

## Judging the NATO Intervention in Yugoslavia, 1999 (the "NATO Bombing" Case)



The *Independent International Commission on Kosovo (IICK)* was established in August 1999 in the aftermath of the Kosovo War. **The Commission concluded that the NATO bombing of Yugoslavia (Serbia) was "illegal but justified"**, in order to prevent further atrocities by Yugoslav forces, which intensified during the NATO bombing.

The crisis had been caused by ongoing human-rights violations by Yugoslav forces in Kosovo (i.e., ethnic cleansing) during the 1990s, although when some Kosovar Albanians shifted from unarmed to

armed resistance, this heightened the Yugoslav response which included many crimes against humanity on both sides. The Commission also reported that international presence in Kosovo did not prevent the *Kosovo Liberation Army (KLA)* and other Kosovar Albanians from ethnically cleansing Kosovo's Serb minorities.

The decision of the *Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY)* to **NOT** open an investigation against the NATO bombing was widely criticized.

**As the current *Chief Prosecutor of the ICTY* you have decided to re-examine whether or not to commence an investigation against the NATO bombing.**

You must review the fact pattern of the case and select a legal theory to either **UPHOLD (agree with) the Kosovo Report finding of "illegal but justified" and forgo an investigation** or **OVERTURN (disagree with) the Kosovo Report finding and initiate an investigation.**

### PROJECT TASKS

To support your opinion on whether or not the NATO bombing was illegal but justified, submit a fully developed answer to each task below that **directly quotes/references** the NATO Fact Pattern Map, the Kosovo Report, required and optional project materials & independent research:

1. State your decision to either **UPHOLD** or **OVERTURN** and the **legal theory you chose to adopt**.
2. Select **2 facts** that have **legal significance** to *judging the NATO bombing from the perspective of your chosen legal theory (COM – 4 marks)*. Detail each relevant fact and cite its source followed by an explanation as to **why it is significant to your chosen theory** (use of specific theory "words"/language is required).
3. State **the most important legal question to ask** in *judging the NATO bombing from the perspective of your chosen legal theory* and **explain its connection to the theory (COM – 4 marks)** (use of specific theory "words"/language).
4. Discuss **one** theoretical consideration a Chief Prosecutor **must follow** in *judging the NATO bombing from the perspective of your chosen legal theory (COM – 2 marks)* (use of specific theory "words"/language).

5. Using the **website materials as a foundation of knowledge**:

- a. Explain the **most important concept** of *legal positivism, legal realism, natural law, and critical legal theory*. You must **directly quote/reference** the required research materials to fully support your explanations (**KU 10 – marks [2.5 marks per theory]**) (**do not** discuss the facts of the case at hand in your explanations). Exceed expectations by **directly quoting/referencing** the optional research materials.
  - b. Explain in detail your decision on whether or not the NATO bombing was illegal but justified from the perspective of **your chosen legal theory**. You must **directly quote/reference** the required research materials, your individual research, and the relevant laws to fully support your answer (**APP – 10 marks**). Exceed expectations by **directly quoting/referencing** the optional research materials.
6. Reflect on the most difficult aspect of judging the NATO bombing from your chosen legal theory. What is your personal opinion about the finding of “*illegal but justified*”? Offer an idea from a different legal theory that you found instructive or helpful in developing your opinion on this question (**T – 10 marks**). Exceed expectations by **directly quoting/referencing** the required or optional research materials.

**Your answers must be digitally produced. Maximum length is 2 pages, single-spaced, 10 — point font.**