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Principal author James Gow initially circulated among team members a disparate collection of very lengthy scholarly papers and articles that he and co-leader Miroslav Hadžić had written for their comment and discussion at the July 2002 SI conference in Sarajevo, which was chaired in their absence by Fotini Bellou. Following that meeting, Gow prepared a single common draft for team review, including contributions from Hadžić. Prof. Hadžić then submitted a highly detailed 6,000-word commentary on the common draft on 6 January 2004. Professor Gow then rewrote the team paper to address each of Prof. Hadžić's questions and concerns, as well as to integrate additional contributions from NED-funded research by team members Svetlana Djurdjević-Lukić and Ivan Zverzhanovski. The ensuing draft was submitted for project-wide review in January-February 2005. Subsequent revisions have incorporated the work of Leon Malazogu and Charles Ingraio, reflecting recent published work by Henry Perritt, Carla del Ponte and Chuck Sudetić. Gow revised his final version for the second edition.

Although the present study is based principally on documentation and interview material in the public domain, it is also informed by privileged official sources. This is very strongly supplemented by use of direct quotation from "the horses' mouths" of the participants in this process, available in *The Fall of Yugoslavia*, a three-part documentary film involving screen interviews with those participants, produced by Norma Percy at Brook Lapping Productions and directed by Dai Richards. Production materials for the films are housed in the Liddell Hart Centre for Military Archives at King's College London.

THE WAR IN KOSOVO, 1998-1999

◆ James Gow ◆

With the outbreak of hostilities in the spring of 1998, the Kosovo conflict quickly evolved from a cold war between the Democratic League of Kosovo (LDK) and the Milošević regime into a full-scale insurrection that pitted the Kosovo Liberation Army (KLA) against the combined forces of the Yugoslav Army (VJ), Serbian Interior Ministry special police (MUP) and, eventually, an assortment of paramilitary units. Within months the Western powers would intervene to end hostilities, to seek to prevent ethnic cleansing and to encourage a settlement whether by diplomacy or by military action. Each of the three sides had its own set of problems and objectives that were distinct from those that they had pursued during the decade-long standoff that had followed the elimination of Kosovo's autonomy. Over the next year, their motives, intentions, and actions would create a new set of controversies that are the subject of this chapter.

Certainly Belgrade and the Kosovo Albanians pursued their antagonistic objectives with unequal forces and means, and employed them using divergent, asymmetrical tactics and strategy. The degree to which each conflicted or cooperated with the Western powers depended on the degree to which its objectives coincided with this third party to the conflict.¹ In addition to this, they may be judged to have had different relationships to time—the ways in which it is measured, spent, or available—historic, astronomic, operational. Different inputs necessarily produce different results. Accordingly, the resulting correlation of chosen objectives and the means applied within a limited time frame is also unequal.²

Motivations and Perceptions in 1998

By 1988, the Kosovo Albanians were united behind the quest for independence. The long-term passive resistance of the LDK had been joined by two strands of militant action under the umbrella name KLA – one strand formed outside the country in the 1990s, the other emerged from clan activity that harassed Ser-

bian Security forces,³ and also sometimes international observers, with the aim of provoking greater international support.⁴ Belgrade's VJ/MUP operations easily defeated KLA units, inflicting significantly higher casualties on them and their civilian sympathizers, forcing them to flee or surrender.⁵ Belgrade insisted that its actions were those protected by sovereign rights,⁶ but gross human rights abuses occurred as forces compelled residents to flee into the countryside.⁷ These actions showed that the key internal obstacle to the protection of Serbian national interests in Kosovo was the regime itself, as there were no alternative political or social forces powerful enough to force Milošević to change course or step down from power.⁸

The question for Western countries was whether Belgrade was merely trying to deal with an armed insurgency, or repeating the ethnic cleansing seen earlier in the decade in Croatia and Bosnia. If the former, were its methods legitimate? Or was Milošević seeking to use the armed insurgency as a pretext for an historic settlement of a different kind where ethnic cleansing would permanently resolve the tension between the Albanian demographic tide and Serbia's claim to Kosovo?

Despite divisions within the six-country Contact Group,⁹ shared values and perceptions ultimately led the NATO allies to articulate a single vision that could be promoted with relative unity. It was the Western leaders' perception of the Serbian leader's agenda that pushed them to address the Kosovo issue. The imperative to take action was driven by three factors: the long-term record of Milošević's regime, particularly in Bosnia; the short-term pattern of activity by Serbian and FRY security forces in Kosovo since the emergence of the KLA; and growing awareness and information, as Western leaders understood it, that Belgrade would again resort to ethnic cleansing.

With the emergence of the KLA and the Serbian response to it, as well as the long-term record of what the West regarded as political and human rights abuses by the Belgrade regime,¹⁰ Western leaders had the history of Bosnia in the 1990s firmly in mind. According to UK Foreign Secretary Robin Cook, "It looked just like the ethnic cleansing in Bosnia."¹¹ There was a sense of trying to prevent history's repeating itself and taking responsible action where their predecessors had been judged to have failed. U.S. President Bill Clinton's view was that "We couldn't have another Bosnia where the international community and Europe and NATO in particular kind of fiddled around for two and half years."¹² The sense of history and avoiding the same outcome as in Bosnia also impelled U.S. Secretary of State Madeleine Albright, who was one of the strongest advocates of action, even from the early stages of the Serbian campaign in Kosovo. She addressed a meeting of the Contact Group at Lancaster House in London in the following

terms: “Gentleman, remember that history is watching us and our predecessors sat in this room and watched Bosnia burn.”¹³ Thus, the image of Bosnia and the ethnic cleansing there weighed heavily in Western motivations.

Albright’s comment was made in the wake of the reports of what quickly became known as the Drenica massacre of 28 February 1998, after which Kosovo Albanians took photos of each of the twenty men killed and then set up a website to show the world.¹⁴ This was a significant propaganda victory for the KLA and ensured that there was international attention, including the calling of the Contact Group meeting that Albright addressed. Between that point and the onset of NATO armed action on 24 March 1999, there was ever more intensive monitoring of the situation in Kosovo by international actors, including the Kosovo Diplomatic Observer Mission sponsored by the U.S. State Department, which was succeeded by the OSCE’s Kosovo Verification Mission, as well as by individual governments and a variety of NGOs.¹⁵

Action by Belgrade’s forces continued to draw international attention and criticism, with reports of massacres and, through the middle of 1998, massive refugee flows. The United Nations high commissioner for refugees (UNHCR) reported that 100,000 ethnic Albanians had been “forced” from their homes in July, accompanied by atrocities.¹⁶ The pattern continued and the scale rose. Another 100,000 followed in August, with further atrocities reported, including the 29 September massacre at Gornji Obrinje of twenty-one women, children, and old people, including a seven-month-pregnant woman whose stomach had been slit open.¹⁷ Toward the end of 1998, figures for refugees and displaced persons were in flux, though generally high, reaching an estimated 300,000.¹⁸ Both the flux and this peak were evident in mid-October, when the UNHCR reported 200,000 displaced persons in Kosovo, plus approximately 92,500 refugees and displaced persons in neighboring areas.¹⁹ At the same time, however, 50,000 people were estimated to have returned to their original villages during the second half of October following a ceasefire agreement on 8 October.²⁰ By 24 November, the figure for returnees had risen to 75,000—with returns registered at 70–100 percent where the KVM was present; although in a survey of 285 villages, 210 of which had been involved in the conflict directly, only 40 percent of homes remained habitable.²¹ At the same time, 175,000 displaced persons remained at large; and confirming the flux, the estimated number of refugees in Albania had risen to 24,000.²² By December, the UNHCR was reporting 100,000 returnees—even tentatively to some of the most “sensitive” locations, but was also reporting 200,000 displaced in Kosovo, higher than the November figure.²³ At the start of 1999, the estimated total number of returnees by then was 110,000, while the number displaced at that stage was reported as 180,000, with another 80,000 displaced,

or refugees elsewhere.²⁴ Although the actual numbers fluctuated and there were extensive returns at times where conditions were suitable, what is clear is that the number of displaced persons and refugees during this period was never less than 100,000 and was mostly in excess of 200,000. This created a significant burden on the region and on the international community. It also created a clear context, where many in Western governments were deeply concerned at the prospect of further massive forcible expulsions—ethnic cleansing—especially in light of the pattern of events in Croatia and Bosnia-Herzegovina earlier in the decade and, crucially, reporting from the various international agencies in Kosovo about atrocities committed on a significant scale by Serbian forces.

From Račak to Rambouillet

Between February and October 1998 the Serbian and Albanian actors tested each other. Each of them, of course, weighed available assets. The testing started with the KLA offensive, continued with retaliatory operations by the Serbian police and the army, and was suspended with the agreement between Milošević and Ambassador Richard Holbrooke in October 1998 under the apparent threat of NATO air assaults if Serbian forces did not desist and draw down to pre-July force levels inside Kosovo.²⁵ This provided for a pause during which the different actors could assess their situations and how to proceed. That pause would include the talks at Rambouillet and Paris, which lie at the center of this study. Yet before anyone arrived at Rambouillet, Serbian forces began once more to test the KLA, international preparedness, and crucially, civilians in Kosovo. During this period, Ambassador William Walker, the American diplomat in charge of the OSCE KVM reported that, typically

A village that had one KLA member would be subject to being surrounded by artillery, being surrounded by the army, being surrounded by the police, being bombarded for hours; the police units would then go in, separate the men and the boys, take them off and essentially pillage and loot and burn in the village.²⁶

Although Serbian forces were withdrawn to comply with the October ultimatum, gradually as Christmas approached, ethnic cleansing operations resumed at low thresholds and some of those forces were reinserted.²⁷

Serbian testing of limits culminated with the major incident at Račak on 15 January 1999, which proved a vital, final spur to international action. Račak was a contested moment. The testimony of then Colonel Jovan Radosavljević gave the Serbian perspective:

We got reports that a family in Račak had killed three policemen. Then we received the order to prepare an action and destroy the terrorists there. We set out at 2 A.M. It was very cold. It was dark. We knew that if a single dog barked it could spoil the whole action. Fortunately, the few dogs still in the village must have been sleeping in the heat. We moved through the woods and reached the trenches. We managed to kill the men guarding the trenches. By then it was dawn and the battle began.²⁸

Radosavljević's forces were said to have found fifteen bodies in the village. However, the position overnight is less clear in his testimony because Radosavljević left a small contingent to guard the village: "During the night the unit left their posts. We heard they came under fire and were frightened." If this is taken at face value, it means that those troops would not be responsible for what was subsequently discovered.²⁹

The next morning the OSCE KVM became involved, with Ambassador Walker visiting the site, after receiving disturbing reports, first thing in the morning. According to him,

I was told 'If you want to see what happened yesterday, you go up this ravine.' We came on the first body and there was a little rug over the head and as I walked up to it, there was no head on this body, just a napkin. As we walked up the ravine, we kept finding one body after another. We then came on a pile of bodies, 10–15 bodies all piled on top of each other.³⁰

In total, the KVM reported forty-five bodies found, of which three were women, at least one a child, and several elderly. Eleven of the dead were found in houses, twenty-three up the ravine behind the village, which Walker mentioned, and the remainder at other sites around it.³¹ Other analysts, based on witness interviews, have concluded that the twenty-three taken to the ravine were subject to extrajudicial execution.³²

The official position was that the dead were KLA soldiers who had been killed in the previous day's engagements but that other KLA personnel had removed their uniforms and dressed them in peasant clothes to look like civilians for propaganda effect. Walker, who had gained relevant experience monitoring and investigating political killings in Latin America, saw it differently: "I noticed blood-stained clothes where the bullet had entered and the blood stains were around the wound. I found it impossible to believe that the blood stains had somehow been put in just the right place." He clearly stated his conclusion at a press conference that day: "From what I personally saw, I do not hesitate to describe the event as a massacre, a crime, very much obviously, against humanity." He later confirmed the conclusion that "I felt that what I had seen was a horror and

that it was in fact perpetrated by the security forces from Belgrade.” Walker’s view seemed hard to reject and was generally supported by observers and concerned leaders in the international community, even as it was officially defiantly rejected by Serbian President Milan Milutinović, who called Walker’s visit and statements “an act calculated to mislead the world public.”³³

