

# Was NATO's decision to militarily intervene in the Kosovo War a 'last resort'?

Written by Flamur Krasniqi

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<https://www.e-ir.info/2017/02/11/was-natos-decision-to-militarily-intervene-in-the-kosovo-war-a-last-resort/>

FLAMUR KRASNIQI, FEB 11 2017

### INTRODUCTION

#### Outline

The justification for the North Atlantic Treaty Organisation's (NATO) decision to militarily intervene in the Kosovo War (1998-99), otherwise known as Operation Allied Force (OAF), is a popular debate in political philosophy and international relations. Mainly, this stems from the traditional approach to the discourse, when attempting to explain the justifiability of NATO's decision, which is through the normative philosophical use of the Just War theory (JWT). Under the JWT, NATO's decision to militarily intervene falls under the *jus ad bellum* criteria, which sets out various principles that need to be followed before resorting to the use of force. Naturally, various scholars have held opposing views towards this notion.

One group of scholars, which this paper identifies as "anti-interventionists", claim the intervention as unjust under the various provisions of *jus ad bellum*. Following Noam Chomsky, NATO's use of force was prematurely invoked as it failed to explore all possible diplomatic avenues, as required under the 'last resort' (LR) criterion[1]. By contrast Tariq Ali accuses the United States (US), as *de facto* NATO leader, of pursuing a *realist* driven agenda aimed at maximising geostrategic interests within a post-Cold War Europe in the wake of an increasingly weak Russia, thus failing to satisfy the 'right intention' principle[2]. Other scholars, such as Nigel White, assert that the intervention lacks justification under the 'right authority' as it holds no merit under international law[3]. Principally, the focus has been on NATO's inability, or reluctance rather, in attempting to obtain explicit approval under the United Nations (UN), by way of a mandate.

On the other hand, other scholars, known as "pro-interventionists", challenge such claims. In particular, David Phillips argues that NATO's decision to militarily intervene in the Kosovo War is justified, as its inception was conducted on the premise of a 'just cause': the prevention of mass slaughter and ethnic-cleansing against Kosovo's ethnic Albanians[4]. While others, notably Ivo Daalder, contend that constant Yugoslav violations of various diplomatic efforts aimed at peacefully solving the issue, certifies that the use of force became the only viable alternative in halting Yugoslav President Slobodan Milosevic from continuing acts of ethnic-cleansing. Therefore, NATO's decision satisfies the LR principle[5].

There are significant problems in attempting to assess the justifiability of NATO's decision to militarily intervene in the Kosovo War through a normative philosophical understanding, in particular, the JWT. This is due to the JWT being inherently ambiguous and open to multiple interpretations[6]. For example, the 'right intention' criterion has been subject to divisive interpretation, with Alex Bellamy arguing that a state's intention in going to war should be focused on restoring the peaceful order, which otherwise would have been achieved through non-forceful measures[7]. In contention, Kenneth Waltz maintains that a state's decision in going to war qualifies as a 'right intention' if it has been driven by national interests, such as the attainment of territory or wealth, rather than moral considerations as such notions are inapplicable in an international society which operates on a self-help system[8]. Alternatively, Nicholas Wheeler argues that intention bears no significance, provided that the end result of a conflict corrects the evil which

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has been used as a pretext for war[9]. As such, the ambiguity of the JWT has resulted into much divided and in some cases, opposing interpretations. In turn, this has led to strategic manipulation by different political and scholarly actors for their own perspectives. In relation to NATO's decision to militarily intervene in the Kosovo War, during the build-up of OAF, key Western political figures, chiefly US President William Clinton, argued that Milosevic's constant defiance of the international community's peaceful attempts in reaching a solution meant that force remained the only viable alternative in halting the plight of the Kosovar Albanians[10]. In refute, Russian President Boris Yeltsin argued that all non-military measures, such as the strengthening of the 'outer-wall' sanctions, had not been given enough time to develop into an effective state which would have contributed towards a peaceful settlement[11], therefore disregarding Clinton's claim.

Despite the abundance of existing literature regarding this topic, minimal attention has been given towards subjecting the various scholarly and political arguments which equip JWT as an explanative tool in justifying NATO's decision. For this reason, it is important that research is conducted which addresses this issue, as it will not only serve to distinguish forms of source manipulation but also help to identify which arguments regarding the JWT have been distorted in favour of a particular political or scholarly viewpoint, alongside the ability to determine clearly whether or not NATO's decision to militarily intervene in the Kosovo War can be justified.

## Methodology

This paper will evaluate the existing respective political justifications for and against NATO's decision to intervene in the Kosovo War and determine that, NATO's decision was justified under the LR condition, as Milosevic continuous undermined the Alliance's non-forceful efforts in dealing with the situation, thus leaving no alternative but the use of force. Out of all the principles of *jus ad bellum* (outlined in Chapter One), this research will only focus on the LR principle for a multitude of reasons. Chiefly, according to many scholars, including David Chandler[12], the LR principle is of most significance. The reason being is, while there may be instances where there is a strong case for war under the 'just cause' principle, such as self-defence from aggression, alongside the fulfilment of all the other criterions, hence a war is 'just', the decision to go to war may still not be prudent.

There are two main ways of attempting to verify the different arguments. Firstly, in certain debates which lack the grounding of facts or evidence, the arguments will be subjected to historical and political contextualisation, either in accordance to previous historical occurrences or the subjection of the same political figures in previous situations. This is so that background information can be achieved which may help provide context to certain perspectives. Secondly, this research will subject certain arguments which do rely heavily on facts and evidence, to evidence provided by an independent party. This is because evidence which has been provided by either of the parties involved may have been victim to malpractice. Therefore, evidence which has been provided by a third party stands having more integrity. As such, this research, as oppose to indulging in a debate regarding the leading literature review on the topic, will discuss the different interpretations of the LR principle in Chapter One and in regards to the normative philosophical use of the theory, it will address and scrutinise literature concerning NATO's involvement in Kosovo in conjunction to analysing it, throughout.

## CHAPTER ONE: INTERPRETATIVE DIFFERENCES

### The Just War theory

The JWT is rooted in moral Catholic theology and principally based on the presumption that binds all Christians together: no harm shall be inflicted upon your neighbour[13]. Saint Augustine suggested that pacifism, in a situation where the use of force became the only viable manner in which to halt evil and restore peace, was a sin in itself, as Augustine identified peace as a crucial requisite towards the advancement of human purity and a closer relationship

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with God[14]. This is a result of Augustine believing that only a stable society can host an organised Christianity which will enable the individual quest for divine redemption[15]. Centuries later, Thomas Aquinas elaborated on Augustine's work, arguing that as all life is precious, the uncontrollable devastation and destruction that war brings, merits the necessity that the resort to war be evaluated, so that certain wars can be avoided and ultimately lives can be spared[16]. Subsequently, Aquinas established the *jus ad bellum* criteria. Within this condition, Aquinas outlined three major principles which are to be adhered to, before one resorts to the use of force: '*just cause*', '*right intention*' and '*legitimate authority*'. All three principles were established with the aim of limiting the chances for waging war[17]. Since Aquinas' writings, the *jus ad bellum* criteria have been subject to increased attention by scholars and religious theologians alike. A major focus by such thinkers has been the development of additional principles which seek to further limit the instances of going to war. These conditions are: '*reasonable chance of success*', '*proportionality*' and '*last resort*'.

## Last resort

The LR principle is based on the assumption that war is the greatest evil. This is primarily due to the devastating nature of conflict, to which Carl von Clausewitz argued often leads into a 'fog', where truth and trust are frequently the first victims of war[18]. In other words, due to the uncontrollable nature of warfare, atrocities are often the products of war. So, in order to avoid such 'casualties of war', all non-forceful means must be attempted first before the lives of soldiers and inevitably civilians are put at risk. This is evident in the contemporary era, where the levels of destruction caused by modern weaponry technology, are capable of quickly transpiring a conflict into unintended and undesired levels of devastation in a very short time. This notion was particularly expanded upon after the end of World War Two, so to avoid the world from witnessing acts such as the Holocaust again. As a result, conditions of the LR principle have been instituted in international law today, under the UN and customary international law[19].

