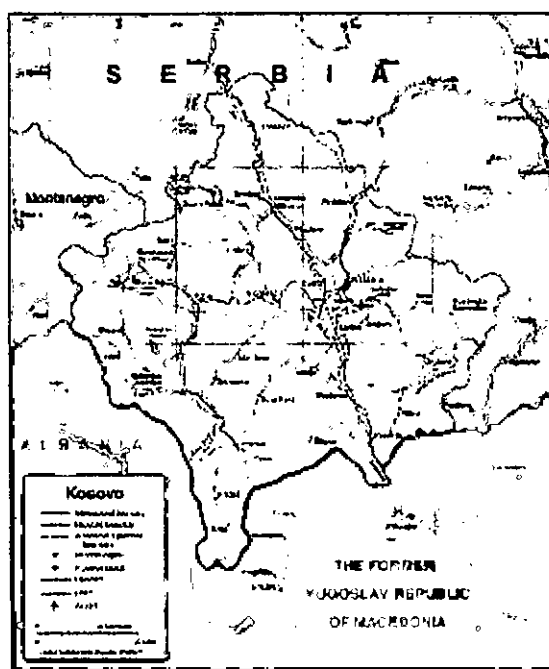


OPTIONS FOR KOSOVO'S FINAL STATUS

"QUO VADIS, UNMIK?"

A POLICY CONFERENCE

*Organized by the
United Nations Association of the United States of America
&
Istituto Affari Internazionali*



Chaired by Lord David Owen

December 12-14, 1999

Rome, Italy



IAI

The conference has the generous support of the

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"OPTIONS FOR KOSOVO'S FINAL STATUS"

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December 1999

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Since the Rt. Hon. Paddy Ashdown joined Parliament as the Liberal candidate from Yeovil in 1983, he has served as the Liberal spokesman on Trade and Industry Affairs; Education spokesman; Leader of the Liberal Democrats; and Privy Councillor. He served as a Royal Marines Officer from 1959 to 1972, in Borneo, the Persian Gulf, the Far East, and as command of a Commando Company in Belfast. In 1972, Ashdown joined the Foreign Office, posted to the British Mission in Geneva and responsible for relations with United Nations organizations and treaty negotiations through 1976. He then turned to local industry in the Yeovil area, ultimately serving as a Youth Worker with Dorset County Council Youth Service, helping the young unemployed until his election to Parliament.

Avramovic, Dragoslav

Mr. Avramovic currently is a member of the Alliance for Change, a group of opposition parties, Belgrade. From 1994-1996, Mr. Avramovic served as Governor for the Central Bank of Yugoslavia. Throughout his career, he has held numerous positions including: Director of Economic Studies of the European Center for Peace and Development, Belgrade; Director of the Secretariat of the Independent Commission on International Development Issues (Brandt Commission), Geneva; Senior Official, UN Conference of Trade and Development (UNCTAD), Geneva; and Economist and Senior Official of the World Bank, Washington, DC.

Bennett, Christopher

Mr. Bennett is a journalist and writer who was based in Yugoslavia before the outbreak of the war as well as during the first 14 months of fighting. He is a co-founder of the European Stability Initiative (ESI), a recently established Berlin-based think tank, and a senior editor with the Institute for War and Peace Reporting (IWPR). Mr. Bennett spent three years in Bosnia with the International Crisis Group (ICG), eventually becoming Director of its Balkan Project. Bennett, a former teacher of Yugoslav history at London University's School of Slavonic and East European Studies (SSEES), is the author of Yugoslavia's Bloody Collapse (NYU Press, 1995).

Bielecki, Jan Krzysztof

Jan Krzysztof Bielecki has been active in political and economic affairs in Poland for over two decades, serving as Prime Minister, Minister for European Integration, and Member of Parliament. He was co-founder of the Liberal-Democratic Congress and the Freedom Union in Poland. Since 1993 Bielecki has been Executive Director of the London-based European Band for Reconstruction and Development. He is a Board member of the Center for Economic Policy Research and the Institute of East-West

Studies in New York and taught comparative politics at the University of Colorado-Boulder. Bielecki has authored numerous publications and articles.

