Chapter III
NATO’s Intervention in Kosovo: 1999
This chapter engages in an analysis of NATO’s intervention in Kosovo by locating it squarely within the Just War paradigm. In doing so, the chapter carries out a detailed study of the intervention by situating it within each criterion of *jus ad bellum* and *jus in bello*. The chapter starts by tracing the trajectory of ethnocentric relationship between the Kosovo Serbs and Albanians; and also captures those historical moments when this relationship turned antagonistic in this small Balkan hub. Towards the later part of 1998 and beginning 1999, Kosovo had turned into an ethnic cauldron that threatened to have a domino effect on neighbouring states of Macedonia, Albania and Greece, and in the process, destabilising the Balkans. NATO leaders fearing another Bosnia type fiasco, where Slobodan Milosevic had been the key instigator of ethnic hatred, decided to intervene before the situation went out of hand in Kosovo. NATO claimed that the intervention in Kosovo in March 1999, was primarily motivated by humanitarian concerns, with regard to the plight of the Kosovar Albanians. The prime focus of the chapter is to examine the validity of this particular stated policy of NATO.

3.1. History

3.1.1. Battle of Kosovo (1389) and the Ottoman Rule in Kosovo:

The Kosovo crisis that erupted in 1999 was the consequence of ethnic history churned out over a span of six centuries. Kosovo assumed a place of historical sanctity in the Serb mindset, especially after the 1389 A.D. battle of Kosovo. According to Serbian academic, Predrag Simic, Kosovo is “an area that sublimes the collective identity of the Serbian people just as Jerusalem does, for instance, for the Jewish nation”. A.N. Dragnitch and S. Todorovitch put it more poignantly. They say that “Kosovo is many diverse things to different living Serbs, but they all have it in their blood-they are born with it.” The Battle of Kosovo (1389) assumed such an emotive attachment for Serbs because it was there that Serbia made its last great stand against the advancing Ottoman Turks. The battle took place in Kosovo Polje outside Pristina, on St. Vitus Day, 28 June 1389. The Serbian Prince Lazar Hrebeljanovic was in possession of Kosovo. The Turks demanded that Lazar accept Turk suzerainty and pay tribute. He refused and instead prepared for war. A

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large army comprising of Serbian, Albanian, Hungarian, Bosnian and Bulgarian contingents gathered at the crack of dawn in the field of Kosovo Polje. In course of battle, Prince Lazar was killed and the remaining Serbian army exhausted by its heavy loss at the hands of the Turks, beat a retreat.³

The Battle of Kosovo had impressed the minds of ensuing generations of Serbs, not because of the loss as such in the battle itself, but the subsequent loss of statehood that followed it. The Serbian church of yore romanticised the Nemanjic tradition by carefully removing all negative aspects of feudalism and cultivating the image of a glorious Serbian state, defended by honourable Serbian men. The Serbs, therefore, perceived the collapse of the medieval Serbian state as a central event in their history and the defeat in the Battle of Kosovo as an undeniable blot in their illustrious past. With Ottoman rule in place, Kosovo became an important pocket of the revitalized trade route, from the Dalmatian coast to Macedonia and Constantinople. The Serb population of Kosovo, fearing Ottoman repression started migrating to other parts of Serbia and what is now Hungary and Transylvania. In the meantime, the Albanian population, settled in the mountains around Kosovo, started moving into the lowlands of Kosovo as well as occupied the abandoned villages of the Serbs. Albanian historiographies suggest that Albanians were in majority even before the Ottoman conquest, but existing literature of the period point out to the possibility of Albanian migrations into Kosovo on the rise during the early sixteenth century.⁴

During the fifteenth century, the majority of Albanians were still Christian and considerable harmony existed between the Serbs and Albanians. Both adhered to similar values, shared a common history of worship and went to the same churches that dotted the Kosovo countryside. Continuous Turkish rule brought with it significant changes, especially in the domain of religion. The Ottoman rule gradually led to piecemeal population movements as local elements moved either south or north of Kosovo and peoples claiming to belong to the ancient Illyrian civilization started moving towards

Kosovo. The peoples whom the Greeks and Romans called the Illyrians occupied an extensive tract on the Adriatic, from Epirus in the South and Macedonia in the Southeast to Istria in the north.\textsuperscript{5}

By the middle of the seventeenth century, several hundreds of Catholic Albanian families had migrated from over populated areas such as Debar to Kosovo, but in the process were Islamised. The number of conversions also increased because of the rising poll tax on the Christians whom the Turkish rulers of Kosovo regarded as enemies. With the beginning of the Ottoman-Venetian wars of 1645 A.D. as well as the wars with the Hapsburg Empire in 1683 A.D., both the Serbs and Albanian population were under constant pressure to embrace Islam in order to escape, not only financial constrains, but also conscription into the Ottoman army that was forced upon Christian men. Moreover, many Albanians regarded Christianity as the religion of slaves, whereas, Islam was a religion that emancipated men. Meanwhile, the Serb population inspired by their Christian monks as well as folktales and songs of Serbian bravery sung to the accompaniment of the lute, cultivated the spirit of non-subjugation and hoped for liberation from the oppressive Ottoman rule.\textsuperscript{6}

The Albanian conversions into Islam led to consequent increase in power for them and marked the beginning of differences with their Serb neighbours. Rather than convert to Islam; many Serb families migrated northwards from Kosovo and in 1690, numbered 37,000 families. Thus, begun the transfer of Serbia's religious, cultural and political centres northwards, finally culminating in Belgrade. As the Serbian population fled to Hungary to escape harsh Ottoman rule that forced conversion to Islam, hundreds of Kosovo villages left deserted by this mass exodus of Serbs were occupied by Albanians from the mountains. The Ottomans were under constant military pressure due to wars with Russia in 1711 A.D. and Austria in 1739 A.D.\textsuperscript{7} The remaining Serbian population came under constant pressure to convert to Islam. This resulted in another great escape on their part under Patriarch Arsenius IV around 1726 A.D. The demographic upheaval of

\textsuperscript{7} See Vickers, n.2, pp.28-29.
Serbs witnessed the arrival of more Albanian migrants from the impoverished lands of Albania to the lush green that was Kosovo. The Serbs that settled in Hungary formed a strong intelligentsia class under the influence of the church and formed the driving force behind the evolution of Serb folklore and the development of national consciousness. With the dawn of the nineteenth century, the Ottomans rule was weakened by continued warfare as well as clashes with the independent Muslim pashas in the Balkans. As the century progressed, it became evident that the Ottoman rulers were adamant at crippling the powers of the Muslim aristocracy in the Balkans. Many of them were deported to Central Asia from Kosovo in order to weed out any show of dissent against stern Ottoman rule, especially with regard to conscription into the Ottoman army.\(^8\)

The Ottomans introduced reforms in 1839 that included new draft laws as well as taxes that were mandatory for the Muslim subjects of Kosovo. In 1844, revolts broke out in Skopje, Pristina and Tetova against the new laws. By 1856, pressure from the Great Powers like Russia and Austria-Hungary persuaded the Ottoman rulers to introduce the *Hatt-i-Humayun* that stressed the equality of citizens. Significantly, the empire's Christian subjects were appeased by the reforms. The rights granted encouraged the Serbs to open their own churches and schools. Economically, the Turks decayed due to their abhorrence for commerce and an unusual engagement with traditional industrial handicrafts. The Christians prospered in commercial towns like Skopje, Prilep and Prizren, whereas, the Ottomans sat smoking their chibuks and grumbling at the progressive Christian subject's initiatives. \(^9\) The anti-Slav sentiment reached its zenith during the Crimean war of 1853-6 A.D. There were more cases of Slav conversion to Islam during this time to avoid persecution, but many Serbs chose to emigrate. In some cases, entire villages fled to Serbia and Montenegro. During the 1860s and the 1870s, the contrast between the lifestyles of the Kosovo Serb and Albanian was glaring. The Kosovar Albanian Muslim was prosperous and striving, whereas, the Serb’s condition was the linear opposite.

\(^8\) See Pipa and Ripishti, n.5, pp 46-54.
\(^9\) P. Simic, n.1, pp.13-34.
The question of Kosovo became internationalised during the Great Eastern Crisis of 1875 A.D. and the Great Powers became involved in its fate. The Christian uprisings against the Ottomans in Bosnia-Herzegovina in 1875 A.D. motivated Austria to propose a plan that was imposed on the Ottoman rulers to prevent any pre-emptive intervention by Russia. The new Sultan of the Ottoman Empire, Sultan Abdul Hamid cherished Islamic values and thus favoured the Muslim element in Kosovo. He encouraged the Albanian population to settle scores with the Slavic-Orthodox element. Meanwhile, the Serbian and Montenegrin principalities taking advantage of the Russia-Ottoman war of 1877 A.D. invaded Kosovo and unleashed a violent rampage against the Kosovar Albanians, amounting to about 30,000 displacements of Kosovar Albanians. The Serb army advanced as far as the Gracanica monastery near Pristina in January 1878 A.D. A solemn liturgy was performed there to honour the battle skills of the Serbian army. In the meantime, Russia and the Ottoman rulers of the Balkans signed a truce that was inclusive of the Serb contingents and they were thus forced to withdraw from Kosovo.

The Sans Stefano treaty signed between Russia and the Ottomans on the 3 March 1878 A.D. extended the border of Serbia to include Mitrovica and Pristina, while the rest of Kosovo remained under Ottoman rule. In the aftermath of the peace treaty that included the independent Serbia, the Kosovar Serbs petitioned in the Berlin Congress for the vilayet to be united with Serbia, whereas, the Kosovar Albanians traveled to European capitals and vigorously argued for Kosovo to be united with the other Albanian vilayets. The failure of the Ottoman rule to defend itself against the European powers caused the Kosovo leadership to gradually adopt the autonomy option. The majority of Kosovar Albanians had neither foretold the decline of Ottoman rule nor wished it. They also did not seek an independent state. They gravitated towards the autonomy option towards the beginning of the twentieth century. The Prizren League formed in June 1878 A.D. was dominated by Kosovar Albanian representatives and provided the only hope in squeezing out some semblance of autonomy.

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Towards the fag end of the nineteenth century, a new spate of thinking developed in Turkey and led to the formation of the Young Turks, a product of better education in schools modeled in the western lines. These young and dynamic groups sprouted in many Kosovo villages and they were successful in capturing power in 1906 from Sultan Abdul Hamid. With the change of guard, the expectations for reform rose rapidly in Kosovo. The Albanians were assured that they could establish schools in their own language and provincial autonomy would be granted to the various nationalities. However, the conservative elements of Albanian society eyed these changes with scepticism. The age-old contours of the Islamic faith held many old Kosovar Albanians, especially from Shkoder and this allegiance to the old order proved an obstacle to the Albanian national movement. However, national activities caught the imagination of the young Albanians, but in areas like Prizren, the new pan-Ottoman identity held sway, which considered all subjects of the empire as an inseparable whole and the Turks wanted to enforce a strong Turkification of the various Ottoman dependencies. It, therefore, became an uphill task to publish any material that was against the Ottoman Empire. The Young Turks, despite their stint at granting autonomy to the Kosovo provinces, reverted to the earlier Ottoman stand and staunchly stood for greater centralisation of power within the empire.¹²

In the meantime, Austria annexed Bosnia-Herzegovina in 1908, dealing a fatal blow to the Serb kingdom as the Serbs considered the region as an integral part of Serbia. The fall of Bosnia-Herzegovina also was a damper for the morale of the Young Turks and in 1909, the conservative old guards of the empire staged a counter-revolution and overthrew the Young Turks and re-established the old absolutist regime. However, this state of affairs did not go beyond Istanbul and the Young Turks were successful in clutching to the reigns of power soon and Sultan Hamid was disposed.¹³

The new Ottoman administration induced many of the Albanians to abandon their rebellious posture, inclusive of demands for autonomy by promising further reforms and free elections. At that time, an Albanian intellectual, Ismail Kemal envisioned that the

¹² Banac, n.4, pp.24-40.
preservation of Albanian-inhabited territories depended on the rivalry between the Great
Powers and concluded that Austria-Hungary was Albania’s only potential defender.14
Kosovo stood as a buffer against Serbian expansion southwards, and thus, Serbia coveted
the ultimate possession of Kosovo. Meanwhile, the Balkan states witnessing the gradual
decline of the Ottoman Empire, signed accords with Bulgaria, Serbia, Greece and Russia.
The first accord between Bulgaria and Serbia in March 1912, assigned Kosovo to
Serbia.15 All these countries got together and formed the Balkan League in 1912, a
reaction to the annexation of Bosnia-Herzegovina by Austria-Hungary. Amidst these
heightened diplomatic activities, Montenegro surprised everyone on 8 October 1912 by
suddenly attacking Albanian territory as well as what remained of the Ottoman Empire.
Serbia, Bulgaria and Greece followed up this action by a declaration of war immediately
against the Ottoman Empire. The outbreak of the First Balkan war witnessed the western
flank of the Ottoman Empire left defenceless as the bulk of the Balkan army was
deployed along the coastline of Asia-Minor and Syria. The war motivated thousands of
Young Serbs to conscript into the army in order to revenge the Battle of Kosovo of 1389
A.D. The realization that Kosovo might be liberated after five centuries of foreign rule
ignited their imagination. “The single sound of the word Kosovo caused an indescribable
excitement—in it existed the whole of their sad past—the tragedy of Prince Lazar and
Milos. Their mothers had lulled them to sleep with songs of Kosovo and the valour of the
Serbian army.”16

The Albanians put up a strong resistance against the advancing Serb army. They were,
however, unprepared for the sudden collapse of the Ottoman Empire and the loss of
Kosovo to the Serbs. The defeat was also hastened due to lack of any central Albanian
authority. The fall of the Ottoman Empire intensified the Great Powers concern about the
partitioning of the Balkans. Austria-Hungary realised that its interest in the area could be
sustained by the creation of an independent Albania. The hastily convened Conference of
Ambassadors at London prevented Austria-Hungary’s intervention in the Balkans in
December 1912. After heated arguments, the Conference awarded the Balkan allies, large

14 See Banac, n.4, pp.35-46.
15 See Vickers, n. 2, pp.73-75.
16 P.Simic, n.1, pp.67.
Albanian inhabited areas without regard to its ethnic composition. This created rift between the allies as well as disenchantment amongst the Albanians and on 30 June 1913, Bulgarian armies attacked the Serbian and Greek armies in Macedonia. This proved disastrous to the Bulgarians because the Romanian, Montenegrin and Ottoman troops entered the war against Bulgaria who was forced to capitulate and to sacrifice all gains it had achieved, after the first Balkan war. The conclusion of the Second Balkan war with the treaty of Bucharest on 10 August 1913 left many issues unresolved. Macedonia remained a source of continual discord among the Balkan allies and left the new Albanian state devoid of a bulk of Albanian dominated territory. Consequently, the treaty of London on 30 May 1913 granted full independence to Albania, but the final settlement of frontiers left a stain in the Albanian mindset, as half of the Albanian population was left outside the new state. The bitterness and resentment felt by the Kosovar Albanian delegation at London was voiced by Isa Baletini, their spokesperson, “When spring comes, we will mature the plains of Kosovo with the bones of Serbs, for we Albanians have suffered too much to forget”17

3.1.2. The First World War (1914-18), Second World War (1939-45), and the Colonisation of Kosovo:

The First World War erupted when a Bosnian Serb Gracia Princip of the Mlada Bosna (Young Bosnia) organization assassinated the Austrian Archduke Franz Ferdinand and his wife, when they were visiting Sarajevo on 28 June 1914, the anniversary of the Battle of Kosovo. Austria declared war on Serbia a month later.18 The Albanians rallied behind Austria during the war in order to fulfill their territorial aspirations. The Serbs continued to regard the Albanian state as an accident in history. As war progressed, Austrian and Bulgarian troops occupied a large part of Kosovo. Serbia, faced with the eventuality of fighting on two fronts against a combined German-Austro-Hungarian offensive, started retreating from Kosovo. An estimated 100,000 Serbs died on that winter retreat across the mountains of Kosovo. In the autumn of 1918, the tide turned against the Austro-Hungarian Empire and along with French troops, the Serbian army entered Kosovo,

18 Banac, n. 4, pp. 23-34.
wrecking revenge on the Albanian population. The Peace treaties of 1919-20 ushered in the new Yugoslav state, which had been proclaimed at the Declaration of Corfu in July 1917, inclusive of the Kingdoms of the Serbs, Croats and Slovenes. Kosovo, with an Albanian population amounting to 64.1 percent, was made a part of the new nation. The new kingdom was to be governed from Belgrade under a constitutional monarchy. In July 1921, the Kosovar Albanians submitted a seventy two-page document to the League of Nations petitioning re-union with Albania and citing Serb atrocities. Nothing came of it.

The 1920s were a turbulent period in Kosovo’s history. Despite claims that a Yugoslav identity exists, the ground realities posited an opposite picture. The national balance was approximately 43 percent Serbs, 23 percent Croatian, 8.5 percent Slovenian, 6 percent Bosnian Muslims, 5 percent Macedonians Slavic and 3.6 percent Albanians. Significantly, the Albanian question played a role in foreign, not internal affairs. The official Serb policy towards the Albanians in the beginning was one of assimilation through the Serbian language education system. However, the Albanians were denied the right to use their language for official matters as well as in the education sector. They were encouraged to pursue catechetical education, conducted by Muslim Imams. This proved counter productive for the Serb state because these Koranic study centers turned into formidable centers of underground national education and oppositional activities. The inter war period was dominated by the deliberate policy of settling Serb families, especially in the border areas of Kosovo. In 1922-29 and 1933-38, 10,877 Serb families were settled in Kosovo. Land was also extracted from the Albanians on the pretext that they had no documents to prove their ownership to the land. The Slavic families were allowed to graze on official land, a right denied to the Albanians. Along with this colonisation program, the Albanians were also encouraged to immigrate to Turkey. Official estimates put the number of Albanian emigrants to Turkey in 1927-39 at 19,279. However, this policy failed due to inadequate finances and failure of the Yugoslav Government to compensate the Turkish Government for accepting the Kosovo

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emigrants. During the Second World War, Kosovo fell to the Germans on 29 August 1941. The area was important to Germany due to the importance of the Trepca mines. A large part of Kosovo comprising 820,000 peoples were attached to Italian occupied Albania. The Italians organized Albanians units into the platoon of the Italian army. The Albanian language was permitted for local administration and the Albanian flag was displayed in the streets of Kosovo. The position of the Serbs was bleak as the Italians and Germans regarded them as the enemy. Thousands of Slavs were either deported or killed and forced to leave Kosovo. Matters changed when the Communist Party of Yugoslavia formed in 1919, succeeded in addressing the Kosovo disenchantment, especially after 1941. The small communist cells spread throughout Kosovo, were able to draw the young Kosovar Albanian into its fold and draw out support for a merger with Yugoslavia. Both the Albanian and Yugoslav communist firmly believed that the problem of Yugoslavia’s Albanians could be solved after the Axis powers were defeated. The Kosovar Albanians looked forward to a post war plebiscite with regard to their future status. In order to mitigate Albanian opposition, the Yugoslav communists conducted the Prizren League in 1943 and the Albanians were invited to join the struggle against Fascism. However, the Kosovar Albanian leadership refused to give up their demand for the union of Kosovo with Albania led by Imer Berisha. After the Second World War, Kosovo remained an integral part of the Yugoslav state, which was at that point one of the strongest states in the Balkans with an army of 800,000.

