Chapter IV

A Comparative Assessment of the Indian Intervention in East Pakistan and NATO’s Intervention in Kosovo in light of the Just War Theory
This chapter carries forth a comparative analysis of the Indian intervention in East Pakistan and NATO's intervention in Kosovo within the context of the Just War Theory. The researcher focuses on the similarities and dissimilarities between the two cases and the ability of the Just War Theory to explain and predict events in both cases, by locating them in a comparative framework. This chapter also studies whether the Indian intervention in East Pakistan and NATO's intervention in Kosovo fulfills the criteria of the theory to an equal degree, not only at the level of decision making, but also in the overall conduct of the intervention. Finally, the chapter explains the reasons why the end results favour either one of the interventions over the other.

4.1. East Pakistan and Kosovo; A Comparison:

4.1.1. Similarities:
The East Pakistan and Kosovo case exhibits certain interesting similarities as well as reflects differences, which cannot be ignored. The similarities with regard to the cases are:

i) Both were cases of intervention without the mandate of the United Nations and when looked at through the prism of international law, went against the norms of international order.

ii) Both were unilateral interventions and fell within the geographical area of influence of the intervener. Thus, certain geo-strategic calculations also informed the overall decision to act in the first place.

iii) Both were cases of intervention that were undertaken in the name of justice, though the Indian government referred to Article 51 of the UN Charter, that dealt with self-defence, as in the realm of international structure at that point of time, the use of force was more defensible under this particular article.

iv) Both were the first case of humanitarian intervention when placed in the particular time period, the Indian intervention in East Pakistan was the first case of unilateral intervention in the cold war period, undertaken in the name of human rights, NATO's intervention in Kosovo was the first case of unilateral humanitarian intervention in the post cold war period.
v) Both interventions were undertaken due to gross human rights violation within the state concerned, Pakistan’s suppression of the political and civil rights of the Bengalis in 1971 had been one of the prime factors behind the Indian intervention. In the case of Kosovo, NATO’s intervention was heavily informed by the human rights violation of the Kosovar Albanians by the Serbian state.

vi) Both justified the bypassing of the UN on the ground that despite evidence of violation of human rights, the UN Security Council was caught up with the rivalry between the five permanent members and could not come to a decision on the use of force. This inability to make a policy choice to intervene was influenced by the complexities of strategic rivalry and power politics, rather than considerations of the context of human rights violations that were taking place on the ground. In the case of East Pakistan, the cold war between the US and the USSR disabled any major policy choice within the UNSC with regard to the human rights violations within Pakistan. Both the super powers were adamant that the other would not take leverage of the situation and further its own area of influence within South Asia. The international situation was such that the rhetoric of world leaders and academician was heavily tilted in favour of order and thus to act in the name of justice would be an outlier, that could not be defended in the forum of the UN. In the case of NATO, the post cold war period brought about a tilt in international relations, more on the side of normative leanings and it was fashionable for states to intervene in the name of human rights, reflecting a liberal ethos.\(^1\) It was also in a state’s national interest to do so and Kosovo set the trend for that kind of activism. Despite certain geo-strategic calculation that went into NATO’s decision to act in Kosovo, the over-arching picture was that NATO was also motivated to act after the Serbian army under direction from Slobodan Milosevic refused to downplay the tempo of human rights violations.

vii) Both were controversial cases as scepticism was voiced with regard to the motivations of the intervening state. In case of India’s intervention in East Pakistan, the sceptics were of the view that the 1971 East Pakistan crisis provided it with an opportunity to undermine the Pakistan state and establish its own hegemony in South

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Asia. In case of NATO's intervention in Kosovo, sceptics strongly argued that it was the desire of NATO to spread the capitalist ideology in Eastern Europe, once a bastion of communism and Kosovo provided the opportunity to further that notion.

viii) Both were cases, which were later on supported by UN Security Council Resolution. ix) Both cases established the fact that social science is characterized by the messy nature of social science data and the complexity of social phenomenon makes it impossible to conclude decisively on anything. This intermixes of complexities lead to uncertainties and is not due to any inherent weakness of the case study method.\(^2\) In both cases, the end result strongly reflected a meeting ground between liberalism and realism and also proved that good statecraft always involved reconciliation between the two traditions of international relations.

x) Both cases also proved that the structure of international system was such that justice had to be placed within the existing order, if it was to be espoused.

### 4.1.2. Dissimilarities:

i) The most glaring dis-similarity between the two cases was more on a theoretical level. The Indian decision to intervene might have been influenced by the realist paradigm, dominated by calculations of power and interest. The refugee problem was proving disastrous for the border-states in India and the Indian government had to intervene, if a solution was to be found, which was not forthcoming from the international community or the Pakistan state. Counter-factually, if the Pakistan army action had not led to the flow of Bengali refugees, numbering 10 million, into the Indian border-states that threatened the fragile tribal-non-tribal ratio, India might not have intervened. But, that of course is speculative and the fact of the matter is that India also referred to the plight of the Bengalis in the UNSC. But, yet, it proved to be an interesting case as it showcased the importance of keeping both the rival traditions in international relations in mind, while studying a state's motive for intervening.

NATO's intervention in Kosovo explicitly stated that it was primarily motivated by humanitarian concerns. Thus, it differed from the East Pakistan case. The NATO policy makers said that the plight of the Kosovar Albanians provided the rationale for the collective defence organization to act. The fear of a spill over of the crisis into the neighbouring Balkan states also geared NATO into action.

ii) The internal situation in both the crisis zones differed. Though both had demanded greater autonomy, the East Pakistanis spear-headed by the Awami League, were consistent in their view that they were an integral part of Pakistan. The meetings between President Yahya Khan, Mujibur Rehman and Zulfika Ali Bhutto from 17 to 25 March 1971 were held with the purpose of finding a solution, that would resolve the differences between the Awami League and the Pakistan's People's Party and form the National Assembly. It was only in the end when the Pakistan army action was inevitable that the Awami League put forth the notion of complete independence. In their religious affiliation, both the East and West Pakistanis pre-dominantly adhered to the Islamic faith. Only about 10 percent of the population in the East was Hindus. The only major difference was in the context of language and culture. The East Pakistanis spoke Bengali and culturally were more similar with their Bengali neighbours across the border in Indian Bengal. The refusal of the West Pakistanis to accord due recognition to the Bengali language was one of the prime reasons for the Bengalis to feel a sense of alienation from the West Pakistani main-land, mostly consisting of Punjabi and Urdu speaking population. And it was this group that dominated policy making for the Pakistani state and thus policies suffered from an inherent bias- a definite tilt towards West Pakistan in all the realms of administration. It was mainly due to this factor that the East Pakistanis ultimately formulated a desire for independence. In case of Kosovo, the major difference was religious. The Albanian Muslims comprised 90 percent of the population and there was the possibility that by 2020, it would supercede the Serbian population in the entire state of Serbia. 3 Though the refusal of the Serbian state to use Albanian language officially after the revocation of autonomy in 1989 had its

repercussions on the Albanian mind-set, it was more so the religious differences that led to a feeling of alienation from the Serbian heartland.

iii) The two cases also differed with regard to the level of historical significance of the crisis zone to the state. In case of East Pakistan, both the wings of Pakistan acquired independence in 1947 along with India from the British. East Bengal voted in favour of joining Pakistan mainly based on religious factors as the criterion of forming the new state was that all Muslim majority states in British India would join Pakistan. Both wings of the new state did not nurture any historical attachment with each other and 1, 500 miles of Indian territory also separated it. This geographic separation proved an obstacle in the smooth functioning of everyday administration and also created misunderstandings between the two wings. On the other hand, Kosovo enjoyed a position of historical significance in the Serbian mindset. The Battle of Kosovo of 1389 A.D in which the Ottoman Turks defeated the Serbian army, left a long-standing impression on Serbian history. For the Serbs, Kosovo was a symbol of their struggle against foreign invasion. Defending Kosovo was equated to a fight for the essence of the Serbian state. Thus, no Serb would be willing to part with Kosovo without a fight. Moreover, the land also had a geo-strategic significance. If Kosovo were granted independence, then the Serbian state would become vulnerable, in having a hostile enemy that was Kosovo coupled with the Albanian state at their doorsteps. The mountains of Kosovo provided a natural wall against the present Albanian state and proved its mettle in times of tensions between Serbia and Albania in the past. Geo-strategically, Kosovo was crucial to the external and internal security of Serbia. East Pakistan was not crucial geo-strategically to the security of Pakistan.