Forensic evidence that could have given clearer confirmation of the circumstances of the deaths was muddled. On 25 January 1999, the head of Priština’s Institute of Forensic Medicine, Slaviša Dobričanin reported that twenty-one autopsies had been conducted and that none of the bodies bore the signs of a massacre, a position in stark contrast to Walker’s experienced eyewitness testimony. Dobričanin also stated that OSCE personnel had been present for some of the postmortem examinations, though the OSCE mission made no statement regarding its participation or judgment. Subsequently, an EU forensic report team of Finnish pathologists participated in the autopsies and was reported to have formally “distanced itself from Dobričanin’s statements,” saying that it was concerned that there had been tampering with the evidence.³⁴ This was, however, a partial misinterpretation according to the head of the Finnish team, who later reported that no “indication of tampering or fabrication of evidence was detected” and that the apparent distancing was a methodological issue, with the Finns unprepared to sign a document that Serbian and Belorussian pathologists had produced because, despite an agreed upon common approach, Finnish practice was not to comment until the whole process had been completed.³⁵

Despite this, the head of the team also made perfectly clear that, technically, although the term *massacre* could not be used on the basis of the medical evidence gained in the postmortem procedures, the reason for this was that such evidence alone could not be enough to form such a conclusion. Rather, drawing such a conclusion required a comprehensive approach, including forensic investigation of the crime scene, as well as complementary investigation by others. The implication seems clear from her report that the understanding of a massacre is likely to be right but that the evidence with which she and her team dealt was insufficient to make this inference. She certainly does not exclude the possibility of a massacre, saying that “the use of this term is better suited to be used by organs conducting criminal investigations for the purpose of initiating criminal proceedings.”³⁶ The more comprehensive picture required was significantly inhibited, however, by the failure of the Serbian authorities. The UN secretary-general reported that the FRY authorities had “failed to respond to the plea of the Head of a Finnish forensic team to postpone examinations until the arrival of Finnish experts” and that by the time they arrived, sixteen autopsies had already been completed. He also concluded that “investigative and forensic efforts in the

wake of the massacre have been willfully obstructed by the lack of cooperation by the authorities of the Federal Republic of Yugoslavia.³⁷ He later reinforced these judgments. On what could be inferred from the EU autopsy team, he commented that the “Finnish team stressed, during its two-week stay in the Federal Republic of Yugoslavia, that it was not carrying out an investigation into events at Račak, but an examination of the bodies moved from the place of death.” Moreover, he noted that, after the events at Račak, “the scene was not isolated; the circumstances of evidence-gathering and the chain of custody of evidence remain unclear.” And on the attitude of the Belgrade authorities, he confirmed that there was “no indication at this time of action by the authorities of the Federal Republic of Yugoslavia to bring the perpetrators to justice.”³⁸ Thus the international community and Washington in particular concluded that Račak had provided firm evidence of Belgrade’s suspected plans to carry out large-scale ethnic cleansing in Kosovo.

The third strand of evidence that shaped Western perceptions was secret information indicating that the Belgrade regime was planning extensive ethnic cleansing. Already in October, as Milošević was agreeing to the terms negotiated with Holbrooke, his chief of staff, General Momčilo Perišić, had somewhat obliquely expressed concern about what would happen to his NATO counterparts in negotiations—Supreme Allied Commander, Europe (SACEUR) U.S. General Wesley Clark and Chairman of the NATO Military Committee German General Klaus Naumann—while Milošević had made his intentions explicit.³⁹ Over the subsequent months, it became ever more clear and likely that Milošević would go beyond testing the limits of international tolerance, as shown in MUP and VJ action during December 1998 and January 1999, and move against the Kosovo Albanians. In this context, evidence of what would later be reported as Operation Horseshoe circulated among Western governments.⁴⁰ Moreover, as this scenario developed with MUP and VJ units evidently preparing for action (protesting, as had the JNA at the beginning of the decade, that they were merely conducting normal exercises), Western governments understood clearly that there was a deadline for any action to counter Belgrade’s campaign on or around 24 March.

The long-term record in Bosnia, the short-term record in Kosovo, and emerging secret information persuaded the West that action was required. Precisely what action remained to be settled. Why did the talks at Rambouillet, with an attached threat to bomb Serbia and the FRY if Belgrade did not reach agreement, emerge as the Western policy option? Was the point of the talks, as some have suggested, no more than a pretext for bombing, in Western thinking? Or, was the intention in holding the talks in France to gain an agreement and avoid the hostile use of force? These questions can only be answered fully in light of the later sec-

tions on the conduct of military operations and what happened at Rambouillet. However, evidence of Western thinking and motivation can be considered here.

For the Americans, Račak had perhaps already been the final straw. It certainly appears to have been decisive. In the words of Madeleine Albright: "It is terrible to think that something like a massacre can actually galvanize people to action, but the truth is something terrible happened and the question then was what to do next."⁴¹ Her special envoy formed a similar conclusion, though adding that others in the international community were not quite as inclined to use armed force: "I made it clear that I thought this justified immediate military response. Now the Europeans were not ready to do this."⁴² However, according to U.S. Assistant Secretary of State James Rubin, who was present at Albright's meeting with her Russian counterpart Igor Ivanov, even Moscow had concluded that the Milošević regime had been a nuisance too often and that a threat or use of force would be required to alter the situation: "Ivanov made clear that he was tired of dealing with the consequences of Milošević's aggression, he was tired of having Russia appear always to defend Milošević, that he agreed that if anything was ever going to work it was going to require the use of force, but he told her quite candidly he could never say that publicly."⁴³

Yet while all of them probably accepted that at least the threat of force might be needed, the Europeans were more sympathetic to Anglo-French advocacy of an alternative strategy: France's President Jacques Chirac reported telling UK Prime Minister Tony Blair that "we must make one more attempt to negotiate a political solution. We Europeans must take responsibility for Europe."⁴⁴ Blair also backed the move for negotiations: "The consequence of these threats was so serious in terms of the military action, for goodness sake let's give it another try with the political process, let's stick all the people together, get all the pressure we can on both sides to come round the table and sort it out."⁴⁵ Much of Western thinking, however, was still influenced by the understanding that at least the threat of force was needed, with a clear model and precedent in the pattern of events—NATO bombing and the Dayton peace talks—that had brought the Bosnian phase of war to an end. According to UK Foreign Secretary Robin Cook: "We took the view that if we could get both sides together, as had happened at Dayton, and make sure that they were obliged to confront each other and to confront these difficult issues we might achieve the breakthrough."⁴⁶ The outcome was that on 6 February talks began at the Chateau of Rambouillet, thirty miles from Paris, although, unlike at Dayton, Milošević himself was not there. This was a crucial difference, given that he and his regime were at the heart of Western motivation and aims.

Two possible options for using Western armed forces were discussed. One was to use air power, and the other was to seek a permissive environment in

which a NATO-led international peace support force could be deployed. The former became the fallback plan as the latter was pursued. However, both were predicated on consideration and dismissal of a third option, the possible insertion of a ground force into Kosovo with a hostile mission. Getting a NATO ground force was judged to be essential. The only question was the route for getting it there. As both a practical and policy preferential step, using ground forces in combat mode was excluded.⁴⁷ In addition to practical factors, it was hardly likely diplomatically, for example, that Moscow or Beijing could have been reassured of the necessity and benign Western intent in such a situation, as evidence from the period of armed hostilities during 1999 confirmed.⁴⁸ But NATO-led implementation of any agreement was vital both to ensuring that the agreement was honored and to establishing a serious, physical-military impediment to the use of Serbian armed forces. Milošević would not be able to move on Kosovo with a major international force in place. But the permissive arrangements for deployment would make all the difference: there would be less need for major logistical backup and reinforcement to insert the force into a hostile environment, meaning that a smaller force and a lesser level of protection would be needed. The problems of deployment would still be significant, but they would be manageable—all the more so if the significantly better option of force transit through Serbia were a part of that package (this is discussed below in the context of the Rambouillet talks).

The effective impossibility of mounting a ground operation in a nonpermissive environment tallied with the political preferences of the leaders, especially those in Washington, DC, who had little taste for putting ground forces in harm's way, lest there should be difficulties that translated into negative domestic political opinion. On the other hand, those leaders were relatively comfortable authorizing what was seen as a largely risk-free use of air power—especially if it involved the use of standoff weapons. This was particularly the case because Western leaders, after years of dealing with Milošević in a variety of ways, had concluded that he would only accept an agreement if there were a credible threat of force—as had been most recently demonstrated by his accepting the October agreement with Holbrooke.

The aim of the Western actors was to get agreement and deployment before the Serbian campaign that they believed was to be launched in late March. Time was of the essence, and a strict timetable was put in place. International diplomatic agreement would provide the political mission for military implementation—and a NATO-led international military force on the ground would make the Serbian campaign of ethnic cleansing impossible. There was little desire to use destructive armed force if it could be avoided. Therefore, Western political

leaders tried to persuade Milošević to accept terms. For example, German Foreign Minister Joschka Fischer tried personally: “We met alone and I said he must see that this would end in war. I told him it was crazy for Yugoslavia and Serbia to fight the USA. I said that Germany had fought the USA twice—and it was a disaster. He should learn from history.” However, in Fischer’s view, “It was clear he wasn’t taking the West seriously.”⁴⁹ It was Milošević who was the real problem in Western eyes. According to Rubin, Madeleine Albright banged the table at one meeting and said that getting rid of Milošević was her number one aim; he had to go before she did.⁵⁰ And when President Boris Yeltsin of Russia said that Moscow and Washington risked losing what they had developed over the preceding years, U.S. President Bill Clinton made clear that the Belgrade leader was the real problem, not U.S.–Russian relations: “I argued to him that we actually took a lot of heat off of Russia by having NATO do this. I went through all the steps: the warnings Milošević had been given, the opportunities that we had that were missed to avoid any kind of a conflict in Kosovo months before it materialized.”⁵¹ However, Milošević claimed that “We are defending ourselves. I think we are defending the right to be free and independent, and the right to live in peace.”⁵² This was a powerful line in the domestic context and among some parts of international public opinion. However, it was out of line with events. Both the course and outcome of the talks at Rambouillet and conduct on the ground in Kosovo offered evidence, as is discussed in the following sections, that the Serbian leader’s protestation was nothing other than disingenuous.

Conduct and Outcomes

The conduct of both the NATO and Belgrade operations in Kosovo can inform understanding of the motivations of each set of actors prior to the Rambouillet talks and of their positions in those talks. To what extent do the conduct of operations and the outcome of armed hostilities shed light on our understanding of the intentions and perceptions of the actors? Was the West right to believe that large-scale ethnic cleansing was possible and likely? To what extent do events suggest that NATO was determined to use destructive armed force, whatever happened? What would have happened in Kosovo without NATO intervention? Did NATO violate international law? What was the extent of war crimes committed by the Yugoslav military/Serbian special police/paramilitaries? Did anyone flee NATO bombs? The answers to these questions posed by the Scholars’ Initiative emerge in consideration of the conduct of operations.

There are two pairs of issues to be covered in the assessment of conduct and outcomes. The first is the conduct of Belgrade forces on the one hand and

NATO's on the other. The second concerns international law. Legality constituted a significant motif in the debate over both Belgrade and NATO operations. The ethical and legal propriety both in launching operations and in carrying them out—*jus ad bellum* and *jus in bello*—is an important aspect of our overall understanding.⁵³

Although the interactive context of statement and counterstatement, action and both countercomment and counteraction cannot be forgotten, the first important feature of Belgrade's armed action is that it had two dimensions and directions. One was against the Kosovo Albanians; the other was against NATO. In considering Serbian operations, it is necessary to consider both sets of action. This is because both affected NATO conduct and action—as noted already, NATO was motivated by concern at Belgrade's action against Kosovo Albanians, yet once the Alliance launched armed action it obviously had to take into account Belgrade's response to aerial attack.

Following this, the other important thing to note is that Belgrade operations began before NATO action. From the first moments of the Serbian campaign on 20 March, villages were shelled or directly razed while the strike units of persecution entered the villages and murdered, raped, and tortured. The campaign was a fluent combination of forces. The security service (SDB) special operations (JSO) shock troops and the paramilitaries moving rapidly from one location to another in armored vehicles were at the sharp end of a joint operation supported by MUP and VJ infantry, including VJ special forces in places (such as Srbica and Suva Reka, as well as Djakovica, Priština, and Peć), and crucially by VJ artillery and tanks, with the latter, in particular, demonstrating the fruits of reflection over the preceding years, with emphasis on the capacity of armor and mechanized units to provide surprise and dynamism through fire and movement in local operations.⁵⁴ This integration was a product of careful preparation—which had also covered significant nonmilitary aspects.⁵⁵ The military leadership's view was that it had “to neutralise the Albanian terrorist forces quickly to prevent a massive armed rebellion.”⁵⁶ However, as the record showed, in Western eyes, the means to achieve that legitimate end were hard-edged and involved extensive and gross human rights abuses—as had been witnessed in Croatia and Bosnia-Herzegovina earlier in the 1990s, as well as in Kosovo itself in the preceding year.