3.1.3. The 1946 Constitution:
The 1946 constitution defined the new socialist state that was Yugoslavia. It intended to safeguard the rights of all minorities from political domination. Yet, the constitution did not guarantee territorial autonomy to the Kosovars and placed Vojvodina at a higher plane than Kosovo, by proclaiming it an autonomous province. In contrast, Kosovo-Metohija was classified an autonomous region with its local administrative units denied any independent decision-making; it did not have an independent legislature, nor a Supreme Court. Thus, Kosovo joined the Yugoslav Federation as a mere province of

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23 Ibid, pp. 28-34.
Serbia. The constitutional arrangements concerning the Albanian inhabited areas were decided arbitrarily without consulting the general population of that area. The 1946 constitution left the Albanians in Kosovo with a simmering resentment towards its administrative practices and local administration. Belgrade continued to centralize all aspects of life, especially, which thwarted any show of Albanian nationalism. The break with Moscow also brought in a wave of anti-Stalinism and Kosovar Albanians, adhering to the Stalin cult were arrested. Though there started a rapid industrialisation of Yugoslavia, this trend did not trickle down to the Kosovo plains. The Albanians lived in conditions of stark poverty and alienation.

The 1963 constitution redefined the original right of autonomous areas. The Republics were given the right to establish new autonomous units and eliminate existing units. But, the constitution did not spell out the rights of these units precisely. The 1963 Constitution tilted towards a pro-active polycentricism. The Albanians went through brutal treatment everyday at the hand of Serb authorities. Such events gave rise to a political catharsis, prompting the local Albanian population of Kosovo to push up emotions held since 1945 to the surface. The demand for autonomy gained momentum. Although Tito backed some amount of reform for the province; he was against granting Kosovo the status of a republic. Towards 1968, the Albanians rose in sporadic protests for greater autonomy. These demonstrations became violent on 28 November 1968 and quickly spread to neighbouring Macedonia, especially in the Albanian dominated areas. Such unrest continued and gained an upper hand in influencing Serbian policies, mainly because of the high birth rates among the Kosovar Albanians whose demographic strength have doubled by the 1970s.

3.1.4. The 1974 Constitution:
The 1974 constitution drafted under the watchful eye of Marshal Tito narrowed the powers of the federation, while extending those of the Republics and autonomous provinces. Kosovo was now a full constituent element of the federation with direct and

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equitable representation in all its local bodies. Kosovo was represented in the federal chamber of the Yugoslav Assembly and like the Yugoslav Republics had the right to propose laws. It also had a separate seat in the Yugoslav Federal court and constitutional court. The new constitution paved the way for Kosovo to emerge as an independent region, no longer under direct Serbian tutelage. However, the constitution caused positive discrimination in favour of the Albanians. There was an Albanisation of public life and access was granted to Albanian schools and cultural activities. It led to a foray of Albanian intellectualism and pride in their cultural heritage. It however, led to distaste among Serbian nationalists towards Kosovo's new found independence during the period 1974-81. The gap in economic prosperity between Kosovo and the rest of Yugoslavia was the only negative filler during this period. The demographic explosion in Kosovo was also straining the economy to feed the ever-growing population.

With Marshall Tito's death in 1981, the Kosovar Albanians felt orphaned. To them, his death represented the death of a leader who understood their grievances and aspirations. They were gripped by a feeling of disorientation and foreboding. In 1981, the Kosovar Albanians comprised about 70 percent of Kosovo's demographic profile. Many among them thought that if they could manage their economy on their own, the level of under-development could be improved. Yet, none of such discontentment prepared the ordinary Yugoslav for the vehemence unleashed during the riots of 1981. The seeds of protest were laid at the Pristina University Campus, where thousands of students protested against crowded dormitories and poor mess facilities. The student demonstrations spilled over to the streets of Pristina, joined by farmers, factory workers and from there, spread like forest fire to the other towns of Kosovo. The Kosovar Albanian demonstrators were citing slogans that spelled out a Kosovo Republic and a unified Albania. The Serbian authorities used excessive force to disperse the belligerent crowd. The Serbian authorities blamed the educational system and the Communist League of Kosovo for its failure at predicting the environment that was turning violent in Kosovo. The death of Tito had snapped the thin thread that had woven the different Yugoslav nationalities together. The Kosovar Albanian intellectual started a proactive program of focusing on the bleak social
and economic standing of the Albanians in Kosovo. Radio Tirana and the influence of Enver Hoxha, the leader of Albania was encompassing the Kosovar Albanian mindset. The Kosovar Albanian tended to see Albania through rose-tinted glasses and appreciated the egalitarian society established under the Hoxha regime. This was notwithstanding the fact that economically, Albania was one of the most backward states in the Balkans. The most significant outcome of the Kosovo riots was the favourable stand taken by the western press towards the Albanians and its engagement on questioning the skillfully concealed inequality of Yugoslav nationalities by Tito that tended to crumble now. The 1980s were a turbulent period for Kosovo. The streets of every Kosovo town were filled with plainclothes police and there sprouted military checkpoints everyplace. The Albanians were a community under siege. Despite such strong military pro-activism, the Albanians grouped themselves in organizations like the Red National Front (RNF), the Kosovar Union and a host of others throughout the West, in and around 1985-87.

3.1.5. Slobodan Milosevic and the Reversal of Kosovo’s Autonomous Status: At Belgrade, two streams of thought were affecting the core of political activism. One, a liberal view led by Ivo Stombolic, the other a hard core nationalist view inspired by Slobodon Milosevic. Despite sharing a close friendship for years, these two men were drifting apart due to different perceptions of Serb nationalism. Both man realized the importance of championing the Kosovo Serb’s cause, but Stombolic was moderate and hoped for a reconciliation that included Albanian aspirations. On 24 April 1987, Milosevic made a visit to Kosovo that left him a changed man. He understood the possibility of grabbing power by arousing the Serb’s emotive attachment to Kosovo, the site of the historic Battle of Kosovo in 1389. Milosevic stepped into the balcony of the city hall in Pristina and witnessed Albanians hurling stones at the Serb crowd that had gathered for him. “No one should dare to beat you”, he screamed. “This is your land: these are your houses, your memories. You should stay here for the sake of your

26 Julie A. Mertus, Kosovo: How Myths and Truths Started a War (California: University of California Press, 1999), pp. 34-56.
29 Interview with Julie A. Mertus, a Kosovo expert on 12 December 2003 through yahoo messenger. She is from Australian University at Canberra and author of the book, Kosovo, Myths and Truths see n. 26.
ancestors and descendents". Accompanied by hysterical cries of "Slobo, Slobo", a crowd of Serbs mobbed him and cried out for action against the Kosovar Albanian leadership, who had for long treated them with contempt. When he returned to Belgrade, none other than the Yugoslav President and friend Ivo Stombolic who stated that "Milosevic was transformed, set afire by Kosovo" captured the change in him. The emergence of a powerful right wing bloc at the wings of power in Belgrade helped Milosevic. Within six months, he succeeded in ousting Stombolic; a colleague and confidant and became the leader of the League of Communists in December 1987. Milosevic strengthened his hold within the party on the promise of strong leadership to address the social and economic unrest. He never failed to remind the Serb citizen about their past glory and inherent right to claim Kosovo. The Orthodox Church that provided him the necessary sanctity in the eyes of Serb citizens also blessed him.

3.1.6. Abolition of Kosovo’s Autonomy, the Grievances of Dayton in 1995, Emergence of the Kosovo Liberation Army (KLA) and the Start of Ethnic Cleansing and Displacement of the Kosovar Albanian:

On the 28 March 1989, Slobodan Milosevic abolished Kosovo’s autonomy by steering in changes into the Constitution of the Socialist Republic of Serbia. This was followed by suspension of Kosovo’s Executive Council and Assembly and the province lost its stand as a socio-political entity. The Kosovo administration was to be directly controlled by Belgrade. These changes in Kosovo’s status were immediately followed by protests on the streets of Kosovo. Serbian police and military personnel were increased and Albanian protesters were physically removed. The latest crisis in Kosovo had a negative impact on Yugoslav-Albanian relationship. On 28 June 1989, the 600th anniversary of the Battle of Kosovo, Milosevic gave a stirring speech in which he suggested that Serb repression by the Muslims would no longer persist. The Serbian mass hysteria about Kosovo, propelled by the official propaganda was also successful because none in Belgrade ever went down

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30 For a precise account of how Milosevic manipulated his visit to Kosovo, see Laura Silber and Allan Little, *Yugoslavia: Death of a Nation* (New York: Penguin, 1996), p. 39. Also, Stoessinger, n. 3, p.189.
to Kosovo, but formed ideas and attachments from books and writings commemorating the valiant heroes of the Battle of Kosovo, 1389 and thereafter.\(^{32}\)

The early 1990s brought in a wave of peaceful protests by tens of thousands of Kosovar Albanians demanding political reform for Kosovo. Meanwhile, Slovenia and Croatia seceded from the Yugoslav federation in 1990 and with the withdrawal of Slovenian and Croatian contingents from Kosovo; the Serb units increased their brutalities. The Serb Parliament imposed emergency provisions in Kosovo that included dismissal of Kosovar Albanians from their seats of employment. Even, the Provincial theatre of Kosovo was placed under emergency management. In the field of education, Serbian History was made the main course in Albanian schools and Slavic songs were made compulsory. It was made mandatory for Albanian students to pass courses in Serbian language and literature.\(^{33}\) Such an oppressive atmosphere had its political repercussions. The old Marxist Leninist parties disappeared and in their place, the Democratic League of Kosovo (LDK) was formed on the 23 December 1989, headed by Dr. Ibrahim Rugova. The Kosovo economy was in doldrums and the Bank of Kosovo collapsed and the money, worth $98 million was confiscated by the state owned Jugobank in Belgrade. In the meantime, the LDK in protest against Serbian policies held elections and established their own parallel Government and declared Kosovo a Republic. Meanwhile, the Yugoslav war with Croatia was intensifying and the Kosovar Albanian men refused to perform their compulsory twelve months military service. Thousands fled abroad, especially to Albania to avoid conscription. The international recognition of Slovenia and Croatia as independent states in January 1992 intensified the war in Bosnia-Herzegovina and increased Serb control in Kosovo.

The Dayton Peace accords of 1995 radicalized the Kosovar Albanian movement for independence. Until then, Ibrahim Rugova's peaceful protests against the Serb establishment, based on the Gandhian style of non violent protests had hold sway amongst the Kosovar Albanian community. At Dayton, Kosovo occupied a secondary

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\(^{32}\) Mertus, n. 26, pp. 32-63.  
\(^{33}\) Silber and Little, n. 30, pp. 43-49.
place in US and Western policy towards the Balkans. They regarded Kosovo as an integral part of Serbia. Moreover, they feared that supporting secession of the province from Serbia would have a spill over effect in Macedonia and neighbouring regions. Bosnia’s bloody civil war had taken its toll on the negotiators at Dayton and they did not want to antagonise Milosevic whom they thought critical for any settlement to the Bosnian crisis. Thus, they stopped themselves from placing the Kosovor Albanians’ demands on the table at Dayton. This posture of the international community dealt a major blow to Rugova’s pacifists’ policies. The post-Dayton Kosovo witnessed the formation of the Kosovo Liberation Army (KLA) in 1996, which engaged in acts of sporadic violence towards the Serbs. Dayton infused the realisation in the Kosovo mindset that only violence gets international attention.

The cult of violence increased Serb military offensive against the Kosovar Albanians throughout 1997-98. The US sent Richard Holbroke, the chief negotiator at Dayton, to chalk out an understanding with Milosevic with regard to escalating human rights violations in Kosovo. Holbroke’s initial efforts were more symbolic, reflecting his belief that diplomacy, like jazz, requires constant improvisation. In subsequent talks, Milosevic refused foreign mediation and the international “Contact Group” (comprising of the United States, Russia, France, Britain, Germany and Italy) sent across by the Organisation for Security and Cooperation in Europe (OSCE) could not carry the process of peace forward due to the lack of a negotiating platform. Notwithstanding that, Milosevic launched his summer offensive in July 1998 that forced 100,000 Kosovar Albanians to leave their homes. From August 1998-March 1999, nearly 800,000 Albanians were forced to flee to neighbouring countries and internally displaced. The Racak massacres of 15 January 1999 gallivanted NATO to act. After the failure at Rambouillet in February 1999, the road to intervention was made clearer. NATO military

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37 Daalder and O’Hanlon, n. 34, p. 68.
operations against the Federal Republic of Yugoslavia commenced on the 24 March 1999 by unleashing a set of air strikes.

In analysing NATO's intervention in Kosovo, the researcher utilizes the process tracing method of analysis by locating the intervention within each postulate of the Just War Theory. In this way, the degree of co-relationship between the theory and the Kosovo case is established. The study also dwells on competing theories and analysis of the Kosovo case.

3.2. NATO's Intervention in Kosovo- Situating it within the Just War Paradigm:
NATO's intervention in Kosovo on the 24 March 1999 captured the attention of policy makers, journalists, human right activists and international relations scholars. It had all the makings of a unique and significant occurrence, something not witnessed before in the annals of intervention history. For the very first time, a regional organisation intervened into the sovereign territory of another state without the authorization of the United Nations with the stated purpose of ending human rights violation. Moreover, it was the first ever use of armed force by NATO in its 50-year existence. Even more significant was the fact that for the first time in the history of warfare, high tech air combat technology succeeded in obtaining most of the objectives put forth by NATO, without a single allied combat fatality. Significantly, Kosovo demonstrated the increasing crescendo of the rhetoric of humanitarian intervention to legitimize the use of force against a sovereign nation; a norm not established by international law. While commentators and analyst of the Kosovo case are yet to decide the exact contours of the intervention, this study explores the viability of the hypothesis set forth for examination:

The collateral damage in NATO's intervention in Kosovo was outweighed by the benefits of the use of force and therefore is justified in Just War terms.

3.2.1. *jus ad bellum* (Right Recourse to War):
(1) *Just Cause:* Was NATO's war against Serbia befitting the cause that the alliance leaders put forth as the chief motivating factor behind the intervention? That was to avert
a humanitarian catastrophe that the Yugoslav President, Slobodan Milosevic unleashed upon the Kosovar Albanian citizenry in Kosovo. The track record of the Kosovo case did point towards an increase in human rights violation of the Kosovo Albanians. However, critics argued that the need to salvage the credibility of NATO and provide a rationale for an alliance that seemed to lose credibility in the post cold war world were supposedly motivating variables and Kosovo provided the much-needed prop for the alliance. With the dismemberment of the WARSAW PACT, NATO wanted to be seen as an upholder of human rights when cold war politics of alliance balancing and bipolar power equations no longer strangled the world.

NATO's objectives in Kosovo were layered. The prime objective of putting a halt to the sufferings of the Kosovar Albanians was clear. Since July 1998, Slobodan Milosevic had raised the ante against the Kosovar Albanians. The Serb population of Kosovo was favoured for all government posts and the Yugoslav army was put on the offensive in order to weed out pockets of KLA supporters. This turned into a massive expulsion program. By August, 10,000 Kosovar Albanians were forced to flee from their homes. Soon the situation turned precarious for the Albanians with the approaching winter. Due to constant Serbian intrusion into their daily lives, many left their villages and sought refuge in the mountains in and around Kosovo. By mid October 1998, according to UNHCR reports, 20,500 Kosovar Albanians had fled to Albania and 7,000 to the district of Tropoje. 7,800 Kosovar Albanian refugees arrived in Sarajevo, Bosnia, a place already struggling with a huge refugee presence since the Bosnian war. The bitter cold that engulfed the mountains of Kosovo in winter, 1998, were also threatening the lives of tens of thousands of people, internally displaced and driven out of their homes by the Serb army offensive.

The Serbian strategy in Kosovo was motivated by the following important factors:

i) The Serbian political community as well domestic public opinion in 1997-98 tended to view the unfavourable demographic profile in Kosovo as a deliberate occurrence of the

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anti-Serbian policies as well as the practices of the old Tito regime, especially during the
1974-89 autonomy periods. It was beside the point that the Albanians constituted 90
percent of the population due to higher birth rates or that the voluntary Serbian migration
from Kosovo to the economically more prosperous regions of Serbia led to a differential
population ratio.\textsuperscript{39}

ii) Yugoslavia was a predominantly Slavic country constituted of Slavic groups like the
Serbs, Croats, Slovenes, Bosnian Muslims and Slavic Macedonians. The non-Slavic
groups like the Albanian Kosovars were regarded as “incidental residents”. Yet, the
Albanians had the highest birth rates in Yugoslavia and by the 1980s were threatening to
topple the official pro-Slavic population index. In June 1997, Aleksander Despic, the
head of the Serbian Academy of Science and Arts issued a warning that by 2020, the
Serbs would be a minority in Serbia, if the Albanian population growth was not
controlled soon. Against this backdrop, the mass expulsion policy of Kosovar Albanians
offered the only viable way for Serbia to keep a hold on Kosovo in the long run.\textsuperscript{40}

In order to carry forth a systematic expulsion of Kosovar Albanians, Milosevic put into
effect the infamous plan, Operation Horseshoe, in order to engineer a fundamental shift
in Kosovo’s ethnic balance as well as strengthen Kosovo’s place within the matrix of
Serbia. The central idea behind this plan was to drain Kosovo villages of its Albanian
population and in the process isolate and weaken the KLA resolve to resist the Yugoslav
army. The coordinated effort would resemble a horseshoe, moving from northeast down
to the west and back to the southeast of Kosovo along the Albanian and Macedonian
borders. The cities of Prizren, Peć and Pristina were also to be drained of the Albanian
population.\textsuperscript{41} Despite doubts with regard to the authenticity of information regarding

\textsuperscript{39} Harry Papasotiriou, “The Kosovo War: Kosovar Insurrection, Serbian Retribution and the NATO
\textsuperscript{40} Tim Judah, “Will There Be a War in Kosovo?” \textit{New York Review of Books} (New York), 14 May 1998,
p.5. Also see Barbara Jelavich, \textit{History of the Balkans: Twentieth Century} (Cambridge: Cambridge
\textsuperscript{41} Daalder and O’ Hanlon, n. 34, p.58-59. For a detailed account see R. Jeffrey Smith and William
April 1999, p. A16. It is important to note that the German Information Officers that provided NATO
with a copy of Operation Horseshoe in February 1999 could not verify it later due to lack of access to
the achieves in Belgrade.
Operation Horseshoe, the escalation of hostilities on the ground in February 1998, proved that a mass expulsion policy was at hand. In response to attacks by the KLA on the Serb army, the Serbian army replied with a major offensive against the inhabitants of Drenica that left fifty-one people dead, including a KLA leader, Adem Jashari and twenty members of his family. Amongst those killed were eleven children and twenty-three women. The Yugoslav army personnel in Kosovo numbered 15,000-16,000 by early 1999. In addition to the regular army, there were around 30,000 police and irregular forces.