iv) On the count of religion, the West and East of Pakistan were dominated by the influence of religion. Majority of the populace were Muslims, while a meager 10 percent in East Pakistan comprised of Hindus. In case of Kosovo, the Kosovar Albanians that were about 90 percent adhered to Islam whereas the Serbs (10 percent were Orthodox Christians) In contrast, rest of the Serbian state were dominated by orthodox Christians and they looked upon the Kosovar Albanians as a reminder of the oppressive Ottoman Turk rule and as outsiders inhabiting their state. The Albanians were also treated as 'culturally inferior', dogged by superstitions and prejudices, lacking any progressive
attitude. This Serbian psyche alienated the Albanians from Belgrade further and strengthened their demand for a separate state.

v) The nature of the intervention also differed in both cases. India made it clear from the beginning that the demands of the East Pakistani for greater political representation within a unified Pakistan, to the extent of self determination, in case of non compliance by the Pakistan state, were dominating factors in its decision to intervene. A political solution must include greater autonomy and full political and social rights of the East Pakistani. In case of Kosovo, NATO made it clear from the beginning that despite the existing human rights violations of the Kosovar Albanians by the Serb army, Kosovo was an integral part of Serbia. Any solution to the crisis would be undertaken within the Serb State. Resolution 1244 of 12 June 1999 clearly spelled out that NATO recognized Kosovo as an integral part of Serbia.\(^4\) (See Appendix 1.1.7.). The presence of 50,000 NATO troops and United Nations Mission in Kosovo (UNMIK) nullified Serbia's hold over the administration of Kosovo but legally, Kosovo remained a part of Serbia.

vi) The post bellum (post conflict) situation reflected the difference in policy option clearly. In the case of East Pakistan, the province broke away from the Pakistan state and formed a state of its own-Bangladesh. The new state was democratic and comprised mainly of Bengali Muslims with a miniscule Hindu population. Whereas, Kosovo remained an integral part of Serbia and till date, no acceptable political solution has been found. Reverse ethnic cleansing plagues the region and the Serb population is closely guarded by UNMIK troops. The post bellum scenario reflects suspicion and distrust between the Serbs and Albanians and an amicable dispute settlement mechanism is absent. There is scepticism among UN officials that once UNMIK pulls out of Kosovo, ethnic clashes would increase.\(^5\)

\(^4\) UN Resolution 1244, 12 June 1999. (See Appendix 1.1.7).
4.2. East Pakistan and Kosovo - Comparing both Cases within the Just War Paradigm:

4.2.1. *jus ad bellum* (Right Recourse to War):

(1) **Just Cause:** The Just War criterion of Just cause cites violation of human rights within a state's border as reason enough to merit outside intervention. Sovereignty includes, not only control, but also responsibility, and though the threshold for outside intervention in the name of justice is higher than self-defence, it is justified all the same. India’s intervention in East Pakistan had a just cause. The Pakistan army’s repression of the East Pakistanis in their demand for greater autonomy was unwarranted. The Awami League had won majority of the seats in the December 1970 elections to the National Assembly. Despite that, due to the dominance of West Pakistan in the political affairs of Pakistan, the Pakistan People’s Party (PPP) refused to accept a government formed by the Awami League. Bhutto, taking advantage of his close affiliation with the Pakistan army, manipulated the political process leading to a stalemate between the Yahya Khan administration and the Awami League, led by Mujibur Rehman. By February 1971, the East Pakistanis, especially in and around Dacca demanded a separate state when they realised that the West Pakistan administration would neither grant them greater political autonomy nor allow their representatives to form the government. By March, 1971, the situation had deteriorated further and a last ditch effort by Yahya Khan to reach a compromise between the Awami League and Pakistan People’s Party in March 1971 failed.

On 25 March 1971, the West Pakistan army was ordered to solve the crisis with the use of force. In its attempt to defuse a volatile situation, the armed forces engaged in accesses that forced the East Pakistani population to seek refuge across the border in India, so much so, that by October, 1971, ten million or more refugees had passed over to the Indian borderlands. The Indian government appealed to the United Nations Security Council to take a stand in the dispute and declare the situation disruptive enough to international peace and security. It was well known that the UN, caught up in cold war politics of bloc creation between the two ideologically hostile super-powers, the US and the Soviet Union, would not come up with a decisive solution till the end. Thus, faced
with an unprecedented situation where the refugee influx was threatening the nature of the population ratio in the strategically fragile borderlands, India intervened to change the political situation within East Pakistan and stop the army repression. Thus, the Indian intervention fell squarely within the Just War criterion of just cause.

With regard to NATO’s intervention in Kosovo, the judgment with regard to NATO intervention constituting a just cause was, but clear. Milosevic had refused any political rights to the Kosovar Albanians and Milosevic thwarted the autonomous rights of the Kosovar Albanians. Milosevic instigated the Serb population of Kosovo in 1987 for political gains to rise against the Kosovar Albanians. When the Kosovo Albanians protested against the discrimination meted out to them by the Serbian authorities in a non-violent manner under the leadership of Ibrahim Rugova in a forum called the Democratic League of Kosovo, Milosevic sent Serbian army ranks into Kosovo to suppress the voices of dissent. Students of Pristina University were forced to learn Serb language and history and the Albanian language was completely suppressed. The Serbian army units carried out killings and repression at a scale that forced about 50,000 Kosovar Albanians to flee from Kosovo to neighbouring countries by October 1998. The images and sufferings of the Kosovar Albanians had been well documented.

The UN passed several resolutions condemning the Serbian state action against the Albanians, calling upon Milosevic to observe restraint. The United Nations Security Council (UNSC) 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 Kosovo. 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. The UNSC on 23

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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. 7 (See Appendix 1.1.4).

Faced with the threat of use of force against him around October 1998 if he continued to carry repressive action against the Albanian, Milosevic agreed to allow OSCE observers into Kosovo as well other humanitarian aid organisations. He even decreased the level of troop presence in Kosovo. Despite that, there continued subtle repressions on the ground, out of the sight OSCE observers. Matters heated off, when on 15 January 1999, 45 Kosovar Albanians were massacred in Racak by Serb security forces. The international community tried one last-ditch effort to resolve matters through diplomatic engagement at Rambouillet. As no compromise was reached and the situation on the ground in Kosovo continued to be one that exhibited severe human rights violations, NATO decided to intervene in Kosovo on 24 March 1999. In comparison, both cases exhibited the unwarranted existence of human rights violations engaged upon by the state governments against their own population. Both cases witnessed the unprecedented flow of refugees, fleeing from fear of death in their own state, to neighbouring states. Though East Pakistan witnessed one of the highest flows of refugees into the neighbouring state, India, the sufferings and precarious conditions faced by the refugees on both counts was more or less similar. And it was more than clear that the intervention in both cases not only stopped the state repression, but also enabled the refugees to return to their own

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state. When analyzed with that benchmark in mind, both the interventions qualified within the Just War criterion of just cause.

(2) War is declared by a Competent Authority:
Both interventions raised questions of legality on the international forum due to their unilateral character, the Indian state in case of the East Pakistan intervention and NATO’s intervention in Kosovo. Both interventions were accused of undermining the sanctity of the UN, more so, in the case of NATO. India intervened in East Pakistan on the face of the UN Security Council’s inability to decide on a course of action to salvage the plight of the East Pakistani citizens becoming the target of the West Pakistan army action. Human rights violations was taking place within the Pakistani state in the hands of the government authorities and that the legitimately elected representatives of the people, the successful election candidates of the 1970 elections were not allowed to form the National Assembly due to political bickering by Pakistan army and the Pakistan People’s Party (PPP), led by Bhutto, who was favourable to the army. The UN stated in April 1971, a month after the army action was ordered around 25 March 1971, that the crisis was an internal matter of Pakistan and as such did not merit any action or statement from the world body. Henceforth, despite repeated appeals by India in the forum of the UN, especially the Security Council, no decisive action was forthcoming.