As the Serbian campaign got going, the stories and the pictures were familiar—destroyed and burned out property, dead and mutilated bodies, massive flows of displaced people and refugees. The pictures were salient, recalling those of recent memory in Croatia and Bosnia, and also those of the Nazi era: just as the images of emaciated figures at barbed wired fences in concentration camps in Bosnia had made the world think of that era, in Kosovo it was the images of tens

of thousands of citizens forcibly packed onto deportation trains that recalled the 1940s. As one Kosovo Albanian research participant encapsulated an impression shared by many: “pictures showing people boarding the train transport were so aggressive and were instinctively identified with the Holocaust.”⁵⁷ The images of those who sought escape in the mountains of Kosovo and in neighboring countries must certainly have made bolstering solidarity within NATO easier. More than 660,000 were forcibly evicted and more than 700,000 fled the region. These figures represented perhaps two-thirds to three-quarters of Kosovo’s population.⁵⁸

One of the early assaults was on Mališevo. This also gave rise to particular evidence—film recorded in the immediate aftermath by one of the survivors, Bali Thaçi, who had fled the village as Serbian forces approached and then returned: “When I reached the spot where I had left my family, there was not a soul to be seen and everything was burning.” He found his camera intact in the ruins and began to film. His film depicts his own burned out house and the dead bodies in and around it.⁵⁹ The footage is of mutilated corpses—thirty-six bodies, among them his uncle, whom he did not recognize at the time and who is shown in closeup with his throat cut out—Thaçi failed to recognize him because he was so mutilated. It also depicts the moment when a friend finds his brother’s body. This captures the real, human experience at the receiving end of ethnic cleansing. The nature of his survivor’s evidence is compelling: “Once the camera started rolling, I didn’t stop. I did that so that no one could accuse me of faking the footage or adding to it.” The straightforward, unedited images are testimony to actions that can only be consistent with the allegations against Serbian forces by the International Criminal Tribunal for the former Yugoslavia of crimes against humanity and war crimes.⁶⁰

Thaçi’s wife, Elmije, had also left Mališevo as Serbian forces carried out operations—but as a part of those operations. As was the case with so many others, Elmije and the female members of her family were herded onto buses and removed. Elmije and her mother-in-law “waded through blood. We trod in pools of blood” as they were moved. Once removed, the future was bleak and the scene behind them grim: “We looked back to where we had left Bali. The place had been set on fire—cars, tractors, everything. The children were screaming ‘We’ve left Daddy back there!’” Even the forced eviction, surrounded by murder, mutilation, and arson, was incomplete. Once removed and driven toward the border, the ethnic Albanians from Mališevo, as happened to hundreds of thousands of others, were abandoned, pointed toward the border and left to complete their experience of ethnic cleansing on foot—although their initial fears were that murder awaited them in the near future:

They dropped us a long way from the border, then they shoved us out. We had no food. We hadn't eaten for four days. We had to rest. My feet had swollen. I couldn't walk. The others went on. I had never seen so many Serb police. We were sure they would kill us there and then. We kept stepping on spent cartridges. You couldn't see anything, it was dark and raining. We were really frightened they would kill us all.⁶¹

Some among the Serbian forces even confirmed the mistreatment of Kosovo Albanians. They reacted against what was happening and, in some cases, deserted rather than continue to be part of such a force. One of these was Dragošlav Bogičević, a member of the VJ: "I saw women on the roads with babies in their arms. I felt terrible. I was crying and saying: 'Serbs should not be doing this. The army never did such things. This is a disgrace for us.'"⁶² There can be little doubt that Belgrade forces in Kosovo committed crimes against humanity and war crimes. This is confirmed, above all, by the evidence introduced by the prosecution at the ICTY—even where specific accusations against particular individuals are not sustained.⁶³ That evidence also includes attempts to cover up the crimes committed by dumping trucks full of dead Kosovo Albanians into the River Danube outside Belgrade.⁶⁴

The Belgrade strategy, as in other cases, was ethnic cleansing—the removal of population groups that might be a reservoir of support for insurgent or terrorist military-political violence against Serbian rule. Belgrade's aim was to remove all, or most, of the Kosovo Albanians, as Serbian Radical Party leader—and both security service "friend" and paramilitary volunteer force organizer—Vojislav Šešelj made clear in a speech in the run-up to NATO action: "If NATO bombs us, we Serbs will suffer casualties. But no Albanians will remain in Kosovo."⁶⁵ Although this statement could be seen as being conditional on NATO action, the conduct of Serbian forces in Croatia, Bosnia-Herzegovina, and Kosovo in the preceding years suggested that the conditional aspect was a contingency of the situation—that is, it was an opportunity, as events seemed to support, to undertake large-scale, rapid ethnic cleansing and to imply that NATO, not Belgrade, was the cause of it.

Thus, when there were hundreds of thousands of Kosovo Albanians in the mountains and on the road who had been forced out of their homes physically or driven to flight by the fear of what might happen physically, Belgrade could blame everything on NATO. Milošević addressed an interviewer who raised the issue of the pitiful hordes on the road thus: "You are right, there are lots of refugees, but they are the result of bombing. And they are not only Albanians, everybody is running away because of bombing, Serbs, Turks, Gypsies, Muslims, Deers [sic] are running, birds are running because of bombing, bees are running."

This caused problems for the alliance, as UK Prime Minister Tony Blair acknowledged: “A lot of people who were opposed to any action in Kosovo and against Serbia were saying ‘You guys have caused this’—so we were getting huge pressure on that.” Milošević was, of course, not averse to uttering words intended to exploit that sense of pressure: “When our soldiers are dying they know why they are dying. They are dying for the homeland, for their fatherland. And for what will die your soldiers 5,000 miles from home, killing children until they sleep, killing women and girls, and peaceful citizens, and ruining what we were building through the decades after the Second World War?”⁶⁶ The propaganda element was salient, as the success of the NATO mission appeared to be in question.

While the Serbian leader said these things for propaganda effect, they were not necessarily groundless. He was right that those fleeing were not purely ethnic Albanians. Over a decade after armed hostilities in Kosovo ended—and most refugees had long ago returned—1,280 Roma remained in Macedonia as refugees, fearing revenge from Kosovo’s Albanians. Although the overwhelming majority of refugees were, of course, ethnic Albanian, it is evident that not all were—and also that there were tensions among refugees. Beyond this, there can be no doubt that the flight of some people was influenced by NATO bombing, as Milošević claimed and as a Macedonian Red Cross manager believed.⁶⁷ Nevertheless, a more detailed assessment suggests that the overdrive ethnic cleansing campaign under cover of NATO action was likely a bigger factor most of the time.

In this context, it is instructive to note that for most of the period of armed hostilities Western journalists were confined to Belgrade and had limited scope. There can be little doubt that the reason for this was to avoid further reports of the Belgrade forces’ actions alleging yet more crimes. However, when there was an opportunity to show NATO in a bad light, both internationally and to a domestic audience (which could be all the more persuasively influenced by reports that included material filtered back through international sources), then the journalists were quickly rushed to the scene to report directly and firsthand about alleged NATO atrocities, especially against Albanian refugees. For example, when NATO planes hit a column of displaced persons near Djakovica, on the road between Prizren and Priština, Milenko Momčilović, the Serbian investigating judge, complained that “NATO fascists have bombed a column of refugees. Nineteen people have been killed.” This happened three weeks into operations, and the final figure of dead was more than seventy.⁶⁸ Foreign journalists previously restricted to Belgrade were taken collectively to the site in Kosovo. The horrifying images of dead bodies laid out in a field spread around the world. This served the purpose of questioning NATO’s role and undermining its legitimacy, while helping to reinforce legitimacy in Serbia. The aspiration here was, presum-

ably, to undermine cohesion and morale in the alliance, both among its members and between each of the governments and their people.

Incidents such as the refugee column (others included attacking a train on a bridge)⁶⁹ and stray bombs on residential buildings in Niš (discussed further below) and Aleksinac,⁷⁰ for example, were not only damaging as signs of NATO's frustrations, thereby affecting support for the mission in the international public sphere, but they were also the material for accusations of NATO war crimes. This aspect of international law compounded concerns in some quarters that the NATO action as a whole was unlawful. Thus, there was a legal-political nexus at the core of discussion about the NATO campaign.

The differences within NATO over the legal grounds for action vied with concerns over how force might be applied, as the alliance approached the prospect of action over Kosovo. NATO Secretary-General Javier Solana played an important role in reaching a position where the alliance could agree that its action would be lawful. On one level, he spoke to political leaders themselves. He asked U.S. President Clinton directly: "If it comes to it, do you have a legal basis to act against him [Milošević]?" Clinton replied without doubt: "I said to him 'yes' and when I authorized the use of force I said emphatically 'yes.'"⁷¹ However, the issue was not quite as straightforward as Clinton's response suggested. There were accusations from Belgrade and elsewhere that NATO action would be an unlawful act of aggression.

At the same time, there had been serious differences within the alliance over the legal basis for action. Some countries were concerned that a further UN Security Council resolution was required explicitly to authorize action. Although a string of resolutions had defined the situation in Kosovo as a threat to international peace and security—the watchword for authorizing mandatory enforcement action in international law that overrides all other elements of international law under Chapter VII of the UN Charter—and intimated that consequences would follow, none of them had used any formulation of words that could clearly be interpreted as authorizing a use of force (for example, "all necessary means").⁷² Others at NATO thought the duty to prevent genocide, under the Genocide Convention should be a legal basis.⁷³ Still others took the view that principles of natural law permitted a right to humanitarian intervention.⁷⁴ After the conflict, some preferred to view NATO's engagement as a justified breach of the law, given the overriding humanitarian situation.⁷⁵ However, there was no single interpretation throughout the alliance, but with each country having its own legal interpretation authorizing action, the NAC authorized action. However, the lack of a single stated legal interpretation must itself be taken as a sign of the legal uncertainty surrounding the conflict.⁷⁶ NATO's legal position has been seen as being

strengthened by three other factors. The first of these is that an attempt to obtain a Security Council resolution condemning the action was lost by twelve votes to three, casting reflected and implicit legal legitimacy on the action, if not formal Security Council explicit authority.⁷⁷ To a limited extent, this might be seen as being reinforced by a twelve vote to four rejection of Belgrade's petition to the International Court of Justice, aimed effectively at declaring NATO operations unlawful—although the basis for this was the lack of *prima facie* jurisdiction to address the petition.⁷⁸ The second is that the action could be interpreted as being endorsed *ex post facto* by the UN Security Council's decision to pass Resolution 1244 on the outcome of the NATO engagement and endorsing NATO's role in implementing that resolution and the agreement, which informed it. The final element was the commitment of various Western countries to seek clarification and consolidation of the right to humanitarian intervention and the terms for it in international law through a UN commission—this gave rise to the notion of the “responsibility to protect.”⁷⁹

The lack of absolute, agreed, and generalizable legal certainty (qualified by a variety of confident understandings held by those carrying out the action) regarding the *jus ad bellum* on NATO's side only helped to accentuate problems regarding the *jus in bello*, with Belgrade and critics charging the alliance with war crimes. Given the extent of NATO's operations, involving some 38,004 sorties, of which 10,484 were strike missions, over 78 days,⁸⁰ it was quite remarkable only to register so few serious errors. Human Rights Watch produced a list of around eighty incidents in this context.⁸¹ Most of these could not be questioned as even potential material for war crimes charges, but even if all of them were to be accepted as seriously meriting investigation, this would amount to a 0.8 percent rate of mistake—by almost any standards, a notable and near perfect record. However, the number of incidents really worthy of anything approaching serious consideration was perhaps a quarter of this figure. For example, the prosecutor at the ICTY conducted a preliminary investigation into allegations of war crimes against NATO, including a list with twenty-two entries on it.⁸²