When reports of Albanian massacres as well expulsion leaked out to the international media, US Secretary of State, Madeleine Albright traveled to Europe to consult the contact group. The rhetoric that she belted out during the course of the meeting was aimed at American public opinion as well as the European allies to act fast in Kosovo before it was too late. She pointed out that “when the war in the former Yugoslavia began in 1991, the international community did not react with sufficient vigor and force...it took us seven years to bring Bosnia to this moment of hope. It must not take us that long to resolve the crisis that is growing in Kosovo. This time, we must act with unity and resolve. This time, we must act before it is too late.”

The Contact Group condemned Milosevic as well as called upon him to end the violence and withdraw Serb troops from Kosovo. They also insisted that the UNHCR and OSCE observers be allowed to visit Kosovo to investigate the situation on the ground. As Milosevic did not comply with any of the demands, the United Nations Security Council passed resolution 1160 on 31 March 1998 that not only imposed economic sanctions, but also an arms embargo on Yugoslavia. The embargo was to remain in place until Milosevic allowed access to the UNHCR, OSCE and Contact Group Diplomats into

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44 As quoted in Daalder and O’ Hanlon, n.34, p.28.
Kosovo.45 Despite the intense diplomatic endeavours carried out by NATO as well as the UN and OSCE, the Yugoslav army continued its offensive against the Albanian population throughout 1998 and by September, 1998, the huge flow of refugees into the neighbouring countries of Macedonia and Albania were creating a crisis within their borders, as the Albanian refugees tended to have a strong influence, not only on the Albanian citizens of Macedonia, but also the citizens of Albania. In view of the state of affairs, the UNSC on 23 September 1998 passed Resolution 1199 by a vote of fourteen to zero (with China abstaining). The resolution called upon the Milosevic regime to:

i) Cease all actions by the security forces against the civilian population of Kosovo and order the withdrawal of security forces from in and around Kosovo;
ii) Facilitate continuous international monitoring of Kosovo;
iii) Assure the safe return of refugees and displaced persons to their homes, with UNHCR and International Committee of Red Cross monitoring;
iv) Allow free and unimpeded access to humanitarian assistance in Kosovo;
v) Engage in meaningful unconditional dialogue to ensure international involvement to end the crisis in Kosovo and herald in a successful political settlement.46 (See Appendix 1.1.4.)

Meanwhile, keeping in mind the deteriorating situation on the ground, NATO also was contemplating the use of force, but consensus was missing within NATO governments as to what they were prepared to do at that moment of time. The North Atlantic Council (NAC) chalked out plans that included the use of limited air strikes on Yugoslavia to persuade Milosevic to end the violence meted out on the Kosovar Albanians. The ground option was also discussed especially to monitor a cease-fire, though it did not assume the aura of formality, which the air-only option was shaping into.47 On 24 September 1998, the North Atlantic Council issued an “activation warning” (ACTWARN) supporting

limited air strikes against Yugoslavia, if the pogrom of ethnic cleansing was continued by
the Yugoslav army.48 On the 29 September 1998, five days after the ACTWARN, the
Yugoslav forces in an act of violence in Gornji Obrinje killed twenty-one women,
children and the elderly.49 Spurred by television images of the massacre, the US sent its
Balkan envoy Richard Holbrooke to Belgrade The purpose of the visit was not only to
demonstrate to Milosevic that NATO meant business when it was threatening air-strikes,
but also to persuade Milosevic to comply with the UN Resolution 1199 (See Appendix
1.1.4.). Milosevic succeeded in averting a possible NATO air strike by agreeing to a
cease-fire in Kosovo and limit the Yugoslav forces in Kosovo to 22,000.50 He also agreed
access to 2000 unarmed OSCE verifiers into Kosovo. The task of the Kosovo
Verification Mission (KVM) was to verify Belgrade’s compliance with UNSC
Resolution, 1199(1998), as well as supervise elections in Kosovo that Belgrade promised
to hold within nine months from then.51

The October ceasefire had enabled around 50,000 Kosovar Albanians to come out of their
refuge on the mountains and return to their homes. This saved them from a perspective
severe winter and starvation deaths. However, the October ceasefire provided a short
term palliative. General Wesley Clark, NATO chief commander categorically stated that
the October agreement had “succeeded in dampening and containing the crisis but not in
resolving it”52 The KLA was ignored and the political aspirations of the Kosovo
Albanians were not acquiesced upon. The absence of a political settlement between the
Serbs and Albanians also pointed to the fact that a violent showdown was brewing
beneath the surface, propelled more so by a lack of NATO resolve to use force, in the
midst of an impending humanitarian catastrophe. As a result violence mounted in

48 NATO Press Release, “Statement by NATO Secretary General”, Vilamoura, Portugal, 24 September
1998.
49 Guy Dinmore, “New Kosovo Massacres May Spur NATO to Act”, The Washington Post
50 Michael McGwire, “Why Did We Bomb Belgrade?” International Affairs (London), vol. 76,
no. 1, January 2000, pp.1-23.
51 Kosovo Verification Mission Agreement between the North Atlantic Treaty Organisation and the
52 Quoted in Tim Weiner, “NATO Warns Time is Short For Talks on Kosovo”, The New York Times
Kosovo. The KLA’s attacks on a group of Serb teenagers at a tavern in Pec were immediately followed by Serbian counter attacks on the Albanian population. The Serb forces, in violation of UNSC Resolution 1199, launched a major offensive around the town of Podujevo on 24 December 1998. The OSCE monitors declared that they were not in a position to stop violence, if the conflicting parties were unwilling to do so.

The Racak massacres steeled NATO’s resolve to intervene in Kosovo. On 15 January 1999, the Serb Paramilitary forces entered the village of Racak in Southern Kosovo, and killed forty-five people including three women and a twelve year old boy. The OSCE verifiers that reached Racak twenty-four hours after the massacre reported that the brutality of the massacre constituted a “crime against humanity”. Racak proved to a turning point for NATO and the US. They realised that they had to give up the “wait and see policy” and enforce the use of force option, if they were to protect the Kosovar Albanians from Serbian repression. One last diplomatic effort was engaged upon to pave a way for a solution to the crisis at the French Chateau Rambouillet from 6-20 February 1999. The talks also involved a Serbian delegation as well as representatives of the KLA. Ratko Markovic, the Deputy Prime Minister of the Serb Republic, led the Serb delegation. The absence of Milosevic proved a damper on any negotiated settlement. The Serbian delegation refused to abide by the strategy set out at Rambouillet mainly due to the military annex. Paragraph 8 of Appendix B in the proposed “Interim Agreement” stated that NATO personnel should enjoy, together with their vehicles, vessels, aircrafts and equipment, free access throughout the Federal Republic of Yugoslavia (FRY), including associated airspace and territorial waters. The Serb delegation refused to accept the presence of NATO personnel in Kosovo. They demanded that any force that would monitor events in Kosovo had to be led by the UN.

53 Daalder and O'Hanlon, n.34, p.61.
54 Ibid, p.62.
The KLA also did not sign the Rambouillet draft, as it did not indicate a lasting solution to the political crisis in Kosovo. The delegation declared in writing to the co-chairman of the Rambouillet conference that it had voted in favour of the agreement and could sign it in two weeks after consultation with the people of Kosovo.\textsuperscript{58} As the Rambouillet conference failed to find any solution to the Kosovo crisis, Milosevic concluded that NATO intervention was inevitable. He had already accelerated the deployment of his army in Kosovo after the failure of the first round at Rambouillet in complete violation of the cease-fire agreement. The military strategy of Milosevic in February-March, 1999 had two objectives:

i) The destruction of the KLA and mass expulsion of Kosovar Albanians, particularly from southern and eastern Kosovo, as well as from borderlands of Albanian and Macedonia.

ii) The survival of the Yugoslav forces from NATO air strikes long enough to bring about a crack in the alliance's unity.

The first objective was carried with out impunity. Within two weeks, a massive and brutal expulsion program was underway that witnessed about 800,000 Kosovar Albanian refugees flee to the neighbouring countries of Albania and Former Yugoslav Republic of Macedonia. It must be noted here that the International Criminal Tribunal for the Former Yugoslavia was unable to inflict charges of genocide on the Milosevic regime.\textsuperscript{59} Genocide, according to the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide, is defined as the deliberate and systematic destruction in whole or in part of a national, ethnic, racial or religious group. Genocide can include any of the following acts: "Killing members of a group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, and imposing measures intended

\textsuperscript{58} Richard Caplan, "International Diplomacy and the Crisis in Kosovo", \textit{International Affairs} (London), vol.4, no. 74, 1998, pp 745-53.

\textsuperscript{59} The \textit{Wall Street Journal} (New York), 4 January 2000 quotes Emilio Pujol, a Spanish pathologist who exhumed bodies after both Kosovo and Rwanda as saying, "Rwanda was a true genocide, Kosovo was ethnic cleansing light".
to prevent births within the group". The 1948 Genocide Convention established two standards to judge a genocidal act:

i) Massive scale.

ii) Specific intent.

The pursuit of the first objective by Milosevic undermined his second because instead of bringing about a break in NATO unity, the mass expulsion of the Kosovar Albanians cemented NATO's resolve and helped in formulating a favourable public opinion within NATO member-states for the launch of air-strikes. In March 1999, the Kosovar Albanians indicated that they accepted the objectives set out at Rambouillet. The Serbs delegation pointed out that Yugoslavia would not accept the deployment of foreign troops as that violated the principles of sovereignty and territorial integrity. The Kosovar delegation signed the agreement on 18 March 1999 in Paris. Six days later, as Milosevic increased Serb repression of the Kosovar Albanians; NATO launched air strikes and bombed strategic military targets throughout Kosovo and Serbia.

The track record of the Milosevic regime from the time autonomy was revoked in Kosovo in 1989 till March 1999 definitely vindicated a just cause for intervention on humanitarian grounds. However, critics of NATO's intervention in Kosovo pointed out that the level of violence prior to NATO bombing did not justify NATO military action; given the fallout such an action would have on relations with China and Russia. In 1998, 2000 Kosovar Albanians lost their lives due to Serbian repression. This could not qualify as genocidal in intent. It had also been pointed out that the alliance could have found a solution to the crisis without going to war, had their existed a better management of the diplomatic moves between NATO and Belgrade. In response to the above observations, it could be stated that without NATO intervention, Milosevic might have increased the violence on Kosovar Albanians. It is likely that the intervention prevented a greater evil from occurring. Serb hardliners had already displayed their motives in Bosnia where

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100,000 Croats and Muslims were killed, and then in the program of ethnic displacement in 1998 in Kosovo, when nearly 300,000 Kosovar Albanians were turned out of their homes. Operation Horseshoe also was a case of planned repression, rooted in Milosevic’s desire to nip the popularity of the KLA within ethnic Albanian society. The authenticity of Operation Horseshoe’s existence might have been doubtful. The Independent Commission on Kosovo, led by South African jurist Richard Goldstone, found no evidence of the existence of Operation Horseshoe, but it did conclude that “there was a deliberate organized effort to expel a huge part of the Kosovar Albanian population and that such a massive operation had to be planned”. Tim Judah concluded in his book on Kosovo that “While there was without doubt a major plan to crush the KLA which would have resulted in a large number of refugees, he wrote, “until the archives are opened in Belgrade, the real picture remains unclear”. Kosovo constituted the five largest crisis-involving refugees and internally displaced persons in 1998 and the only country subject to cold winters. It is possible that Milosevic sensing NATO’s lack of resolve in protecting the Kosovar Albanians might have driven hundreds of thousands of Albanians permanently out of Kosovo. He might have also adopted the Bosnian style of ethnic cleansing, killing far more than the 10,000 that were eventually killed.

With regard to NATO’s intervention and its consequences on Russia and China, neither offered an alternative to NATO’s adopted strategy. Infact, though the relation between them were strained during the course of the war, relations assumed an air of normalcy by late 1999 and early 2000. With regard to the possibility of protecting the Albanians without going to war, it seemed an argument where critics were stating their case too far. The conflict in Kosovo was fundamental and only a show of force would have put an end to the killings and displacement program.

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65 The other major crisis involving refugees and internally displaced persons were in Angola (300,000-500,000 uprooted in 1998), Congo- Brazzaville (250,000), Sierra Leone (550,000) and Columbia (300,000), World Refugee Survey, 1999, (Washington D.C.: US Committee For Refugees, 1999), p.1.
66 Daalder and O’ Hanlon, n.34, p. 13.
Noam Chomsky had pointed out, “In Kosovo, the threat of bombing did not arrive too late to prevent the widespread atrocities, but preceded them”. In response to air strikes, the Serbian offensive in Kosovo escalated during 1998, a legitimate response on the part of a sovereign state faced with invasion that would jeopardize its territorial integrity. The limited time frame adopted by Chomsky pointed to the fact that he completely ignored the many years preceding 1998, in which Serb police and paramilitary troops committed gross violation of human rights of the Kosovar Albanians.

(2) **War is declared by a Competent Authority:** NATO’s intervention in Kosovo was termed controversial, mostly, due to the fact that the intervention took place without United Nations mandate. It was for the first time in its fifty years of existence that NATO used force to avert a humanitarian disaster, solely depended on its own counsel. Amidst an increasing Serbian repression of Kosovo Albanians on the ground, NATO intervened. That action left NATO at loggerheads with certain provisions of the UN Charter. At worst, NATO’s unilateral use of force, critics argued, jeopardized the international order that entrusted the UN Security Council with the responsibility to monitor and guarantee international peace and security.

The UN Charter articles 2(4) and 2(7) govern the use of force in international law. Article 2(4) reads as follows:

“All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations.”

Article 2(7) provides that:

“Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction or shall require the Members to submit such matters to settlement under the present Charter: but this

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69 UN Charter, Article 2, Para. 4.
principle shall not prejudice the application of enforcement measures under chapter VII.  

However, Article 51 of the UN Charter allows the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations. In Kosovo, NATO to justify its use of force against Serbia used a completely new rhetoric. For the first time in the history of the alliance, humanitarian concerns were raised to justify the use of force. The United Nations Security Council Resolutions 1199 (September, 1998) and 1203 (October, 1998) (See Appendix 1.1.5) had determined that the situation in Kosovo posed a threat to international peace and security. Acting under Chapter VII of the Charter, the UNSC called upon the parties to the conflict to comply with certain provisions in order to pacify the ongoing conflict. Under Resolution 1160 (March, 1998), the United Nations had imposed an embargo against the sale to Yugoslavia (Kosovo included) of arms and related materials. In Resolution 1203, (October 1998) the UNSC endorsed the establishment of an OSCE Observer Mission (KVM). The task of the KVM was to verify compliance by all parties in Kosovo with UN resolution 1199, to establish a permanent presence throughout Kosovo and supervise elections in Kosovo. The UNSC in Resolution 1203 called upon Yugoslavia to ensure full implementation of the provisions of Resolution 1199, but the language felt short of threatening the use of force in case of noncompliance. NATO faced a UNSC veto, if the use of force option was made because both Russia and China had made it clear that they would veto any UNSC resolution that mandated the use of force against a sovereign country, for what they regarded as an issue that was purely an internal affair of Yugoslavia. China had abstained during vote for UNSC Resolution 1199, emphasizing that it went too far and Russia had conditioned its support of Resolution 1199, given it did not authorize the use of force.

70 UN Charter, Article 2, Para. 7.
71 UN Charter, Article 51.
NATO referred to these UN Resolutions as providing a rationale for its intervention in Kosovo. This linkage was problematic since though Russia and China did not oppose these Resolutions, they had made it clear that they did not condone the use of force.\(^75\) It was pointed out that Russia and China were alarmed that the world’s mightiest alliance was motivated to use force in the name of absolute and moral principles, rather than national interest concerns, that are subject to cost-benefit calculation. They feared that it would set a precedent for future interventions. Russia had its own problematic region—Chechnya and China-Tibet. Yet, these alarm-bells that rang across many states in the world were far-fetched. NATO was neither motivated solely by moral principles, nor did it ignore cost-benefit calculations.\(^76\) The NATO intervention in Kosovo was not a moral crusade. It also had certain geopolitical concerns.

The absence of UN authorization posed a problem to many NATO member states, who argued that NATO could not use force for other purposes, the exception being the right to self-defence, unless the UNSC approved an explicit mandate for such a venture. A UN authorisation proved impossible during late 1998 and 1999 because of a certain Russian and Chinese veto of any resolution that allowed use of force against Yugoslavia. Some NATO governments maintained that the repression and mass exodus of the Kosovar Albanians that was being orchestrated by the Milosevic regime in Kosovo in 1998 and 1999 merited a humanitarian intervention. The Security Council’s inability to act created an urgent situation in which use of force by NATO without UN mandate was justified.\(^77\) Jacques Chirac, the French President reinstated this stand when he pointed out on 6 October 2004 that “Any military action must be requested by the Security Council. In this particular case, we have a resolution, which does open the way to the possibility of military action. I would add, and repeat, that humanitarian situation constitutes a ground

\(^75\) Russia said that, ‘it could not be agreed that the situation in Kosovo presented an international danger. For such reasons such as the use of force had been reflected in a draft and Russia would not condone that it would abstain in the vote of the resolution”. China stated that its request for deletion of the elements that authorized the use of force or the threat of the use of force was accommodated. Resolution 1203 contained certain elements that might usher in interference in the internal affairs of Yugoslavia. China, therefore, abstained from voting. See ‘Security Council Demands Federal Republic of Yugoslavia Comply Fully with NATO and OSCE Verification’, UN Press Release SC/6588, 24 October 1998 at [http://www.un.org/News/Press/docs/1998/19981024.sc6588.html](http://www.un.org/News/Press/docs/1998/19981024.sc6588.html)

\(^76\) Papasotiriou, n. 39, p. 52.