Bildt, Anna Maria

Anna Maria Bildt is a Balkan analyst for the CEMISS (Centro Militare Studi Strategici) in the Italian Defense Ministry. She is also consultant to the International Institute for Democracy and Election Assistance (IDEA) of Stockholm on democracy building programs for Bosnia-Herzegovina. From 1992 to 1998, Dr. Bildt served with the United Nations peace mission in the Former Yugoslavia (UNPROFOR) and the European Commission's post war operation in Bosnia-Herzegovina. During 1992 to 1996, she was responsible for civilian and political activities in the UN-"protected" areas in Croatia's Krajina (Knin), in Sarajevo, and Croatia's Eastern Slavonia. From 1996 to 1998 she was responsible for the democracy building, free media and civil society development programs at the European Commission Representation office in Sarajevo. Dr. Bildt was Special Assistant to the Under-Secretary-General for Human Rights, UN Office Geneva in 1992. Prior, beginning in 1987, she was responsible for activities related to International Development co-operation, serving with UNESCO, the Italian Foreign Ministry and the OECD. With a doctorate in political science, Dr. Bildt has just completed a research on the civilian and political aspects of the peace process in former Yugoslavia, focused on democratization, free media and civil society development.

Bildt, Carl

In May 1999, former Prime Minister of Sweden Carl Bildt was appointed Special Envoy of the United Nations Secretary General For The Balkans. From 1995-1997, Mr. Bildt served as EU Special Representative to Former Yugoslavia, Co-Chairman of the International Conference on Former Yugoslavia, Co-Chairman of the Dayton peace talks, immediately thereafter appointed High Representative of the International Community for monitoring the implementation of the peace agreement and to co-ordinate its civilian aspects. For his contribution to peace in Bosnia-Herzegovina, Mr. Bildt was awarded on behalf of Her Majesty Queen Elisabeth the Honorary Knighthood, Knight Commander of the Most Distinguished Order of St. Michael and St. George, June 1998; by Chancellor Helmut Kohl, the Grand Cross, Order of Merit of the Federal Republic of Germany, July 1998; and by President Jacques Chirac, the rank of Commander, Honorary Legion (Legion d'Honneur), June 1997.

Bildt led the Moderate Party in Sweden from 1986 to 1999, serving as Prime Minister from 1991 until late 1994. During this period, Bildt negotiated the membership of Sweden in the European Union, signing the Accession Treaty in June 1994. Bildt entered public service in 1976, serving as Under Secretary for Policy Planning and Co-ordination in the Ministry of Economic Affairs and then in the Prime Minister's Office until 1981. In 1979, Bildt was elected Member of Parliament from Stockholm. Among numerous positions held, Mr. Bildt has been a member of the Royal Advisory Council on Foreign Affairs since 1984; Defence Review Commissions, including the Submarine Defence Commission of 1982; member of the Nordic Council since 1986;

Chairman of the worldwide International Democrat Union since 1992. Mr. Bildt is the author of several publications and essays.

Bonvicini, Gianni

Mr. Bonvicini is Director of the Istituto Affari Internazionali (IAI), Rome, where he has been editor of the International Spectator, IAI's quarterly journal. He has been visiting professor of International Relations at the Bologna Center of Johns Hopkins University and president of the *Istituto Trentino di Cultura* Trento. Mr. Bonvicini serves on numerous international boards, including the editorial advisory board of *Perspectives* in Prague; the Board of Directors of *CeSPI*, in Rome; the advisory board of *European Foreign Affairs Review*, London; and the European Strategy Group of the Bertelsmann Science Foundation, Gutersloh. A columnist, his essays and articles appear in various scientific publications, professional journals, and newspapers.