In terms of the conduct of those operations, a main focus for allegations of NATO war crimes was a report by Human Rights Watch in the course of operations, which was supplanted later by an extensive report on its view of the circumstances surrounding the deaths of more than 500 civilians as a result of NATO aerial action.⁸³ However, of the incidents cited by Human Rights Watch and other international NGOs, which were noted, a report for the prosecutor at the ICTY concluded that on the basis of the available evidence there was not a *prima facie* case to bring against anyone involved at whatever level in the NATO operations regarding allegations made.⁸⁴ To some extent this was to be expected because

the alliance and its members took particular measures to ensure the lawfulness of action and to protect against accusations of intent to commit war crimes. The Allies imposed significant legal restraints on operations, with every single mission legally vetted at the national level⁸⁵—although this also included air support missions where the specific targets could not be preapproved, only the nature of the action. At the strategic level, a legal advisor at the U.S. European Command Headquarters in Stuttgart participated in General Clark's video teleconferences with his U.S. commanders in his capacity as U.S. CINCEUR,⁸⁶ when final targeting decisions were made prior to the political approval process. Before approving each target, General Clark weighed its military value against the likely extent of civilian casualties. On occasion there were disagreements among the senior officers over whether a target was justified.⁸⁷ But, overall, there was a clear intention to act within the laws of armed conflict. That intention, of course, did not necessarily mean that every single action was beyond charge, or even potential conviction in court, but it did confirm that care was taken to try not to contravene the law. However, some cases would always stir attention. Among the most notable and controversial cases, the prosecutor's study concluded that in slightly different circumstances the bombing of the Chinese Embassy in Belgrade might have been susceptible to prosecution, but in the given case, it was not.⁸⁸ Close attention was paid to the bombing of Radio Television Serbia (RTS) in Serbia. However, although it was noted that had that attack been based purely on seeking to impede Serbian propaganda its legality might have been doubtful, the evidence suggested that NATO attacked RTS clearly because it formed part of Belgrade's military command and control communications network. The prosecutor, however, did not look in detail at one of the most contentious, and potentially strongest allegations, concerning cluster munitions. Although the legal authority of the Tribunal has to be acknowledged on this issue, it is worth further attention.

The focus here on cluster munitions seems warranted by a number of factors that suggest more of a *prima facie* case than the prosecutor's report admitted. The prosecutor did not look at specific incidents involving cluster bombs, including the case of Niš, which is described below. Instead, it treated cluster munitions as a general issue, thereby dismissing consideration of potential specific charges. The report noted that there might be cases involving the use of cluster munitions, although there was no specific treaty provision that precluded their use. It did so citing one case, a Rule 61 hearing decision at the Tribunal regarding Republika Srpska Krajina commander Milan Martić, where an Orkan rocket with a cluster warhead had been used in such a manner as to warrant criminal charges. This was based on three main elements: there was intention deliberately to attack civilians, the weapon was inaccurate, and it struck an area with no military objectives.⁸⁹

The inference in the report was that these circumstances did not apply to NATO action over Kosovo. Although no intention deliberately to attack civilians and the reasonable presumption that there were military targets, albeit mixed ones, in areas hit can be accepted, this is not sufficient. The weapon is indiscriminate by definition—that is its purpose: around two hundred separate explosive devices of different kinds can be held within one warhead. Thus, one of the three elements has to apply. Beyond this, *Additional Protocol I to the Geneva Conventions of 1949*, Article 52, indicates that there are two conditions to be satisfied regarding the legitimacy of a particular attack where a military objective has a dual character or is mixed with nonmilitary entities: that the purpose or use should make an effective contribution to military action and that destruction caused should give definite military advantage.⁹⁰ The detailed ins and outs in cases in Kosovo cannot reasonably be handled here. But it can be noted that the prosecutor's team, while considering these issues in a reasonably lengthy and balanced treatment of the RTS tower, did not consider them at either a general level, or regarding specific cases in the one paragraph assessment regarding cluster bombs. This indicates that, at a minimum, other questions could have been and might be posed.

Cluster munitions, as noted, have perhaps two hundred separate missiles within one warhead. They are effective for battlefield use against concentrations of troops, tanks, or artillery, for example, dispersing multiple destructive devices over a widespread area. Similarly, cluster is useful against airfields, which was the intended mission in Niš. However, they are inaccurate pieces of weaponry. In addition, they have a relatively high rate of redundancy—out of 200 devices, it is recognized by military personnel that around 5 percent fail at any time.⁹¹ This means that for every cluster device, there will be around ten unexploded bombs in the dispersal zone. This caused problems for the NATO-led ground forces of KFOR because they undertook their implementation mission in Kosovo, noting that both experienced soldiers and civilians were liable to maiming if they accidentally detonated one—which, for example, stepping on it could cause. This potential for civilian harm, with any military effect dislocated in time, is compounded by the potential for damage to civilian objects at the time of use if, as in the case of Niš, where the air base is located within the town, cluster bombs are used in an urban, civilian populated area.

In human terms, the effects of using cluster bombs against Niš were stark. Notwithstanding the visual fireworks, the strike was politically maladroit considering that the city's political leaders were among the most pro-West in Serbia. But it was most devastating in its human impact. Pregnant schoolteacher Liljana Spasić was one of many injured left lying amid pools of blood and body parts. Her mother-in-law, who later described how they had been hit by “little bombs,”⁹²

was taken to the hospital to have her leg amputated, not knowing that her daughter-in-law and unborn grandchild had been killed where both she and Liljana had stood. The city's mayor (and later Serbian prime minister) Zoran Živković described the awful scenes, commenting ironically, as an anti-Milošević activist and friend-in-waiting of the West: "Their 'humanitarian' intervention killed fifteen people in a day."⁹³

Although the deaths were clearly unintentional, this was not entirely evident until after the prosecutor's report had studied the incident for possible charges of military negligence. The *prima facie* case—using a weapons system known to be inaccurate and indiscriminate against an airfield in a civilian residential area without a compelling military objective—may well have influenced the U.S. decision to discontinue using cluster munitions soon afterward, particularly in view of a report by Human Rights Watch questioning their legality.⁹⁴ It seems reasonable to suggest (without prejudice) that the report's assertion that cluster bombs "should not have been used in attacks in populated areas, let alone urban targets, given the risks" might have been better tested by the prosecutor.

Incidents where war crimes were alleged (whether or not the allegations were well founded) clearly put additional pressure on the alliance, with Western journalists posing awkward questions at the daily NATO briefing to Jamie Shea, the official spokesperson. Shea was asked aggressively by an American journalist, "Do you deny that NATO was responsible for the incident, or incidents, which have been shown on Serbian television and to which Western correspondents were invited to go and look at those bodies and so on that appeared to have occurred on the road between Djakovica and Prizren?" Shea was unable to respond in any positive way for want of information. He could only say, "I have no indication at the present time that NATO was responsible," which under insistent pressure, did not sound reassuring.⁹⁵ As pressure grew, UK Prime Minister Blair phoned U.S. President Clinton and told him, "Look, we're losing this, we're losing the propaganda battle, I mean we're losing it big time. This is like, you and I are familiar with this, it's like winning an election. You've got to have a proper press war room, war propaganda room, where you are putting out the correct information, you're correcting the lines of your opponents, you're setting the agenda."⁹⁶ NATO was under pressure at this point because operations were not going according to plan. Indeed, from the outset, they had not been, as the plan was for no bombing or, at worst, up to one week of air operations, as noted below. In this context, the nature of the operation and the issue of ground forces became an important part of the debate on NATO's action.

There was intense discussion within the alliance on moving to a commitment to use ground forces, which involved crucial discussions between UK

Prime Minister Tony Blair and NATO SACEUR Wesley Clark.⁹⁷ However, while debate, discussion, and virtual discussion occurred, in some sense, the KLA had begun to provide a very limited ground complement for the NATO air action, at least in the area close to the border around Mount Pastrik. The KLA role in this context has led some to suggest that the KLA was a proxy ground force for the alliance's airmen.⁹⁸ This would be significantly to exaggerate both the role and the capability of the KLA. Although there was a good deal of harassment, especially close to the borders with Albania, it did not amount to operations that could threaten Belgrade's forces directly. Absent NATO air power, the KLA stood no chance operationally against the VJ, as had been demonstrated many times during the previous year. On every occasion, VJ and MUP operations had rolled back the KLA insurgency. Aside from the convenience to the NATO air campaign, there is no suggestion that the "revitalized" KLA operations in May were in any way substantial. They were not directly threatening to Serbian forces. Despite the losses incurred by NATO's bombing of troops drawn into the open, the VJ was finding no problem in rebuffing KLA action. Thus, although some recognition has to be given to the fact that the KLA was present and that its raids played a limited role in making Belgrade forces more vulnerable to air attack, it is hard to make the jump to an inference that the KLA was NATO's proxy ground force in any but a limited sense. That limited sense was that in the last weeks of the conflict some KLA operations, especially around Mount Pastrik, were coordinated with the help of Albanian military intelligence intermediaries, according to Clark, with a view to flushing VJ personnel and targets out into the open, where NATO aircraft could strike them.⁹⁹ Not all NATO's successes were in the KLA area of operations close to the border with Albania. The only thing that could be said regarding the KLA action in those areas is that it provided a small-scale catalyst to what would have happened anyway once NATO had taken the decision politically to accept the deliberate killing of Belgrade troops if necessary to the pursuit of the military objective—which it did in mid-May.¹⁰⁰ At the same time, in terms of the ground conflict in Kosovo, it should be noted that KLA operations in some cases gave rise to suspicion of committing war crimes and crimes against humanity, which resulted in indictments against KLA personnel by the ICTY.¹⁰¹

Although examination of motivations in the previous section offered some evidence that U.S. Secretary of State Albright appeared keen to bomb, the weight of evidence also suggested that the U.S. and NATO as a whole were certainly not intent on bombing, considered the possibility gravely, and had gaining agreement at Rambouillet as a primary objective but that the key aim was to ensure deployment of ground forces so as to prevent the possibility of Belgrade's conducting anything like ethnic cleansing operations. The threat of aerial bombardment was

intended to coerce Belgrade—which meant Milošević—into agreement. There was intent behind NATO’s threat to give it credibility—experience over the years had led to the conclusion that Milošević would only desist from actions if he felt there was a serious threat. The evidence from NATO’s actual air campaign indicates that the alliance, while prepared to use force, was not intent on doing so.

The crucial evidence on this is that, in terms of actual conduct, there were plans for only very limited operations over perhaps only three days, certainly no more than one week. The hope at NATO was clearly that bombing could be avoided. This was clear when U.S. Envoy Holbrooke reported to Secretary-General Solana that he had not persuaded Milošević to accept terms: “The news from Dick was bad. The NATO Council prepared for the worst.”¹⁰² NATO governments had strongly hoped to avoid the resort to air power. And, as far as they had recognized that it might be possible, everything was predicated on a short campaign. One U.S. airman’s account confirms that a campaign of less than a week was foreseen, all being well: “Everyone was talking three days. And all the pilots were telling me ‘you gotta get me in, you gotta get me in cos I need to go, I want to go and bomb before the war is over.’”¹⁰³ There was a similar expectation, it seems on the Serbian side: “When the bombing began, I thought it would be over in one night. Then life would go back to normal. I thought it could not last 24 hours. Three days was unimaginable.”¹⁰⁴ However, the campaign, as noted, ended up taking nearly three months.

Already, it was evident that the campaign could be a long haul. Bad weather meant that many operations could not be carried out, and NATO was unable to get around Belgrade’s highly successful and ingenious asymmetric strategy of not seeking significantly to use its air defense capability,¹⁰⁵ especially after a couple of planes had been lost to NATO attack aircraft less than a week in. Within a week, NATO’s campaign was stalling: “All the targets that were given had been hit. So there weren’t any approved targets to hit anymore unless we went out there and hit the same targets again, which is what we did.”¹⁰⁶ As the NATO SACEUR, U.S. General Wesley Clark, noted, “It was fairly clear by Monday that we were not going to get a knock-out blow.”¹⁰⁷ Thus, it became clear that succeeding would require more than initially thought, both conceptually and practically. That generated new problems for the alliance. The debate surrounding how to solve these problems – notably targeting soldiers, bridges and the RTS building – revealed much about the West’s real intentions at Rambouillet.¹⁰⁸ This could be seen in discussion on using ground forces in a nonpermissive environment and in discussion regarding the nature of the operations themselves—how to use air power and what the purpose was. This shows that the West, far from having a lust to bomb, had great reservations about using force despite judging it necessary to

take such action in the end. It also shows that what made the West judge action to be necessary was the determination to stop the Milošević regime by denuding its forces and changing its policy.