\(^77\) See Guicherd, n.68, pp. 28-29.
that can justify an exception to a rule, however, strong and firm it is. And if it appeared that the situation required it, then France would not hesitate to join those who would like to intervene in order to assist those that are in danger”. Within NATO, the debate raged in the months of September 1998 to February 1999 with regard to the use of force against Yugoslavia. The North Atlantic Council was divided into three camps. First, there was the “Catholic Camp” comprising France and Italy that insisted on the need of a UN mandate, at the same time recognizing that in exceptional circumstances, military action was justified by a humanitarian crisis, second; the “Lutheran Camp” included Britain and Germany, who stood by the requirement to stop an overwhelming humanitarian disaster. Such disasters required an emergency response and the bickering in the UNSC would only perpetrate the crisis to unmanageable levels. Third, the United States adopted an “agnostic” approach in arguing that UN mandate was neither sacrosanct nor absolute.

The absence of consensus made matters uncomfortable for NATO Secretary General Javier Solana. After an intense debate that lasted for ten hours on 10 October 1998, he put forward a cluster of reasons that justified military action and provided a legal basis to the threat of force against Yugoslavia and if necessary its justification. These reasons included:

i) The failure of Yugoslavia to fulfill the requirement set out by Resolutions 1160 and 1199, based on Chapter VII of the UN Charter;

ii) The imminent risk of a humanitarian catastrophe, as documented by the report of the UN Secretary-General Kofi Annan on 4 September 1998;

iii) The impossibility to obtain, in short order, a Security Council resolution mandating the use of force; and

iv) The fact that Resolution 1199 stated that the deterioration of the situation in Kosovo constituted a threat to peace and security in the region.

78 Ibid, p.28.
79 Daalder and O’Hanlon, n.34, p. 45.
80 North Atlantic Council consultations summarized by NATO Secretary General Javier Solana on 9 October 1998, and released as a NATO press release on the same day at www.nato.int/pressrelease/oct/1998
Russia's opposition to the above statements was registered in Russian Ambassador to the UN, Sergei Lavrov's statement. He asserted that only "the UN Security Council can decide the use of force or authorize resort to force under the authority of the UN Charter". He also pointed out that to invoke "humanitarian crisis in a country as a sufficient reason for a unilateral armed intervention" would "be unacceptable and contrary to the foundations of the contemporary system of international relations and to the Charter of the United Nations". In October, 1998, the Chinese Foreign Minister, Tang Jiaxuan stated that "his Government resolutely opposed the use of force or the threat of force in international relations", adding that it was "disturbed" by the fact that "some countries are now treating to use force against Yugoslavia". Sergia Lavrov added that bombings on Yugoslavia constituted a "crude violation of the UN Charter and "an act of open aggression against a sovereign member state of the UN".

In order to understand whether NATO had the right authority to intervene in Yugoslavia within the Just War context, one has to understand that there exist serious gaps in international law with regard to humanitarian intervention. It is pertinent here to point out that the adversaries and critics of NATO's intervention should concentrate on developing a strong and precise body of laws that allow intervention on humanitarian grounds. St. Augustine had put forth the aphorism in the 4th Century A.D. that it was the responsibility of states and the sovereign (the King) to save populations in neighbouring states from being massacred by a ruthless sovereign of the particular state. Later Just War thinkers, starting with Thomas Aquinas in the 12th Century A. D. to Paul Ramsey and Michael Walzer of our times, who advocates that unilateral interventions that avert a humanitarian disaster are justified, tied this trend of thinking together.

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81 Declaration of Ambassador Sergei Lavrov quoted in Presse de l' OTAN, Derrières nouvelles, 22 January 1999.
82 Geisburd, no.68, p.29.
i) Sovereignty vs. Human Rights:

In international law, the UN Charter governs the use of force. Since, sovereignty and territorial integrity of states form the core of the UN Charter, it sets out clear prohibitions on the use of force under Article 2(4) and 2(7). The only two exceptions to that norm are stated in Article 51 of the UN Charter that allows individual or collective self-defence when a member state is a victim of aggression. The International Court of Justice (ICJ) put restrictions on this action by stating in a ruling in 1986 that supported the UN General Assembly Resolution 2625, that assistance to either party in a civil war is prohibited.\(^{84}\) The second exception is the UN Security Council’s authority to determine under Chapter VII of the UN Charter ‘the existence of a threat to international peace and security’.\(^{85}\) Since 1945, a contradictory and parallel trend has developed in international law that prioritizes human rights. The United Nations Declaration of Human Rights in 1948 provided a legal basis to act in order to uphold human rights. In Europe, the Organisation of Security and Cooperation in Europe (OSCE) undertook a resolution that the commitments undertaken in the field of ‘human dimension of the OSCE are matters of direct and legitimate concern to all participating States and did not belong exclusively to the internal affairs of the states concerned’.\(^{86}\)

The difference between international human rights law and humanitarian law are essential to chum out the contradictions that exist on the international plane in justifying humanitarian intervention. International human rights law is an offshoot of the UN’s Declaration of Human Rights and consists of a body of rules adopted at the 1966 Covenants on International Civil and Political Rights, and on Economic and Social Rights, and the 1984 Convention against Torture. An apparent weakness of this human rights law is that apart from genocide as defined in the 1948 Geneva Protocol, it does not have an enforcement mechanism and has nothing to say with regard to the prevention of crime.\(^{87}\)

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\(^{85}\) UN Charter, Article 39-42.

\(^{86}\) Helsinki Summit Declaration, 1992, Para. 8.

International humanitarian law goes back a long way in the annals of history, developed by theologians, lawyers and political philosophers, in order to humanize war, especially by locating it within the *jus in bello*. International humanitarian law provides a framework to try war crimes, after the 1950 Charter of the Nuremberg Tribunal and before the Geneva Protocol of 1949. In cases of extreme violation of human rights law as well as humanitarian law, the codes of conduct tend to overlap. However, both fall short in that they do not contain any provisions on preventive actions. And, it is precisely the prevention of gross violations of human rights within states that provide the basis for humanitarian intervention. The United Nations General Assembly in Resolution 43/131, 8 December 1988 confirmed that the victims of man made and natural disasters had the right to receive assistance. The UN Security Council in Resolution 688, 5 April 1991 for the first time authorized a humanitarian relief operation by invoking Chapter VII of the UN Charter. Resolution 794, 3 December 1992 on Somalia clearly stated the UNSC’s right to intervene in support of humanitarian objectives. Yet, overwhelming majority of international lawyers argues that a right to intervene in cases of humanitarian catastrophe cannot be recognized because that would violate the Charter’s prohibition on the use of force. It is beside the point that the Charter also states in the Preamble, as well as Article 1 (3) that respect for human rights is also one of the purposes of the UN. At best, one needs to consider that states have a moral obligation to act in the face of an impending humanitarian disaster. The world must ensure that another tragedy like Rwanda was not allowed to blotch human history.\(^{88}\)

Specialists point out that a right to humanitarian intervention, especially of a unilateral nature should meet the criterion that the ground for intervention is brought to the notice of the Security Council. That would also provide a basis to prove that individual states make the UNSC non operational, due to their own self-interest.\(^ {89}\) For instance, during the build up to NATO’s intervention in Kosovo, Russia and China destabilized the UN Security Council by holding on to the view that the humanitarian catastrophe in Kosovo

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was an internal matter of Yugoslavia. This was despite reports from the ground that Milosevic had increased Serb oppression after July 1998 in violation of UNSC Resolution 1160 and later 1199.90 The Russians claimed that in international law, there was no support for the doctrine of humanitarian intervention. This was countered by Britain in the Foreign and Commonwealth Office (FCO) paper in October 1998, that there was a legal basis for NATO to use force in Kosovo without explicit Security Council authorization. The paper stated that to justify the use of force, the following criteria had to be fulfilled:

i) That there is convincing evidence, generally accepted by the international community as a whole, of extreme humanitarian disaster on a large scale, requiring immediate and urgent relief;

ii) That it is objectively clear that there is no practicable alternative to the use of force if lives are to be saved;

iii) That the proposed use of force is necessary and proportionate to the aim (the relief of humanitarian need) and is strictly limited in time and scope to this aim.91

Russia and China were also accused of misusing the UN veto. They were adamant even before the matter was discussed in the Security Council in March 1998, that they would veto any resolution that mandated the use of force in Kosovo.92 Power and interest is present in international law. The five veto wielding permanent members of the UNSC have their own core interest in using the veto. Such a political atmosphere could be suffocating for the victims of the human rights abuses. The deadlock between the permanent members of the UN Security Council could prove to be an obstacle in averting a genuine humanitarian crisis on the ground. Andrew Linklater in response to a claim that NATO should not have acted without proper UN authority because of the consequences to order replied that the responsibility of a good international citizen was to resolve the

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tension between legalism and morality. He pointed out "that the Great Power veto must not be exercised in the worst humanitarian emergencies.\textsuperscript{93}

The moral sanctity of NATO’s unilateral intervention in Kosovo also arose from a gradual shift in analyzing the ethos of the humanitarian intervention debate. Instead of clubbing the use of force with a “right to intervene”, it is deemed pertinent to talk about a “responsibility to protect”. These put forth three engaging issues:

i) It implies evaluating the issues from the point of view of those needing support, rather than those who may be considering intervention. That would signify the beacon light into matters that need immediate attention, the duty to protect communities from mass killings, women from systematic rape, and children from starvation.

ii) This also implies that the primary responsibility rest with the state concerned. If that state is unable or unwilling to fulfill its responsibilities to protect, or is itself the perpetrator, the international community must take the responsibility to act on its place.

iii) Responsibility to protect also would mean the responsibility to rebuild. The shift in the essence of sovereignty from ‘control to responsibility’ is also necessary to be imbibe so as to understand the indignation in capitals of NATO member states after the Racak massacre on 15 January 1999. The Westphalia system empowers a sovereign state to take authoritative decisions within its borders, but the ascendancy of the human rights culture has ushered in the idea of national and international accountability. It is no longer possible for a state to carry out violations to the dignity of man and be protected from outside intervention by the culture of sovereign impunity.\textsuperscript{94}

Moreover, certain critics argued that the use of force by NATO had led not only to an undermining of UN, but announced the end of the UN peace keeping mission.\textsuperscript{95} They pointed out that the antiquated rules of the UN were responsible for the fact that most bloody conflicts have been ignored in recent history as “domestic matters”. This is an

\textsuperscript{93} Andrew Linklater, “The Good International Citizen and the Crisis in Kosovo”, in Schnabel and Thakur, n. 74, p. 470.

\textsuperscript{94} See Evans and Mohammed, n. 88, pp.101-02.

extreme view because it suffers from an inherent bias. The critics refused to acknowledge
the fact that when the Security Council was not manipulated by Great Power politics, it
had taken the decision a couple of times to authorize the use of force, be it in Bosnia,
Somalia, Rhodesia, South Africa and Iraq. In NATO's intervention, the use of the veto by
Russia and China reflected their own insecurity over Chechnya and Tibet. That kept the
UNSC from taking just and necessary measures in Kosovo. It has to be kept in mind that
NATO's action was not the first case of a unilateral intervention, in response to averting a
humanitarian tragedy. India faced that choice before intervening in East Pakistan in 1971
to stop the Pakistan army action against the Bengalis.

That law, including the UN Charter is written to govern the general conduct of states in
light of historical precedents. If, in context, a general law inhibits doing justice, then it is
up to members of a particular community to come up with alternatives or over-ride the
law. NATO's intervention in Kosovo was in accordance with the criterion of right
authority. The argument that NATO's bypassing of the UN Security Council represents a
fundamental blow against the UN system of peace and security is open to opposite
rebuttal, the Security Council's inaction in cases that shocked the conscience of mankind
presents an equally fundamental blow to the dignity and authority of the UN.

(3) Right Intention: NATO's intervention in Kosovo was chiefly motivated by the
following factors:

i) That NATO's intervention was partly motivated by universal moral principles. The
major concern of the North Atlantic Council was that despite the UN Secretary General's
statements with regard to the breakout of a major humanitarian catastrophe in Kosovo,
the UNSC failed to take any measures to mitigate the crisis. The Kosovo intervention was
undertaken with the imperative to prevent a major humanitarian catastrophe in Kosovo.
NATO acted in a Kantian rather than a Grotian spirit, putting universal principles above
the legalist notions of international order.  

For a detailed analysis of the Grotian, Kantian and Machiavellian traditions, see Martin Wright,
International Theory: The Three Traditions (London: Leicester University Press for The Royal Institute
of International Affairs, 1987).
ii) That NATO’s credibility was at stake. If NATO failed to put a halt to ethnic cleansing in the Balkans, then the rationale for existence of the alliance in the post cold war period would stand on shaky ground. Moreover, the Serb repression was taking place in NATO’s backyard. If the world’s mightiest alliance were to stand a mute spectator, despite an unfolding sequence of human rights abuses in Kosovo, its integrity and honour would be at stake.

iii) That ethnic cleansing could not be allowed in a civilized Europe and that it posed a threat to European security.

iv) That the massacre in Srebrenica during the Bosnian crisis in 1995 infused a feeling of guilt among NATO members. In 1993, when the Security Council had declared ‘safe areas’ in Bosnia, the Secretary General had requested a force of 70,000 troops under NATO control to prevent attacks on these areas. This had been turned down by the US and other members. The result was the Srebrenica tragedy in July 1995 that left at least 7,414 Bosnian men dead. NATO did not possibly want another Srebrenica.

With regard to the first motive that is to stop a “humanitarian tragedy” NATO argued that it was Yugoslavia’s use of unrestrained force against the Kosovar Albanians that justified a military intervention:

"The unrestrained assault by Yugoslav military, police and paramilitary forces, under direction of President Milosevic, on Kosovar civilians has created a massive humanitarian catastrophe, which also threatens to destabilize the surrounding region...These extreme and criminally irresponsible policies, which cannot be defended on any grounds, have made necessary and justify the military action by NATO". 100

97 McGwire, n. 50, p.1.
The US President Bill Clinton stated that 'the US act[ed] to protect thousands of innocent people in Kosovo from mounting military offensive' and to 'prevent a wider war, to defuse a powder keg at the heart of Europe that has exploded twice before in this century with catastrophic results'. The US in its verbal submission to the International Court of Justice in the case Yugoslavia vs. the United States stated its concern not only for regional security, but also for the humanitarian spill over that the Kosovo conflict was having on the neighbouring regions:

i) The humanitarian catastrophe that has engulfed the people of Kosovo as a brutal and unlawful campaign of ethnic cleansing has forced many hundreds of thousands to flee their homes and has severely endangered their lives and well being;

ii) The acute threat of the actions of the Federal Republic of Yugoslavia to the security of neighbouring States, including threat posed by extremely heavy flows of refugees and armed incursions into their territories;

iii) The serious violations of international humanitarian law and human rights obligations by forces under the control of the Federal Republic of Yugoslavia, including widespread murder, disappearances, rape, theft and destruction of property; and finally;

iv) The resolutions of the Security Council which have determined that the actions of the Federal Republic of Yugoslavia constitute a threat to peace and security in the region and' pursuant to Chapter VII of the Charter, demanded a halt to such actions.  

This line of argument was also adopted by other NATO powers. The need to maintain regional stability as well as avert a humanitarian catastrophe dominated most debates in the prelude to NATO's intervention. Germany and France, though not keen on the use of force against Yugoslavia, maintained that the ground situation, especially in the early

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102 In April 1999, the FRY filed for proceedings against the US at the ICJ for 'its violation of the obligation not to use force'. It also asked the Court to order the US to cease its use of force and refrain from any threat or use of force against the FRY. The ICJ rejected the application, finding that it lacked jurisdiction, as the US had not submitted to the court. See Legality of Use of Force (Yugoslavia v. United States), Oral Pleadings, ICJ Doc. CR/99/24, 12 May 1999, Para.1.7 at http://www.icj-cij.org/icjwww/idocket/youframe.htm
months of 1999 made necessary the overt use of force in Kosovo. Gunter Verheugen, the Minister of State in German Foreign Ministry stated: "One can imagine a situation in which the level of violence becomes so great that every decent person would say something had to be done to end the killing. If Russia uses its Security Council veto, one would say this was an abuse of the veto and argue the primacy of halting the slaughter is greater than formal respect of international law."103 The US President Bill Clinton pointed out to the American public on 23 March 1999 that the West had a moral responsibility to stop the terrible atrocities that were taking place in Kosovo. "We are upholding our values, protecting our interests, and advancing the cause of peace. We cannot respond to such tragedies everywhere, but when ethnic conflict turns into ethnic cleansing where we can make a difference, we must try, and that is clearly the case in Kosovo. Had we faltered, the result would have been a moral and strategic disaster. The Albanian Kosovars would have become a people without a homeland living in difficult conditions in some of the poorest countries of Europe...."104 Secretary of State Madeleine Albright voiced similar concerns in February, 1999 when she stated that "this kind of thing cannot stand, that you cannot in 1999 have this kind of barbaric ethnic cleansing. It is ultimately better that democracies stand up against this kind of evil."105

Critics pointed out that a cursory examination of the proclamations of humanitarianism made by NATO revealed that its intentions were extremely dubious. The values cited by the leaders of NATO member states as instrumental in activating the intervention in Kosovo were far from being universal. In fact, the selective engagement of humanitarian intervention by these states made their humanitarian claims questionable. Many among the critics pointed out that if protection of the oppressed was their real concern, they could have been defending the Kurds, who were subject to extreme extermination for the last 50 years, somewhat in lesser degree than the Holocaust in terms of numbers of

people killed, but equally worse, if morality was the determining factor. They added that Turkey's ethnic cleansing of the Kurds is tolerated because Turkey is a strategic ally in Europe. Rwanda would have been saved from genocide in 1994, if the international community was so moved by universal values and had the US been firm in its humanitarianism during the Somalian crisis in 1993, it would not have pulled out its troops due to the death of 18 US Marines.\(^{106}\) That Saddam Hussein was a friend and ally and recipient of substantial military and other aid from the US, the UK and other western powers, while he was gassing the Kurds, torturing dissidents and committing the worst crimes of his career. Yet, no western state condemned his actions since he was an ally. It was when he attacked Kuwait in August 1990 that the West and the UN deemed it pertinent to restrain him.\(^{107}\)

Many among the anti-imperialist, anti-interventionists are opposed to American and European diplomacy that have taken the driver's seat at the end of the cold war, and also to the rise of a unipolar world. It is widely claimed by these critics of the present unipolar international order that these hegemonic democracies use the rhetoric of humanitarian intervention selectively in order to camouflage their real intentions, which is projection of their own military and economic dominance. They also regard the mainstream media as a player in this great power game, portraying images of death and destruction selectively, that appeal to the domestic public at home and influence their support base for such ventures abroad.\(^{108}\) In reply to this damming criticism, Michael O' Hanlon and Ivo Daalder points out that it is in US national interest to promote human rights and act in its defence whenever it could. According to them, "Upholding human rights and alleviating humanitarian tragedy are worthy goals of American national security policy. Doing so reinforces the notion that the United States is not interested in power for its own sake but to enhance stability and security and to promote certain universal principles and


values". According to Joseph Nye, "the American people clearly think that their interests include certain values and their promotion abroad—such as opposition to ethnic cleansing in the Balkans." In a democracy, national interest is a set of shared priorities regarding relations with the rest of the world. It is broader than strategic interest and could include such values as human rights and democracy. That threats have changed on the priority list of the US is shown by the fact that lists A threats like the Soviet Union ceases to exist. Its List C, threats like Kosovo, Bosnia, Somalia have taken top priority. That is also because of media attention to such tragedies in the information age. Dramatic visuals and television images of people in distress have a great impact on public opinion. More importantly, Americans have their national interest at stake, if events that influence international order are not stopped. Preventing disorder beyond borders, is a first rate national security concern. The ability of the Kosovo crisis to command media attention and the moral concerns of the American population also made it a fit case for intervention, as far as American foreign policy was concerned. This trend would continue well into the next century, due to the preponderance of American power. According to Michael Walzer, mixed motives are bound to influence a state's decision to intervene for humanitarian reasons. "An absolutely singular motivation, a pure good will, is a political illusion." Prudent statecraft requires mixed motives that galvanize a state into action. It is also necessary to keep in mind that there has definitely occurred a significant normative shift in international order that acts as an influencing factor on a state's decision making and behaviour. There exists, definitely, a deep commitment to justice, in recent years.