By November 1971, India was flooded with more than 10 million refugees that threatened not only its internal stability, but also the economic resources of a country that was itself faced with nearly 40 percent of its population living below the poverty level. The UN Secretary General, U. Thant declared in August 1971 that the situation in East Pakistan threatened international peace and security and that amounted to UN action under chapter VII of the Charter. But, the two super blocs led by the US and the USSR, both permanent members of the UN Security Council with the power of veto, speculated that either might use the situation within Pakistan as an excuse to extend its own sphere of influence in South Asia or as such, blocked any action by the UN. At that time, the concept of interventions in the name of human rights had still not gained credence and the twin principles of sovereignty and territorial integrity were thought to the
cornerstones of international law and world order after the Second World War. That India had intervened to stop Pakistan army action and in the process saved the East Pakistanis from further harm is clear. India’s authority came from the fact that the East Pakistanis also desired the Indian army action. Nations around the world, especially Western Europe and the US did not condemn the Pakistani action. An Indian diplomatic entourage led by Prime Minister Indira Gandhi had tried to persuade world leaders to take note of the situation, but could not evoke any credible international response. The Nixon Administration continued to supply arms to Pakistan till July 1971. Given, that the lack of any UN response as late as November 1971, after nearly eight months of army action, left a million people dead inside Pakistan, India had no other option, but to intervene. The researcher would say that in India’s decision to intervene, the realist notions of national interest also acted as a strong influencing factor. Protecting India’s fragile borderlands from the influx of an unwarranted number of Bengali refugees was in India’s own national interest. But, the liberal notion of saving people in neighbouring states from human rights violations also influenced the overall Indian decision to act. Unilateral actions that save a particular community from abuse and discrimination are completely justified in the norms of international justice. As such, the Indian action that succeeded in averting a situation that guaranteed the return of refugees and stopped the army action had the sanctity of right authority within the Just War criterion of Right Authority.

In comparison, NATO’s intervention had more or less the same characteristics, though placed in a different time zone and a world order that witnessed the collapse of the Soviet Union, which heralded the end of the cold war. The UN, freed from the shackles of super power rivalry it was hoped, would play a much more pro-active role in world events. However, the situation in Kosovo that had deteriorated towards 1999 and merited the UN’s use of force did not bring forth such action. Despite the increasing rhetoric of human rights, followed by a strong human rights movement in the post cold war period, the UNSC could not invoke Chapter VII due to the possible use of veto against such a course of action by both Russia and China. Both these two countries were against the use of force by the UN, as that would impinge upon the sovereignty of Yugoslavia. The situation was very similar to East Pakistan situation. In both cases, the governments were
denying political autonomy to the provinces. Both sanctioned military action after the
demand for autonomy and political independence gained momentum and threatened to
attract international attention. In Kosovo, the UNSC had passed Resolution 1160 and
1199 based on Chapter VII that imposed economic sanctions on Yugoslavia. NATO
threatened the use of force towards October 1998 when Milosevic had not stopped the
Yugoslav army from carrying out human rights violations in Kosovo. On the face of
NATO’s threat to use force, Milosevic did agree to a ceasefire and allow international
observers under Organisation for Security and Cooperation in Europe (OSCE) to monitor
the withdrawal of the bulk of Serbian forces from Kosovo. But, 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 authorization 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.
However, 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
necessary. The exodus of Kosavar Albanians to the neighbouring countries, especially
Macedonia and Albania numbered 800,000 by October 1998. This threatened the
population ratio in these countries, a situation also faced by India in 1971. Milosevic
continued the policy of political discrimination of the Kosovar Albanians and Serbian
police and military personnel continued their reprisal throughout. The UNSC could not
sanction the use of force due to the politicking of the veto by Russia and China. Thus,
when in February 1999, the Rambouillet Conference failed to usher in any kind of
solution, NATO decide to use force. With the ascendancy of the human rights culture,
the concepts of international accountability and human security had taken precedence.
Moreover, in both the cases, contextual evidence that human lives were lost due to state
action, which could have been stopped by international condemnation and UN action,
norms of justice and the criterion of the Just War Theory enabled states to take action.
Both India and NATO had the authority to act in such a case as both were threatened with defending their credibility in responding to human suffering in their own sphere of influence.

(3) Right Intention:
In the context of right intention, both India’s intervention in East Pakistan and NATO’s intervention in Kosovo raised many questions from varied quarters. The criterion of right intention according to the Just War Theory means that the intent of the intervening state has to be clear, that it must not include any calculations of national interest as well as the desire for hegemonic domination, on the part of the intervening state. An intention that is dominated by a policy choice that includes doing away with human rights violations within the state as well as saving a state structure from collapsing are justified. When placed within that particular paradigm, NATO’s intervention seemed to be more fitting into the norm of right intent then that of the Indian intervention. NATO had made it clear from the beginning that it was intervening in Kosovo in order to protect the Kosovar Albanians from further harm at the hands of the Serbian state. NATO’s 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 according to the liberal tradition. The liberals firmly believe that the post cold war period has witnessed a shift in international relations when concepts like human rights and human security, have came to occupy an important place in rational policy choice, within democratic societies and international institutions.

For the first time in the history of the alliance, NATO acted in the name of humanitarian goals and sanctioned the use of force for the protection of human rights. In the domain of Just War Theory, the intention was pure, that to save human beings from being massacred. That was exactly what NATO had set out to do. Whereas in the Indian case, India had from the beginning stated that it was acting out of self defence. The concept of ‘refugee aggression’, constituted by the influx of ten million East Pakistani refugees from across the border was threatening the Indian border states with population disarray and in
order to get the situation under control, India had to use force against the Pakistani state.\(^8\)

That India did mention in the UN Security Council that human rights violations that were taking place within Pakistan shocked the ‘conscience of mankind’. \(^9\) Moreover, Ambassador Sen in his address to the UN Security Council stated “what has happened to our conventions on genocide, human rights, self determination?”\(^{10}\) Placed within the context of the cold war period, when the rhetoric of human rights occupied a secondary position in international thought and the twin principles of sovereignty and territorial integrity enjoyed a strong influence on states, it was understandable that India cited self-defence as its motive to intervene, in East Pakistan. Reacting to a statement by Pakistan that India was deliberately destabilising Pakistan, he said that it was Pakistan that was breaking up Pakistan itself and in the process, creating an aggression against India by forcing millions of East Pakistanis too flee their homes.

Critics of both the interventions, especially those belonging to the realist school, points out that India had intervened in East Pakistan in order to divide Pakistan and establish its own pre-eminence in South Asia. The crisis offered India a golden opportunity to undermine the status of Pakistan as well as ensure the emergence of a friendly neighbour in its eastern front. Dealing with a hostile Pakistan was indeed taxing for the Indian security establishment. A friendly and docile Bangladesh would be a strategic boon.\(^{11}\) Following the same line of argument, critics of NATO’s intervention indicate that NATO was more interested in salvaging its credibility in the post cold war period when the rationale for its existence as an alliance was at stake. The WARSAW Pact had broken off with the collapse of the Soviet Union and NATO needed a new reason to explain its continuance in the new era. Kosovo provided an opportunity to do just that. 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


\(^{10}\) See SCOR, 1606\(^{th}\) meeting, 4 December 1971, p. 15.

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.\textsuperscript{12} 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’\textsuperscript{13} Critics point out that such proclamations of humanitarian intent rang false because NATO as well as the US were extremely selective when it came to humanitarian interventions. The real motives, the critics argue, were of hegemonic extension and capitalist incursion into East Europe, especially Yugoslavia, once a bastion of communism. The rhetoric of humanitarianism was used in order to camouflage this intent. In case of India, though it had an obligation to protect the refugees within its own border, the intervention was primarily motivated by the calculations of national interest that endorsed undermining Pakistan as priority one motive in India’s decision to act.