Rambouillet, Paris, and Beyond

At Rambouillet, the Western intention was to secure an agreement that would provide broad-ranging and effective self-government for the province of Kosovo—short of its gaining independent international personality—secure the withdrawal of most Serbian and FRY forces, and also facilitate the deployment of an international armed force under NATO leadership, command, and control, which would ensure that there was no possibility of Belgrade's being able to initiate ethnic cleansing operations against the predominantly ethnic Albanian population in the province. The primary objective was deployment of an armed force that could block Serbian action. It was desirable that such an agreement should be broadly international and have the backing of the UN Security Council. With this in mind, and given the role of the international Contact Group dealing with the breakup of the old Yugoslavia, there was a great desire to ensure Russia's involvement.¹⁰⁹ However, there was a fine line to be walked between the desire for a truly international character to the agreement and the imperative of blocking, if at all possible, what Western leaders believed to be an imminent Serbian campaign of ethnic cleansing. For those focused on Western interests—including the viability of the NATO-led operation in Bosnia-Herzegovina and the credibility of the Alliance itself—an effective response to the problem posed by Belgrade was more important than securing broader international support, if that decision had to be made.¹¹⁰

The French and British, on behalf of the Contact Group, formally, and the EU, politically, led the negotiations at Rambouillet, with their respective foreign ministers as co-chairs.¹¹¹ However, the talks were reinforced by the continuing presence of a NATO threat to use force against Belgrade if it did not cooperate in the talks.¹¹² Although these were technically separate tracks of international involvement, the reality was that London and Paris were prominent in both cases and that the U.S. was very close to each process. In a strong sense, the two tracks were part of the same Western approach, broadly: the aim was to avert the Belgrade campaign against the KLA and the ethnic Albanian population in Kosovo, including extensive ethnic cleansing, that Western leaders believed was imminent. Although there was no doubt that success in this would count on the use of Western armed forces, the issue of how best to use the military was not

straightforward, as noted above. This made an agreement that allowed for the deployment of an international force highly desirable from the Western perspective.

Deployment of an international force was a key question that became part of the proposed agreement because most of the political questions appeared to be capable of interim agreement.¹¹³ In February, Belgrade decided to send a delegation backed by a parliamentary vote. But that vote explicitly instructed the delegation to block any attempt to part Kosovo from Serbia or to impose an international presence that was greater than the KVM's already in place.¹¹⁴ Despite this, political progress was made. The interim document tabled was developed from the "Hill plan"—that is, the draft arrangements for Kosovo that U.S. Special Envoy Christopher Hill had been quietly seeking to negotiate over several months.¹¹⁵ There were additions to the Hill plan, but ostensibly these were less favorable to the Kosovo Albanians than to Serbia. One was that arrangements would only be interim and that a process to find a final status would begin only after three years. Another was that the KLA would have to disband completely—an element of the scheme not shown to the Kosovo Albanian delegation until two days before the second deadline in the talks and one that clearly generated friction between the West and the Kosovo Albanians at the talks.¹¹⁶

Indeed, the key political difficulty appeared to rest with the Kosovo Albanians rather than Belgrade. The crucial issue for the Kosovo Albanian delegation was inclusion of a referendum on independence. Although the interim agreement offered a process that would lead to final status arrangements for Kosovo, it made no mention of a referendum. One commander of the KLA, known as Remi, admitted: "We phoned each delegate and warned them: Don't you dare sign!"¹¹⁷ Head of delegation Haşim Thaçi, a KLA leader, added that Remi had said that "to sign would be treason." However, the foreign ministers chairing the meeting excluded that possibility, knowing that it would not be acceptable to the Belgrade delegation, whereas there could be hope that something would change, one way or the other, after three years and whatever process would follow that period. The Kosovo Albanian position was a matter of immense frustration to the Western political leaders. Thaçi was well aware that, "the time had come to say Yes or No to the document. It was an impossible choice. . . . The document ruled out independence. A referendum wasn't mentioned. Many men had died fighting for this. My response was, 'I will sign the document, but it must include a referendum.' . . . I knew that if we said no to the document we would lose all international support. The Kosovo question would be swept aside like the Kurds."¹¹⁸

Albright typified Western frustration: "When he wouldn't say yes, I remember taking off my earphones, just putting them down on the table in pure exasperation." In her mind, the "question was basically 'Do you agree with the

framework—Yes or No?’ And we were expecting a Yes, or I was.” As the conference session was suspended, Albright held a private meeting with Thaçi and said, “Look, I don’t understand what just happened in there. You have let us down. It is an impossible situation now. How could you do this? We expected you to be a leader.”¹¹⁹ This much was completely in line with her colleagues from other Western countries, such as France, the UK, Italy, and Germany. However, her position in the discussion perhaps went beyond that which was clearly in common and revealed an inclination on her part, certainly, and possibly on that of the U.S., that seemed equally or more intent on isolating Serbia so that it would either have to agree, or as seemed more likely, face NATO’s bombs. According to Thaçi: “Mrs. Albright said: ‘If you sign and the Serbs don’t, we will bomb. NATO will activate. If you don’t sign, our hands are tied.’” From her perspective, Albright “could see that he was just shocked. I mean he looked like a high school student that I had just dressed down.” The Kosovo Albanians, according to Thaçi, were pressed ever harder to accept the document, “with no referendum.”¹²⁰

In the end, there was no referendum, but only because the Kosovo Albanian delegation, working with American negotiators, came up with a side measure. In the words of one delegation member, Vetton Surroi, the highly respected publisher, journalist, and liberal political leader: “We had been negotiating for three weeks. We’d had ten years of conflict with Milošević. If we refused to sign, we would be throwing it all away. Three seconds could ruin everything. All we had to do was to find the right form of words. . . . So we left the door open for a referendum, but we told the international community we would stop trying to change the document.” Their solution was a letter to Albright confirming the understanding that the wording “will of the people” in the interim agreement implied a referendum. Although Thaçi wanted time and translations before he was sure, the Americans, eager to grasp this means of agreement, rushed to make it public and cement what would therefore mean Kosovo Albanian agreement. Before announcing it, Albright’s spokesman, Assistant Secretary Rubin, hesitated a moment: “I thought that I’d better first check with the Secretary of State and I snuck in to the conference room and whispered in her ear what had happened, and she said ‘go out and announce it.’” This is what Albright and her team wanted—as Rubin concluded: “The Albanians had chosen peace and deferred independence, and the Serbs had not. And now there was clarity that the world needed in deciding whose side they should be on.”¹²¹

Although this seems indicative of an American urgency to put Serbia in a corner and possibly to frame air attacks, the latter did not necessarily follow from the former. At this point, had there been Serbian agreement, the subsequent aerial assault on the country would have been avoided. That seemed possible, given that

political agreement was so close. It is also consistent with the instructions given to the Serbian negotiators at Rambouillet by Milošević, where the emphasis appeared to be on achieving some kind of solution that would avert NATO action. The testimony of Zoran Anđeljković, minister for Kosovo, makes this clear: “It was late, Milošević was at home, he told us that we had to prevent NATO aggression. We had little room to manoeuvre. We faced the bombing of Yugoslavia. We had to make one last try. So Milutinović would go to Rambouillet.”¹²² Although they seemed to have limited real authority initially, once Serbian President Milutin Milutinović had been dispatched this was no longer so clearly the case, and negotiations offered the prospect of success in the eyes of some, such as Hill, as noted already.

Even though political agreement was close, in the end it slipped far away during a two-week gap in which the Kosovo Albanian delegation was allowed time to return to Kosovo and explain to the KLA commanders there what they had really agreed to at Rambouillet, the U.S. position, and the importance of either forcing Serbia to come to terms and accept interim and implementation arrangements or to be isolated and face NATO action. They could also explain how either of these outcomes would suit KLA purposes. However, when the parties returned, Belgrade tabled a new proposal,¹²³ which for the most part in both its terminology (consistent use of *Kosmet* rather than *Kosovo* beginning with the title and continuing throughout) and content (critically, for example, the promise of self-government was compromised by the statement that “federal organs and organs of the republic of Serbia shall also exercise their powers and rights in Kosmet”¹²⁴), was a very long way in many respects from the document that had been close to political agreement a fortnight earlier.

Although the Belgrade proposal dealt with issues of autonomy, these clearly entailed less real self-government for the majority Albanians. Explicitly reducing them to equal status with a variety of other small “national communities,” it effectively rejected the substantive autonomy envisaged in the Rambouillet document. Ironically, Milošević suggested that “What was tried to be imposed in Rambouillet was not autonomy at all but independence. And I really don’t believe that if you can show it to any honest American that there is one single honest American who will tell you that if they were in the place of our delegation they would sign it.”¹²⁵ Although there could be no doubt that the interim accord left Belgrade with no significant political role in the province—and enough to hint at future independence in the right circumstances for the Kosovo Albanians—the reality was that it left a very real Serbian and FRY presence and responsibilities in Kosovo. This was despite what Milošević alleged to the contrary, appealing to those both in Serbia and outside the country, who were not aware of the detail and

the real picture. That Rambouillet left Belgrade with a real presence in Kosovo can be understood through consideration of the military implementation provisions of the agreement.

The question of deploying troops through Serbia or, if this could not be achieved through agreement, then NATO bombing became the main point of contention in both public and political discussion. This was true at the time and subsequently. The real intention was not to gain the chance to bomb. As noted in the previous section, although ready to bomb, the alliance was not ready for a sustained campaign, believing that this would not be needed and that troops would be deployed. This was also confirmed by the reality that some European NATO countries, with the UK notably in the lead, had begun to deploy troops to Macedonia in February in anticipation of an agreement whose implementation would require immediate readiness—these forces would join with those already deployed there under NATO auspices as an extraction force for the OSCE mission in Kosovo. What the draft planning and the appendix envisaged, first of all, was an agreement under which (according to chapter 7 of the interim agreement¹²⁶—the Rambouillet document) the parties would invite NATO “to constitute and lead a military force to help ensure compliance” with the provisions of the agreement and that affirmed the “sovereignty and territorial integrity” of the FRY.¹²⁷

The version of KFOR proposed at that stage (primarily embodied in chapter 7 of the agreement), was considerably more limited than the version eventually deployed after armed hostilities ended in June 1999. Whereas the latter gave KFOR a wide-ranging security remit in the province, under the Rambouillet terms the mission would have been limited to supervising demilitarization and then ensuring that there was no retreat on that position and no armed hostilities¹²⁸—and it would not have had the role it took, in the end, regarding Kosovo’s borders with Albania and Macedonia, because Rambouillet would have permitted a continuing VJ presence of 1,500 troops for border monitoring, backed by up to 1,000 further troops to perform command and support functions,¹²⁹ as well as a small number of border police,¹³⁰ 2,500 ordinary MUP for public security purposes¹³¹ (although these were expected to draw down and to be transformed), and 3,000 local police,¹³² whereas the eventual deployment of KFOR saw the complete removal of all Serbian forces.¹³³ Belgrade would clearly have been better off in terms of its connection to Kosovo under Rambouillet than it proved to be afterward. However, in the end, after seventy-eight days of air action, Belgrade agreed to terms in which no Serbian or FRY forces remained in the province.

This change in the Western position emerged in the course of the conflict and was the subject of discussions between the Americans and the Russians in late May while framing a joint initiative. The Russian envoy, former Prime

Minister Viktor Chernomyrdin still favored letting Belgrade police operate in Kosovo, whereas the Americans were insisting that NATO was needed for this and that Serbian forces should leave. As U.S. envoy Strobe Talbott made clear: “At the end of the day, the disagreement between us was going to come down to one three letter word, all—A-L-L, which also happens to be a three letter word in Russian, v-s-e. So, the only way to create what was called a secure environment in Kosovo is to get all of the Serbs out. That meant all of the Serb armed forces, all of the paramilitary, all of the Special Police, all of them, every one.”¹³⁴ Thus, by rejecting the terms at Rambouillet, where the West had been prepared to allow, and work with, the presence of Serbian and FRY security forces, Belgrade had ended with no presence whatsoever in the province, *de facto* losing any effective authority over it—although formal rights over the status of borders remained.