The military action in Serbia by NATO was also tantalizingly close to the 50th birth anniversary of NATO, held in New York from 23-25 April 1999. The confrontation with Milosevic would be a crucial test for NATO's credibility. The Racak massacre of 15

109 Daalder and O'Hanlon, n. 34, p.12.
111 Ibid, p.23.
112 Ibid, p.29.
January 1999 provided the spur to use force in Kosovo, in order to coincide with the timetable of the birthday celebrations. The alliance also wanted to extend its sphere of influence into the Balkans. The critics might be correct in their assessment of NATO's intentions. That does not detract from the fact that by March 1999, the Milosevic Regime brutalized the Kosovar Albanians. He had disregarded the cease-fire agreements, as well as the provisions of the UNSC Resolution 1199, and had increased his troop presence in Kosovo. To conclude, NATO's intention in Kosovo meets up to the criterion of right intention of Just War Theory mainly on two grounds:

i) That the intervention stopped Serbian repression against the Kosovar Albanians;

ii) NATO did not formally support Kosovo’s secession from the Federal Republic of Yugoslavia. On this crucial aspect, NATO was on the side of the Serbs. The agreement of June 1999 as formulated by the UN Security Council 1244, affirmed the ‘commitment of all the Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia.’

(4) Force must be the Last Resort: That any decision to wage war must always be the last resort. There must be a process of peacemaking before any final decision to stop diplomatic negotiations with that particular state. Sanctions, threats, dialogue and diplomatic engagements must be exhausted. If all other steps do not persuade the defiant state to give up aggression or abuse of human rights, force is used. However, accommodations do not always serve the purpose of peace. Moral judgments need to be informed by the realities of a given situation. How to reconcile the moral imperative of speedy action with the requirement that force always be the last resort? Nigel Rodley points out the realistic necessity that “nothing short of the application of armed force would be sufficient to stop the human rights violations in question.”

With regard to Kosovo, the first official warning to the Milosevic regime was issued by the US on 27 December 1992, when the then President George Bush, warned Milosevic

115 McGwire, n. 50, pp.8-15.
that if Serbia began a civil war in Kosovo, the United States would regard it as a direct threat to US national interests and would be obliged to act. This Christmas warning reflected the view at Washington that the Serbian aggression in Kosovo was looked upon as territorial aggression.\(^{118}\) The letter sent to Milosevic by President Bush stated that “in event of a conflict in Kosovo caused by Serbian action, the United States will be prepared to employ military force against the Serbs in Kosovo and in Serbia proper”\(^{119}\) This Christmas warning was restated by the Clinton Administration when the Secretary of State, Warren Christopher stated, “We remain prepared to respond against the Serbs in the event of conflict in Kosovo caused by Serb action.”\(^{120}\)

The escalating crisis in Kosovo around 1997-98 when Milosevic increased Serbian counter offensive against the Kosovor Albanians, convinced the NATO countries that at that juncture, the most important policy option was the rapid use of force, if they were to avoid a repetition of the Bosnian horrors. Secretary of State, Madeleine Albright pointed out that “We are not going to stand by and watch Serb authorities do in Kosovo what they can no longer get away with doing in Bosnia”.\(^{121}\) On 9 March 1998, in the London meeting, she told her European colleagues, “History is watching us. In this very room, our predecessors delayed as Bosnia burned, and history will not be kind to us if we do the same.”\(^{122}\)

In November, 1997, Milosevic had spurred an offer by the European Union to improve trade and diplomatic relations with Belgrade, in return for accepting a negotiating process with the Kosovor Albanians, and allowing third party mediation in the conflict. In early 1998, the Clinton administration’s special envoy to the region, Robert Geelbard traveled to Belgrade and indicated to Milosevic that Belgrade would have to face more stifling sanctions, if violence against the Kosovar Albanians was not

\(^{118}\) McGwire, n. 50, p.5.


\(^{122}\) Quoted in Walter Isaacson, “Madeleine’s War”, *Time* (New York), 7 May 1999, p. 29.
stopped.\textsuperscript{123} Within days of his departure, the Serb security forces killed some two dozen people in Qirez and Likosane in Central Kosovo on 28 February 1998. The worst happened in Drenica valley where fifty-two people were killed, including the KLA leader, Adem Jashari and twenty members of his family. Serb authorities had justified the violence as a counter-insurgency move necessary to safeguard the integrity of the Serb state from secessionist groups, an act that was legitimate and natural to statecraft.\textsuperscript{124} The response by NATO was more rhetorical, steeped in the firm determination to stop further Kosovar Albanians deaths. However, the “use of force” option was not outlined in NATO’s strategy to deal with the crisis. In fact, in March 1998, the UN Resolution 1160 that imposed economic sanctions on Yugoslavia, did not imply that force would be used, if Milosevic did not allow international mediation in the crisis.

The no force option might have been influenced by Russia and China’s decision that they would veto any resolution that endorsed the force option on Yugoslavia. The United States was also wary at that moment of time to intervene military, as the US President Clinton was involved in a major scandal at scandal, the Monica Lewinsky affair. He had just survived an impeachment ordeal and faced a Congress that was hostile to any US military intervention abroad. The spring offensive against Iraq in 1998 that lasted for four days did not come out with any positive results with regard to weapons of mass destruction. Moreover, the use of force had to be endorsed by the NATO allies and it already had a troop presence in Bosnia. One US official stated “the idea of using force over the objection of allies who have troops on the ground, subject to retaliation, is fantasy land. Allies do no do that to each other”\textsuperscript{125}

It was considered early to use force in Kosovo before offering Milosevic a chance to end the violence. What was required at this stage was to make a credible threat on the use of force to persuade Milosevic to negotiate with the Kosovar Albanians. NATO had the experience of Bosnia, where Milosevic capitulated under pressure of NATO air strikes

\textsuperscript{125} As quoted in Daalder and O’ Hanlon, n.34, p. 30.
under Operation Deliberate Force.\(^{126}\) However, the summer offensive carried out by Milosevic left nearly 200,000 Kosovar Albanians temporarily displaced. In reply, the NATO defence ministers directed the NATO military authorities to undertake the following:

i) Conduct an appropriate air exercise in Albania and Macedonia as quickly as possible with the aim to demonstrate NATO’s willingness to use military power in Kosovo;

ii) Develop a full range of options with the mission to halt a systematic oppression of the Kosovo population;

iii) Provide support to OSCE and UN monitoring activities in Kosovo.\(^{127}\)

The pressure of using force on Milosevic was mainly aimed at providing a political solution to the crisis. This proved problematic since Belgrade regarded the Kosovo problem as an internal matter. Differences also persisted among the Kosovar Albanians and Belgrade with regards to the means of solving the crisis. Belgrade firmly believed that it had the authority as a sovereign country to stem out any dissidence within its borders. The KLA stood by its demand of independence, as the only solution to the crisis. Both these views proved irreconcilable. In the meantime, Richard Holbrooke, the man instrumental in brokering the Dayton Peace Agreement in 1995, was sent to Belgrade to convince Milosevic to allow diplomatic observers access into Kosovo. Holbrooke succeeded in his mission and the Kosovo Diplomatic Observer Mission (KDOM) was established.\(^{128}\) The major obstacle in solving the Kosovo crisis was the inability of the international community to decide which of the three options to stand by, autonomy, independence or partition of Kosovo. Since the NATO allies were against the partition of Kosovo because that would only increase ethnic clashes across the region, it was ruled out as a viable strategy. The independence option was in danger of spilling over to other regions of the Balkans and stoking demands for independence among other disgruntled minorities. Autonomy provided the least-controversial solution. In September,

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\(^{126}\) McGwire, n.50, p.1.


Christopher Hill, US Ambassador to Macedonia announced that Rugova and Milosevic had agreed to work towards an interim solution for the present, and postpone deliberations on the final status of Kosovo. This was considered a mistake on the part of Rugova by the KLA. The increase in Serbian violence through summer led the UN to pass Resolution 1199(September) 1998, (See Appendix 1.1.4) that demanded most of all to cease all actions by the security forces against the civilian population and enable humanitarian organizations to enter Kosovo and monitor the return of the displaced Kosovar Albanians to their homes. Within two weeks of passing the UN resolution, the US sent Richard Holbrooke to Belgrade again to demonstrate NATO’s commitment to use force, if the UN Resolutions were not complied with. Holbrooke carried a list of demands that needed to be met in order to comply with the UN Resolution. Among the demands was the necessity to end offensive operations and hostilities as well as withdraw Serb forces from Kosovo and allow the return of refugees and displaced persons. Milosevic agreed to a ceasefire when Richard Holbrooke informed him that NATO was about to approve an ACTORD (activation orders) for limited air strikes. After the ceasefire, humanitarian agencies and international organizations were granted access to assist displaced persons to return to their homes. Most of the 250,000 Kosovar Albanians were able to return to Kosovo.

The Holbrooke-Milosevic talks left many crucial matters vague:

i) The amount of Serb forces to withdraw from Kosovo was not mentioned. In-fact, Samuel Berger, US Secretary of Defence stated that he did not want to get into the number game.

ii) The verification mission had no enforcement powers. The unarmed monitors were helpless, if violence erupted.

130 Press Briefings by British Foreign Secretary, Robin Cook “Contact Group Discussions on Kosovo”, (London: Contact Group, 8 October 1998).
131 According to UNHCR, by 26 November 1998, 75, 000 of the 250,000 displaced returned. The other 175,000 found shelter elsewhere. See “UN Inter-Agency Update on Kosovo Situation Report 72”, (UNHCR, 26 November 1998).
132 See Daalder and O’ Hanlon, n.34, p. 51.
iii) That the agreement had completely ignored the KLA and the Kosovar Albanian demands. Thus, it could not stop an increase in violence by the KLA.

The Holbrooke-Milosevic talks proved to be a short term palliative. Throughout winter, Milosevic continued his offensive against the Kosovar Albanians that left nearly 50,000 people freezing in the mountains in winter, and the failure in finding a political solution through dialogue and negotiation, reflected the fact that the conflict between the Serbs and Albanians remained unresolved. NATO’s understanding of Milosevic’s position in the crisis proved contradictory. On the one hand, they thought him as the key instigator behind the Kosovo cauldron, and yet felt that he would be indispensable in providing a peaceful solution to the dispute.

The Racak massacre changed all that. The 15 January 1999 murder of 45 Kosovar Albanians in Racak steeled NATO’s resolve that force had to be used in Kosovo. After the massacre it was but obvious, that a change in policy was important. However, NATO was reluctant to use force immediately. The Clinton administration was doubly more cautious due to the fear that it may turn into a long-term engagement, especially in the light of Congress displeasure with extended deployment of American troops in Bosnia. The reluctance to use force was also influenced by American Regional Culture more so by the strong divide between the Dovish North and Hawkish South. Clinton and most of the top administrative tier belonged to the liberal Democrats who had their base in the North, especially in the states of New England, upstate New York, northern Ohio and Indiana, much of Michigan and Wisconsin, whereas the Republicans had strongholds in the Highland South, from West Virginia through Tennessee to Texas. Throughout history, the Northerners tended to be anti-militarist, whereas the Southerners were prone to be militarists and believed in projecting American power. Regional differences had a strong hold on American Foreign policy. The north tended to be anti-interventionist whereas the South was pro-interventionist. However, the pattern of partisan attitudes did not fit into familiar trends in the Kosovo case. At a closer scrutiny, it is clear that the Kosovo war was not thought of as a major war, indeed not a single American fatality was reported. That made it easier for the democrats to rally behind their President. The
political atmosphere in Washington was also corrupted by the ongoing impeachment procedures that were instigated by the Republican Party.\textsuperscript{133}

The Clinton Administration also felt that instead of military action, credible threat of force would be sufficient to convince Milosevic that NATO was serious and pave the way for a deal with the Albanians, in granting them greater autonomy. One last diplomatic effort was made at Rambouillet from 6-20 February 1999. The strategy for Rambouillet was laid out in a statement issued by the North Atlantic Council where it pointed out that “NATO is ready to take whatever measures are necessary in the light of both parties' compliance to international commitments, in order to avert a humanitarian catastrophe, by compelling compliance with the demands of the international community”.\textsuperscript{134} In case of failure, the authority to start air strikes against the Federal Republic of Yugoslavia laid with the NATO Secretary General. The Rambouillet Conference comprised of all the Contact Group Countries, the OSCE representatives as well as the EU. The Serbian Prime Minister led the Serbian delegation. The actual focus of negotiation was on three negotiators delegated by the Contact Group, mainly Christopher Hill (USA), Wolfgang Petritsch (EU) and Boris Mayorski (Russia). The draft drawn for the Rambouillet conference by the Contact Group had the following non-negotiable factors:

\begin{itemize}
  \item[i)] End of violence with immediate effect;
  \item[ii)] Provide Kosovo a high degree of self-governance through representative police and judicial bodies, free and fair elections in Kosovo under OSCE supervision;
  \item[iii)] International involvement and full cooperation of parties on implementation;
  \item[iv)] The interim period would last three years, the territorial integrity of Yugoslavia would be guaranteed and an amnesty would be declared.\textsuperscript{135}
\end{itemize}

The major obstacle to the Rambouillet negotiation was that the Deputy Prime Minister, Ratko Markovic, led the Serb delegation and they refused to engage in any serious

\textsuperscript{133} Michael Lind, “Civil War by Other Means”, \textit{Foreign Affairs} (New York), vol. 78, no.5, September-October 1999, pp. 123-142.


\textsuperscript{135} Weller, n. 56, pp. 211-51.
negotiations. The Kosovo delegations headed by KLA representative, Hashim Thaci indicated that it agreed to the general framework of the negotiation, but was not willing to sign it, since it did not mention anything about the final status of Kosovo. It declared that it would only sign the draft after consultations with the people of Kosovo. The Serbian delegation refused to sign the draft mainly on three counts:

i) The “interim agreement” at Rambouillet did not provide sufficient safeguards for the Serbian minority in Kosovo and it put into question Serbia’s future sovereignty over Kosovo.

ii) Paragraph 8 of Appendix B in the proposed interim agreement stated that “NATO personnel shall enjoy, together with their vehicles, aircraft, and equipment, free and unrestricted passage and unimpeded access throughout the Federal Republic of Yugoslavia including associated airspace and territorial waters.” This clause was unacceptable to Serbia. Richard Holbrooke tried to persuade Milosevic to sign, but he continued his defiance stating “attempts to condition a political agreement on our country’s acceptance of foreign troops are unacceptable”. Milosevic also insisted that the Kosovo Force (KFOR) had to be under UN command. It was only in Paris on 18 March 1999, that the Kosovars signed the agreement that ended a diplomatic effort and opened the way for air strikes against the FRY.