Yet, there are problems with the LR principle. Mainly it's because of the ambivalent meaning behind the term 'last', for which many political figures and scholars alike, have easily appropriated and misused for certain political gains. There are two different interpretations of the LR principle, all of which have been at the centre of the Kosovo debate also.

## Stringent last resort

The first interpretation, as advocated by thinkers such as Eamon Aloyo and Helen Frowe, adhere to the account, of which this paper has identified as 'stringent last resort' (SLR), which entails the LR principle in being interpreted as a measurement of time for when force is permitted. In other words, this is focused on the time one should wait before she/he resorts to the use of force. Naturally, the perceived time frame may differ for everyone, particularly on a case-by-case basis.

For Frowe, this means the exhaustion of all non-forceful means in resolving an issue, such as, economic sanctions, trade blockades/bans, arms embargoes and other forms of diplomatic pressure[20]. Simply exploring these non-forceful means is not enough, as their exhaustion is paramount to the adherence of the LR principle, which is to restrict the occurrence of force by avoiding unnecessary acts of force. In elaboration, Aloyo suggests that non-forceful means are not to be withdrawn whilst in dialogue with an aggressor for various reasons. Firstly, numerous non-forceful means require time for their effects to take place, such as economic sanctions which take effect in the long term. Secondly, certain actors may be of such evil that removing restrictive conditions may enable them to return to their acts of violence[21]. As a result, that specific actor may then grow stronger as a direct consequence of their alleviated condition(s)[22]. Ultimately, this would require the use of stronger force, such as an increase in troop levels or the use of stronger weapons. Either way, this would almost certainly lead to higher levels of destruction than previously envisioned, including the further loss of life. In addition, Laura Sjoberg has enforced Aloyo's point by arguing that non-forceful efforts are not to be restricted to non-coercive measures and as such, may include the threat of force itself[23]. The best example for this is Neville Chamberlain's 'appeasement' of Adolf Hitler following the Munich Agreement (1939). As put forth by Winston Churchill, if European powers (Great Britain and France) were to have stood a firmer ground and willing to deal with Hitler and his expansionist tendencies before the invasion of Poland, fewer lives may have been taken as a result of a smaller war having been waged, if one at all, rather than the

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one that followed[24].

Regardless of how plausible the SLR interpretation may seem, there is a stark amount of criticism towards this interpretation. Notably, Michael Walzer, has argued that one can never know when he or she has achieved 'lastness', as arguably, we are always able to try other means in order to achieve a solution[25]. Ironically, this would determine the JWT redundant, as John Lango argues that this equates the LR principle to a horizon, whereby it is always there in the distance but never reachable[26]. As such, this would lead one to assume the pacifist interpretation of JWT, which rejects the use of force under all accounts. In support, Reinhard Merkel argues that there can be no morally acceptable justification for causing suffering towards a handful of individuals, even for the purpose of alleviating millions from tyranny[27]. Paradoxically, this would render the LR principle completely impermissible, as it rejects any notions where force is justified.

However, this cannot be a viable interpretation of the LR principle. Not least because in principle it rejects the foundation of the theory itself but also, as the use of non-force in resolving an issue may actually cause or at least allow the occurrence of further injustice than the act of war itself[28]. Take the inclusion of sanctions as an example. If regime X is inflicting mass human rights violations against a specific sector of their population, say group Y, sanctions against regime X may not necessarily impede their immediate cessation of violence against group Y. As a result, regime X is able to still inflict violence against group Y. Therefore, at least within the immediate time frame, the exhaustion of non-forceful means may have limited success. During which, an aggressor (regime X) may have inflicted far more injustice against the targeted victim (group Y). In this occasion, albeit morally hard to accept, war may have caused less injustice than the continued pursuit of non-forceful means, at least numerically.

Incidentally, this was demonstrated during the Bosnian War of Independence (1992-95). Whereby, various European Union (EU) sanctions and UN Security Council Resolutions (UNSC/Res), UNSC/Res 713 (1991) in particular, pursued various non-forceful means, chiefly arms embargoes, sanctions and trade bans, against the Socialist Federal Republic of Yugoslavia (SFRY) in 1993, so to put an end to the conflict[29]. Still, the Bosnian Serb forces (VRS) were able to conduct their acts of terror against the Bosniaks (Muslims) and ethnic Croats. This showcases that the exhaustion of non-forceful means is not always the ideal way to solve a situation. In support, Alexander Hinton has argued that, the international community's pursuit for the exhaustion of non-forceful means was a leading factor which enabled the VRS to perpetrate various mass atrocities and war crimes, including the Srebrenica Genocide[30] which claimed over 7,900 lives. This is due to sanctions having no immediate affect against the VRS' capabilities.

## Necessary last resort

Opposing scholars, notably Aidan Hehir, Brian Orend, and Walzer[31], are in opposition to the SLR interpretation. These scholars discredit the notion that the LR principle follow a time frame based narrative. Rather, LR should follow what this paper identifies as 'necessary last resort (NLR), a logistical assumption: the moral obligation that one explores all other non-forceful means before resorting to the use of force. In direct opposition to SLR, precisely for instances such as the Bosnian example, NLR, as argued by Jeff McMahan, advocates that in certain circumstances it is necessary that force is used in order to achieve the 'just cause'[32]. In other words, if force is deemed to be the only successful method in resolving an issue, its use is thereby permitted. In comparison, with reference to the Bosnian example again, the UN sanctions which were pursued, NLR would deem them unnecessary as, if the situation merited immediate attention in order to save the lives of people, say the Srebrenica victims, non-forceful measures such as sanctions are not required to be exhausted, thus war would be permissible. Furthermore, NLR requires that we only explore the avenues which stand a reasonable chance of success. This is in part due to the need to make limited resources as efficient as possible. Although, mainly its so that time is not wasted in pursuing methods which do not stand a chance of success, as that time wasted further victims could have lost their lives[33].

Yet, even within NLR, there are major objections to its interpretation. The understanding that states are not to pursue non-forceful means which bear no rate of success, Lango argues that this possesses problems for the 'last resort' condition, in particular, epistemological limitations to individuals, which as humans we find it challenging to determine when the needed forceful or non-forceful measures in achieving a 'just cause', are successful[34]. By that, Lango

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means that even if all conditions which did not have a reasonable chance of succeeding were eliminated, it is still hard to determine what will suffice in achieving the 'just cause'. This may be the result of numerous reasons, principally a policymaker's imperfect knowledge of a situation[35]. So, if both, forceful and non-forceful means in resolving a conflict have an equal chance of success, NLR would still require us to pursue the non-forceful methods, even if the use of force is projected to save a greater number of lives[36]. Another critique is that in such instances, actors may be liable to abuse cases of LR in favour of certain war aims under the rhetoric of 'all else failed'. Sjoberg enforces this perspective by suggesting that policy makers are able to claim the standard of LR has been met even though war may be their first policy[37].

## **Different types of force**

It should be underlined that even within the definition of force, there are several different interpretations. Firstly, the most common understanding of force is the use of physical potency by one party, against another[38]. Other scholars advocate that force is not restricted within the physical paradigm. Rather, it can also encompass other forms such as psychological or emotive forms[39]. In terms of inter-state activity, which is what war is identified as[40], this can encompass non-direct military means such as, sanctions, arms embargoes, trade blockades and so forth. Illustratively, Egypt's 1967 blockade of the Straits of Tiran against Israel, highlights both interpretations. The trade blockade was sustained through Egyptian military means, thus satisfying the first interpretation of force. The trade blockade also restricted Israel's economic development as the blockade disabled Israeli trade, leaving Israel weak economically, as over 90% of Israel's trade was done through shipping of which 40% traveled through the Straits of Tiran alone[41]. This had a great impact on Israel's economy, creating 10% inflation and subsequently becoming a leading factor for the Israeli attack on Egypt on June 5<sup>th</sup>, 1967 in what became the Six-Day War. Therefore, this also satisfies the second interpretation.