Appendix B of the draft agreement was to become notorious and the centerpiece of criticism and conspiracy theories (noted above) depicting NATO as a provocative bully, delivering ultimatums that contained terms that were alleged to have been designed to be unacceptable and, therefore, to do no more than serve as the pretext for an armed air campaign that the alliance was determined to initiate. Milošević characterized it this way: “UN troops would be free to use all roads, harbours and airports on our territory. It would be occupation.”¹³⁵ Appendix B was the basis of this notion.¹³⁶

In terms of the appendix itself, however, it was a more-or-less off-the-shelf status-of-forces agreement. This can be seen in the wording, which in all but small details was a copy of that which had been used by NATO in Bosnia-Herzegovina, by reference to the most contentious elements of the appendix. The focus of contention was paragraph 8 of appendix B. Paragraph 8 stipulated freedom of movement throughout the FRY for the force—something simply transferred from the Bosnian model without particular thought. The wording of paragraph 8, however, is exactly the same as that of the start of the equivalent paragraph 9 in the Status of Forces Agreement for IFOR, the NATO-led multinational implementation force deployed to Bosnia-Herzegovina in November 1995:

NATO personnel shall enjoy, together with their vehicles, vessels, aircraft and equipment, free and unrestricted passage and unimpeded access throughout the FRY, including associated airspace and territorial waters. This shall include, but not be limited to, the right of bivouac, maneuver, billet, and utilization of any areas or facilities as required for support, training and operations.¹³⁷

However, despite being copied from the Bosnia SoFA in the first place, once thought about, the proposal carried significant logistical and transit advantages,

given the physical difficulties of relying on Albania and Macedonia for deploying forces into Kosovo.¹³⁸ Alleged by Belgrade to be a mandate for an occupation force, this was, from the NATO perspective, a mixture of lazy borrowing from an existing template and the realization of greater practicality in using access from Bosnia-Herzegovina and, particularly, from Hungary, to transit through the rest of Serbia into Kosovo. However, whereas the authority to move freely throughout Bosnia and Herzegovina was not seriously contested, the identical provision regarding the FRY was seen by critics and willfully by Belgrade as contentious and unacceptable. Rather than being a device designed to be unacceptable, as critics suggested, it was something normal and sensible in military planners' terms.

The paramount fallacy in what Alex Bellamy has called the "orthodoxy" over the military appendix is the charge that it was nonnegotiable.¹³⁹ In fact, it was Milošević who refused to contemplate discussion over the annex. With perhaps seven points still to be agreed on the political part of the plan, Milošević told Ambassador Hill that the military implementation arrangements were wholly unacceptable—that not a country in the world could accept such terms (ignoring, as discussed above, that these were the same terms to which Bosnia and Herzegovina had agreed, in large part because of him). Hill said that the Serbian leader should make suggestions about what would be acceptable and that he would see what he could do. He offered Milošević his pen to mark the text. Milošević, however, sat with his arms firmly folded and what can only be imagined as a childish stubborn sulk on his face and did not speak again.¹⁴⁰ Hill's efforts were not the only ones. Secretary of State Madeleine Albright, in what must have been an uncomfortable act of personal concession, also secretly called Milošević, by arrangement, to make it clear that the U.S. (and, therefore, it could be presumed, its allies and partners) was prepared to negotiate the terms of the military annex, even proposing a meeting in Geneva, which the Serbian leader rejected.¹⁴¹ Albright testified as follows: "I placed a call to Milošević and I explained to him what the stakes were and once again I did 'we're at a fork in the road and you have an option to come back and be part of Europe, this is a very serious time, you need to consider what's been offered here.'"¹⁴² However, despite these offers, the Serbian leader would not even begin to discuss the possibility.

By now, Milošević appears clearly to have made up his mind and to have set course for conflict, expecting NATO air action and waiting to exploit it. This judgment is borne out by the political counterproposal at the Paris follow-up meeting to Rambouillet, which was so different from the near agreement two weeks before; by Milošević's clear refusal to contemplate offers to investigate changing the document on military implementation; and by the ultimate acceptance of terms far worse than anything on the table in France regarding Belgrade's

presence and role in Kosovo—something that cannot rationally be explained as a function of the seventy-eight-day campaign of aerial force by NATO, given that if the stakes were genuine and high enough to warrant walking into such a campaign, the decision abruptly to capitulate in late May 1999 and accept far worse terms would not be tenable.

Even until the very last moment, there was an option to avert bombing and keep Belgrade forces in Kosovo while conceding the deployment of an international military force with a limited mission—one far more limited than that of the force eventually deployed. On 23 March 1999, Holbrooke was dispatched one last time. His mission was to convince Milošević to change course, freeing both him and the West of the prospect of armed conflict—except, as the conduct of both sides in the actual armed conflict indicated, as already seen, NATO was not really prepared for armed hostilities, assuming that coercive threat would produce agreement, whereas Milošević seemed both prepared for and intent on calling NATO's bluff and then exploiting NATO action to carry out ethnic cleansing operations while his forces showed themselves ready to face NATO and even outwit the alliance. In Holbrooke's words: "I was asked to go back and to give Milošević a very clear message that if he didn't accept the Rambouillet agreements, we would bomb."¹⁴³ While Milutinović confirmed that Holbrooke "told Milošević that their missiles were so precise they could hit his table," Hill observed that "Milošević looked almost disinterested in it, sort of moving his head to the side and shaking it in disgust." He told Holbrooke, "well there's nothing I can do. I'm not going to sign," and the American team left, with Milutinović saying goodbye to them and, "tell us when it's starting so we can hide." The Serbian parliament subsequently backed rejection of the Rambouillet terms.¹⁴⁴

According to France's President Chirac, Belgrade's rejection took away any potential blurring around the issue: "Plainly, it was Milošević who had refused. So the die was cast."¹⁴⁵ It was Milošević who actively prevented any possibility of peace. More than this, the proposal was something about which there could have been discussion, had Belgrade shown even a smithereen of interest in engaging in negotiation. When the NATO Kosovo campaign came, it was by no means because NATO had sought to provoke it—as the conduct of that campaign confirmed. The Rambouillet and Paris talks were an opportunity for all concerned to avoid the use of destructive armed force—especially the West, which hoped that NATO threats would push Belgrade into agreement—rather than a pretext for NATO bombing. Although the talks had clear objectives from the Western perspective, political agreement with Belgrade had been close and the terms for military implementation were open to negotiation. Belgrade refused even to try

to negotiate. Milošević had seemingly decided that he would use the Rambouillet document as a cover for using force and pushing NATO into using force too.

Conclusions

In keeping with the SI's focus on salient controversies, we offer some indicative conclusions.

What motivated the U.S. and its NATO Allies? The West was motivated by the experience of Bosnia, the direct evidence of Serbian action in Kosovo during 1998 and the first months of 1999, as well as a clear belief that Belgrade intended an extensive campaign of ethnic cleansing in its southern province. The West therefore sought to prevent what it believed to be an intended Serbian campaign. Eventually, it sought to do this through armed air action, which aimed to denude the Belgrade security forces' capability strategically and ultimately persuade Milošević to change his policy—Milošević and his regime were seen as the source of the problem and constituted the main target, politically. The West tried to avoid resorting to the use of air power while preventing the Serbian campaign of ethnic cleansing that it believed had previously begun and was due to start over in accelerated form by gaining agreement through negotiations that would permit a ground force, led by NATO, to be deployed without any use of force and blocking any use of force by others.

What would have happened in Kosovo without NATO intervention? NATO believed that extensive ethnic cleansing by Belgrade forces was imminent. Belgrade's record during the 1990s in Croatia, Bosnia, and Kosovo (where up to 300,000 people were displaced in the months preceding NATO's initiative) appeared to support this view. So, even more, did the onset of operations in March 1999, as the attempt to find a negotiated outcome in Paris failed and the Serbian campaign started, four or five days before NATO action began. To this extent, it seems reasonable to conclude that ethnic cleansing would have occurred. It also seems reasonable to conclude that without the NATO intervention the KLA would not have made significant progress, as the record of both 1998 prior to and even 1999 during the NATO engagement indicates that it was weak, relatively unformed, and incapable of mounting sustained operations, whereas Belgrade forces had shown themselves to have the measure of the KLA—notwithstanding the strategy of atrocity that accompanied the majority of their actions—and to be able to beat the KLA comfortably in direct combat. However, given the nature of the KLA and its political agenda, supported by the majority of the Kosovo Albanians, it seems unlikely that repeated military defeats would have wiped out the

movement. Thus, the asymmetric struggle would have continued for many years, despite the extensive ethnic cleansing by Belgrade's forces.

Did NATO violate international law? There are two aspects to the issue of international law and the NATO engagement. The first concerns the lawfulness of NATO's intervention. The evidence is not absolutely clear. In an evolving area of international humanitarian law, there are different interpretations that support the lawfulness of the action, including interpretations that rely on compounding the various different elements. The record is that each member of the alliance assessed the action to be justified and had its own legal interpretation. However, that record is also that there was not one single interpretation on which the allies agreed. Thus, although there was a clear belief that the action was legal, this was not clear-cut, even among those carrying out the action. This gave strength to those who criticized the NATO action, whether in Belgrade or elsewhere, asserting that it was an unlawful campaign. However, the decision by three prominent states, which charged that the action was illegal, to propose a Security Council resolution to condemn the action and declare it to be unlawful backfired, for the vote on it was held and lost twelve votes to three. This gave backhanded legitimacy to NATO intervention in international law, reinforcing claims to legality by NATO states.

The second aspect of legality concerns the conduct of NATO operations and the issues of war crimes. This issue is given added relief by the lack of an absolute position on the legality of undertaking the action. However, although questions were raised regarding suspected war crimes, most of these were addressed and dismissed with appropriate care by the prosecutor at the ICTY. However, in one area, that of cluster munitions, the evidence was not thoroughly weighed by the prosecutor, either in general or in detail. The general basis on which potential charges relating to cluster munitions were dismissed does not appear to be comprehensive. In addition, there were elements in NATO's use of cluster bombs, particularly relating to the attack on Niš, that might suggest a *prima facie* case to investigate, in terms of specifics. This is not to prejudge the outcome of such an investigation, merely to indicate that perhaps not all the questions that might have been posed in this respect appear to have been addressed.

What was the extent of war crimes committed by the Yugoslav military/Serbian special police/paramilitaries? Did anyone flee NATO bombs? There can be no doubt that at some points some people were seeking shelter from NATO bombs in Kosovo and elsewhere in Serbia—this is both inevitable and human nature. It is also clear that some Kosovo Serb civilians fled KLA action, some of which warranted war crimes and crimes against humanities charges against their personnel. Nonetheless, the central, undeniable fact in this narrative remains

the expulsion of over 700,000 Kosovo Albanians by Belgrade's forces through a systematic campaign of ethnic cleansing marked by diverse atrocities that led to indictments against a host of its military and civilian leaders, including Slobodan Milošević.

Was the Rambouillet diktat justified? . . . and was it a diktat? Although the term itself is both pointed and prejudicial in tone, there can be little doubt that the West issued an ultimatum to Belgrade. This was predicated on agreement by the Kosovo Albanians that proved much more difficult than Western actors had assumed prior to the Rambouillet negotiations. Once that agreement was reached, it then became clear that Belgrade was isolated and faced a clear choice between negotiating in good faith, including meaningfully accepting key aspects of the proposed agreement, or facing coercive NATO aerial bombardment. The value of the approach taken in this study, where motivations are considered first, then conduct, and finally, the negotiations themselves, is that evidence of Western motivations is confirmed by subsequent conduct, including inadequate preparation for sustained military operations and both political and strategic differences over how to prosecute the campaign successfully once it had begun.

Although there can never be any assurance that military plans will remain relevant once a campaign begins, the evidence is that NATO's bluff was called by Belgrade and that the desire to avoid, or if this were not possible, to limit action, indicates that the real aim was to get a ground force deployed to make ethnic cleansing impossible but to accomplish this via agreement. This can be taken to confirm that the West's intention at Rambouillet was to secure an agreement rather than to create a pretext for air bombardment, no matter what. In this context, it is vital to note two things. First, political agreement had nearly been achieved at Rambouillet; the much-discussed military annex was never a stumbling block because Western representatives desperate to avoid air strikes had made clear to Milošević personally that it was open to revision and tried to get him to engage in shaping its final form. Second, despite NATO's potentially humiliating eleventh-hour efforts to bring Milošević around, the Belgrade delegation returned to the negotiations with a counterproposal that was far different from the terms to which it had appeared ready to agree just two weeks before. This seems to have been not a gesture at gaining some form of reconciliation but another willful provocation aimed at calling the West's bluff. Although the interactive construction of any situation requires two participants, the shape of events prior to NATO's action, as well as the evidence of motivations in the West and Belgrade, the conduct of both in their military operations, and their approaches to the talks in France suggest that the NATO ultimatum was more justified than not.