Critics point out that the strategy adopted at Rambouillet was flawed. By terming most of the general points of the draft non-negotiable was like offering a recipe for disaster. The negotiators were accused of being too harsh on the Serb delegation, and did not make much effort to persuade the Kosovar delegation to sign the agreement. It is pointed out that the conference tried to accommodate the sensibilities of Russia and the allied powers and differed from the more focused approach adopted at Dayton. The problem with such criticisms is that Dayton was concluded after three years of brutal fighting, whereas Rambouillet was staged at a time of escalating violence in Kosovo and evidence that showed more was to come. Moreover, to say that the negotiators were not harsh with the Kosovars is also not correct. Madeleine Albright had warned them in private as well as

137 Papasotiriou, n.39, p.39. Also see McWire, n. 50, p.14.
138 Daalder and O' Hanlon, n.34, p. 83.
public that their failure to sign the agreement would result in them facing the Serbian repression. It would have been futile to threaten bombing KLA units because they were too dispersed a group for target strikes. Michael Mandelbaum pointed out that a deal might have been brokered at the Rambouillet talks, provided NATO had deleted the security annex and agreed to place Kosovo under UN control instead of NATO troops.\textsuperscript{139}

The answer to that particular criticism would be that at no point during the Rambouillet talks, the Serbs agreed to a UN role in Kosovo. Their aim was to limit international mediation there. Mandelbaum also stated that the promise of a referendum at Rambouillet should have been removed from the general contours of the draft in order to facilitate Serbian signatures. It is interesting to note that the final text of the draft never said that Kosovo’s future would be decided by a referendum. It stated that three years after the entry into force of this Agreement, an international meeting shall be convened to determine a mechanism for a final settlement for Kosovo, on the basis of the will of the people, opinion of relevant authorities, each party’s effort regarding the implementation of this Agreement, and the Helsinki Final Act.\textsuperscript{140}

Another strong hypothesis against the Rambouillet talks is that it was set up to fail so that NATO could go to war at a juncture when it was desperate to establish its credibility, as well as provide a platform for its birthday celebration to take off.\textsuperscript{141} Chomsky pointed out that “the killer clause” that would have allowed NATO troops access to operate anywhere in Yugoslavia was an accord, few sovereign states would accept.\textsuperscript{142} Tim Judah, however, described the Rambouillet negotiations as an intense and sincere effort by international diplomats to reach a deal, before the use of force. It was unacceptable that so many people would have put in such efforts, if it were pre-planned that the talks were meant to fail. He pointed out that there might have been a flaw in the way the proposals were drafted, but to smell a conspiracy theory in the venture was to deny human error.\textsuperscript{143} By the time the Rambouillet talks were underway, the situation in Kosovo had turned worse,

\textsuperscript{139} Mandelbaum, n. 62, p.4.
\textsuperscript{140} “Interim Agreement for Peace and Self Government in Kosovo”, 23 February 1999, as quoted in Weller, n. 56, p. 34.
\textsuperscript{142} Chomsky, n. 106, p.33.
\textsuperscript{143} Judah, n. 64, pp. 218-19.
and any solution required a military option. In fact, the contention of this thesis is that the use of force in Kosovo came too late. The moment it was obvious that Milosevic had violated the terms of the cease-fire in October-November, 1998, as cited in the UN Resolution 1199, September, 1998, NATO governments should have intervened militarily. That would have saved lives and displacement of people that touched 800,000 in October 1999.\footnote{See UN Interagency Update on Kosovo Situation Reports available at www.reliefweb.int1998.htm}

Richard Haas maintains that sometimes it is militarily prudent to act fast by the intervening state, when there is evidence that humanitarian disasters are in the making, due to state action.\footnote{Richard Haas, Intervention The Use of American Military Force in the Post Cold War World (Washington: D.C.: Brookings Institution Press, 1999), pp.93-94.} Michael Bazyler also pointes out that “intervening nation or nations need not wait for the killings to start if there is clear evidence of an impending massacre.”\footnote{Michael Bazyler, “Reexamining the Doctrine of Humanitarian Intervention in the Light of the Atrocities in Kampuchea and Ethiopia”, Stanford Journal of International Law (Stanford, California), vol. 23, no. 4, 1987, p. 600.} The problem with speedy action is that such an assessment is likely to be disputed by other governments and domestic public opinion. NATO policy makers as well as the UNSC tried to engage the Federal Republic of Yugoslavia in diplomatic negotiations to find a way for mitigating the crisis, without the use of force. Thus, when placed within the Just War criterion of force must be the last resort; the decision to intervene in March 1999 was justified. But, the dilemma posed by such delays is that, while the policy makers throughout 1998 and early 1999 were trying to achieve a halt to abuses through non-violent means, expulsions and killings were continuing on the ground in Kosovo and were even showing signs of escalating.\footnote{UNHCR and OSCE Reports, September-November, 1998 on the situation in Kosovo available at www.un.org/unhcrreports/Kosovo/septemberoctober98.htm} As Michael Walzer points out, given the sequence of events as they unfold in a particular case, it is difficult to weigh the consequences of an alternative approach. Based on a contextual analysis of the Kosovo case, it is difficult to perceive how one reaches lastness, because one would never know that this is the last step. “There is always something more to do: another diplomatic note, another UN resolution, another meeting”.\footnote{Walzer, n. 83, pp. xiii-xvii.} The lastness threshold, however, provides a
moral connotation, since the intervening state has to cross the line between diplomatic
moves and sending its soldiers into battle, where lives are at stake. This was, in all
probability; the main issue that NATO member states kept in mind, which motivated
them to wait and see whether Milosevic would have succumbed to diplomatic pressure
and credible threat of use of force.

(5) Proportionality of Ends: The overall good achieved by war must not be outweighed
by the harm it produces. The gravity and extent of the violations must be on a level
commensurable “with the reasonably calculable loss of life, destruction of property and
expenditure of resources.” The end of a humanitarian intervention action must improve
the level of human rights in the state, intervened. The maxim of proportionality is
somewhat tricky. It introduces an element of utilitarianism into the discourse of war. It
requires potential combatants to weigh the losses that might occur in war, against the
final outcome, that is a direct consequence of such an action. It has also been pointed
out by critics that in an era of aerial bombing and deliberate anti-morale campaigns,
modern wars would always be in conflict with this particular criterion. The calculation of
trade-offs between the loss of human lives, the concepts of justice and human rights that
are the goals of any humanitarian intervention could prove to be problematic, because the
costs of modern warfare would always outweigh the benefits.

The proportionality maxim, though appearing to be a mathematically calculable criterion,
may not be so, in reality. How can one calculate the value of human rights, say, against
the value of lives, which might be lost in obtaining it? The end result of a humanitarian
intervention must usher in a situation, henceforth, that ensure a more congenial
atmosphere for the ethnic or minority community, that have suffered human rights abuses
under the previous regime. In the case of NATO’s intervention in Kosovo, the level of
per capita violence though high, had dropped tenfold within nine months after war ended
in June 1999. Elections had also been held to form an interim government with Ibrahim

149 N.S. Rodley, n. 117, pp. 34-35.
150 See Benjamin A. Most and Harvey Starr, “Conceptualizing ‘War’, Journal of Conflict Resolution (New
Haven), vol.27, no.1, March 1983, pp. 137-159.
vol.18, no. 4, December 1974, p. 408.
Rugova assuming power over the assembly in Kosovo. Autonomy had been restored to the Kosovar Albanians and the United Nations Mission in Kosovo (UNMIK), the first international civil administration, authorized and created by the UN Security Council, was given the primary task of advancing a human rights culture in Kosovo.\(^{152}\)

UNMIK was also to provide a transitional administration, while establishing and overseeing the development of provisional democratic self-governing institutions, which ensured conditions of peaceful and normal life for all inhabitants of Kosovo. However, the ground realities in Kosovo did not complement the lofty ideals set forth by UNMIK. The ongoing political instability and lack of a consensus on Kosovo’s final status creates a politically complex environment in which UNMIK might not be able to function well. In case of the judicial system in Kosovo, the hybridism that has emerged in laws made up of the old FRY laws and those set out by UNMIK promulgate confusion. The right to bail is not allowed as per the old FRY laws. Moreover, humanitarian laws are not placed above those of the FRY, thus, in a situation of contradiction between the two, the FRY laws win out. The UNMIK has also been criticized of minimal consultations with the local population, whereas one of the major obligations of UNMIK is to establish provisional democratic self-governing institutions. UNMIK’s response to the reverse ethnic cleansing and displacement of nearly 100,000 Serbs from Kosovo after NATO’s intervention is to maintain that human rights can be ensured only when a certain stage of political and economic development has been achieved. This line of argument could well have been made by an authoritarian regime in order to buy time. Moreover, Kosovar Albanians were upset when UNMIK closed down a local newspaper in Kosovo that had ran articles criticizing UNMIK’s inability to bring war criminals to trial.\(^{153}\) In another case, Serbs were angered when UNMIK shut down the Trepa Mining and Industrial Complex in the northern Mitrovica region. UNMIK stated that it was an action,

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necessitated to reverse "levels of atmospheric lead in northern Mitrovica". However, Serbs viewed the closure as discriminatory, since the owners and most of the workers were Serbs. One major flaw of UNMIK’s administration is of course the lack of local participation. Without gaining the confidence of the local people, the enforcement power of UNMIK and its humanitarian goals will be diminished. The failure of UNMIK to protect the Kosovar Serbs from reverse ethnic cleansing has also created a clash between rhetoric and practice of the human rights culture of the UN.

Michael Mandelbaum termed NATO’s intervention in Kosovo as a "perfect failure". He pointed out that when the war ended in June 1999, the status of Kosovo remained unsettled. The Albanians had sought independence, while the Serbs wanted to keep Kosovo as a part of Serbia. Though NATO intervened on behalf of the Kosovar Albanians against the Serbian state, yet in UNSC Resolution 1244, it sided with the Serbs in maintaining that Kosovo was an integral part of Serbia and that it was opposed to independence for Kosovo. (See Appendix 1.1.7) Though paved with good intentions, the end result left much to be desired. At the outset of the bombing, 230,000 Kosovar Albanians were displaced from their homes. The end of the war displaced 1.4 million Kosovar Albanians. Of these, about 860,000 were refugees in the neighboring countries of Albania. In Macedonia, the refugees threatened the fragile ratio between the Slavs and indigenous Albanians there. According to Ken Booth, the Western political leaders stated that they were fighting for the sake of values and freedom of the Kosovar Albanians. The war, however, left the Albanians worse than before.

154 Ibid, p. 17.
156 See Mandelbaum, n.62, p.5.
157 Ibid.
158 Ibid. Also see Wheeler, n. 90, p. 272.
159 Ken Booth, "The Kosovo Tragedy: Epilogue to Another 'Low and Dishonest Decade'?” Lecture given at the South African Political Science Association Biennial Congress, 29 June 1999 at www.sapsa.edu/biennialcongress/1999
The most earnest defenders of NATO's intervention are the Kosovar Albanians. In fact, "there was unanimity among the Kosovar Albanians about the need for NATO intervention than there had ever been about non-violence, and there remains a genuine gratitude to NATO and to the international leaders who-Kosovar Albanians hope "finally" pushed Milosevic out of Kosovo."\(^{160}\) In interviews to Human Rights Dialogue, many Kosovar Albanians indicated that their human rights were violated for years. From 1997 onwards, their lives were threatened almost everyday, with almost five Kosovar Albanians killed in a day. People were not sure that they would be home at night, once they had ventured out. NATO put an end to all that repression. Thus, the intervention was the right thing to do. The massive displacement of Kosovar Albanians and hardships that they had to undergo were worth the end result, because now, they could live with dignity in Kosovo. The day when NATO troops entered Kosovo, the Albanians treated them as heroes. The intervention was also successful in establishing a strong Serbian Civil society that could see through Milosevic's power hungry ways, which had used the concept of patriotism to rally support against NATO's intervention. It was this civil society that defeated Milosevic in the elections in October, 2000. The intervention also instilled respect for human rights.\(^{161}\) Daalder and O'Hanlon assessed the outcome of the intervention as proportional because the benefits of the use of force in Kosovo were not outweighed by the harm done because in their words "NATO reversed a horrendous campaign of mass expulsion, contained a massive risk to innocent lives, preserved the dignity and political rights for the Kosovar Albanian people, and upheld important international principles at the cost of up to 10,000 dead ethnic Albanians and perhaps 1,000-2,000 Serbs. That, by the standards of war, was a good outcome."\(^{162}\) Most significantly, the NATO forces succeeded in all five goals set forth before the war:

i) Serb forces stopped their killings and left Kosovo;

ii) NATO troops numbering 50,000 entered Kosovo and were stationed there;

iii) Kosovar Albanian refugees returned home;

iv) Humanitarian aid flowed into Kosovo;

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\(^{162}\) Daalder and O’Hanlon, n. 34, p. 195.
v) The conditions for self-rule in Kosovo were established on a firm footing.\textsuperscript{163}

The Just War criterion of proportionality of ends, however, does not allow such a cold calculation of human lives lost, especially the kind that was worked out by Daalder and O’Hanlon. Kosovo, beset by reverse ethnic cleansing of Serbs, cannot serve as a model towards establishing a multi-ethnic society that NATO had set out to establish. As time goes by, with more attacks on Serbs committed by Albanians, as well as emergence of communal violence, that is threatening to spill over to Macedonia, the intervention is being critically scrutinized by the Kosovar Albanians now.\textsuperscript{164} The situation in 2003 in Kosovo was one beset by revenge killings of Serbs and Roma (Gypsies) and border clashes between Albanians and Serb police. The situation has improved little since 1999 and thus NATO’s objective to promote a multi-ethnic and human rights abiding society has not succeeded as yet. Daalder and O’Hanlon pointed out that the general security situation in Kosovo had improved. However, the failure to stop reverse ethnic cleansing tempers any conclusion, which establishes that the military costs of war are outweighed by the end result. Daalder and O’Hanlon had also reflected “Serbs left in great numbers, many out of a very real fear for their lives, but the displacement of some 100,000 Serbs since the end of the war is a far less severe violation of human rights than what Milosevic did to the ethnic Albanian. Two wrongs do not make a right. But people who have been discriminated against for decades, oppressed for the last decade, brutalized for a year and then driven from their homes could be forgiven certain paranoia, even if their revenge attacks against the Serbs could not be condoned.”\textsuperscript{165}

This sounded like an apology for Albanian violence. Moreover, given the absolute polarization of Albanian and Serb communities, the international community has to work hard to establish a congenial atmosphere prevalent in Kosovo till the late 1990s, when the Albanian community had fought for autonomy through non-violent means. However, it is also important to understand that the Kosovar Albanian leadership was also responsible

\textsuperscript{163} Ibid.
\textsuperscript{164} Interview with Vuruna, n. 155. Also see Julie A. Mertus, “The Undermining of Human Rights Culture in Kosovo”, Human Rights Dialogue, Kosovo Report, 2000, pp. 8-9
\textsuperscript{165} Daalder and O’Hanlon, n. 34, p. 16. Also see Wood, n. 155.
for promoting a campaign of non violence based on painting the Serbs as “beasts without an ounce of rationality and compassion.” “The dangers of deriving one’s identity from a matrix of antagonisms are evident—a lack of flexibility, an inability to appreciate what is held in common, ultimately a Manichean worldview, where one is always a victim or a martyr, the other always the oppressor”.166 Thus, the seeds sown for non-violence could grow into vicious and violent acts later. The proportionality of ends criterion problematises the rhetoric of humanitarian values that had motivated NATO to intervene because in the end, the contextual analysis of the Kosovo case till date reflects a volatile mix of ethnic hatred and discord.

(6) Probability of Success: In the ostensible use of force either in a war or a humanitarian intervention, there must be a reasonable hope of success. In the case of NATO’s intervention, it was the world’s mightiest alliance that was intervening in Kosovo. Militarily, there was no doubt about the outcome of the intervention. The power differential between the military of NATO and Yugoslavia was but obvious.

Mathematically, in case of NATO’s intervention in Kosovo, (arrived at after analyzing the existing military defense expenditure of both sides), Barry Posen calculated that NATO’s combined GDP was almost 900 times that of Yugoslavia, and NATO’s combined defence spending about 300 times that of Yugoslavia.167 According to the Kugler – Posen “attrition” – FEBA (forward edge of the battle area) expansion model, a military of sufficient size can hold a front of a given length against all out enemy assault provided the attacker makes sure that the defender’s capability to reinforce and protect any bulges in its front is considerably dwindled. The model also calculates, not only the quantity of troops killed in attacks, but also the quality of the armored divisions of the enemy. Most importantly, the air defence heavy weaponry of the enemy forms the most dynamic variable in the aerial warfare of today. The model requires a user to calculate the “exchange rate” or proportionality factor linking the losses of the attacker to those of the defender. This exchange rate reflects more on quality than on quantity of defence

166 Clark, n. 160, p. 69.
attributes. The Kosovo case was a straightforward case with regard to the end result of battle based on the Kugler Posen model. The quality of defence technology tilted heavily in favour of NATO. Despite such a huge power differential, it took NATO seventy-eight days to win the war. Why? That was because NATO adopted the gradual escalation strategy against Yugoslavia. The basic idea was that a few days of bombing would add muscle to coercive diplomacy and persuade Milosevic to surrender. On 24 March 1999, the US had made available only one-third of its aircraft that it ultimately devoted to the war. During the early phase of the war, NATO aircraft bombed Serbian military and defence establishment.\(^{168}\) Since such a strategy had worked in Bosnia, NATO felt that it would be successful in the Kosovo case. However, Kosovo was not Bosnia. Kosovo had a far more significant place in the Serb mindset. It was the land that had witnessed the great battle of Kosovo in 1389, a symbol of Serbian heroism. Kosovo had a historical legacy in Serbian life and Milosevic, whose political ascendancy started with Kosovo in 1987, would not give up on Kosovo without a fight. NATO policy makers underestimated the Serbian commitment to Kosovo and the political ruthlessness of Milosevic.

Moreover, Bosnia was not a good precedent for NATO to adopt as a model for strategy, because Operation Deliberate Force by NATO in 1995 was backed by major ground offensive led by Croatian and Bosnian Muslim regular armies, compared to which the KLA was an insignificant military force. The KLA as a guerilla group was successful on two counts namely:

i) The rugged and wooded terrain of Kosovo facilitated the KLA’s maneuvers of evasion when pursued by Yugoslav forces.

ii) The local population supported the guerillas, providing them not only shelter, but also valuable information with regard to Serb military positions.

\(^{168}\) Richard Haas as well as Lieutenant General Michael Short, the commander of air warfare against Serbia believed that such a limited strike strategy never works. From the outset, wide ranges of targets have to be hit. See Haas, n. 145, pp. 93-94.
Yet once NATO bombing started, the KLA could not provide valuable ground support due to lack of sophisticated military strategy, as well as the geographic disadvantage that the small size of Kosovo proved to be. Both Clausewitz and Liddell Hart had emphasized the ratio of space to forces as a central factor in guerilla campaigns. Decentralisation of fighting was the key, with the support of large spaces that allowed its irregular fighters to evade regular armies.  

In Kosovo, the space to force ratio was decidedly against the KLA. Rugova and other Albanian leaders recognized this fact when tension was brewing between the Kosovar Albanians and the Serb state. Kosovo was too small for comfortable operational space. Thus, the Democratic League of Kosovo (LDK) decided on non-violent ways of fighting.

NATO started the war in Kosovo with just 350 planes. It amounted to only 10 percent of the number of coalition aircrafts that participated in the air war against Iraq in 1991, and the air war in the four day Operation Desert Fox, the US-British Bombing of Iraq in December, 1998 in support of the Kurds. The US had no aircraft carrier in the vicinity of Serbia. It was only after 5 April 1999 when there were signs that it was going to be a prolonged war in Kosovo, that the Theodore Roosevelt was deployed to the war zone. In the first stage of NATO attacks, the focus of the air campaign was to attack the Yugoslav air defence system. About 160 cruise missiles, 100 Tomahawks and conventional air launched cruise missiles were used. Some 350 NATO aircrafts, of which 220 were American, participated in the first three days of air strikes. This was a far cry from the final 740 U.S. aircrafts and 300 from the allies that was ultimately used to turn the fortunes of the war in favour of NATO. In June 1999, Operation Allied Force numbered 940 aircrafts and 35 ships, almost triple the forces that the campaign started with. In the end, allied pilots flew 37,464 sorties, of which 14,006 were strike missions.