Placing both interventions within the methodology of structured focused comparison, it is, but clear, that both cases exhibit inferences especially within the right intention criterion, that are mixed. In both cases the intent of the intervener had a mixture of various motives and the actual motive could only be speculated, but not established as a fact. One line of argument informed by the liberal school state that both interventions were justified, as their intent was to save lives. On that count, the Indian intervention was more successful as it succeeded in putting an end to killing within the Pakistan state within a span of two weeks. NATO’s intervention, however, fell short as the killing of Albanians by Serbian police increased during NATO bombing. NATO, moreover, did not field in any ground troops and only engaged in high altitude bombing that missed its


target quite a number of times, despite high precision guided technology due to bad weather in and around March-April 1999. The way in which it conducted the war in the Balkans undermined its moral rhetoric, as none of the member states were willing to risk the lives of their own soldiers in order to save Albanian lives. India, on the other hand, engaged in a full-fledged invasion of Pakistan territory, both by land and air. Critics point out that India had strategic interest in sight as Pakistan was an enemy since 1947 and thrusting a military defeat on Pakistan was in India's national interest, whereas NATO had no such strategic distaste of Yugoslavia. Both cases endorse the view of Michael Walzer when he states that mixed motives are a normal course in domestic as well as international politics. "An absolutely singular motivation, a pure goodwill, is a political illusion."\(^{14}\) This study would state that when it comes to human intent, there exist a mixed array of motives and thus, one cannot conclude that a single motivation is behind a particular action. So is the case with both India and NATO. Despite the difference in spacio-temporal zones in which the interventions were located, in both cases, the actual intent was difficult to discern. Thus, with regard to right intention, the researcher would state that policy, which is informed by a confluence of realism as well as liberalism, instead of a tension between the two, would be beneficial for statecraft, especially with regard to decisions on humanitarian intervention, where the stakes for the intervening state as well as the state intervened could be quite high.

(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 is taken and force resorted to against the target 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 within its borders, force is to be used. Placed within a comparative framework, both the interventions were in a more or less equal level when located within the criterion of force as last resort. The variables of diplomatic engagement, the level of UN involvement, the evaluation of the intervening state or organization's efforts at garnering international condemnation of human rights violations

\(^{14}\) Walzer, n. 9, pp. xvi-xix.
within the state intervened, the UN Security Council debates, the policy ramifications in
democratic countries due to the ongoing crisis, the public support towards the use of
force, and the role of domestic and international media with regard to intervention
decisions, were a intermix of more or less the same tale, though both interventions had a
time gap of nearly 28 years. They also occurred in changed circumstances, especially at
the international systemic level. The world had gone through important structural changes
at the international level by the time the Kosovo crisis commanded international
attention. Globalization and the rapid spread of information technology added to the flow
of news of the Kosovo crisis across the world in a matter of seconds. Despite the changed
conditions and faster communication channels that NATO could have taken advantage of
at that time, the Indian intervention sat more comfortably within the force as last resort
criterion. The Indian decision makers took into account, not only the heavy influx of
refugees by December 1971 into India border-states, but also the weather, which cleared
after heavy monsoons towards November before intervening. Moreover, it was not easy
to move troops to the far flung Indian border areas during heavy rains, as roads,
especially in the Northeastern eastern sector were hilly and prone to heavy landslides.
India took into consideration not only the logistical preparedness of the Indian army, but
also the preparation of the various regiments to be engaged in battle in order to achieve a
quick and cost effective victory. In comparison, NATO decision makers were clueless till
as late as February 1999 as to whether force was actually to be used in Kosovo.
Milosevic violated UN Resolution 1199 (September) 1998 that had put him under the
obligation of a cease-fire in Kosovo in order to warrant of a possible use of force threat
by NATO. However, most of the Serbian forces remained in Kosovo and carried on
police action against the Albanians. Within two weeks of passing the UN resolution, the
US sent Richard Holbrooke to Belgrade 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.15 Milosevic

15 "Contact Group Discussions on Kosovo: Press Briefings by British Foreign Secretary, Robin Cook
(London: Contact Group, 8 October 1998).
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 cease-fire, 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.\(^{16}\)

Despite that, Milosevic continued his program of repression through the winter of 1999 in violation of the UN Resolution. NATO should have used force when it was clear that Milosevic had neither plans nor motivation to carry out the obligations he had agreed upon under UN resolution 1199, especially with regard to the withdrawal of Serbian forces from Kosovo. Instead he increased their presence.\(^{17}\) It could be said in NATO’s favour that unlike the Indian intervention in which the decision had to be taken by a single state government, NATO had 19 member states with conflicting views and the use of force had to be endorsed by all of them 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”.\(^{18}\) Most of the member states loathed using force against a sovereign country without UN mandate. In both cases, Indian diplomats as well as NATO countries like the US, France and the UK debated on the platform of the UN Security Council as well as used the medium of the international media in order to garner support for a favourable UN Resolution that endorsed the use of force against Pakistan in case of the Indian intervention 1971 and Yugoslavia against whom NATO intervened in 1999. Surprisingly, in both cases, the UN could not do much. In the Indian case, not a single resolution that condemned the action of the Pakistani state was passed. Instead, the UN in April, 1971 declared the East Pakistan crisis as an internal matter of Pakistan.\(^{19}\) The debates in the

\(^{16}\) 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).


UNSC were more about the nuances of Great Power politics and the politics of superpower reach in South Asia. Little attention was paid to appeals by the Indian diplomats in the UN to take into account the flow and plight of refugees into the Indian borderlands.

The Nixon administration was very suspicious of Indian motives in its decision to intervene and thus till the end supported the Pakistani stand that the crisis was within Pakistan’s own jurisdiction as a sovereign state. By November 1971, the Indians had exhausted all diplomatic engagements without any result. The only country that extended support to India was the USSR with reasons tuned into its own desire for extending its sphere of influence within South Asia, as Pakistan openly demonstrated its leaning towards the US. The support of the USSR enabled the Indian decision makers to take a firm decision to intervene in East Pakistan in order to stop the Pakistan army action that resulted in a high flow of refugees into India. What differentiated the Indian intervention from that of NATO’s intervention in East Pakistan was that in the immediate run up to the intervention, India did not have any direct diplomatic engagements with Pakistani Government officials.

Whereas, in case of NATO’s intervention, the involvement of outside forces in Kosovo, before the intervention was quite high. Given the change in information technology, the role of the media in highlighting the events in Kosovo was also phenomenal. But when it came to matters of real politics, the scenes in both cases were similar. The UN was stopped from sanctioning the use of force by the threat of a probable Russian and Chinese veto. The UN did pass resolutions, Resolution 1160(March, 1998) and 1199 (September, 1998) that leveled economic and arms flow sanctions into Yugoslavia, but stooped short of sanctioning the use of force. NATO even tried to engage Yugoslavia as late as February 1999 at Rambouillet to arrive at a compromise before sanctioning the use of force, in order to defuse the volatile situation in Kosovo. 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". 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 Deputy Prime Minster, Ratko Markovic, led the Serbian delegation. The Serb delegation did not appear serious about finding a solution to the crisis and they did not want any UN role in Kosovo. The Albanian delegation led by Hashim Thasci refused the sign the accord as there was no mention about the final outcome for Kosovo—that was independence. The failure of the Rambouillet conference led to the decision that the use of force as a last resort was indeed necessary, if the situation had to be brought under control, as at that time the situation within Kosovo was deteriorating. NATO started air strikes on 24 March 1999, after a messy diplomatic engagement with Milosevic.

When both the cases are taken together in a comparative study, it appears that the Indian decision was much smoother and force was used taking into account not only the failure of diplomatic overtures made by India to the UN and other major countries, but also the military potential and weather conditions of the target state—that was East Pakistan. Given that, India was able to achieve a quick and more or less easy victory. NATO, on the other hand, completely misjudged Milosevic’s affiliation with Kosovo. Kosovo was very significant in Serbian history and his politicizing of the situation in Kosovo facilitated Milosevic’s rise to power within Yugoslavia. NATO should have realised early on that Kosovo was no Bosnia in which he had agreed on concessions at Dayton in 1995. Both cases, however, reflected a flaw in the force as last resort criterion. In case of India, though the weather conditions were a major influencing factor in the overall decision to intervene, yet it was very difficult to understand when the last diplomatic note had been written. Since diplomacy is an engagement in human psychology and the ability to persuade a potential enemy to change guard and understand the negotiator’s point of view, the breakthrough in diplomatic engagements could happen anytime. Put in a

21 UNHCR report, n.16.
contextual understanding of case by case specifications, it would be difficult to understand when lastness would have been reached. If the main connotation of just cause is to save lives, then both India and NATO should have intervened in April 1971 and November 1999 respectively. Yet force as last resort also requires prudent calculations, a last minute effort, before sending soldiers into battle. On that count, both the interventions more or less fulfilled that criterion.