For the purpose of the reader, this paper shall abide by the first and most restrictive meaning of violence: physical use of force. This is due to a multitude of reasons. Partly, it is because the first term applies closer to our personal instincts of what force means, thus making it easier for the reader to understand the different arguments set out in this paper. However, mainly this is due to the International Commission on Intervention and State Sovereignty (ICISS) conclusion on the use of force. In the paper published in 2001, the ICISS concluded that all coercive measures, including economic and political sanctions which are deemed by some as a form of force, be attempted before the invocation of direct military force[42]. Thus, the ICISS' decision rejects the psychological and emotive interpretations of force and further identifies that physical force should only be resorted to once all diplomatic means are attempted first.

As such, this paper has already demonstrated the inherent ambivalence of the LR criterion from a normative philosophical perspective, hence, emphasising the paper's importance to the current literature. For the remaining two chapters, the paper shall address the different interpretations of the LR in conjunction to the arguments surrounding NATO's decision to militarily intervene in the Kosovo war and whether or not, it satisfies the LR principle. Then specific focus of each chapter will be outlined in their respective outsets.

## **CHAPTER TWO: THE KOSOVO 'ISSUE'**

This chapter will analyse the different arguments surrounding NATO's use of non-forceful means in dealing with Milosevic prior and during the early stages of the conflict in late 1998 until the Racak 'incident' (15<sup>th</sup> January, 1999). In order to scrutinise the various arguments, this paper will subject them to two different forms of verifiability tests. Firstly, certain arguments will be subject to historical and political contextualisation. Contextualisation is the ideal method to verify opposing arguments in instances where the debate is not reliant on facts and evidence but on scholarly and/or political opinions[43]. In these circumstances, providing context through the comparison of historical and political situations, remains the only option as such contextualisation will help to provide substance to the

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different perspectives. For instance, in the debate surrounding the UN Special Envoy, Richard Holbrooke's threatened use of force against Milosevic during the October Agreement (OA), many anti-interventionists argue that the threat of force was not a viable method for securing a non-forceful end to the Kosovo issue, as Milosevic had been pressured into an agreement. Meanwhile, pro-interventionists argue the opposite, Holbrooke's threats were reminiscent of NATO's successes in dealing with Milosevic during the Bosnian War, of which brought Milosevic to the negotiating table.

Secondly, in cases where the reliance of facts and evidence is crucial, this paper will subject opposing arguments to evidence derivative of a third and/or independent party, preferably one with little to no interests in the Kosovo conflict. This is vital, as evidence which has been supplied by a party involved in the conflict may be victim to malpractice for the benefit of a certain perspective. Whereas, evidence supplied by an independent and uninterested source is more likely to hold integrity. To exemplify, in this chapter, the Racak incident will be extensively analysed. Due to the sensitive nature of the incident and the importance of it to NATO's overall decision to intervene in the Kosovo conflict, renders evidence provided by opposing factions involved prone to possible strategic temperament and/or manipulation.

## The October Agreement

In an address to the British Parliament in 1998 the United Kingdom's (UK) Foreign Secretary, Robin Cook, defended NATO's decision to intervene in the Kosovo war on the basis that the Alliance had pursued every non-forceful method in resolving the conflict. Yet, Milosevic's continued deviance to such efforts fostered the necessity for the use of force[44]. In support of Cook, Howard Clark focuses on Milosevic's disobedience towards the OA as evidence that NATO had no other option but to implement the use of force, so to deter the ongoing violence against ethnic Albanians[45]. The OA was a diplomatic settlement between US Special Envoy to the UN, Richard Holbrooke, and Yugoslav President, Slobodan Milosevic, to re-stabilise the situation in Kosovo. The OA was not conveyed for the purpose of reaching a decision on the permanent legal status of Kosovo, as evidenced by the agreement's draft peace proposal which specifically called for an interim period of three years. This is so that a substantive amount of time could be dedicated towards 'confidence-building' measures, such as the establishment of democratic institutions and the holding of free elections which would allow Kosovo to return to normal life and perhaps become more intuitive for the conflicting groups to solve their differences through ballot boxes rather than on the battlefield[46]. Nonetheless, the OA stipulated a number of terms. Of most significance: the establishment of a ceasefire between the KLA and the Yugoslav federal forces which was to be monitored by the Organization for Security and Co-operation in Europe's (OSCE) international civilian unarmed monitoring group, the Kosovo Verification Mission (KVM), the return of Yugoslav federal forces to their stationing barracks and Milosevic's guaranteed safe return for the already 180,000 confirmed refugees[47].

## Non-forceful measures before and during the October Agreement

NATO had pursued numerous non-forceful measures in resolving the conflict prior and during the OA, both unilaterally and multilaterally. Unilaterally, the US, under President George H. Bush, in what became the 'Christmas Warning of 1992', issued a statement to Milosevic that continued repression against Kosovar Albanians would be met with a US military response[48]. Even under President Clinton, as early as 1995 after the Dayton Peace Agreement which ended the conflict in Bosnia, the US refused to remove the 'wall of outer sanctions' against Belgrade amidst growing 'excessive Serbian control' over Kosovo[49]. Multilaterally, the US supported the Milosevic-Yeltsin Agreement (1998), setting out a nine-point plan for peace, which included the redeployment of Yugoslav federal forces to their stationing barracks, a ceasefire, and the sponsoring of Russia's proposal for the instatement of an international unarmed civilian monitoring body, the Kosovo Diplomatic Observer Mission (KDOM). Furthermore, the US drafted two successful United Nations Security Council Resolutions (UNSC/Res) that issued further international sanctions and trade bans on Yugoslavia (1160 and 1199) due to their continued repression against Kosovar Albanians[50]. Furthermore, non-forceful measures were not restricted to coercive means. In 1997, the US and the EU offered \$10,000,000 in financial aid so to fund the Education Agreement between Milosevic and Rugova [51]. In 1998, the embassies of Germany, UK and the US funded the Swedish lead *Riininvest Research Report* which aimed to provide institutional guidance for the revival of Kosovo's economy for all citizens, as Clinton argued that this

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was a leading factor to the conflict which had been scapegoated by various individuals (Milosevic) for political gains, by blaming opposing ethnic groups[52].

During the negotiation of the OA, NATO, personified by Holbrooke, encompassed various non-forceful measures in reaching a peaceful solution. Particularly coercive measures were used, such as the Activation Order (ACTORD) by NATO Secretary General, Javier Solana, which ordered the commencement of air strikes within 96 hours if an agreement failed to formulate[53]. During the meeting, Supreme Allied Commander Europe (SACEUR), General Wesley Clark, also threatened Milosevic by saying "Mr. President, I have unmanned monitoring planes on one hand and B52 bombers on the other, it is down to you on which ones I use"[54]. Consequently, General Clark's threat was clear evidence that the Alliance was committed to reaching an agreement over Kosovo. While James Headley also argues that the ACTORD was symbolic that NATO's resort to force was ultimately all down to Milosevic's compliance[55].

In opposition, Russian Military General Leonid Ivashov argued that in the case of a failed agreement Russia would still reject NATO's decision to use force, claiming that it would not be permissible as Milosevic had basically been under duress throughout the negotiation and the threat of force by the most powerful military alliance in the world would naturally lead one to concede to any demands[56]. As such, Ivashov argued that more time needed to be invested into the actual negotiation itself without the invocation of threats. Under the Vienna Convention on the Law of Treaties coercive tactics such as the threat of force are not permitted in reaching agreements and if used an agreement is nullified[57], thus supporting Ivashov's position.