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The NATO member states had expected Milosevic to capitulate with the use of 'coercion' in the first phase of NATO strikes.

What is coercion? Coercion is the use of threatened force, including the limited use of actual force to back up the threat, to induce an adversary to behave differently than it otherwise would. It has the capacity to sway adversaries, not only because of its direct destructive impact, but also because of its effects on an adversary's perception of future force and the adversary's vulnerability to it.\textsuperscript{173} In the Kosovo case, NATO Commander, Gen. Wesley Clark explained that air war "was an effort to coerce, not to seize".\textsuperscript{174} Coercion relies a lot on strategic bombing because success or failure is decided by the target state's decision with regard to cost and benefits, given that the benefits that would be lost by concessions and the probability of attaining these benefits by continued resistance are exceeded by the costs of resistance and the probability of suffering these costs. Coercion definitely works when anticipated suffering associated with a threat exceeds the anticipated gains of defiance.\textsuperscript{175} In NATO's case, the equation of coercion did not work. Milosevic, in fact, increased his formula of repression on the ground in Kosovo. Moreover, the success of the Yugoslav armed forces in evading NATO air strikes defeated the coercive diplomacy that NATO engaged itself, in the early phase of air strikes. This created a wedge in the NATO strategy that forced commanders to rethink on their bombing strategy. After 30 March 1999, once the alliance aircraft had established superiority in the air, the set of targets were widened. Civilian infrastructures with military applications such as radio, television, as well as residences of key Yugoslav leaders were targeted.\textsuperscript{176}


\textsuperscript{176} Daalder and O' Hanlon, n.34, p. 118.
NATO's level of success in the war was determined by its capacity to inflict damages on the infrastructural facilities in Yugoslavia, which also damaged the support base of Milosevic and other Yugoslav leaders. The military technology used by NATO involved electronic and stealth jamming aircraft, sophisticated command and control planes as well as precision guided bombs that added to the alliance’s success in the end. Though the Balkan weather proved to be an obstacle in the beginning, the later days witnessed less cloud cover, which helped the pilots in precision bombing. From 300 sorties in the first month of bombing, NATO aircrafts involved itself in 600-700 sorties by May, 1999. Most importantly, the semi precise Joint Direct Attack Munitions (JDAM) guided by Global Positioning Systems (GPS) satellite constellation could be dropped by B-2 bombers in bad weather, unlike the laser guided bombs, which were unable to perform during bad weather, since laser light cannot penetrate clouds.\(^{177}\) During the course of the bombing, NATO destroyed nearly 800 heavy Serb weapons that included 450 artillery tubes and mortars, 220 armored combat vehicles and 120 tanks with 80 percent of the damage done in the final two and a half weeks. Since, about 1000-1500 armored weapons were placed in Kosovo; nearly 40 percent of the weaponry was hit by NATO air strikes.\(^{178}\) By 20 May 1999, NATO had destroyed about 75 percent of Serbia’s fixed surface-to-air missile sites.\(^{179}\) To top it all, the damage to Serbian military and civilian infrastructure was instrumental in persuading Milosevic to capitulate.

Within NATO, there were misgivings amongst the member states with regard to the bombing of civilian infrastructure in Serbia, especially within domestic circles in Germany and Italy. Ironically, Milosevic came to the rescue of the alliance. His continual policy of targeting Kosavar Albanians, mass displacement as well as the arrival of 800,000 Kosovor Albanian refugees in Albania, Macedonia, Bosnia, Germany and Turkey, cemented NATO’s resole and unity and that outlasted Serbia’s willingness to endure escalating destruction to its material infrastructure.

\(^{177}\) Ibid, p. 144.


\(^{179}\) Daalder and O’Hanlon, n. 34, p. 144.
Table: 3.1. Kosavar Albanian Refugees and Internally Displaced during NATO Bombing

<table>
<thead>
<tr>
<th>Countries</th>
<th>Refugees</th>
<th>Internally Displaced</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>400,000</td>
<td></td>
</tr>
<tr>
<td>Macedonia</td>
<td>300,000</td>
<td></td>
</tr>
<tr>
<td>Bosnia</td>
<td>22,000</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>13,000</td>
<td></td>
</tr>
<tr>
<td>Turkey</td>
<td>7,000</td>
<td></td>
</tr>
<tr>
<td>Norway, Italy, Canada, the United States, France, Austria, Netherlands, Sweden, United Kingdom, and Denmark</td>
<td>2,000-6,000</td>
<td></td>
</tr>
<tr>
<td>Montenegro</td>
<td></td>
<td>70,000</td>
</tr>
</tbody>
</table>

Total- Around 800,000.


Ultimately, NATO prevailed in the war against the FRY. Three factors played a key role in ensuring NATO’s probability of success:

i) Severe damage was inflicted on the Serbian infrastructure by NATO bombing and this stuck at the heart of Serbia’s defence mechanism in the war.
Table: 3.2. Damage to Serbian Infrastructure

<table>
<thead>
<tr>
<th>Target</th>
<th>Damaged or Destroyed (in percentage)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defence Industry</td>
<td>100</td>
</tr>
<tr>
<td>Petroleum refining</td>
<td>70</td>
</tr>
<tr>
<td>Aviation equipment assembly and repair</td>
<td>40</td>
</tr>
<tr>
<td>Aviation vehicle production and repair</td>
<td>40</td>
</tr>
<tr>
<td>Explosive production</td>
<td>50</td>
</tr>
<tr>
<td>Ammunition production</td>
<td>65</td>
</tr>
<tr>
<td><strong>Lines of Communication</strong></td>
<td></td>
</tr>
<tr>
<td>Danube road bridges</td>
<td>70</td>
</tr>
<tr>
<td>Danube rail bridges</td>
<td>50</td>
</tr>
<tr>
<td>Rail lines to Montenegro</td>
<td>100</td>
</tr>
<tr>
<td>Kosovo rail corridors</td>
<td>100</td>
</tr>
<tr>
<td>Kosovo road corridors</td>
<td>50</td>
</tr>
<tr>
<td><strong>Army Infrastructure</strong></td>
<td></td>
</tr>
<tr>
<td>First Army</td>
<td>35</td>
</tr>
<tr>
<td>Second Army</td>
<td>20</td>
</tr>
<tr>
<td>Third Army</td>
<td>60</td>
</tr>
</tbody>
</table>

Source: Human Rights Watch, "Incidents involving Destruction of Civilian Infrastructure in Operation Allied Force", February 2000

available at hrw.org/reports/2000/natbm200-02.htm
ii) The second factor critical in influencing Milosevic to capitulate was the realization that Russia would not support him against the West. In April 1999, Victor Chernomyrdin, the new Russian envoy to the Balkans, made it clear to Milosevic that Russia could not support any further escalation in the violence, given the growing unity in NATO’s resolve to stop the Kosovo crisis. He also warned Milosevic that NATO was considering the ground option.\textsuperscript{180}

iii) By June 1999, Milosevic was aware that NATO was building up its ground troops in Macedonia and Albania. NATO Secretary General Javier Solana asked NATO commander General Wesley Clark to draw up plans for a ground invasion around May 1999.\textsuperscript{181}

The contention of this thesis is that NATO employed the wrong war strategy in Kosovo. Given the track record of Milosevic in Bosnia, it was naïve to expect him to capitulate to the policy of gradual escalation in Kosovo. The allies also held Milosevic as the key to the peace process in Kosovo. This presented an inherent contradiction because he was the perpetrator of the violence that pressurised NATO to intervene in the first place. It should have been understood that the Bosnian peace process was successful, not because of Milosevic’s cooperation, but due to NATO’s active involvement in the end.\textsuperscript{182} It is important to understand the strategy of coercion as a dynamic two-player contest. The coercer must be aware of the coerced’s ability to engage in internal repression, as well as its intention to drive a wedge between the states aligned against it. The allies and adversaries alike face the pressure of coercion, though the degree might vary. Coercion always means a relative change in the use or threat of force.\textsuperscript{183} In NATO’s case, had Milosevic not increased his killings on the ground in Kosovo, once NATO bombings


started, there might have been a breakdown in NATO unity. The war strategy adopted by NATO also brought it in conflict with both criteria of *jus in bello* (right conduct in war).

### 3.2.2. *jus in bello* (Right Conduct in War):

1. **Proportionality of Means:** Means used in war must not outdo or overweight the good achieved. The thrust of the proportionality of means criterion is its emphasis on the use of force that is not disproportionate to the ultimate outcome of war. To put it succinctly, the end result of a particular humanitarian intervention must not be overweighted by the harm done, in course of that action. NATO's intervention in Kosovo was unique when one analysed the war strategy of the allies. For the first time in the history of warfare, the use of air strikes brought an enemy to heel, that too without a single NATO live lost. Lieutenant General Michael Short, who was commander of the bombing campaign of Operation Allied Force in Kosovo, stated "NATO got every one of the terms it had stipulated in Rambouillet and beyond Rambouillet, and I credit this as a victory for air power" He went on to say that the air war in Kosovo fulfilled the prophesies of air visionaries, the like of Giulio Douhet.\(^{184}\) Historian John Keegan conceded, "I didn't want to change my beliefs, but there was too much evidence accumulating to stick to the article of faith. It now does look as if air power has prevailed in the Balkans, and that the time has come to redefine how victory in war may be won".\(^{185}\)

However, critics note that it was not just air power, but the threat of a NATO ground invasion, the lack of Russian support for Serbia, and the resurgence of the KLA that were instrumental in Milosevic's capitulation. They also pointed out that air power failed to prevent the ethnic cleansing that prompted western leaders to act in the first place.\(^{186}\) The violence on the ground in Kosovo increased manifold immediately after the bombing. Before NATO's bombing on 24 March 1999, 2,500 people died in Kosovo's civil war.

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\(^{185}\) Quoted in Byman and Waxman, n. 47, p. 233.

between Serb authorities and the ethnic Albanian insurgents of the KLA. During the 78 days of NATO air bombardment, an estimated 10,000 people died due to Serbian repression. At the outset of the bombing, 230,000 were estimated to have left their homes. By the end of the bombing, 1.4 million were displaced, of which 860,000 were refugees outside Kosovo.\textsuperscript{187} The NATO bombing campaign was designed to stop the killing that was unleashed by the Serbian army in accordance with the proportionality of means criterion.\textsuperscript{188} Yet, the intervention failed to do just that. Nicholas Wheeler offered his own critique of the intervention when he pointed out “On the one hand the intervention precipitated the very disaster it was aimed at averting, and KFOR failed to prevent the exodus of Serbs or guarantee of security of those who remained. On the other hand, through a combination of bombing, Russian diplomacy and the threat of a ground invasion, Milosevic accepted a deal that returned the refugees to their home and created KFOR...”\textsuperscript{189} Why was it that the world’s mightiest alliance failed to furnish a credible ground option? The answer to that is the argument that no NATO member state could have sustained a ground force, because it was widely believed that body bags would have undermined the domestic public support for the intervention in NATO states. The intervention had to be casualty free for the allies.\textsuperscript{190}

NATO also chose to fly its planes at a height of 15,000ft above sea level, so that its pilots were immune to Serbian air defence mechanisms. This high altitude bombing was an asymmetric means of warfare as NATO was not in a position to prevent Serb authorities from committing their atrocities on the ground.\textsuperscript{191} That the Yugoslav army would increase its violence in Kosovo after the bombing was known to the NATO command structure at Brussels. On 27 March 1999, General Wesley Clark, the Supreme Commander of NATO operations in Kosovo reported that he was not surprised by sharp escalation of Serb terror after the bombing. He conceded, “the military authorities fully

\textsuperscript{187} See Mandelbaum, n, 62, p.3.
\textsuperscript{188} Judith Gail Graham, “Proportionality and Force in international Law”, \textit{American Journal of International Law} (Washington D.C.), vol. 7, no.87, July 1993, pp. 391-413.
\textsuperscript{189} Wheeler, n. 90, p. 284.
anticipated the vicious approach that Milosevic would adopt, as well as the terrible efficiency with which he would carry it out. The researcher hypothesizes that such an escalation of violence on the ground by the Yugoslav army could have been averted, had NATO fielded in ground troops. The acts of Serbian repression included killings in large numbers, rapes, looting as well destruction of Albanian homes. Bodies of many victims were deposited into wells. In the city of Djakovica, eleven Kosovar Albanian men were killed and then their bodies were cut and left on the streets. Such incidences were happening on a daily basis. Thousands of Albanians were forced out of their homes and out of Kosovo into the neighbouring countries. It must be noted here that NATO did not invoke the term genocide under the 1948 Convention on Genocide that defines genocide as the effort to annihilate "in whole or in part" a given national, ethnic, racial, or religious group, and ethnic killings need not reach a definitive quantitative threshold. NATO member states maintained that there was the possibility of the occurrence of genocide, but did not refer directly to the killings in Kosovo as genocide.

Despite early warnings about the probable increase in violence, NATO did not consider the ground option at all. On 5 March 1999, Italian Prime Minister, Massimo D’Alema had visited Washington and warned President Clinton that if Milosevic was not coerced to capitulate immediately, "the result would be 300,000 to 400,000 refugees passing onto Albania and Italy." House of Representative’s Intelligence Committee Chair, Porter Gross informed the media that "our intelligence community warned us months and days before the bombing that we would have a virtual explosion of refugees over the 250,000 that was expected as of last year (pre-bombing) that the Serb resolve would increase, that the conflict would spread, and there would be ethnic cleansing." Despite that, the ground option was completely ruled out. Given the fact that only ground troops could have been successful in providing some degree of protection to the Kosovar Albanians, the ‘no ground troop option’ undermined NATO’s humanitarian rhetoric. The Clinton

Administration believed that the US Congress would not have supported a ground troop option. On 24 March 1999, President Clinton declared that he did not “intend to put our troops in Kosovo to fight”.\textsuperscript{195} In January 1999, the British Prime Minister Tony Blair had told Clinton “ground troops could not be used to fight a war”.\textsuperscript{196} This sentiment was echoed in most of the NATO member states’ capitals. The ground option might have been ruled out on three counts:

i) The NATO alliance might have cracked in its resolve to intervene in Kosovo if the ground option was furnished;

ii) The Clinton administration was rather convinced that the ground option might have triggered off a major public debate in the US and presumed that Congress would have vetoed the Kosovo intervention, if the option of ground invasion was laid on the table. It was widely held that nobody in the house wanted another Somalia, where 18 US Marines were slaughtered in front of media footage as well as a Vietnam type quagmire;\textsuperscript{197}

iii) Given the geography of the Balkans, a ground invasion could have proved difficult. The dearth of good roads and ports in Albania meant a three-month build up by NATO to improve infrastructure as well as enjoy access to the deep waters ports in Greece, where public support for the war was tethering on the edge of disapproval.\textsuperscript{198}

However, with regard to congressional opposition to the option of ground troops in Kosovo, the Clinton Administration had overstated its presumption. The fact of the matter was that the administration did not make a case for ground troops at all in Congress. Within the first week of bombing, many members of Congress had begun to argue for ground invasion on the face of an unfolding humanitarian crisis in Kosovo. Republican Senators John McCain, Richard Lugar joined their democratic colleagues

\textsuperscript{195} Address by President Clinton to the nation, White House, Office of the Press Secretary, 24 March 1999 available at www.usia/dpistate/presidentaddress/Kosovo/24march/99/htm
\textsuperscript{196} Quoted in Daalder and O’Hanlon, n.34, p. 96.
Chuck Robb, Joseph Lieberman and John Kerry in supporting a ground troop option.\textsuperscript{199} By early April 1999, the British Government was also advocating the ground option. Prime Minister Tony Blair became a strong supporter of invading Kosovo with the help of ground troops. This British stand could be asserted due to the political security that Blair enjoyed with a majority of 179 seats in the House of Representatives.\textsuperscript{200} It would, however, be wrong to conclude that the "no ground option" was a policy choice of the Clinton administration. There were many in the Congress that had remained anti-US army's direct involvement with the Kosovo conflict. Many Congressmen also stated publicly that they were against the ground option.\textsuperscript{201}

The "no ground option" adopted by NATO brought it in direct conflict with the values that it were espousing in justifying the intervention. In the tradition of the Just War Theory, it was not only unethical, but also strategically flawed to conduct a humanitarian intervention that effectively valued the lives of NATO troops as far more important, than those of ethnic Albanians. That killed the very purpose for which the intervention was undertaken in the first place, that to protect the Kosovar Albanians from further harm. According to Michael Walzer, the political leaders in NATO could not have launched a campaign in Kosovo that aimed "to kill Serbian soldiers and others as well, unless they are prepared to risk the lives of their own soldiers. They can try; they ought to try to reduce those risks as much as they can. But they cannot claim that, we cannot accept, that those lives are expendable, and these are not".\textsuperscript{202} In Kosovo, NATO countries displayed a willingness to fight for human rights, but not die for them. The war strategy was aimed at rules of engagement that were designed to keep pilot loss as close to zero as possible. Though the Kosovo campaign as Samuel Berger, US Secretary of State pointed out, achieved victory without a single allied casualty, mainly due to an asymmetric advantage over Milosevic in the air, and that air power was sufficient to defeat the Yugoslav army, NATO's military achievement reflected an unsettling moral dilemma. That the US and its

\textsuperscript{200} Fareed Zakaria, "Wage a Full War or Cut a Deal", \textit{Newsweek} (New York), 12 April 1999, p. 44.
\textsuperscript{201} See Graham and Gugliota, n.197, p. A25.
allies were ready to go to war to protect human rights, only if they were guaranteed impunity.\textsuperscript{203} The proportionality of the intervention with its objectives of humanitarianism was on shaky ground because the desire to uphold combatant immunity from war deaths was pitted against the increasing deaths of civilians on the ground.\textsuperscript{204} Had the war been fought for national interest, and the eviction of Serb forces from Kosovo was vital to NATO member countries, the war could have been declared a resounding success and a revolution in military technology. But, NATO had fought the war for its values, most importantly to secure the Kosovo Albanians from further harm. Judged by this standard, the intervention was not successful as the means adopted by NATO also violated the Just War criterion of discrimination.