Brecht, Eberhard

Since 1990, Dr. Brecht has served as Deputy Chairman of the German United Nations Association and the German Atlantic Association. As a member of the Bundestag from the district of Sachsen-Anhalt, he also serves as Deputy Speaker on Foreign Relations for the Social Democratic Party (SDP) and as Chairman of the Subcommittee on the United Nations, Committee on Foreign Affairs. Dr. Brecht was elected to the first democratic People's Chamber (Volkskammer) of the GDR in 1989. Brecht was a founding member of the New Forum and Civil Rights Movement in his hometown of Quedlinburg also in 1989. From 1968-1982, Dr. Brecht studied physics at the University of Leipzig, was a research assistant at the Central Institute for Microbiology at the Academy of Sciences of the GDR, and received his doctorate in the natural sciences.

Brimmer, Esther

Dr. Brimmer is a Member of the Office of Policy Planning at the U.S. Department of State. From 1995-1999 she was a Senior Associate at the Carnegie Commission on Preventing Deadly Conflict. From 1993-1995 she served as a Special Assistant to the Under Secretary of State for Political Affairs. She wrote weekly analyses of pending legislation as the Foreign Affairs and Defense Analyst at the Democratic Study Group in the U.S. House of Representatives from 1991-1993. From 1989-1991 she was a management consultant with McKinsey & Company in New York. She received her Ph.D. and master's degrees from the University of Oxford.

Danspeckgrüber, Wolfgang

Professor Wolfgang F. Danspeckgruber teaches at Princeton University's Woodrow Wilson School of Public and International Affairs, and directs its Liechtenstein Research Program on Self-Determination. He is also founder and chairman of the Liechtenstein Colloquium on European and International Affairs, Vaduz (a private diplomacy forum) and has been a consultant to the governments of Austria and Liechtenstein, The House of Liechtenstein and institutions and corporations in the United States. Danspeckgruber has published on self-determination, small states,

permanent neutrality, European security affairs, and the emerging international order. He is currently finalizing *Self-Determination of Peoples-Communities, Nations, States in Global Interdependence* with Lynne Rienne Publishers. His publications include *Emerging Dimensions of European Security Policy*, and *The Iraqi Aggression Against Kuwait* (co-edited with Charles Tripp) and a major edited volume (with Sir Arthur Watts, QC, KCMG) on *Self-Determination: A Sourcebook* published by Lynne Rienner Publishers, 1997.

Dassù, Marta

Marta Dassù has been Counsellor/advisor for International Relations to Prime Minister Massimo D'Alema of Italy since 1998. She is currently Director, Centro Studi di Politica Internazionale (CeSPI) in Rome. Ms. Dassù is a member of IAI's Board of Directors; Steering Committee of the Anglo-Italian of Pontignano; European Council for Security Cooperation in the Asia Pacific (ECSCAP); Council for Asia-Europe Cooperation (CAEC). Her former professional activities include direction of research projects for the Italian Ministry of Foreign Affairs, the Italian Ministry of Domestic Affairs, World Bank, NATO, European Commission, Western European Union. She has been a guest professor to numerous courses and seminars. She is the author of several volumes and articles on Italian foreign policy, European issues, international security and Asian issues.

Daviet, Maryse

Mr. Daviet is a counselor of foreign affairs, serving the French Foreign Ministry since 1979. Since September 1998, he has served as "sous-directeur", or Under-Secretary, for the Balkans at the office of European affairs. Mr. Daviet was a member of the French delegation at the Rambouillet/Paris conference in 1999. Prior posts include "premier secrétaire" in Peking from 1984 to 1986; in Paris at the European office from 1987 to 1988 and then at the office of cultural relations until 1990. From 1990 to 1995, he was Deputy Permanent Representative at the United Nations in Geneva. Mr. Daviet then was political counselor to Rome-Quirinal from 1995 to 1998.