However, rather than presuming the ACTORD as a violation of international law, Clark argues that it was reminiscent of the Alliance's approach in dealing with Milosevic throughout the conflict in Bosnia, in what was termed as 'NATO's lessons from Bosnia'. Amidst growing Serb atrocities, NATO threatened the use of air-strikes in February, 1994, so to enforce UNSC/Res 713, 721 and 724, which called for the cessation of Yugoslav military operations against Bosniaks and ethnic Croats[58]. Similarly, the ACTORD of 1998, as Clark would have us believe, was used to enforce UNSC/Res 1160 and 1199 which demanded the cessation of federal military operations against Kosovar Albanians[59]. In support, President Clinton's National Security Advisor, Anthony Lake, argued that there very few cases exist where "power divorced from diplomacy has ever worked"[60].

As the evidence above outlines and in relation to the broader aim of this paper's main thesis, NATO (mainly the US) attempted various non-forceful means in resolving the Kosovo issue. This was achieved through coercive and non-coercive measures in an attempt to force Milosevic in recognising the cost-benefit analysis of a NATO intervention, as highlighted by the ACTORD and more directly by General Clark's threat. Also, NATO did not limit itself in unilaterally dealing with Milosevic which may have reciprocated disobedience, as argued by Noam Chomsky who contends that doing such would have presented the US as a colonial power attempting to enforce their will upon Yugoslavia[61]. In fact, the US attempted to avoid such images by attempting to explore all methods in resolving the Kosovo issue, such as drafting of UN resolutions as a means of displaying respect for international law[62]. Furthermore, the US even included Yugoslavia's allies (Russia) in dealing with Milosevic, so to not present themselves as the new global superpower attempting to assert its will in a post-Cold War era which saw the US assume the position of global hegemon.

In addition, the Alliance attempted to deal with Milosevic over Kosovo from as early as 1992. In that sense, Milosevic had at least six years to reconcile over Kosovo, which Clark argued was enough time[63]. Thus, Clark suggests that NATO's non-forceful means in dealing with Milosevic satisfy the SLR interpretation of the LR principle. However, Ivashov's opposition contends that the OA fails to satisfy the SLR interpretation, as NATO needed to have vested more time into a non-coercive approach in dealing with Milosevic. Clark and Ivashov's disjuncture reflects Walzer's initial argument that one is never able to conceive when she/he has achieved 'lastness', as we can always try further methods to non-forcefully resolve an issue. On the other hand, the wide range of diplomatic measures used supports Ayolo and Lango's perception of exhausted non-forceful means at least logistically, therefore satisfying the NLR interpretation. Therefore, firstly one is able to identify the different strategic manipulations which have been used by various political and scholarly figures as a result of the LR's inherent ambiguous meaning. Secondly, the reliance on measures by NATO which had been used against Milosevic before, such as the ACTORD, highlights the

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appropriateness in the use of contextualisation when attempting to *verify* the opposing arguments.

Furthermore, the use of coercive methods, such as the threat of force and the ACTORD by Holbrooke is reflective of Sjøberg's argument (see Chapter One), which sets out that the instatement of coercive measures, including the threat of force, are legitimate in not only pursuing non-forceful means but also in the actual adherence of the LR principle. Thus, vindicating Lake's argument and ultimately legitimising NATO's ACTORD. Hence, the failure of all these different non-forceful methods underlines Cook and Clarks' arguments that Milosevic constantly disregarded NATO's efforts in peacefully solving the Kosovo issue, therefore requiring the use of force so to alleviate the hardships of the Kosovar Albanians. Thus, adding further legitimacy to the claim that NATO satisfied the LR principle, at least under the NLR interpretation.

### Negotiation delegates

While the above section addressed the non-forceful methods used prior and during the OA, much of the discourse also centres on the actual negotiation of the OA. In particular, the focus is on the delegates in attendance, or lack thereof. For anti-interventionists, notably Ted Carpenter, the USA's, as *de facto* NATO leader due to their leading logistical role in OAF, involvement in the OA is heavily criticised. Specifically, Carpenter argues that OAF cannot be justified under the 'last resort' criterion, as their unwillingness to include a Kosovar delegation, from neither the *Ushtria Çlirimtare e Kosovës* (Kosova Liberation Army) nor from Ibrahim Rugova's *Lidhja Demokratike e Kosovës* (Democratic League of Kosovo) is clearly a failure to pursue all diplomatic options[64]. Indeed, the absence of any Kosovar delegation makes it difficult to comprehend how the US envisioned a successful peace settlement without the participation from one of the parties involved.

However, under closer contextual analysis of the separate Kosovar delegations, the US's unwillingness, or rather inability, to include either party is understandable. On the one hand, Milosevic refused to negotiate with the guerrilla movement: the Kosova Liberation Army (KLA), whom he considered terrorists[65]. In support, Russian President, Boris Yeltsin, also advocated for a Moscow held summit between Milosevic and Rugova in order to reach a peaceful solution to the conflict, with respect to Yugoslavia's territorial integrity[66]. The US, until early-1998, considered the KLA a terrorist faction with links to various Middle-Eastern Islamist groups and European drug smuggling cartels[67]. To now endorse them as official representatives not only endangered discouraging Milosevic from participating but also risked damaging US-Russo relations due to Moscow's own separatist struggle in Chechnya. Therefore, including the KLA would have been legitimising the use of terrorism as a method for achieving political ambitions. Russian endorsement of the OA was important for NATO in securing a deal with Milosevic, as it had been Russia who persuaded Milosevic to attend negotiations in Dayton (1995)[68]. Based on the above, incorporating the KLA into official talks was not an option in 1998, thus Holbrooke's decision to not do so is understandable.

In turn, incorporating the Democratic League of Kosovo (LDK), which was the pacifist movement that won various Kosovo underground elections in 1990, 1994 and 1998 also posed major objections. Mainly, the LDK's agenda, which in 1998 was still the enhancement of Kosovo's autonomy within a federal Yugoslavia (to Republic status), was in direct opposition to the KLA's aim of complete independence[69]. This was problematic, as the failure by Rugova's pacifist movement in providing any results 'on the ground', which were to alleviate the Kosovar Albanians from Yugoslav violence, contributed to the loss of public support, both in the diaspora and domestically. As a result, KLA's method of armed struggle became a more viable alternative. This is evidenced by the increase in financial support for the KLA amongst the Kosovar diaspora under the so called *Venlindja Therret* (Homeland Calling Fund). By the time of the OA, more than 85% of funds were funneled into the KLA for training, equipment and logistical purposes[70]. Previously, diaspora remittances had been diverted to LDK shadow institutions. Furthermore, prior the emergence of the KLA in 1997 Rugova had won the shadow elections of 1990 and 1994 with a rate of 92%[71]. Amidst growing KLA popularity, political representative of the insurgency, namely Adem Demaci, called for the boycott of the 1998 underground elections mainly due to Rugova's continued belief that Kosovo should only be given enhanced federal status. Incidentally, Rugova received 80%. Albeit still a high majority, it was by no means as much as previous elections. This change of trajectory in financial and electoral support is some indication of Rugova's loss in public support amongst Kosovar Albanians. Despite the overwhelming majority of 80% votes for Rugova, incorporating the LDK in official talks over the future of Kosovo held no logical imperative, as any decisions reached may not have



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been accepted by all Kosovar Albanians. Even if the LDK was accepted, there was no guarantee that the KLA would seize its operations for any results short of complete independence[72].

Under these circumstances, incorporating one Kosovar delegation into the official peace negotiations posed igniting to many different factors which ultimately risked derailing the peace process. The failure to not reach a diplomatic compromise over Kosovo in October, 1998, NATO officials argued would have resulted in the death of at least 180,000 internally displaced Kosovar Albanians, who were left without adequate food and shelter as they fled the winter conflict into the mountains[73]. Instead, numerous scholars, including James Pettifer, argue that the OA came just in time to save hundreds of thousands who faced starvation and hypothermia[74] (further discussed in Chapter Three). Therefore, in contrast to Carpenter's argument, NATO's decision to not implement a Kosovar delegation is deemed a reasonable decision as to do so would have allowed the death of thousands as incorporating either the KLA or the LDK respectively risked derailing the entire peace efforts. So, the SLR claim can be seen to reject the OA as having satisfied the LR principle due to Holbrooke's failure to include a Kosovar delegation during the OA. This because it fails to exhaust all possible means, as it is almost impossible to imagine how a deal can be achieved without the participation from one of the warring factions. Yet, due to the different reasons highlighted above, the exclusion of a Kosovar delegation was paramount in saving the lives of at least 180,000 lives. Therefore, Holbrooke's decision to exclude a Kosovar delegation renders the OA as satisfying the NLR since it concludes that doing so held reasonable success in achieving a non-forceful solution.