\textbf{(2) Discrimination and Non-Combatant Immunity:} The laws of war firmly lay down that civilians or non-combatants must not be the targets of war. Direct targeting of civilians as well as civilian infrastructure is not advocated by the Just War criterion of discrimination and non-combatant immunity. Yet, NATO’s intervention in Kosovo had succeeded in the end, due to the damage it inflicted, mainly on the Yugoslav civilian infrastructure. The ability of the Yugoslav army in evading NATO bombs forced NATO to change its strategy of high altitude bombing of Serbian air defence systems and army heavy weaponry, to bombing of civilian infrastructure in order to weaken the morale of the Serb army, as well as reduce civilian support to Milosevic. The strategy of flying NATO planes at an altitude of 10,000-15,000 ft above sea level while bombing increased the possibility of civilian deaths. Even at lower altitudes, pilots could not discriminate between civilians and infantry soldiers. Notable among the mistakes was the bombing of a bridge in Southern Serbia while a passenger train was crossing it on 12 April 1999, which resulted in the death of twenty Serb civilians. Another incident of indiscriminate targets was the bombing of a convoy of Albanian refugees on 14 April 1999, killing seventy-five civilians, mistaken to be an armored column.\textsuperscript{205} Around April-May, 1999, NATO also started bombing civilian assets like television and radio towers, oil refineries,


\textsuperscript{204} Julie A. Mertus, n. 164, pp. 8-9.

factories, electricity grids, cigarette factories, fertilizers plants, including houses of top Serbian leaders. The bombing damaged considerable civilian facilities that created electricity shortages and lack of food and water supply.\textsuperscript{206} The tactical bombing was thought vital for the success of the military effort in Kosovo. However, this increased Serb civilian casualties and bombs accidentally hitting civilian areas further tarnished the moral character of the intervention. Moreover, there was a diplomatic catastrophe with the accidental bombing of the Chinese embassy in Belgrade on 7 May 1999.\textsuperscript{207} Mary Robinson, UN High Commissioner for Human Rights pointed out that NATO’s targeting of civilian infrastructure undermined the humanitarian credentials of Operation Allied Force.\textsuperscript{208}

The most disturbing aspect of the bombing was the failure to differentiate between combatants and non-combatants. Adam Roberts pointed out “the disturbing lesson of the air campaign may be that it’s most effective aspect involved hurting Serbia proper (including its population) rather than directly attacking Serb forces in Kosovo and protecting the Kosovar Albanians.”\textsuperscript{209} Tim Judah also indicated that NATO’s bombing produced results only when it started bombing civilian infrastructure.\textsuperscript{210} In fact, the ability of the Yugoslav army to use deception techniques reduced the ability of NATO bombing to cause major harm to the Serbian tanks and artillery pieces. Most significantly, the NATO campaign did not undermine Milosevic control over Kosovo. He was able to induce the exodus of ethnic Albanians that he desired. The air attacks had neither stopped the Serbian forces from terrorizing the local population, nor prevented further build up of Serbian paramilitary forces in Kosovo. Had he so desired, Milosevic

\textsuperscript{206} Carpenter, n. 35, pp.77-91. Also Mandelbaum, n.62, pp. 2-8.
\textsuperscript{207} See “Behind the Walls of a Besieged Embassy”, The Times (London), 11 May 1999. Also Roberts, n. 91, p.112.
\textsuperscript{208} See P.Bishop, “UN Chief Warns NATO on Bombing”, The Telegraph (London), 5 May 1999 available at www.telegraph.co.uk
\textsuperscript{209} Roberts, n. 91, pp.117-118.
\textsuperscript{210} Judah, n. 64, p. 134.
could have maintained control over Kosovo for months and continued his pogrom of ethnic cleansing.\textsuperscript{211}

The NATO campaign in Kosovo was, however, significant because civilian deaths caused by the bombing did not exceed 500 deaths.\textsuperscript{212} The concept of “double effect” developed by Catholic theologians held the view that unintentional death of civilians when on the line of fire are justified because they are not the direct targets of military action. Michael Walzer argues that this concept of “double effect” provides blanket justification for civilian deaths that are “unintended but foreseeable,” Guenter Levy also points out that given the terrible imponderables attached to each calculation, ‘even a good cause is not worth any price.’\textsuperscript{213} The reconciliation of absolute prohibition against attacking non-combatants with the legitimate conduct of military action comes too easily, too soon.\textsuperscript{214} This was also the case with NATO. Civilian deaths due to the bombing were termed as unintended “collateral damage”. Yet, they were foreseeable because NATO had targeted civilian infrastructure that were tantalizingly close to civilian habitats.\textsuperscript{215} On this ground, NATO's policy of targeting in Kosovo was discredited within the context of the Just War Theory. However, many supporters of the NATO intervention state that deaths that occurred due to NATO bombing in Kosovo were on a lower scale when compared to other civil wars around the world in the 1990s.\textsuperscript{216}

\begin{itemize}
\item \textsuperscript{212} See Human Rights Watch Report, n. 164, pp.8-9.
\item \textsuperscript{215} Walzer, n. 202, p. 5.
\end{itemize}
Table: 3.3. Deaths in Civil Conflicts

<table>
<thead>
<tr>
<th>Country</th>
<th>Deaths (million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sudan</td>
<td>4.4</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>4.0</td>
</tr>
<tr>
<td>Angola</td>
<td>3.0</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>2.0</td>
</tr>
<tr>
<td>Yugoslavia</td>
<td>1.6</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>1.0</td>
</tr>
<tr>
<td>Burundi</td>
<td>0.9</td>
</tr>
<tr>
<td>Colombia</td>
<td>0.7</td>
</tr>
<tr>
<td>Democratic Republic of Congo</td>
<td>0.6</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>0.5</td>
</tr>
<tr>
<td>Uganda</td>
<td>0.5</td>
</tr>
<tr>
<td>Eritrea</td>
<td>0.4</td>
</tr>
</tbody>
</table>


The Kosovo conflict witnessed a death toll of 10,000 Kosovar Albanians, beginning 24 March to 9 June 1999. This was very low compared to the above mentioned cases (See table 3.3). However, the fact that these Kosovar Albanian deaths could have been averted
if NATO had fielded in ground troops disqualifies the intervention when studied through the prism of *jus in bello*.

3.3. **In Retrospect:** With the benefit of hindsight, NATO's intervention in Kosovo in 1999 produced mixed results when located within the Just War paradigm. It could be a truism that NATO had a just cause to intervene in Kosovo, especially when the Yugoslav regime under Slobodan Milosevic was involved in acts of ethnic cleansing and displacement of the Kosovar Albanians, and was showing no signs of ending it. NATO might have had the best of intentions to intervene, namely, to salvage the Kosovar Albanians from the onslaught of the Serb forces. It could also be argued legally that the FRY was also right to retaliate with the use of force, since it was a clear case of self defence, which according to the General Assembly Resolution 3314 (1974), justifies use of force by a state against 'the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state'.\(^{217}\) The Serbian army in Kosovo increased its offensive against the Kosovar Albanians whom they termed as the cause of the intervention in the first place. This, however, backfired because, not only did it decrease Serbia's reputation as a responsible sovereign state, but also strengthened NATO's unity and resolve to end the repression. No state that turned against its own citizens could expect to shield itself from outside intervention with the help of international law.\(^{218}\) Moreover, Serbia's inability to inflict costs on NATO decreased its ability to defeat NATO's coercion efforts as well reduced its credibility to shore up public morale at home. The FRY had also violated the laws of war by its act of killing as well as program of displacement of thousands of ethnic Albanians during the course of the war.\(^{219}\) NATO, on the other hand, had failed to fulfill its most important political objective, that to avert the humanitarian catastrophe and end Milosevic policy of


perpetrating violence on the Kosovo Albanians. NATO did achieve its two other objectives: that to persuade Milosevic to accept the Rambouillet Agreement and remove all Serb forces from Kosovo as well accept the stationing of an international force in Kosovo (KFOR). However, the war strategy adopted by NATO was disproportionate to the end that it sought. There were many advocates of the technological expertise of air power who termed the Kosovo war as heralding a new era of warfare and NATO’s zero casualty rates in conformity with the concept of “post-heroic warfare.” Air power as an instrument of coercion was successful in Kosovo to bring the enemy to the point of surrender. However, flying airplanes at 15,000ft above sea level made it difficult for NATO airplanes to stop the rising tempo of ethnic cleansing and displacement on the ground as well as proved hazardous for a precise differentiation between civilian and non-civilian targets.

3.3.1. Thinking Synergistically: Strategic Significance of the Ground Troop Option:
The air power protagonists who described the NATO air war as a success ignored an important distinction. The application of absolute binary metrics of success or failure of the air power coercive strategy was to ignore a spectrum of other possible reasons for Milosevic to surrender. The threats of ground invasion, lack of Russian support towards Serbia and the destruction of civilian infrastructure heavily influenced Milosevic to surrender. As a successful policy option, NATO, from the start, should have maintained some level of ambiguity with regard to the threat of ground troops. The exclusion of the ground troop deployment option from NATO draft strategy undermined NATO’s war strategy in Kosovo. Had NATO considered the ground option from the beginning, Milosevic might have capitulated without the use of force. Be that as it may, it was also necessary to have a synergy between NATO ground troops and air force in order to clinch a quick victory in Kosovo and save the Kosovo Albanians from further harm. The

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222 See Albrecht Schnabel and Ramesh Thakur, “Lessons and Recommendations”, in Schnabel and Thakur, n.74, pp. 8-23. Interview with Ramesh Thakur, under-Secretary-General, United Nations and Rector, UN University, Tokyo, Japan, India International Centre Annexe, 30 January 2004.
history of warfare pointed to the success of this synergy, be it in North Korea in 1950, the Gulf crisis, 1991 as well as Bosnia, 1995. In North Korea, the cooperation between the US air strikes and the Chinese fielded forces, and UN force led by the US, had made possible a successful outcome. In Operation Desert Storm, Saddam Hussein had vacated Kuwaiti territory when faced with a successful winged-ground combination launched by the US led-UN operation in Iraq.

The history of air power also suggests that the precision, flexibility and versatility of air power work as long as the adversary is dependent on the employment of heavy forces and artillery that proves difficult to be shielded against air strikes. Air power in Iraq in 1990, the Linebacker operations in Vietnam in the 1970s, and Israeli air operations in the 1967 war against Egypt proved to be a powerful tool of coercion, mainly due to the fact that in all three cases, the adversary could not quickly take cover against air strikes due to its dependency on heavy defence weaponry. During NATO’s intervention in Kosovo, the KLA ground offensives had drawn the Serbian forces out in the open, thus, adding to the success of NATO bombing of Serbian army units. The potential of a local insurgency movement in facilitating a third party intervention’s success was also witnessed in Bosnia in 1995. The synergy between the NATO air strikes and Croatian and Bosnian Muslim ground forces added to the lethality of Operation Deliberate Force. The KLA, however, did not possess the military sophistication or the numbers to fight against a regular Serb force, which a NATO force would have had. The coordination between NATO and the KLA had also created apprehension among the NATO member states. On a political level, the KLA was an unattractive ally, with many of its members linked to the undemocratic ideologies and the drug trade. NATO’s goal of creating regional stability also meant that the KLA’s influence be limited in a post operation political settlement in Kosovo. At this juncture, it is also important to point out that, to take the US intervention in Vietnam in the 1960s and 70s as a precedent that foretells disastrous

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223 See Pape, n.221, pp.141-142.

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consequences for any future deployment of ground troops is a misnomer. In retrospect, it
could be said without doubt that the US army in Vietnam had faced an increasingly
hostile local population that had rendered its support to the local guerilla movement
against the US intervention. In Kosovo, the situation was the linear opposite. The local
population was in favour of NATO’s intervention and the KLA was on its side. That
support would have added to the competence of the NATO ground troops.

3.3.2. Demonising Milosevic: There also arose strong criticism in many quarters about
NATO’s policy of carrying out a strong propaganda campaign that depicted Milosevic as
the brutal crucifier of the Balkans. It was believed that this was a deliberate strategy to
ease the West’s conscience about its inept performance in 1985-95 in Bosnia. The policy
of demonizing Milosevic also diverted attention from the legitimate interest of the
Serbian state in defending itself, not only from the rising KLA insurgency, but also from
NATO’s bombings. Moreover, to single out Milosevic as the creator of the Bosnian crisis
is a misreading of history. The Serbian General, Ratko Mladic and his political boss,
Radovan Karadzic had a certain degree of independent decision making in Bosnia. The
Croatian President, Franjo Tudjman was equally guilty of ordering the “ethnic cleansing”
of the Krajina Serbs in 1995.227

3.3.3. The Propaganda War: “This generation’s entry in the mass murder category is
ethnic cleansing....it has become a major coinage, now used without quotation marks or
handled without the tongs of so-called....If the practice is not stopped the term will
continue in active use; if the world forces the forcible separation and killing to end, the
phrase ethnic cleansing will evoke a shudder...as a force frozen in history, a terrible
manifestation of ethnocentrism gone wild”.228 Operation Allied Force happened in a
world flooded with information as a result of the advent of the Internet and the mobile
phone. The 24-hour news coverage on CNN, VOA, and BBC, along with the various
websites on the war led to a “manufacturing of consent”. Milosevic had also used the

227 McGwire, n. 50, p. 5. Also see Jacques Paul Klein, “Stopping the Whirlwind”, The World Today

p.6.
main Serbian government controlled RTS to broadcast Serbian deaths in order to bolster public opinion. The NATO air force, airdropped millions of leaflets on the Yugoslav army warning them that "the apaches are coming".\footnote{Phillip M. Taylor, "Propaganda and the Web War", \textit{The World Today} (London), June 1999, pp. 10-12.} Kosovo witnessed some of the boldest use of loaded imagery in the lexicon of 20\textsuperscript{th} century politics. Comparisons to the holocaust signaled to the viewers the scale of deaths there. The media was a platform to garner American public opinion and support to the war in Kosovo. Kosovo was one of the best-publicized instances of a civil war taking place in the world. Rwanda, that suffered a million deaths in two weeks in 1994, did not invoke the same response due to lack of media footage. The politics of compassion was used deftly in the Kosovo case according to certain critics. Words, like 'Genocide' and 'the Holocaust', were tossed around casually. Genocide differs from ethnic, tribal or civil wars. Genocide might have lost its specific meaning in the media but legally; it means the intention to exterminate a chosen group, which might not have been the case in Kosovo. The word genocide was a cachet and used frequently, notwithstanding the fact that Kosovo in reality, was far from being genocidal. The images of the Kosovar Albanian refugees leaving Kosovo in great numbers were, to some, a clever imagery deliberately used by the Kosovo leaders to "manufacture western support to their independence movement".\footnote{Interview with Vuruna, n. 155. Also see Moeller, n. 108, p. 225.}

3.3.4. Kosovo-End Result of the Intervention: Ken Booth suggests that the crisis in Kosovo could have been solved without the use of force. He points out that, "outsiders could have looked after the refugees, built a hostile international consensus against Milosevic, imposed extremely rigorous sanctions on Serbia, helped in empowering Serbian civil society and offered huge incentives in term of regional economic and security building in return for a changed policy in Kosovo".\footnote{Booth, n. 159, p. 14.} His criticism of NATO's intervention is premised on the inability of NATO to save lives in Kosovo. Booth's criticism is valid, but then to follow his strategy would have taken years. By, then Milosevic would have completed his program of ethnic cleansing and repopulated Kosovo with Bosnian Serbs. Despite criticisms of an effort to demonise Milosevic and the media hyperbole with regard to the Kosovo crisis, it was true that Milosevic had used...
Kosovo as a prop for his political career and carried out a campaign of ethnic cleansing and displacement there. Had intervention not taken place, hundreds of Kosovar Albanians would surely have been expelled, without any possibility of returning. He might have also caused more deaths if he thought that NATO was against the use of force.

The Kosovo crisis was mainly rooted in competing constructions of history that had perpetuated ethnic hatred between the Serbs and Albanians. Each claimed exclusive rights and sovereignty over the same piece of land. As Tim Judah puts it succinctly, “At the heart of the matter was a fundamental struggle between two people for control of the same piece of land”. The need of the hour today is to find a viable political solution to the crisis in Kosovo. UNMIK is still stationed in Kosovo and has control over security, foreign relations, minority rights protection and energy, until the province's final status is determined. Secretary-General Kofi Annan's Deputy Special Representative in Kosovo, Jean-Christian Cady, told the Stockholm International Forum on preventing genocide in February 2004 that “One of the shortcomings we had in Kosovo was that during the time it took to establish the full peacekeeping presence, in the summer and autumn of 1999, numerous interethnic retaliation actions took place and the victims became the perpetrators,” The second difficulty is the return of refugees. In Kosovo, practically all ethnic Albanians went back in a matter of weeks, but more than four years later, most Serbs, who fled, have not returned, despite the efforts of UNMIK. Before reconciliation can occur, effective justice must be delivered, so that no crime is left unpunished, whoever the victim or perpetrator. The main challenge for UNMIK is to create stable conditions for a multiethnic Kosovo, not only to prevent ethnic cleansing from occurring again when the mandate of the international mission comes to an end, but also to ensure the normal development and prosperity of all communities, free from harassment and with equal access to institutions, as well as the establishment of an impartial police and justice system.

232 Judah, n. 64, p. 84.
3.3.5. Readings for a Just Case of Humanitarian Intervention: Operation Allied Force has all the qualities of a mixed case of humanitarian intervention when placed within the Just War paradigm. The following table would make that clear:

Table: 3.4. NATO’s Intervention and the Just War Criteria

<table>
<thead>
<tr>
<th>jus ad bellum</th>
<th>jus in bello</th>
</tr>
</thead>
<tbody>
<tr>
<td>Just Cause-Yes</td>
<td>Proportionality of Means-No</td>
</tr>
<tr>
<td>Right Authority-Yes</td>
<td>Discrimination and Non-Combatant Immunity-No</td>
</tr>
<tr>
<td>Right Intention-?</td>
<td></td>
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<tr>
<td>Force Must Be the Last Resort- Yes</td>
<td></td>
</tr>
<tr>
<td>Proportionality of Ends-No</td>
<td></td>
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<tr>
<td>Probability of Success-?</td>
<td></td>
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</tbody>
</table>

However, to term NATO’s intervention in Kosovo as an unjust case of intervention would be to commit the error of influence. Karl Popper had stated that the falsification of a hypothesis would amount to the entire case being nullified for the testing of a theory. However, Post-Popperian developments in the philosophy of science have discredited falsification, the most notable of which is the wide acceptance among philosophers of science of the Duhem-Quinne thesis. According to this thesis, it is impossible to test empirically a single hypothesis because it is inevitably embedded in a large collection of assumptions (That are really hypotheses assumed to be true). Hence, any alleged test of a single hypothesis always involves testing host of others, often-unarticulated hypotheses. The impact of this is that if we reject a hypothesis because it appears to be empirically false, we are subject to the error of influence, as we would tend to ignore the other inferences that could be drawn from a particular study.

The next chapter deals with a comparative assessment of the Indian intervention in East Pakistan and NATO’s intervention in Kosovo in the light of the Just War Theory.