Notes

- 1 Particularly when dealing with the U.S., which as a single actor often had a firmer and more tightly defined agenda than the composite of Western powers.
- 2 Miroslav Hadžić, *Security Ranges of NATO Intervention in Kosovo*, draft paper for the Copenhagen Research Institute, 2000. The analysis of motivations and perceptions in this chapter draws heavily on Hadžić's earlier work.
- 3 James Gow, *The Serbian Project and its Adversaries: A Strategy of War Crimes* (Montreal, McGill-Queen's University Press, 2003), 258–61; Tim Judah, *Kosovo: War and Revenge* (New Haven: Yale University Press, 2000), 103–20; Henry H. Perritt Jr., *Kosovo Liberation Army: The Inside Story of an Insurgency* (Urbana: University of Illinois Press, 2008), 81–87.
- 4 Gow, *Serbian Project*, 260; Alan J. Kuperman, "The Moral Hazard of Humanitarian Intervention: Lessons from the Balkans," *International Studies Quarterly* 52 (2008): 64–71; Perritt, *Kosovo Liberation Army*, 55, 67.
- 5 For example, thirty-one Kosovo Albanians were killed in just one incident resulting from KLA attacks near Prizren on 14 December 1998. See "Report of the Secretary-General Prepared Pursuant to Security Council Resolutions 1160 (1998), 1199 (1998), and 1203 (1998)," UN doc. S/1998/1221, 24 December 1998, Annex 1, para. 4. Operational Zone leader Ramush Haradinaj later observed that when his fighters "saw that a battle was not going so well . . . they just sought the safest place. They would run for a half day until they got there." Quoted in Perritt, *Kosovo Liberation Army*, 79.
- 6 Robert Thomas, *Serbia Under Milošević* (London: Hurst, 1999), xiv. Leaving aside normal considerations of domestic jurisdiction and the rights pertaining to statehood to address security challenges on a state's territory (underpinned by article 2, paragraphs [iv] and most of paragraph [vii] of the UN Charter), a well-publicized statement by U.S. President Bill Clinton's special envoy to the Balkans at that stage appeared to reinforce the rightfulness of Belgrade's position—though not necessarily its methods—by condemning "very strongly terrorist actions in Kosovo" and adding for clarity that the KLA was "without any questions, a terrorist group." Quoted in William G. O'Neill, *Kosovo: An Unfinished Peace* (Boulder: Lynne Rienner for the International Peace Academy, 2002), 24. On Serbian policy and practice in the decade or so preceding NATO action, see Judah, *Kosovo*, chapter 2; Sabrina Ramet *Balkan Babel: The Disintegration of Yugoslavia from the Death of Tito to the Fall of Milošević* (Boulder: Westview, 2002), 316–23; Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000), chapter 1; and for a broader based approach to the emerging conditions see Julie Mertus, *Kosovo: How Myths and Truths Started a War* (Berkeley: University of California Press, 1999).
- 7 See UN Security Council Resolution 1203, S/RES/1203, 24 October 1998.
- 8 On the ways in which the Milošević regime managed to survive by ensuring social fragmentation, see Eric D. Gordy, *The Culture of Power in Serbia: Nationalism and the Destruction of Alternatives* (University Park: Pennsylvania State University Press, 1999).
- 9 The Contact Group had been formed during the war in Bosnia and originally involved the U.S., the UK, France, Germany, and Russia, with Italy later joining. The original membership was based on countries representing particular international organizations. After pressure from Italy, the representation became that of the influential countries

- directly. See Gow, *Triumph of the Lack of Will: International Diplomacy and the Yugoslav War* (New York: Columbia University Press, 1997), 260–61; David Owen, *Balkan Odyssey* (London: Victor Gollancz, 1995), 276. Interview with Jack Zetkovic, DCM, U.S. Embassy–Belgrade by Charles Ingraio, February 1998.
- 10 The UN Commission on Human Rights, for example, issued a number of reports on the situation in the former Yugoslavia generally and Kosovo specifically, largely criticizing the Belgrade authorities in the years after 1989, when the formal autonomy of Kosovo as a province in Serbia was revoked. A selection of material relating to Kosovo appears in Heike Krieger, ed., *The Kosovo Conflict and International Law: An Analytical Documentation, 1974-79* (Cambridge: Cambridge University Press, 2001), 2.1.2.
 - 11 *The Fall of Milošević*, Dir. Dai Richards, Brook Lapping for the BBC (3 parts), 2003, part 1. This invaluable documentary features a plethora of “talking-head” film interviews with the protagonists themselves, giving direct testimony on what happened and their parts in it.
 - 12 *Fall*, part 2.
 - 13 *Fall*, part 1.
 - 14 *Fall*, part 1.
 - 15 James Gow, “Kosovo after the Holbrooke–Milošević Agreement: What Now?” *International Spectator* 33, no. 4; Alex Bellamy, *Kosovo and International Society* (London: Palgrave, 2002), 96–101.
 - 16 “Report of the Secretary-General Prepared Pursuant to Security Council Resolution 1160 (1998),” UN doc. S/1998/712, 5 August 1998, para. 12.
 - 17 Reported by Ivo Daalder and Michael O’Hanlon, *Winning Ugly: NATO’s Kosovo War* (Washington DC: Brookings Institution, 2000), 40–41, 43.
 - 18 “Report of the Secretary-General Prepared Pursuant to Security Council Resolutions 1160 (1998), 1199 (1998), and 1203 (1998),” UN doc. S/1998/1068, 12 November 1998, annex I, para. 7.
 - 19 Forty-two thousand in Montenegro, 20,500 in Albania, 3,000 in Macedonia, 10,000 in Bosnia-Herzegovina, and 20,000 within Serbia. In addition, 80–90 percent of the 28,000 internationally registered asylum seekers from the FRY were from Kosovo. “Report of the Secretary-General Prepared Pursuant to Security Council Resolutions 1160 (1998), 1199 (1998), and 1203 (1998),” UN doc. S/1998/1068, 12 November 1998, para. 20.
 - 20 “Report of the Secretary-General Prepared Pursuant to Security Council Resolutions 1160 (1998), 1199 (1998), and 1203 (1998),” UN doc. S/1998/1068, 12 November 1998, para. 21.
 - 21 “Report of the Secretary-General Prepared Pursuant to Security Council Resolutions 1160 (1998), 1199 (1998), and 1203 (1998),” UN doc. S/1998/1147, 4 December 1998, paras. 18 and 21.
 - 22 “Report of the Secretary-General Prepared Pursuant to Security Council Resolutions 1160 (1998), 1199 (1998), and 1203 (1998),” UN doc. S/1998/1147, 4 December 1998, paras. 8–10.
 - 23 “Report of the Secretary-General Prepared Pursuant to Security Council Resolutions 1160 (1998), 1199 (1998), and 1203 (1998),” UN doc. S/1998/1221, 24 December 1998, paras. 7–8, 10.
 - 24 “Report of the Secretary-General Prepared Pursuant to Security Council Resolutions 1160 (1998), 1199 (1998), and 1203 (1998),” UN doc. S/1999/99, 30 January 1999, paras. 29–30.

- 25 Gow, *Serbian Project*; Bellamy, *Kosovo*, 96–101. The NATO threat was apparent in that the governing political body of NATO, the North Atlantic Council, had authorized an activation order, which meant that in appropriate circumstances military commanders were now authorized to use force, but it was not yet clear that action would actually be taken. To reinforce its threat in what might well still have been a bluff predicated on achieving agreement to deploy the KVM, the U.S. made a major point of forward deploying bombers to bolster the credibility of its threats and making sure that these planes were clearly seen on television. As Ambassador Richard Holbrooke noted, “we made sure that the world saw this.” *Fall*, part 1.
- 26 *Fall*, part 1.
- 27 Events in December and January are noted in “Report of the Secretary-General Prepared Pursuant to Security Council Resolution 1160 (1998), 1199 (1998), and 1203 (1998),” UN doc. S/1999/99, 30 January 1999, paras. 3–21.
- 28 *Fall*, part 1.
- 29 It should be noted that the NGO Human Rights Watch concluded that the twenty-three were killed at around 1500 on 15 January. Human Rights Watch, *Report on the Massacre in Račak, January 1999*, reproduced in Krieger, *Kosovo Conflict*, 193.
- 30 *Fall*, part 1.
- 31 “Report of the Secretary General,” S/1999/99, 30 January 1999, para. 11.
- 32 Human Rights Watch, *Massacre in Račak*, 193.
- 33 “FRY Statement by the President of the Republic of Serbia, Milan Milutinović,” 17 January 1999, reprinted in Krieger, *Kosovo Conflict*, 193–94.
- 34 Human Rights Watch, *Massacre in Račak*, 193.
- 35 “Report of the EU Forensic Team on the Račak Incident,” 17 March 1999, reprinted in Krieger, *Kosovo Conflict*, 198.
- 36 “Report of the EU Forensic Team,” 198.
- 37 “Report of the Secretary-General,” S/1999/99, 30 January 1999, para. 12.
- 38 “Report of the Secretary-General Prepared Pursuant to Security Council Resolution 1160 (1998), 1199 (1998) and 1203 (1998),” UN Doc. S/1999/293, 17 March 1999, para. 16.
- 39 Daalder and O’Hanlon, *Winning Ugly*, 292nn137 and 138; General Wesley Clark, *Waging Modern War* (New York: Public Affairs, 2001), 148. Naumann’s evidence to the UK House of Commons Defence Committee is cited fully by Bellamy, *Kosovo*, 121–22.
- 40 For more on Operation Horseshoe, including what, if anything, it was and its relationship to the actual Serbian campaign in Kosovo, see Gow, *The Serbian Project*, 207–09.
- 41 *Fall*, part 1.
- 42 *Fall*, part 1.
- 43 *Fall*, part 1.
- 44 *Fall*, part 1.
- 45 *Fall*, part 1.
- 46 *Fall*, part 1.
- 47 This is discussed more extensively in Gow, *Serbian Project*, 280–83, 294.
- 48 Moscow and Beijing, along with New Delhi, sponsored a draft resolution at the UN Security Council on 26 March 1999 to condemn the NATO action and declare it to be a breach of the UN Charter. However, the resolution was defeated twelve votes to three in a vote of the council’s fifteen members. Ironically, the attempt to condemn NATO action had rather the reverse effect of legitimizing it with Security Council authority,

- while not giving formal and explicit Chapter VII authority for the action. See Nicholas J. Wheeler, *Saving Strangers* (Oxford: Oxford University Press, 2000), 279–81.
- 49 *Fall*, part 1.
- 50 *Fall*, part 1.
- 51 *Fall*, part 2.
- 52 *Fall*, part 2.
- 53 One of the classic discussions of just-war theory is Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (London: Allen Lane, 1978).
- 54 Colonel Milinko Stišević, “Iskustva iz Lokalnih Ratova o Pripremi i Anagažovanju Oklopnih and Mehanizovanih Jednina,” *Vojno Delo* 49, no. 1 (1997).
- 55 Among the ways in which the campaign had already been well prepared was the collection and removal of public documentation and records from many towns. The same was true of valuable cultural artifacts, including important pieces of religious heritage, presumably taken away for safekeeping.
- 56 General Nebojša Pavković, chief of staff of the VJ, *Fall*, part 2.
- 57 Focus Group 2, Priština, November 2011, Pictures of Peace and Justice Project; this was a view strongly supported within the group, and the sense of it was shared in other focus groups both in Kosovo and in London. <http://projects.beyondtext.ac.uk/sg-james-gow/index.php>
- 58 “Kosovo: Action by the European Commission,” IP/99/319, European Commission, Brussels, 11 May 1999, reprinted in Krieger, *Kosovo Conflict*, 478; in the wake of the conflict, the UN secretary-general reported that there had been 800,000 refugees in Albania, Macedonia, and Montenegro, and at least 500,000 had been displaced inside the province, making a total of 1.3 million. “Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo,” UN Doc. S/1999/779, 12 July 1999, para. 8. Alberto R. Coll, “Kosovo and the Moral Burdens of Power,” in *War over Kosovo: Politics and Strategy in a Global Age*, ed. Andrew J. Bacevich and Elliot A. Cohen (New York: Columbia University Press, 2001), 131, sets the number at 1 million expelled from Kosovo plus another 300,000–500,000 internally displaced. In a contribution to SI research, Mr. Vlado Dimovski stated that the total number of refugees in Macedonia reached 380,000. Dimovski was manager of the Macedonian Red Cross refugee camp at Blače for one month, in spring 1999, and later coordinated refugee accommodation from the capital, Skopje. ‘Recollections of Mr. Vlado Dimovski’, SI/ Charles Ingraio, December 2004.
- 59 See *Fall*, part 2.
- 60 *Prosecutor vs. Slobodan Milošević*, IT-02-54.
- 61 *Fall*, part 2.
- 62 *Fall*, part 2.
- 63 *Prosecutor vs. Slobodan Milošević*, IT-02-54, for example, has ample evidence of the crimes committed.
- 64 Marlise Simons, “Witness Links Milosevic to a Plan to Cover Up Crimes in Kosovo,” *New York Times*, 24 July 2002.
- 65 *Fall*, part 2. Although the filmmaker’s translation is used here, to be consistent, it is notable that in the original, Šešelj follows the reference to NATO bombing with the words “if there is American aggression.”
- 66 *Fall*, part 2.
- 67 “Recollections of Mr. Vlado Dimovski.”