### Implementation and the Kosovo Verification Mission

So far the different arguments concerning NATO's use of non-forceful means, both prior and during the OA have been analysed. In addition, closer scrutiny of the OA's actual negotiation phase, with respect to the Kosovar delegation, has also been subjected to scrutiny. Yet, the debate is not confined within the negotiation phase. In fact, a majority of the debate takes place on the agreement's implementation. For pro-interventionists, such as James Pettifer, Milosevic's continued defiance towards the agreed terms serves as evidence to Cook and Clark's earlier claims that the Yugoslavs were in no position to resolve the Kosovo issue through non-forceful means. Whereas, anti-interventionists, such as Diana Johnstone, argue that the US did not do enough to uphold the OA as they seemingly focused on Milosevic's compliance, effectively ignoring the KLA's. As a result, this enabled the KLA to exploit the various terms, not least the ceasefire[75]. In order to scrutinise Pettifer and Johnstone's arguments to the truth, analysis of the agreed terms is required. There is a slight limitation to this analysis, as the exact agreed terms were never documented into a single documentation, text, verbal and/or otherwise, thus raising difficult questions as to how one might address questions of *verifiability*. However, the terms were later inscribed in UNSC/Res 1203 (1998)[76], therefore at least giving us an idea. The agreed terms were outlined at the beginning of this chapter.

During the negotiations, October 27<sup>th</sup>, 1998, was set as the deadline for Milosevic to comply with the agreed terms. Within the terms, General Clark argued that federal forces be reduced to 10,600, which he considered a substantive standing force[77]. Milosevic initially complied with most of the agreements: reducing federal forces in Kosovo to 12,300, alongside the withdrawal of 4,126 Interior Ministry Police (MUP)[78]. By December, 1999, 90% of all federal forces in Kosovo (36,000) were redeployed to their stationing barracks and 75% of refugees returned to their homes[79]. Yet, remaining federal forces and MUP underwent actions which not only shattered the ceasefire but were in renegade to the entire peace efforts: in Pudojeve (24<sup>th</sup> December, 1998), killing 14; in Racak, killing 45; and, in Rugove (29<sup>th</sup> January, 1999), killing 24. These incidents have faced enormous scepticism towards their authenticity in recent years, especially the Racak Massacre. However, closer attention to this will be applied later in this chapter. In the meantime, assuming their authenticity remains intact, the argument here, at least for Pettifer, is that continued Yugoslav violence against Kosovar Albanians showcases Milosevic's unwillingness to comply towards non-forceful measures, thus necessitating the use of force in solving the Kosovo issue.

In contrast, Johnstone contends that the KLA are to blame as they exploited the ceasefire and constantly provoked Yugoslav forces. All the meanwhile, the KLA remained immune to international criticism, thus demonstrating that NATO needed to have focused more on implementing a fairer agreement. Since the conflict is highly politicised, rendering any evidence possible victim to malpractice. This raises strong questions as to how one might analyse the separate arguments. One way in which to avoid evidence tampering is through the analysis of alternative statistical

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evidence, such as the KLA's overall activities following the OA. This evidence needs to have derived from an independent source(s) to ensure its integrity. Illustratively, according to OSCE statistics in 1997, KLA attacks on Yugoslav police stations had amounted to no more than two per month[80]. Following the redeployment of Yugoslav forces after the OA, the US State Department and the OSCE, records attacks as having been as frequent as two per week[81]. Furthermore, by the time of the Racak Massacre, the OSCE estimates that the KLA had regained 40% of the entire territory in Kosovo[82]. Meanwhile, unlike against Belgrade's actions, Western officials failed to condemn the KLA. In fact, during a White House press release in January, 1999, the Clinton administration even praised the KLA's adherence to the ceasefire[83]. This would suggest that the KLA did exploit the ceasefire. As enforced by KLA General, Agim Ceku, who noted that the "ceasefire was very beneficial to us in that we were able to expand our control"[84]. Robert Hislope has argued that failure to equally condemn the parties implicitly implied notions of impunity for the KLA[85]. Thus, vindicating Johnstone's argument that the KLA exploited the ceasefire.

Supporting Johnstone's position, Philip Hammond and Edward Herman argue that the KLA were able to exploit the OA's terms due to the bias of the KVM[86]. Despite the group's purpose in monitoring both parties' compliance, the KVM only seemingly focused on Milosevic's compliance[87]. This meant that the Serbs were constantly being portrayed as the only party violating the OA and thus responsible for the continued violence. To the extent this was true, the KLA continued to capitalise by provoking Yugoslav forces into performing chains of indiscriminate reprisal attacks against mostly unarmed Kosovar civilians, which the KVM continued to report on. Meanwhile, instigative KLA attacks remained relatively undocumented[88]. Hammond and Herman maintain their position by arguing that this was further exacerbated by the fact that the head of the KVM was an American diplomat: William Walker. To which Hammond and Herman contend that the KVM were effectively "out to get Milosevic"[89]. Under these circumstances, failing to equally pursue the implementation of the OA's terms fails to satisfy the LR, at least under the SLR interpretation, as the failure to hold accountable the KLA to the same standards of the Yugoslavs presents the image of a biased agreement and the inadequate use of the non-forceful options available [KVM].

In contrast, there is one significant factor which disputes Hammond and Herman's argument. Firstly, the KVM's implementation was subject to a decision from the internationally chaired OSCE's Permanent Council (OSCE/PC), of which the USA did not have an exclusive role in. Yes, the KVM was headed by an American diplomat but under OSCE/PC Decision No. 263, the terms that Milosevic was to respect the ceasefire, was under the scrutiny of UNSC as outlined by UNSC/Res 1199 and 1203 which instated the KVM, not Clinton's administration[90]. Therefore, any decisions regarding the KVM were under UNSC oversight, in which Yugoslav friendly states, namely China and Russia, which are strongly opposed to outside involvement in a state's domestic affairs, had an equal say to the US, due to their Permanent Five member status which enables them to exercise absolute veto power. Still, both China and Russia remained in favour of the structure of the KVM and Walker as its head. Otherwise they could have vetoed the decision. Furthermore, Russia in fact was responsible for the inception of an international unarmed civilian monitoring group, as the roots of the KVM were with the KDOM[91]. So, as the arguments against the KVM having a biased outlook are refuted, this would suggest that Milosevic's defiance of the OA's terms are vindictive of Pettifer's and subsequently Clark and Cook's earlier arguments that NATO's non-forceful means were constantly being undermined and thus force did become the only viable option. As a result, NATO's decision to militarily intervene in the Kosovo War becomes justified under the LR.

### **Racak**

Following the continuation of hostilities between federal forces and the KLA, there was a complete breakdown in the OA which culminated into a series of massacres in Pudojeve, Rugove and most notably in Racak, which left 45 Kosovar Albanian civilians dead. Many Western politicians, including Clinton, argued that Racak indicated that NATO needed to act quickly if they were to save the fate of the Kosovar Albanians[92]. However, these massacres, in particular Racak, have experienced an increasing amount of scholarly challenges to their authenticity. Allen Palmer argues that the 'massacre' was staged by the KLA so to invoke international empathy for their aims of separation[93]. Meanwhile, David Philips protests that Racak is evidence that non-forceful means in dealing with Milosevic were proving unsuccessful[94]. Either way, a majority of pro and anti-interventionists alike agree that Racak was a turning point for NATO in dealing with the Kosovo issue and that it was the beginning of the end for Milosevic[95].