(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.” In comparing both these two cases within the probability of ends criterion, the East Pakistan case fitted in more than that of Kosovo. In case of East Pakistan, the post bellum (post intervention) scenario reflected political harmony and the end of repression by the Pakistan army. Given the basic tenet of the probability of ends criterion, which requires the end result of any humanitarian intervention to bring about a congenial atmosphere for the ethnic or minority community that suffered from human rights violations within the present regime before the intervention had commenced, the Indian intervention in East Pakistan succeeded in doing just that. Not only did the Indian intervention succeed in granting self-determination to the East Pakistaniis as well as stop human rights abuses, but it was also instrumental in overseeing the safe return of millions of refugees from the Indian borderlands back to their homes within East Pakistan. The political situation was also congenial within East Pakistan as the elected representatives of the East Pakistani people from the Awami League led by Muzibur Rehman were able to form government. The post bellum atmosphere was exactly in keeping with what the Indian government had cited as one of its goals before the use of force, that to usher in an atmosphere in which the political and social rights of the Bengalis were respected.

That the Pakistani army was deprived of its ability to carry out more human rights violations within East Pakistan;
That the cost of lives to the Indian army and air force was outweighed by the lives saved as a result of the intervention;
That the post bellum scenario within East Pakistan ensured the ability of the East Pakistanis to enjoy their political and human rights which they had been deprived of by the West Pakistan establishment. Self-determination provided them with the ability to decide their own political future, devoid of further manipulations and suppression from West Pakistan, dominated by the Punjab and the Urdu speaking Muslims, which had migrated to Pakistan in 1947 mostly from the Indian states of Uttar Pradesh and Bihar;
That most of the refugees that had fled to India were able to return to their homes;
That the end result was in keeping with what the Bengalis had hoped for after the Indian intervention.

The Indian army employed a quick exit strategy and by December end, 1971, the administration of East Pakistan was left to the hands of the elected representatives of the people. Whereas, in comparison, Kosovo reflected a mix of many factors. Without doubt, NATO's intervention put an end to Serbian repression against the Kosovar Albanians. It also brought about the formation of the Interim Assembly led by Ibrahim Rugova and the Democratic League of Kosovo. The intervention also facilitated the establishment of the United Nations Mission in Kosovo (UNMIK), the first international civil administration authorized and created by the United Nations Security Council. Despite such international presence in Kosovo along with Kosovo Force (KFOR) filled in by NATO of 50,000 troops, the post bellum scenario, in contrast to the East Pakistan case, is plagued by uncertainty with regard to the final status of Kosovo as well as inter-ethnic animosity between the Kosovar Albanians and Serbs. Due to this political uncertainty, UNMIK has not been able to garner the required local support that it should have acquired from the local population. Michael Mandelbaum termed NATO's intervention in Kosovo as "a perfect failure."

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. 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. By the end of the war, 1.4 million were displaced. Of these, about 860,000 Kosovar Albanians 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.

In intervening in Kosovo, NATO did stop Serbian repression and stationed 50,000 troops in Kosovo, it also made possible the flow of humanitarian aid and the safe return of refugees into Kosovo. However, such successes could not hold in the long run as Kosovo's political status hangs on an edge even now and the present scenario is rampant with reverse ethnic cleansing. The majority Kosovar Albanians, so much so carries out revenge killings on existing Serbian minority that lives in Kosovo, that even UNMIK is unable to stop it. Till date, there is a complete polarization of the Albanian and Serbian communities and given a history of hatred and inter group clashes, it is hard to imagine how these two communities could ever live in peace with each other without an international military presence. The Indian intervention in East Pakistan was a success story as far as the proportionality of ends criterion was concerned because it was able to establish a situation that brought about a congenial political and social atmosphere within


25 Ibid.
26 Ibid. Also see Wheeler, n. 23, p. 272.

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East Pakistan. Whereas in Kosovo, the solution was too short term. Thus, the East Pakistan case qualified as a humanitarian intervention within this criterion, but NATO’s intervention fell way short as the end results did not reflect the lofty humanitarian goals set forth by NATO before intervening. The present study would hesitate to state that self-determination is always a solution to bring about an end to ethnic hatred. Sometimes, separation may not be the key to bring about a positive change for a community or ethnic group suffering under a present regime. However, the decolonization period and the spate of independence moves, by the Balkan states, have left them much better off than under a single regime. Moreover, the East Pakistanis, in a counter-factual analysis, would have continued to suffer from human rights abuses, had they continued within the Pakistani state, given the major cultural differences between the two and the memories of torture that was suffered by the East Pakistani in the hands of the West Pakistan army. Separation from its Western wing brought about betterment in the quality of life of the East Pakistanis. It also improved relations with Pakistan, which was not the case, when the two wings were part of the same state.

Kosovo is a glaring example of the pitfalls of the obsession of states to maintain the status quo, despite evidence that reverting to the original order of things would mean the continuation of human rights abuses that the intervention had sought to stop in the first place. As for now, the only solution that looms clearly in the horizon as far as Kosovo is concerned is self-determination. That might bring about the question of the rights of the Serbian minority, who the researcher would safely hypothesize, would be much better off, if relocated to the Serbian heartland. The Serbian minority are so continually targeted by the Kosovo Albanians that they have already started leaving Kosovo to re-settle in Serbia proper. Such a radical solution, sceptics, especially belonging to the realist tradition would argue, would release a domino like effect in which most volatile regions in the world would engage in movements demanding self determination from a regime that they do not like. But, if liberalism demands that human beings must have the ability to enjoy rights and the Just War Theory, which is also an extension of the liberal ethos, justifies interventions that stop human rights abuses of citizens by their own regimes, then self determination that guarantee a permanent solution to the end of any sort of
abuse on a minority community within an existing establishment, should be legalized within the context of international law. If a people in a particular region decide that they want to start as an independent political community, they should be given that chance. Could one ever imagine peace in either Chechnya or Kashmir within the present political space that they occupy? New political space has to be chalked out since it's in the interest of that particular community to thrive as a separate political entity and which is denied them in the present context. Post bellum scenarios in a heated political landscape like either East Pakistan or Kosovo could rarely be reversed, unless self-determination is the solution, as reflected clearly in the East Pakistan case.

(6) Probability of Success:
The criterion of probability of success proved to be a deciding factor in weighing the scale of success of the Indian intervention in East Pakistan and NATO's intervention in Kosovo. It tested not only the military strategy and political maturity of the decision makers in both cases, but also clearly brought about certain truisms when it came to interventions, undertaken in the name of humanitarian interventions. That any intervention which explicitly state humanitarian concerns as motivating the act, fell short of meeting up to such credentials, if the decision makers did not have the stomach to field in ground troops and make room for combatant deaths. When placed within the probability of success criterion, the co-efficient of variance was stark between both cases. The degree of variance could be put in mathematical terms as contextual analysis of both cases clearly indicated that the Indian decision makers were much more focused in the military strategy as well as the end result that was self-determination. In NATO's case, the member states were not sure if fielding in ground troops was a good idea as they were worried that any combatant deaths would adversely affect the support base for the intervention in their own domestic political base back home. The US President Bill Clinton clearly stated that 'the no ground option' had to be explicit from the beginning if the administration wanted the US congress to rally behind the intervention.28 In the Indian case, the army led by Gen. Sam Manneckshaw was preparing for a showdown

with the Pakistan army since March 1971 after the Pakistan army cracks down against the East Pakistanis on 25 March 1971. However, since it was a difficult task to round up troops logistically, move then to the border states of India in order to carry out an offensive against Pakistan within a short span of time, if a quick victory was to be gained, the process was delayed. Calculation of weather also played a crucial role in the Indian decision to delay the use of force in the Indian case.  

The monsoons that ravaged East Pakistan from May-October 1971 would have resulted in disastrous consequences for India and many deaths on both sides. East Pakistani terrain crisscrossed by countless rivers that overflow during the monsoon months would have also made the movement of troops very difficult. Thus, to ensure a successful campaign, the Indian military strategist took into account all these factors.  