- 68 *Fall*, part 2; *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the FRY*, ICTY PR/PIS'510-E, 13 June 2000, III9.
- 69 The Korisa Bridge incident on 13 May 1999 resulted in from 48 to 87 deaths. *Final Report to the Prosecutor*, III9; Human Rights Watch, *Civilian Deaths in the NATO Air Campaign* (Washington, DC: Human Rights Watch, 2000) and www.hrw.org/reports/2000/nato/; appendix A contains a list of all incidents identified by Human Rights Watch.
- 70 *Final Report to the Prosecutor*, III9 and 13.
- 71 *Fall*, Part 1.
- 72 James Gow, *Defending the West* (Cambridge: Polity, 2005), 55–58; nonetheless, reflecting the diversity of views within the alliance, the kingdom of Belgium argued at the International Court of Justice that the Security Council resolutions provided “an unchallengeable basis for the armed intervention.” “Belgium Oral Pleading in the Case ‘Legality of the Use of Force,’ CR 99/15 (translation),” 10 May 1999, reprinted in Krieger, *Kosovo Conflict*, 308, 504–05.
- 73 *Convention on the Prevention and Punishment of the Crime of Genocide* (1948), reprinted with discussion in *Documents on the Laws of War*, ed. Adam Roberts and Richard Guelff, 2nd ed. (Oxford: Clarendon Press, 1982), 157–68; this view was expressed in an interview by Gow of a German national working at NATO, December 1998.
- 74 “Belgium Oral Pleading in the Case ‘Legality of the Use of Force,’ CR 99/15 (translation),” 10 May 1999, reprinted in Krieger, *Kosovo Conflict*, 308, 504–05; for further discussion, see Wheeler, *Saving Strangers*, chapter 8.
- 75 This was the personal view expressed privately by two official senior legal authorities from different NATO countries to James Gow.
- 76 This uncertainty and different views on it was discussed in expert testimony to the UK House of Commons Foreign Affairs Committee. The committee concluded that, in the circumstances, “the NATO allies did all that they could to make the military intervention in Kosovo as compliant with the tenets of international law as possible.” *House of Commons Foreign Affairs Committee, Fourth Report on Kosovo*, London: HMSO, 7 June 2000, para. 133.
- 77 “Draft Resolution Submitted by Belarus, the Russian Federation, and India,” S/1998[sic]/328, 26 March 1999, reprinted in Krieger, *Kosovo Conflict*, 432; for further discussion, see also Wheeler, *Saving Strangers*, 279–81.
- 78 “ICJ Case Concerning the Legality of Use of Force, Request for the Indication of Provisional Measures, Order,” 2 June 1999, reprinted in Krieger, *Kosovo Conflict*, 309, 508–14.
- 79 “*A More Secure World: Our Shared Responsibility*”: *Report of the High-Level Panel on Threat Challenges and Change*, UN Doc. DPI/2367, December 2004.
- 80 William M. Arkin, “Operation Allied Force: ‘The Most Precise Application of Air Power in History,’” in Bacevich and Cohen, *War over Kosovo*, 1–37, which provides extremely detailed figures on the air operations. It also offers an excellent and detailed account of the operational campaign from the U.S. military perspective in Washington, DC—in any case, the hub of the air campaign, clearly based on extensive interaction with many of those involved. Other contributions to the volume, especially the one by Elliot Cohen, offer particularly engaging and informative essays on the strategic implications of the Kosovo conflict, while Michael G. Vickers’s contribution is an especially useful source of further detail on operations in the former Yugoslav region.
- 81 Human Rights Watch, *Civilian Deaths*.

- 82 *Final Report to the Prosecutor*, III.9.
- 83 Human Rights Watch, *Civilian Deaths*.
- 84 *Final Report to the Prosecutor*, III.9.
- 85 Interview with British officers engaged in targeting decisions and operational command by James Gow, December 2004 and May 2005.
- 86 Commander-in-chief, U.S. European Command, overall commander of U.S. forces in Europe (General Clark's U.S. hat in addition to his NATO hat as supreme allied commander Europe).
- 87 Interview with a senior Supreme Headquarters Allied Powers Europe staff member present at the videoteleconferences by Charles Ingrao, 10 May 2000.
- 88 *Final Report to the Prosecutor*, IV.B.iv.80–85.
- 89 *Final Report to the Prosecutor*, IV.A.iii.27.
- 90 *1977 Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims in International Armed Conflict*, article 52, reproduced with discussion in Roberts and Guelff, *Documents*, 416–17.
- 91 The present section is based on current research by James Gow and colleagues from the War Crimes Research Group, King's College London, carried out on a confidential basis among military personnel from different countries, some of whom had served with NATO countries in some part of the Kosovo engagement.
- 92 *Fall*, part 2.
- 93 *Fall*, part 2.
- 94 Human Rights Watch, *Civilian Deaths*; although the U.S. stopped using cluster munitions, the UK continued to deploy them but legally vetted all missions prior to launch to ensure their lawfulness.
- 95 *Fall*, part 2.
- 96 *Fall*, part 2.
- 97 *Fall*, part 2; Clark, *Waging Modern War*, 299–303.
- 98 The following draws on Gow, *Serbian Project*, 291–92.
- 99 Clark, *Waging Modern War*, 328–29.
- 100 Prior to this point, the alliance had sought to avoid inflicting either civilian or military deaths or casualties. The second half of May produced the majority of the Serbian MUP–VJ 525 dead, approximately 1,400 wounded, and 28 missing in action (of which forensic remains of four appear to have been identified at Kosare, close to the border with Albania). Gow, *Serbian Project*, 298, quotes the slightly higher official figure of 576 dead, while suggesting that the real figure might run into thousands. However, although there were efforts to suppress the number of wounded at the time, it seems unlikely that so many more deaths could have been covered up so long after the fall of Milošević, when the identities, details, and biographies of all the dead had been published. This point and the accurate figures are thanks to Colonel Branislav Mitrović, operations officer in the Third Army command at the time of the Kosovo conflict, who was responsible for collating information and ensuring operational readiness. Interview by James Gow, 8 September 2005.
- 101 *Prosecutor vs. Ramush Haradinaj et al.*, IT-04-84, 24 February 2005.
- 102 *Fall*, Part 2.
- 103 Major James Hardin, U.S. Air Force, *Fall*, part 2.
- 104 Mira Marković (Milošević's wife), *Fall*, part 2; in the original, she actually adds that three days would be “really a lot.”
- 105 Gow, *Serbian Project*, 215–23.

- 106 General Michael Short, *Fall*, part 2.
- 107 *Fall*, part 2.
- 108 Clark, *Waging Modern War*, 243–49, 298; Daalder and O’Hanlon, *Winning Ugly*, 198; *Fall*, part 2.
- 109 U.S. Secretary of State Madeleine Albright, for example, made a special visit to Moscow in January 1999, reflecting a general Western sense that Moscow had to be engaged. *Fall*, part 1. See also “U.S. Secretary of State, Albright, and Russian Foreign Minister Ivanov, Joint Statement,” Moscow, 26 January 1999, reprinted in Krieger, *Kosovo Conflict*, 253–54.
- 110 This is borne out by events, where NATO, in the absence of new and explicit UN Security Council authority, undertook the use of destructive armed force.
- 111 “Contact Group, Chairman’s Conclusions,” London, 29 January 1999, reproduced in Krieger, *Kosovo Conflict*, 255.
- 112 “Statement by the Secretary-General on Behalf of the North Atlantic Council,” press release (99)020, 19 February 1999.
- 113 Ambassador Christopher Hill discussion with James Gow, December 1999.
- 114 *Tanjug*, 6 February 1999.
- 115 See, for example, “Final Hill Proposal,” 27 January 1999, reprinted in Krieger, *Kosovo Conflict*, 176–85.
- 116 Alex Bellamy, “Reconsidering Rambouillet,” *Contemporary Security Policy* 22, no. 1 (2001): 130.
- 117 *Fall*, part 1.
- 118 *Fall*, part 1.
- 119 *Fall*, part 1.
- 120 *Fall*, part 1.
- 121 *Fall*, part 1.
- 122 *Fall*, part 1.
- 123 “Agreement for Self-Government in Kosmet,” Paris, 18 March 1999, reprinted in Krieger, *Kosovo Conflict*, 280–86.
- 124 “Agreement for Self-Government,” article 1, para. 2.
- 125 *Fall*, part 1.
- 126 “Interim Agreement for Peace and Self-Government in Kosovo,” Rambouillet, 23 February 1999, reprinted in Krieger, *Kosovo Conflict*, 261–78.
- 127 For considerably fuller discussion of these issues and the fallacies of the critics, see Alex Bellamy’s excellent “Reconsidering Rambouillet,” 31–56.
- 128 “Interim Agreement,” chapters 2 and 7, and appendix A.
- 129 “Interim Agreement,” chapter 7, article IV, para. 2a.
- 130 “Interim Agreement,” chapter 2, article VI, para. 2(a)(i).
- 131 “Interim Agreement,” chapter 7, article VI, para. 2d, and appendix A, para. 4.
- 132 “Interim Agreement,” chapter 2, article II, para. 2.
- 133 UN Security Council Resolution 1244 /S/RES/1244, 10 June 1999; “Military-Technical Agreement between the International Security Force (KFOR) and the Governments of the FRY and the Republic of Serbia, 9 June 1999,” UN Doc. S/1999/682, annex, 15 June 1999.
- 134 *Fall*, part 2.
- 135 *Fall*, part 1.
- 136 “Interim Agreement,” appendix B, reprinted in Krieger, *Kosovo Conflict*, 276–78.

- 137 “Interim Agreement,” appendix B, para. 8; “General Framework Agreement,” appendix B to annex 1A, para. 9.
- 138 Gow, *Serbian Project*, 284–85; Bellamy, *Kosovo*, 138.
- 139 Bellamy, “Reconsidering Rambouillet,” 31–56.
- 140 Ambassador Christopher Hill discussion with James Gow, December 1999.
- 141 Jamie Rubin, “Countdown to a Very Personal War,” features section, *Financial Times*, 30 September 2000. Albright’s own account offers detail on a telephone conversation with Milošević from Washington, DC, after two weeks of negotiations at Rambouillet. It makes no reference to proposing a meeting in Geneva and has a generally hostile tone, although it concludes with preparedness to “negotiate on specific concerns” once Milošević had met, as Albright proposed, with Special Envoy Hill. It seems highly likely that this has to be the same secret telephone conversation, although Rubin’s crucial detail must be accurate, despite Albright’s not including it—perhaps a sign of her sensitivity. Madeleine Albright, *Madam Secretary: A Memoir* (New York: Hyperion, 2003), 509–10.
- 142 *Fall*, part 1.
- 143 *Fall*, part 1.
- 144 Bellamy, *Kosovo*, 151.
- 145 *Fall*, part 1.