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The debate on Racak relies heavily on the use of forensic evidence that was conducted by scientific autopsy findings on the victims' bodies, by the opposing perspectives. At the time, President of Serbia, Milan Milutinovic, claimed that the bodies found in Racak were in fact, KLA members, which had fallen in light of an earlier battle with Yugoslav security forces in the previous morning[96]. Milutinovic further claimed that after the brief gunfight, surviving KLA members returned and replaced the uniforms from the dead bodies with civilian clothes, so that it would look like a massacre[97]. Naturally, KLA representatives opposed such accusations, claiming that Yugoslav forces had knowingly entered Racak and executed civilians[98]. Milutinovic's version of events is hard to believe, considering amongst the dead lay a 70 year old man, 13 year old boy and a pregnant woman, individuals who are unlikely to be involved in an armed resistance movement[99]. Although what often distinguishes insurgent groups from regular armies is their use of 'irregular combatants' such as child soldiers[100]. This due to most guerrilla wars being fought with the tactic of carrying out attacks and then blending back into the general population for cover. Therefore, it is not unthinkable that the bodies found were former KLA members.

Yet, the opposing perspectives from the different parties involved poses a difficult challenge as to how one might validate the respective arguments here, especially considering the sensitive nature of the incident which means that evidence may be liable to manipulation for the preference of a particular position. Following the international media attention Racak received, there were two different forensic examinations carried out on the bodies so to determine what the cause behind their deaths were. The consultation of those forensic results is paramount when attempting to *verify* the different arguments. Initially, a Yugoslav pathologist investigation into the incident conducted on the 19<sup>th</sup> of January, 1999, found that the surrounding area showed movement marks, which most likely indicate that the bodies had been moved from their original place. Palmer argues that this highlights Milutinovic's claim that the KLA added bodies to the scene[101]. Finally, the findings conclude that, out of the 40 bodies found, 37 tested positive for gunshot residue, indicating that they had recently used firearms[102], further enforcing Milutinovic's claims.

However, two very significant factors challenge the Yugoslav team's findings. Firstly, the team was sanctioned by the Yugoslav state, which was a participatory party in the conflict. This means that the pathologist's findings may have been subject to manipulation. Secondly, days later, a second team (which is discussed below), found 45 bodies, not 40. This has led to widespread criticism of the Yugoslav pathologists' findings, including David Phillips who argues that the Yugoslav findings were clearly engineered to favour Milosevic[103]. Therefore, in order to avoid the incorporation of evidence which may have been victim to malpractice, consultation with evidence from an independent party on the matter is required.

Following the Yugoslav team's findings, two days later a group of Finnish scientists under the auspice of the EU, also conducted forensic experimentation on the autopsies. In their report, several findings undermined the Yugoslav results. Firstly, signs of close range entry and exit bullet wounds from all of the bodies in civilian clothes were identified[104], thus rejecting Milutinovic's claims that the KLA had returned after the battle to change the clothes of the victims. It is possible that the KLA shot the bodies again after changing the clothes. However, as Phillips claims, the gun shots would have alarmed nearby Yugoslav forces, which would have resulted in the changing of the victims' clothes to have been carried out at such a quick pace, that it was inevitable the bodies bear struggle marks[105]. No such marks were found by either team.

Secondly, the paraffin test used by the Yugoslav team which 'discovered' gunshot residue is highly contested on two accounts. Firstly, the Finish team argued that gunpowder residue is easily obtainable from numerous different sources, such as handling tobacco, using fertilizer and even day to day activities such as urinating or using standard cosmetics[106]. Therefore, it is almost impossible to confirm the source of the gunpowder residue as originating from the use of weapons. Secondly, as argued by Mary Cowan in 1967, the paraffin test is outdated for testing gunpowder as it is known to falsely produce negative results[107]. Therefore, this denies the claims that Racak was fabricated.

Ultimately, as the Racak massacre is proven to bear authenticity, this enforces the accusation that Milosevic indeed did undergo acts which were in renegade to the terms of the OA and thus NATO's non-forceful attempts at resolving the Kosovo Conflict. Therefore, this would further enforce the legitimacy of NATO's decision to intervene in the Kosovo War under the LR principle, as the evidence concludes in support of Clark, Pettifer and Cooks' arguments that Milosevic continuously undermined the peace efforts.

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## CHAPTER THREE: THE KOSOVO 'CRISIS'

This chapter shall focus on NATO's non-forceful means in dealing with Milosevic after the Racak incident until the commencement of OAF on 24<sup>th</sup> March, 1999. This chapter will focus on the Rambouillet talks as this was NATO's second major attempt at resolving the Kosovo issue since 1998, which by the time the Rambouillet talks conveyed was steadily turning into a crisis. Partly, this resulted from growing reports of frequent massacres of Kosovar Albanians, which many Western officials believed signified the beginning of another Balkan genocide[108]. Of more immediate concern for Western officials, was the fast-growing number of reports of Kosovar Albanian refugees, which by the time the Rambouillet talks was estimated to have reached over 300,000 – almost double what was witnessed during the OA negotiations. As in the previous chapter, Chapter Three will also scrutinise the various arguments through the use of contextualisation and evidence from an independent third-party, so to distinguish possible strategic manipulation of the LR principle from opposing arguments.

### The Rambouillet talks

Following the complete breakdown of the OA and the global media attention on Racak, ministers from the Contact Group (CG) countries (France, Germany, Italy, Russia, the UK and the US), which was the international group that lead the negotiations at Dayton, conveyed the London Ministerial Conference (LMC) on the 29<sup>th</sup> January, 1999. During which, the CG declared that “time is of the essence for reaching a solution over Kosovo”[109]. Following the LMC, the CG set up a round of negotiations in Rambouillet, France between the warring parties. The Rambouillet talks began on the 6<sup>th</sup> February, 1999 and formerly ended on the 24<sup>th</sup> March, 1999, directly resulting in the commencement of OAF. Much like the OA, Rambouillet was also not conveyed for the purpose of reaching a decision on Kosovo's final legal status. In fact, identical to the OA, Rambouillet also established a three year interim period[110]. Unlike the OA, Rambouillet, under what became known as the Rambouillet Accords (RA), was the first time NATO officials proposed the stationing of NATO troops in all of Yugoslavia, including Serbia and Montenegro, for the purpose of enforcing another international unarmed monitoring group[111].

### 'Appendix B' and the refugee crisis

Much of the debate surrounding the Rambouillet talks and to the extent it suffices as having been a real attempt at solving the Kosovo crisis non-forcefully, has been in relation to the 'Status of Multi-National Military Force' Appendix, otherwise referred to as 'Appendix B'. Appendix B stipulated that Yugoslav military withdrawal from Kosovo be accompanied by NATO ground troops who, amongst many things, would have unrestricted ground, maritime and air access throughout Yugoslavia, including Montenegro and Serbia proper[112]. Furthermore, NATO troops would also enjoy complete immunity from Yugoslav judicial processes[113]. Milosevic argued that such an annex was completely unacceptable and reminiscent of the 1914 Austro-Hungarian ultimatum to Serbia[114]. Consequently, the Serbian Parliament rejected the Accords on the 23<sup>rd</sup> March, 1999, resulting in NATO air-strikes the next day. Various anti-interventionists, such as Noam Chomsky and Tariq Ali, are in agreement with Milosevic, claiming that Appendix B was not a reasonable demand to make as no single sovereign state in Yugoslavia's position would have accepted such demands[115]. Presumptively, this would seem to suggest that Appendix B fails to satisfy the NLR interpretation, as its demands are deemed unacceptable and beyond any possibility of success.