India also ensured that local support within East Pakistan was with the Indian army by the time the intervention took place. Without local support that included crucial intelligence about the movement and location of West Pakistani troops and the terrain, it would have been next to impossible for Indian army and air force to achieve victory within such a short span of time. In comparison, NATO took seventy-eight days to bring about Milosevic's surrender. Also, the killing of Kosovo Albanians increased after the bombing commenced on 24 March 1999.

Despite such a huge power differential between NATO and Yugoslavia, 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. Since such a strategy had worked in Bosnia, NATO felt that it would be successful in the Kosovo case. However, Kosovo was not Bosnia.

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30 Ibid.

31 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 Richard Haas, *Intervention the Use of American Military Force in the Post Cold War World* (Washington: Brookings Institution Press, 1999), pp.93-94.
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, NATO did not field in ground troops. In classic war strategy starting with the Second World War, the synchronization between the army and the air force was the key to a successful battle engagement. The ability to ‘shock and awe’ an enemy could happen only when bombing from the air was backed by ground logistics. In NATO’s case, bombing from an altitude of 15,000 to 17,000 ft could not create a furor in the Serbian military establishment. Moreover, the Serbian army was very deft in adopting deception tactics in hiding from the enemy. 32 Given the rugged terrain of Kosovo with many regions that had dense forest and mountains, the Serbian army was able to shield its movements, including the movement of its battle tanks. The weather in the Balkans in late March-early April 1999 had a very strong cloud clover that came in the way of precision targeting by NATO bombs. The Kosovo Liberation Force (KLA) though enjoying complete local support did not possess the military sophistication that a NATO ground troop would have possessed in order to facilitate smooth air-ground coordination and achieve victory within a short span of time.

Placed in the same line of analysis, the Indian army had enjoyed support of the Mukti Bahini and the local population. Counterfactually, if India had not send in the army into East Pakistan but only utilized aerial bombing, an area in which India enjoyed superiority over Pakistan at that time according to military records, it would have been a long term engagement with more people killed and the Pakistan army carrying on repression unchecked during the course of the war. 33 That was exactly what happened during


NATO's intervention, which would be more evident when a comparative analysis of both interventions would be undertaken within the proportionality of means criterion.

In the end, to break the Serbian resolve to counter NATO’s attack, NATO had to target Serbian infrastructure that included radio stations to basic facilities like water supply. In Just War terms, this was not justified. The attack was on the regime, not the civilian population. The direct effect that destruction of power grids and water purification plants had on civilian life could be quite high and such indirect military strategy would not even come under the concept of "double effect" that overlooked killing of civilians if they came in the line of fire between two combatants in war conditions. In stark contrast, the Indian intervention did not damage East Pakistani infrastructure. The Indian army adopted the quick 'in and out' strategy and handed over the political reigns to the elected representatives of the East Pakistanis in a span of two weeks. Whereas, NATO, despite enjoying a strong military advantage over Yugoslavia, took more than two months to defeat the Yugoslav army. On that count, the Indian decision makers, the researcher might say so was much more focused and its military commanders ensured that its military strategy resulted in success much before the actual battle. NATO military strategy and its gradual escalation strategy might have had an adverse effect, resulting in more killing than the 10,000 deaths, had it carried on for more time. It’s clear from this study that the Indian intervention satisfied the probability of success criterion, whereas, NATO's intervention reflected a hazy picture and revealed that though possessing a strong upper hand in defence capabilities, a state or organization could actually face defeat if faulty military strategy was adopted.

The Indian intervention was a success story when it came to probability of success criterion because the motivations that India had were different from NATO’s intervention. On a systemic level also, both differed. The influence of the international system on the Indian military planning and design was less than its influence on NATO’s decision making. The international system in 1971 was more interest based and matters of national security concern carried a far greater weightage. India and Pakistan had
conflicting values and interest since 1947 and had already fought two wars by then, in 1947 and 1965. To defeat Pakistan in an all out war would be strategically significant for India’s potential rise as a hegemon in South Asia. Emotions in the Indian army ran high when it came to dealing with Pakistan. So, as the realist would argue, the meticulous planning and clear cut military strategy, backed by an unwavering political will, existed within the Indian political and military establishment to defeat Pakistan in an all out war, and to humiliate it within its own borders was even more strategically significant for India. On the other hand, NATO, being a regional organisation was heavily influenced by the international system which in the post cold war period accepted human rights as an important variable within the structure of world politics. However, if one placed the entire debate within the levels of analysis debate, the influence of the international system was far less on the national level where decisions were taken, keeping in mind the interest and public opinion of NATO member states. Thus, though at a systemic level, mainly in the UN as well as NATO debates at Brussels, it calculated that a quick all out attack would be a solution to stop human rights abuses of the Albanians, at a national and unit level, almost all the NATO member states were adverse to use force as a first resort as well as field in ground troops because they feared that it would have an adverse effect on favourable public support towards the intervention. In India’s case, the military plan was mapped out by Indian commanders, less susceptible to systemic influences and moral rhetoric except perhaps, the influence of their own political leaders. Reverting to NATO again, military commanders led by Gen. Wesley Clark admitted that they were heavily influenced by a set of multiple factors as they had to take into account the interest of all members’ states, debates in the UN Security Council and the high voltage media focus that Kosovo attracted.

Spacio-temporal differences also played their part. Indian intervention occurred at a time when high altitude bombing lacked precision and was most of the time way out of target, whereas, when NATO’s intervened in Kosovo, military technology had changed drastically since the Gulf war of 1991, when Revolution in Military affairs (RMA) completely changed the face of war and high altitude bombing succeeded in hitting targets on the ground on a scale of 10:9:9. Notwithstanding that, since NATO had cited
humanitarian reasons for bombing, it should have ensured a better probability of success. India had cited reversing the adverse flow of refugees and bringing about a safe return of refugees to their homes as its rationale for intervening. The Indian intervention was successful in doing just that with very low cost to lives, and military expenditure. Measured on that scale, the Indian case was more befitting the probability of success criterion than NATO though one might not be able to give a mathematically accurate co-efficient of variance in both.

4.2.2. *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. With regard to this particular criterion, the co-efficient co-variance between the Indian intervention and NATO’s intervention in Kosovo was particularly high. In fact, since, social science theories aims not only at explanation, but also at prediction, the means adopted with regard to two specific case studies that this thesis analyses could actually predict the end result. In the language of Just War, when an intervention is undertaken primarily to undo human rights violations in the target state, the military strategy of the intervening state has to ensure that the destruction to civilian infrastructure as well as collateral damage is kept to the minimum. Yet, when one analyzed both the interventions, the Indian intervention in East Pakistan appeared to have been conducted according to this particular norm of the Just War Theory. It was another matter that the idea of Just War and the concept of humanitarian intervention were not having much influence in those cold war years, dictated as it were by calculations of power and interest. This is also not to say that *realpolitik* has no influence in the present context.
To be honest, it is one of the most dominating paradigms of politics of today, possessing the ability to explain and predict many events in the world of state-craft, globalization and open borders, notwithstanding. Maybe, the world has become even more radicalized now, given the polarization of the world on civilisational terms, especially after the terrorist attacks on the United States on 11 September 2001, which to many heralded the end of the post cold war period that witnessed a rise in the rhetoric of human rights culture. Coming back to the Indian intervention, many critics of a Just War approach in analyzing the Indian intervention, would state that it could not qualify under the Just War paradigm as India’s decision to intervene in East Pakistan was taken keeping, its own national interest in mind. This, however, does not detract from the fact that the means adopted by India in conducting the war in East Pakistan achieved a victory within a short span of time with very less damage and deaths, be it to the Indian military or the East Pakistani civilians. The air-ground combination proved successful against the Pakistani army, who was not only hampered in its movements within East Pakistan due to a hostile population, but also due to lack of speedy reinforcement, given the geographic separation of the East from the West. It proved logistically impossible for the Pakistan army divisions to be air lifted or shipped to East Pakistan from West Pakistan within a given time period. The Indian military had good intelligence about Pakistani army positions in East Pakistan as well as the number of troops that they had to encounter in the war zone. The Indian military command also had a fair idea of Pakistani defence equipment and that worked in their favour. That the Indian intervention was able to save lives on a larger scale than the number of lives killed due to the use of force, justified the Indian intervention within the proportionality of means maxim.

