mundalist blog on 1 May, 1999.

In addition, the US acted undemocratically acting alone, without permission of other members of the UN Security Council. Was NATO's violation of international laws because of real humanitarian crisis? What would the ICC have decided? One could argue that NOT prosecuting NATO would give incentives to other nations unilaterally and arbitrarily to use unauthorized force, before exhausting non-violent and peaceful alternatives, even if the reasons for launching a humanitarian intervention were genuine. *Ex ante*, powerful nations can abuse the rhetoric of humanitarian intervention by carrying out their selfish designs. The ICC, in conducting an economic and legal analysis followed by a court of law, would have prosecuted NATO. Its inaction has provided powerful states with incentives, with the result that those states and NATO will continue to use aggression, force and violence. NATO has increased the severity and the frequency of war, and will continue to do so, if not checked by international law.

Can NATO abolish war?

Davis writes that "fire cannot extinguish fire". Gandhi says: "True nonviolence, security, and democratic empowerment are possible only under economic conditions and structures of a more decentralized, more equitable distribution of economic resources and power".

Can NATO curb Economic Violence?

Certainly, NATO has acted on behalf of prosperous nations. As Roberts writes in his article, *The Wrong World Government*: "The NATO world government is one which will pick on areas of particular concern to the wealthy and will treat them as favoured, will expend treasure and time to reform them nearer to the design of some NATO leaders; and will ignore much of the rest of the globe." NATO can curb economic violence by respecting the sovereignty of states that may be the poorest of the poor. It can also abandon its practice of impoverishing the world by shifting resources from social sectors to war. In this way, NATO could provide economic reward to poor and conflict-ridden nations by helping them resolve their internal problems, rather than through external intervention. For example, NATO could reward North Korea with oil supplies, on condition that North Korea halt building its nuclear arsenal.

In addition, NATO can reduce economic violence by becoming an international humanitarian aid agency. It can, through its air, land and sea power, transport food, medicines and other materials to areas

affected by human-made or natural disasters. According to UN communications piece, *The Right to Food: Commission on Human Rights Resolution 2002/25*, a total of 36 million people die of starvation every year. According to the United Nations Children's Emergency Fund (UNICEF) the cost of ensuring universal access to basic education for all, basic health care, and reproductive health care for all women, adequate food, clean water and safe sewers would total \$40 billion a year. The world military budget is approximately \$1.1 trillion. For one-thirtieth of the world military budget, starvation could end.

To reduce economic violence, NATO must eschew unnecessary expenditure on armament and wars. It must embrace instead UN laws. The United Nations Security Council (UNSC) must be more democratic. It must accommodate poorer states and grant them veto powers. Neither John Roberts nor Gandhi would support the Bush doctrine of pre-emptive war, which his administration used to justify the Iraq invasion. Douglas Allen, economic professor at Simon Fraser University, writes: "In such a situation, in which there was no evidence of an Iraqi imminent threat to the US, Gandhi would view the pre-emptive war doctrine as an early, not a last, resort, to violence. For Gandhi, 99 per cent of the time we resort to violence, there are nonviolent options and means that we have overlooked or are unwilling to consider." Allen also maintains that Gandhi would advocate the use of necessary violence only as a last resort in the cause of non-violence. Thus, NATO can help resolve national and international disputes only by binding itself to the rule of law, learning non-violent dispute resolution techniques as alternatives to military solutions and ensuring its accountability to the UN, the ICC and the public.

I propose the adoption of a universal legal instrument by the UN, such as a Right-to-Information Convention which all NATO members must sign. This Convention must enable the public to access information about NATO activities. Only a fully informed public can deem NATO transparent. I also propose a system of judicial review by the ICJ that would to scrutinize all NATO actions and resolutions. Such a review could immediately halt any move not in conformity with international law. At the same time, I propose a judicial mechanism of public interest litigation, similar to that common in India. Under this law, any individual in the world can take any NATO illegal action to the ICJ.

With the above remedies in place, I believe that Roberts, Gandhi, Buddha and the world would view NATO as a solution to war rather than as an obstacle.

About the competition:

NATO Watch launched its inaugural John Roberts Student Essay Competition in Spring 2010. We were looking for 2,000 words or a 2 minute video which addressed the question: To abolish war do we first need to abolish NATO?



About John Roberts:

ROBERTS John Charles de Villamar, world citizen, teacher, husband, father and grandfather died at home on 27 February 2010. John joined the Federal Union in 1948 and worked for 60 years in world citizen and federalist

movements, including chairing the World Association of World Federalists. He was an active ex-chair of the Institute for Law and Peace and wrote more than a dozen pamphlets on world problems. Fluent in Esperanto, he attended congresses in Brighton (UK), Brazil, China, France, Germany, Hungary, Japan and the USA. He taught in schools, colleges, then at the Universite Laval in Quebec for eight years, and finally an American college in England for 15 years (Professor of International Studies). John was a critic of the NATO military alliance and of the intervention in Afghanistan, but agreed to become one of the founding NATO Watch Associates in June 2009. He believed that an alliance based on the use of armed force is a denial of where we should be in the 21st century and that only by supporting and developing global legal structures could NATO be made non-aggressive and peaceful. You can read more about John's work at:

<http://jrmundialist.org/>