In defence, Chomsky highlights the US's, this time personified by US Secretary of State Madeline Albright, 'take it or leave it' style of diplomacy. Chomsky maintains that this sort of diplomacy is vindictive that NATO was not seriously attempting to avoid the use of force. In fact, Chomsky further claims that the Clinton administration purposefully raised the bar too high for the Yugoslavs with the RA[116]. This would seem the case, as Albright continuously invoked the threat of force against the Yugoslav delegation, which began to present the US as a colonial power attempting to enforce their will upon Yugoslavia, as the whole purpose of the Rambouillet talks was for the purpose of

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reaching a non-forceful solution to the Kosovo crisis[117]. Chomsky elaborates by suggesting that Albright needed to focus more on mediating a fairer negotiation[118]. However, there are several contentions towards Chomsky's position. Firstly, Albright's threats were not exclusive to the Yugoslav delegation as she also threatened the Kosovar delegation that if they failed to sign the RA NATO would stop pursuing air-strikes against Milosevic[119]. Secondly, Hedley argues that Appendix B was only an initiation point to the negotiations, not a final condition to the RA. So, instead of rejecting the RA flat out, the Yugoslavs could have and indeed should have made contributions to the negotiation.

Regardless if the RA's conditions were non-negotiable, Appendix B was a duplicate to Article 6, Annex 1A to the Dayton Peace Agreement (DPA), which Milosevic evidently signed himself. In support, Phillips has maintained that Milosevic's personal absence from the Rambouillet talks was a testimony that the Yugoslavs were not willing to make any concessions over Kosovo. Retrospectively, Milosevic was personally involved in the DPA, which still hold at the time of writing this paper. Thus one can presume that Milosevic's absence at the Rambouillet talks highlights the unwillingness of the Yugoslavs to resolve the peace.

As such, many inside the Clinton administration, including Clinton himself defended the necessity of Appendix B, on the basis that NATO presence was paramount to maintaining a peace. As showcased by the OA, where only implementing a civilian mission failed to implement the agreed terms, as the opposing factions were able to exploit the terms. Evidently, Phillips has argued that the KVM was not confirming anything apart from the fact that Kosovo was a dangerous place for its ethnic Albanian inhabitants[120]. During a speech on the 24<sup>th</sup> February, 1999, in what became known as the 'Clinton Doctrine'. Clinton stated that [the US] "should not be everywhere, only where our values and interests are at stake"[121]. No specific foreign policy directive existed under the Clinton Doctrine. However, Clinton distinguished between US national interests and values in his last National Security Strategy (NSS). Interests were outlined as being situations in which the US held sizable economic stakes or commitments to allies and instances where crises with a potential to generate substantial and highly destabilizing refugee flows[122]. While US values were considered to be instances where there was a need to respond towards natural and manmade disasters; promoting human rights and seeking to halt gross violations of those rights[123].

As such, Albright's 'take it or leave it' approach distances itself away from Chomsky's accusation of a purposefully constructed annex that guaranteed Yugoslav rejection, towards the notion of adhering the 'Clinton Doctrine'. In a speech during a state visit to Rwanda, a day after the commencement of OAF, Clinton 'apologized', stating that "the international community must share responsibility for the Rwandan genocide. We did not act quickly enough after the killing began"[124]. Michael Ignatieff argues that this narrative is reflective of Clinton's (Albright's) 'tough-line' approach towards the Yugoslav delegation, arguing that Clinton no longer took chances with dictators and humanitarian crises[125]. Where Milosevic is concerned, this seems to hold weight. Ignatieff argues that Milosevic's participation in peace negotiations was nothing but a masquerade in presenting the international community with images of Yugoslav peace, all the meanwhile pursuing acts of violence[126]. This was showcased during the OA, whereby Milosevic participated in the OA, while he continued to expel Kosovar Albanians *en masse*. Even during the Rambouillet talks Milosevic in fact escalated as opposed to just maintained his acts of violence through the expulsion of Kosovar refugees (discussed below).

Intrinsically, Paul Latawski argues that Milosevic had aims to forcefully change the demographics of Kosovo in favour of the Serbs. As such, the Alliance needed to act quickly if they were to prevent the eviction of an entire population[127]. The United Nations High Commissioner for Refugees (UNHCR), reported that 250,000 Kosovar Albanians had been expelled by mid-February, 1999. By early March, a further 350,000 were forced to flee into neighbouring Albania and the Former Yugoslav Republic of Macedonia (FYROM)[128]. The Red Cross estimates that a further 200,000 were also internally displaced, bringing the total number to at least 550,000 – a quarter of Kosovo's population at the time[129]. However, the level of displacement prior the bombing is strongly disputed. Some reports claim the total number of displaced, internally and externally, to be less than 350,000[130]. Amnesty International claims an even lower amount of 300,000[131]. Notwithstanding the statistical discrepancies, all the evidence still concludes that Kosovar Albanians were being expelled *en masse*. Thus enforcing Latawski's argument that Milosevic intended to forcefully alter the demographics of Kosovo and so the situation in Kosovo warranted outside intervention.

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Yet, the cause behind the refugee crisis is also contested. For anti-interventionists, such as Robin Blackburn, the refugee crisis is considered as a direct consequence of NATO's threat of force[132]. A sentiment strongly supported by many Western officials at the time, including General Clark, who warned that any outside of the NATO intervention would almost certainly contribute to the intensification of Serb atrocities[133]. Ken Booth supported General Clark's position by stipulating that signs of any possible outside intervention, especially by NATO which had contributed to the Serb defeat in Bosnia, would contribute to the already existing pretence of war that existed in Kosovo since March, 1998. In turn, this would further intensify the nature of lawlessness, thus enabling mass human rights violations to go widely unchecked[134].

Nevertheless, this does not mean that the refugee crisis was in direct response to NATO's threat of force. On the contrary, when taken into consideration the time periods between April and September, 1998, alongside the four months between December, 1998 and March, 1999 over 180,000 Kosovar Albanians were forcefully displaced, as confirmed by various independent sources. Even in one instance (between April and September), Yugoslav forces were forcefully expelling Kosovar Albanians before any NATO force had been threatened. As such, NATO's threat is better understood as a main contributing factor to the refugee crisis as distinct from an instigative factor. Therefore, not only does this indicate an ongoing Yugoslav effort to forcefully transfer Kosovo's Albanian population, it also, again, underpins Latawski's claim that the situation warranted outside NATO intervention, due to the likelihood that federal forces would continue such actions if unrestricted[135]. Latawski concludes that NATO's intervention was justified, even though it may have contributed to the intensification of refugees, as it did, at least numerically, save a greater number of lives than those which would have otherwise been harmed as a result of Milosevic's motives[136]. Therefore, Latawski's argument enforces the NLR interpretation, as he argues if left alone Milosevic would have caused more harm than what was witnessed.

Ultimately, the above highlights a number of different important factors. Firstly, Chomsky's argument that Appendix B's unreasonableness would not have been accepted by anyone, and thus must be considered as having been purposefully constructed to fail it reflects Sjoberg's perspective that often policy makers may argue that the decision to go to war has come after numerous attempts to diplomatically resolve an issue and thus has achieved the LR condition, meanwhile war may in fact have been their first option. Secondly, Chomsky's questioning of the reasonableness of Appendix B also underlines Lango's criticism of the NLR approach that due to human nature we are sometimes restricted in our understanding as to what methods would be successful in solving an issue. Furthermore, while Chomsky concludes that the RA fail under the SLR due to Appendix B, Latawski's perspective that NATO had a limited time before Milosevic's policy of ethnic purification can be achieved, highlights the NLR interpretation of the LR principle, in that often the exhaustion of non-forceful means will enable the occurrence of further injustice(s).

### The prospects of genocide: Bosnia and Kosovo compared

In an address to the Canadian Parliament, Czech President, Vaclav Havel, stated that the Alliance needed to act quickly if they were to stop the extinction of a population which was suffering tyranny at the hands of a majority[137]. To which many pro-interventionist scholars, including Phillips, supported by claiming that NATO outside military action was essential in stopping the genocidal intentions of Milosevic's systematic ethnic-cleansing campaign[138]. Aside the refugee crisis, there is little evidence which enforces such claim. This is unless, other factors, such as civilian deaths, are also analysed in conjunction to the refugee figures. Initial US State Department figures suggested that "100,000 military aged men have been unaccounted for"[139], leading to the belief that genocide had already taken place. In contrast, final estimates conducted by Doctors Without Borders (DWB), Human Rights Watch (HRW) and the UN, conclude the number of Kosovar Albanian deaths in Kosovo by the time of Milosevic's withdrawal between 1,900-2,500. Later, after continuous media attention as a result of lack of evidence supporting the US State Department's figures, the Clinton administration clarified that the earlier statement meant 100,000 people were unaccounted for, rather than suggesting they had been victim to Yugoslav violence[141]. As a result of the low death toll, the figures would seem to suggest that accusations of possible genocide are inaccurate.