In contrast to that, NATO violated the proportionality of means maxim. It appeared clueless in the first week of its bombing Serbia, as in retaliation to its use of force; the Serbian army increased its attack on Albanian civilians. Air power failed to prevent the ethnic cleansing that prompted western leaders to act in the first place.\(^{34}\) The violence on the ground in Kosovo increased manifold immediately after the bombing. Before NATO’s bombing on 24 March 1999, 2,500 people had died in Kosovo’s civil war

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. 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. 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...” Looked at from the point of view of classic battle strategy, NATO’s war in Kosovo was a resounding success as many air power enthusiast would have us believe. NATO was able to defeat the Yugoslav army without a single casualty. 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” 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”. If one analyzed wars and battles within a completely historical narrative and took Kosovo as a case study, it was, without doubt, the most successful battle strategy of all times. But, what was it that made Kosovo so messy in terms of military strategy and measure up less than the Indian intervention in East Pakistan with

35 See Mandelbaum, n. 24, p.3.
37 Wheeler, n. 23, p. 284.
regard to the proportionality of means criterion? The answer at a theoretical level is very clear.

Just Wars are conducted with the least damage to civilian infrastructure and lives. The means used in a particular war must not be such that it caused damage disproportionate to the final outcome of the battle. NATO waged war in Kosovo with the stated motive of ending human rights violations to Kosovar Albanians. As mentioned in the section before this, it failed in doing just that. As NATO was involved in a virtual war than kept a distance of nearly 17,000 ft between its airplanes and the Yugoslav forces on the ground, it was not in a position to keep track of Yugoslav force movement on the ground. 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 anticipated the vicious approach that Milosevic would adopt, as well as the terrible efficiency with which he would carry it out”.40 Taking the Indian intervention as a cue to future interventions undertaken to stop refugee flow and stop state repression of its own citizens, NATO should have realized that having intervened in Kosovo with the purpose of ending human rights violations in mind, it would have been impossible to stop a powerful Yugoslav army; deft in the tactics of deception against air power bombing, no matter how precise and accurate that bombing was, without fielding in ground troops. A strong NATO ground contingent enjoying local support and better quality defence equipment (a situation similar to India where the local population was behind the Indian army’s onward march in East Pakistan territory) would have been successful on two counts, first, stopping further Serbian repression of the Albanian population and second, grabbing a quick victory.41

Placing both interventions in the same line of argument with regard to battle strategy, NATO failed exactly in the same context in which India succeeded. India had stated that reversal of human rights violations, political independence to the East Pakistanis and

41 Fareed Zakaria, “Wage a Full War or Cut a Deal”, Newsweek (New York), 12 April 1999, p. 44.
reversal of a huge refugee flow into India as its objectives of intervention and the war means justified the end. The cost of war did not overweight the end result. The Indians exited within the span of a month from East Pakistan. The Indian strategy of an all out military thrust proved successful. In Kosovo’s case, NATO adopted the gradual escalation strategy even after months of diplomatic engagement with Milosevic failed to bring him around on his Kosovo policy. Till the first week of bombing, NATO commanders miscalculated that Milosevic would capitulate. The UK and US were firm that NATO would not use ground troops. In January 1999, the British Prime Minister Tony Blair had told Clinton “ground troops could not be used to fight a war”. On 24 March 1999, President Clinton declared that he did not “intend to put our troops in Kosovo to fight”. The “no ground option” adopted by NATO brought it in direct conflict with the values that they were espousing for 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”. 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. To be fair to NATO decision makers, NATO did not enjoy the advantage of familiar neighbouring terrain to the war zone and it would have required moving around 50,000 to 60,000 troops from those areas into Kosovo. The neighbouring countries of Albania and Macedonia did not have logistical capability and infrastructure that would have helped a smooth and fast movement of such a huge troop that NATO

42 Quoted in Daalder and O’Hanlon, n.18, p. 96.
43 Address by President Clinton to the nation, White House, Office of the Press Secretary, 24 March 1999 available at www.usia/dept/state/presidentaddress/Kosovo/24march/99/htm
was considering, towards the later days of the war. India did not have to take into account such factors as East Pakistan and India had a common border and Indian troops were already stationed in the borderlands. Moreover, moving troops within one’s own country to the border was not so difficult, but accomplishing that in terrain, though friendly, was unknown to NATO military commanders, would have proved difficult, given the mountainous borderlands between Albania and Kosovo.

Getting into the threshold of the Just War Criterion of proportionality of means, since NATO was fighting a war for safeguarding values and not in any of its member states’ national interest calculation, it should have done more homework on troop movement and should have realized that the ‘no ground option’ would free Milosevic of the strategic fear of engagement on the ground. He could also carry out with impunity human rights violations of Albanian Kosovar, with the hope that more Kosovar deaths after a NATO intervention, would cut into the support base of the interventions in NATO states. Given that, India was a much neater intervention within the mapping of humanitarian interventions, especially in a comparative mode with NATO’s intervention in Kosovo. To state matters succinctly, India qualified as a humanitarian intervention within this particular criterion, whereas, NATO failed.

(2) Discrimination and Non-Combatant Immunity:

Within the Just War Theory, the criterion of discrimination and non-combatant immunity states that in war or any combat engagement, military strategy of either side must make sure that they do not target civilians in war. Important to keep in mind is that civilians, who get killed in the line of fire, are overlooked under the concept of “double effect” or more recently, the concept of ‘collateral damage’. It means that, since the intention of the combatants is not to kill them, it is justified. Placed within this criterion, India’s intervention in East Pakistan was justified. The ‘two weeks’ war was conducted according to the norms of military strategy, with an excellent co-ordination, between the

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army and the air force. The Indian military was also helped by local intelligence that kept
them informed about the position of the Pakistan army. Most importantly, the local
Bengali population was warned beforehand about the site of potential battles so that they
could relocate to safer zones. That helped in keeping the civilian deaths at a level
commensurate with the overall good at the end of the war.46

In Kosovo, the means adopted by NATO in its battle strategy to defeat the Yugoslav
violated the Just War criterion of both proportionality of means and discrimination. As
NATO did not use ground troops, it was not successful in stopping Albanian deaths at the
hands of the Serbian army. NATO planes targeted civilian infrastructure to get at the core
of the Serbian support base for Milosevic and weaken his resolve to continue the war.
Had the Kosovo war been an all out war that was bent at defeating the Yugoslav state and
its people, such means were justified according to the war convention, under the realm of
necessity. But since, this was a humanitarian war, whose primary aim was to protect
civilians, targeting of civilian targets revealed a lack of discrimination on the part of
NATO warplanes. 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. 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 targeting was the bombing of a convoy of
Albanian refugees on 14 April 1999, killing seventy-five civilians, mistaken to be an
armored column.47 Around April-May, 1999, NATO had also started bombing civilian
assets like television and radio towers, oil refineries, 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.48 There was a diplomatic catastrophe with the accidental bombing of

46 See Walzer, n. 9, pp. 105-108. Also see Wheeler, n. 23, pp. 42-43 and Sumit Ganguly, “India-Past,
Present and Future”, in Seliq S. Harrison, et al., India and Pakistan-The First Fifty Years (Cambridge:
47 Human Rights Watch, “Incidents Involving Civilian Deaths in operation Allied
Force”, February 2000 at
48 Mandelbaum, n. 24, pp. 2-8.
the Chinese embassy in Belgrade on 7 May 1999.49 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.50

In the concept of Just War, cutting off vital civilian supplies, targeting of hospitals and civilian infrastructure in order to ensure victory reflected a lack of discrimination on the part of the intervener. In India’s case, since the war was short and the Indian army was in a position to locate Pakistani troop movement easily, it was able to inflict fatal damages to the Pakistan army. In NATO’s case, the war was fought completely from the air and that reduced the ability to discriminate between Serbian troops and civilians. The NATO campaign in Kosovo was, however, significant because civilian deaths caused by the bombing did not exceed 500 deaths.51 However, what disqualified NATO’s intervention in Kosovo and justified the Indian intervention in East Pakistan was the fact that NATO had damaged the Yugoslav civilian infrastructure completely, whereas, India did nothing of that sort. Critics of this line of argument might state that NATO bombing utilized precision guided missiles and was successful in keeping civilian deaths at the minimum, but then the jus in bello criteria of proportionality of means, discrimination and non combatant immunity are not separated from each other in any analysis of war or intervention. Both the criteria have to be fulfilled. The means adopted in war automatically resulted in the ability of the intervening state to fulfill the condition of discrimination. Without ground troops, NATO could not hope to pursue its first objective, that of reversing the Serbian state policy of killing Kosovar Albanians, which in fact increased after bombing started. NATO’s policy of bombing Serbian military positions that was close to civilian habitats was deliberate and saw civilian deaths and could not be termed as collateral damage, as such events were foreseeable. In view of this study, NATO’s intervention could not be justified in the context of jus in bello. The Indian intervention qualified on both counts.