Regardless, of the 'numerically' low death toll compared to other atrocities of the 1990s, say Darfur, Rwanda and Timor-Leste, the case made by several Western political figures at the time, notably Holbrooke and Solana was that

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without foreign intervention, Milosevic would steadily intensify his ethnic-cleansing campaign to a more violent policy, inevitably leading to a rise in the number of casualties. Solana even argued that the Yugoslavs had a policy of carrying out atrocities at the rate of "a village a day, as it keeps NATO away"[142]. There is no documented proof of such a policy, thus raising difficult questions as to how one might proceed in scrutinising this argument. Yet, as outlined in Chapter One, when there is lack of evidence or fact, contextualisation becomes the ideal manner to subject the different arguments. The first mass number of refugees in 1998, alongside the initial massacres in Pudojeve, Racak and Rugove, attracted strong international media attention, evidently as the former became the main precursor for the OA. So, a Yugoslav policy of 'a village a day' means that a more discrete policy of expulsion and murder is understandable, that is if international attention was to be avoided. Therefore, adding weight to Holbrooke and Solana's arguments. Yet, their accusations alone cannot stand as evidence due to their affiliations to NATO, which as a participatory party in the conflict means that their claims may have been subjected to political manipulation which favoured NATO.

Still, this does not mean Holbrooke and Solana's arguments should be dismissed. So, as there is a lack of evidence which places Milosevic guilty of having genocide intentions in Kosovo, this means that much of the opposing arguments will be scholarly and political opinions. In order to scrutinise such arguments, as outlined in the Introduction and Chapter One, the use of contextualisation is crucial as this will provide substance to a debate. Therefore, this requires historical contextualisation to a case which is agreed as having been constituted genocide. In relation to Kosovo, this would principally encompass the comparison to Bosnia, which out of all the Yugoslav Wars of secession, is the only one to be legally regarded by many international courts (the International Court of Justice and the International Criminal Court), as having constituted a genocide[143].

So, in contextualisation to Bosnia the death toll figures in Kosovo are analogous to the early stages of the Bosnian war[144]. In particular, the massacres in Kosovo, such as Abri te Eperme, Peje, Racak, Rugove and Skenderaj, mirror the early accounts of Bosnian massacres in, Glogova, Grabovica, Sijekovac, Snagovo, and Stupni Do. In all these cases, the death toll was lower than 150. Also, all the massacres in Kosovo took place in a similar time span to those in Bosnia. In Kosovo they all took place within 12 months (from late September, 1998 to late February, 1999). In Bosnia, all massacres took place within 17 months, with Glogova taking place on 9<sup>th</sup> May 1992 and Stupni Do on 23<sup>rd</sup> October, 1993. Therefore, this would seem to support Solana's remarks regarding a Yugoslav 'policy' of 'a village a day'. As a result, the frequency of the massacres in Kosovo fostered the image that, as the fighting in Kosovo prolonged, ethnic Albanians would eventually meet the same fate as the Bosniaks (Muslims) in Srebrenica (1995)[145].

In addition, many have argued that perhaps the occurrences have been nothing but coincidence and besides, the frequency of the massacres is not a sign of a carefully coordinated plan, rather the difficulties a regular army faces when fighting insurgencies[146]. As such, this creates further problems as to how one may subject these arguments to further scrutiny. One ideal way would be through the contextualisation of the different actors and groups involved in Bosnia and Kosovo. Immediately, Guzina Dejan presents the argument that in Bosnia the VRS which orchestrated many of the massacres, including Srebrenica, were under the orders of General Ratko Mladic and the leadership of Radovan Karadzic, not Milosevic. While this is indeed true, several aspects challenge Young's argument that this means Bosnia and Kosovo bear no resemblance. However, in Bosnia, Srebrenica particularly, various Serb paramilitaries partook in the war and the subsequent atrocities. In particular, the 'Scorpions' were implicated for various war crimes in Bosnia by the International Criminal Tribunal for the Former Yugoslavia (ICTY)[147].

Similarly in Kosovo, the 'Scorpions' also were indicted for various war crimes against humanity by the ICTY[148]. However, the difference in Kosovo is that various paramilitary groups were in fact incorporated into official Yugoslav military ranks, specifically the Yugoslav Special Anti-Terrorist Unit, which was expressly under direct orders from Milosevic[149]. In one particular case, the Podujeve Massacre (28<sup>th</sup> March, 1999), the 'Scorpions' took a leading role in, leaving 14 ethnic Albanian civilians dead. The incorporation of such extreme groups into the official government forces, Pettifer argues that Milosevic was embarking on a policy of 'ethnocide'[150].

Therefore, while the evidence above fails to clearly outline substantial evidence which suggests that Milosevic held genocidal intentions towards Kosovar Albanians, it does at least provide evidence that Milosevic was aware of his

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actions which may lead towards the possible genocide of Kosovar Albanians. As such, Holbrooke and Solana's arguments that NATO had to intervene in Kosovo on the basis of saving the Kosovar Albanians which faced genocide not only stand true, but also highlight that NATO's decision to militarily intervene in the Kosovo War enforces the NLR interpretation.

## CONCLUSION

In conclusion, this paper has outlined through its chapters the different interpretations of the LR principle and their use in attempting to justify the opposing arguments surrounding NATO's decision to militarily intervene in the Kosovo War. In the first Chapter, the paper mainly focused on the events which transpired prior the OA, alongside the actual negotiation phase and following the OA's implementation up until the Racak massacre. The evidence provided, first through historical contextualisation, presents the argument that following extensive non-forceful attempts by Western officials before any unified NATO approach to Milosevic over his repressive actions in Kosovo and then by a unified NATO attempt during the OA were unsuccessful in dissuading Milosevic from his violent actions. Additionally, the Chapter also encompassed the analysis of evidence from an independent source regarding the Racak massacre so to mediate and provide an unbiased analysis of the incident, in order achieve a fair conclusion on the incident's authenticity. As such, all the evidence provided in Chapter One concluded that, to no avail, NATO explored all non-forceful means in dealing with Milosevic over Kosovo. Yet, Milosevic continued to apply repressive measures against Kosovo's ethnic Albanians, not least creating a substantive refugee situation in late 1998, alongside the occurrence of other atrocities, such as massacres.

Chapter Two focused on NATO's non-forceful relations with Milosevic following the Racak incident up until the instatement of NATO air-strikes, with a main focus on the Rambouillet talks. During which numerous factors were analysed, chiefly the actual RA themselves with specific focus on Appendix B. Following a discussion with regards to the reasonableness of Appendix B, which encompassed the political contextualisation of the Clinton administration's 'Clinton Doctrine', the Appendix alongside Albright's 'take it or leave it' approach is justified as Milosevic's continued repression of Kosovar Albanians, even the actual peace negotiations in Rambouillet, signified that the Yugoslavs were not in a situation to make credible concessions. As such, this created the further discussion that the Yugoslavs were only participating in the RA for the purpose of presenting the image of subverting international criticism and subsequently NATO air-strikes, while simultaneously embarking on a policy of ethnic purification which also posed genocide consequences for the Kosovar Albanians. As a result, all the evidence provided in Chapter Two outlined that NATO's efforts in dealing with Milosevic, even following his deviances of the OA, were still unsuccessful and thus evidence that force remained the only viable option in halting the plight of Kosovo's ethnic Albanians. For all the above-mentioned reasons, this paper concludes that NATO's decision to militarily intervene in the Kosovo War was justified under the LR principle.

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## **Was NATO's decision to militarily intervene in the Kosovo War a 'last resort'?**

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