50 See P.Bishop, “UN Chief Warns NATO on Bombing”, The Telegraph (London), 5 May 1999 available at www.telegraph.co.uk
4.3. Conclusion:

Given the complexities of the world of social science, a theory that seeks to explain events in the real world is best judged, not by some abstract principles, but by its purpose, that is to bring order and meaning to a mass of phenomena, which without it, would remain disconnected and unintelligible. In short, is the theory consistent with the facts and within itself? In carrying out a comparative analysis of India’s intervention in East Pakistan and NATO’s intervention in Kosovo, the explanatory power of the Just War Theory is in evidence. It shows the consistency of the theory within itself, the natural linkage between the criteria of the theory, that are *jus ad bellum* and *jus in bello* and their ability to explain and predict contextual events in course of the two interventions, be it positive or negative. When any the two interventions failed to qualify under any of the criterion that the theory has set up as bench marks for justifying an act of humanitarian intervention, it informs policy makers as to what acts do not come under the concept of justness in war and have to be avoided in future humanitarian interventions. Social science is also about being specific in one’s perceptions and by implication, theoretical study has to be balanced by empirical cases, which in comparative methodology, possesses the capacity to explain and predict human actions across time and space. In this study, the cases compared are located in different time zones, and the theory accounts for structural as well as unit level differences between them with regard to the changing character of international politics. Both the interventions are compared within the method of structured focused comparison, the thrust of which is to look for intersystemic similarities and intersystemic differences. Falling within the “most similar system design”, that to many social science researchers, constitutes the optimal samples for comparative enquiry, the Just War Theory engages in “controlled for” comparison of common systemic similarities between the two cases and tries to explain both cases at the level of systems as well as account for the within case variance between them. The intersystemic differences are taken up as the explanatory variables of important outliers and the realist theory based on calculations of power and interest is also invoked.

Though a statistical analysis based on large $n$ is not possible in a normative study, the

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researcher could conclude that the Indian intervention is more justified within the Just War Theory than the NATO intervention with the help of a detailed narrative of both the cases within the Just War paradigm. The table below would make it clearer:

Table: 4.1. Comparative Analysis of East Pakistan and Kosovo in the Context of Just War: Scale of Measurement in Qualitative Term

<table>
<thead>
<tr>
<th>Just War Criteria</th>
<th>Indian Intervention in East Pakistan</th>
<th>NATO's intervention in Kosovo</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>jus ad bellum</em> (Right recourse to war)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Just Cause</td>
<td>Justified</td>
<td>Justified</td>
</tr>
<tr>
<td>Right Authority</td>
<td>Justified</td>
<td>Justified</td>
</tr>
<tr>
<td>Right Intention</td>
<td>Mixed results</td>
<td>Mixed results</td>
</tr>
<tr>
<td>Force as Last Resort</td>
<td>Justified</td>
<td>Justified</td>
</tr>
<tr>
<td>Probability of Success</td>
<td>Justified</td>
<td>Unjustified</td>
</tr>
<tr>
<td>Proportionality of ends</td>
<td>Justified</td>
<td>Unjustified</td>
</tr>
<tr>
<td><em>jus in bello</em> (Right conduct in war)</td>
<td>Proportionality of means</td>
<td>Unjustified</td>
</tr>
<tr>
<td>Discrimination and non-combatant immunity</td>
<td>Justified</td>
<td>Unjustified</td>
</tr>
</tbody>
</table>

If one carries out a mathematical count of the number of Just War Criteria that the Indian intervention in East Pakistan meet up to, it amounts to seven out of eight, whereas NATO's intervention in Kosovo qualifies for three out of eight of the variables of Just War. On that basis, the Indian intervention is a better case of humanitarian intervention when analysed from a point of view of the Just War Theory. The Indian intervention also satisfies the crucial *jus in bello* (Right recourse to war) criteria of proportionality of
means, discrimination and non-combatant immunity. Most importantly, placed in a comparative mode, the Just War Theory explains as much of the variance in both the cases and can predict the outcome of future interventions undertaken for undoing human rights violations. A theory is expected to be accurate as well as explain and predict variation to a great extent. In fact, the more variance accounted for by a theory, the smaller is the error of prediction. In the realm of comparative research, this means that the goal of social science theory is to explain given phenomenon as accurately as possible in each social and political system across spacio-temporal barriers.

A theory's most important character is the concept of causality. Causality is the property of a system of variables where i) the dependent variable, in this case, humanitarian intervention is not 'over determined'. Over determination could be tested through the analysis of partial co-relation or partial path co-efficient. Over determination means that social science events are the result of several causes and any one of them could have produced the observed outcome. Most social scientists look for parsimonious explanations to seemingly complex events and assume that those explanations and the strategies based on them would be applicable in a wide range of situations. However, though the method of structured focused comparison is utilized in this study and the ability to "controlled for" is undertaken, the researcher is also aware that the combined effect of two or more factors might have been crucial in the logic of 'multiple causation' that is the final outcome. In the study of the two cases of intervention, the uncorrelated factors have also been tested. Significantly, a detailed contextual narrative of both interventions also proves that the explanatory pattern does not change when tentative new variables are added. For instance, in both cases, the researcher has accounted for the variables of national interest and power as well as the strategic importance of the 'state intervened' to the intervening state or organization. That does explain certain strong linkages, especially in understanding the intent and the overall conduct of war, but significantly, it does not produce much of a variance, when it comes to the contextual analysis of the cases from a Just War angle. Since every nuance and inference that does

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not complement both interventions from a Just war prism is not overlooked, but accounted for, the theory establishes that both cases are not absolutely pure cases of humanitarian intervention. The calculations of power and strategic national interest choices are significant factors in the decision to intervene. One could say that the Indian intervention is neater and much more focused as the state intervened “Pakistan” is an age old enemy and defeating it is in India’s national interest. However, what qualifies the Indian intervention is not only the humanitarian concern for the East Pakistani refugees but the final outcome of the war. The Indians were successful in providing the East Pakistanis with the political choice that they so desired and that was self-determination. In case of NATO, till date, the Kosovars Albanians have been denied the independence that they require to enjoy political and social rights, and significantly, that may be denied to them, once a physical UN presence is removed from Kosovo. Reverse ethnic cleansing of Kosovar Serbs by Albanians is widespread till date.\textsuperscript{55}

In a comparative analysis of both cases, though both the Indian intervention in East Pakistan and NATO’s intervention in Kosovo could be partially justified in Just War terms, yet the Indian intervention appeared to be a more fitting case with regard to the means and end of the war. For any humanitarian intervention in the future, India sets a good precedent. But then, one could not completely undermine NATO’s war in Kosovo. The intentions of NATO might have been benign and sometimes good motives, though they give an assurance against bad policies, does not necessarily translate in the political success of a particular endeavor and might end up undermining the moral intentions that inspires the act in the first place.\textsuperscript{56} From the point of view of this thesis, the Just War Theory succeeds in explaining the factors operating at different levels of analysis and establishes without doubt that Just War criteria is ‘policy prescriptive’ in the realm of humanitarian intervention policies and choices.

\textsuperscript{55} See \url{www.cnn.com/15july2005}. Also \url{www.nytimes.com}

\textsuperscript{56} See Morgenthau, n. 52, p. 6.