Dienstbier, Jiri

Since 1998, Mr. Dienstbier has served as Special Rapporteur of the United Nations Human Rights Commission for Federal Republic of Yugoslavia, Bosnia-Herzegovina, and Croatia. He was Minister of Foreign Affairs and Deputy Prime Minister of Czechoslovakia from 1989-1992. Mr. Dienstbier is Founder and Chairman of the Czech Council on Foreign Relations and member of International Press Institute, New York Academy of Sciences, Commission on Global Governance. He is the personal representative of President Vlacav Havel to the "Group of 16 Heads of States for multilateral cooperation and reform of the United Nations." Dienstbier has been a visiting professor at Claremont Graduate University in California and at the University of North Carolina - Chapel Hill. Dienstbier was among the first 250 signatories of Charter 77 and twice its spokesman. In 1979, he was sentenced to three years in prison with Vlacav Havel and other members of the Committee for the

Defense of the Unjustly Persecuted. He has authored many publications, articles, and essays.

Donnelly, Joseph Brian

Brian Donnelly is Director of the Regional Crisis, Foreign and Commonwealth Office in the British Foreign Ministry, since 1999. From 1997 to 1999, Donnelly was British Ambassador to Belgrade. From 1995 to 1997 he was Minister, UKDEL to NATO in Brussels. From 1992 to 1995, Ambassador Donnelly was Head of Department in the Non-Proliferation, Foreign and Commonwealth Office. He was CDA at RCDS, Foreign and Commonwealth Office from 1991 to 1992. From 1988 to 1991 he was Counsellor, Political/CG in Athens. Ambassador Donnelly held various posts prior to 1998 since joining the Foreign and Commonwealth Office in 1973.

Eide, Espen Barth

Mr. Eide is Director of the "UN Programme" at the Norwegian Institute of International Affairs, focusing on collective security and related issues. As a political scientist trained at the Universities of Oslo and Barcelona, he has written extensively on peacekeeping, conflict prevention, post-conflict peace building, civil war theory, and on the evolving concept of security. Much of his research has focused on the conflict in the Balkans and international military and diplomatic activities within. Mr. Eide is a member of the Lessons-Learned Expert Advisory Board, which is related to the UN DPKO; member of the Conflict Prevention Network of the European Commission; Board member of the Academic Council of the United Nations System (ACUNS); and is a co-editor of the London-based journal *International Peacekeeping*.

Gardner, Nina Luzzatto

Prior to her return to Rome, Nina Luzzatto Gardner spent the last three years in Croatia, first as political and humanitarian affairs officer at the UN Liaison Office in Zagreb, where she monitored human rights issues with regard to Croatia. She was responsible for regular analysis of legislation regarding human rights and civil society including media freedoms, independence of the judiciary, property laws and minority rights. She was the principal contact on behalf of the office to the opposition parties and human rights groups (OSI, Helsinki Committee, etc.) as well as liaison to the numerous NGOs in Zagreb and in the field. In 1998 OSCE High Commissioner for National Minorities, Max Van der Stoep, appointed her to work with the Joint Council of Serb Municipalities in Vukovar in helping them negotiate official status with the Croatian Government, create a viable institution, and obtain independent funding. Previously, she was Director of Interconnect, a legal and business consulting firm in Prague, and Program Director for Aspen Institute Italia in Rome, Italy. She has a B.A. from Harvard University and J.D. from Columbia University Law School. She is now an independent consultant in Rome.

Greco, Ettore

Ettore Greco has served as Deputy Director of the Istituto Affari Internazionali (IAI) in Rome since March 1997. He has also been Managing Editor of *The International Spectator*, the IAI's English-language quarterly journal, since April 1998. Since 1994 he also has served as Head of the Program on Central/Eastern Europe and Russia at IAI. From 1990 to 1994 he was Research Fellow at IAI on nuclear issues, arms control, Mediterranean and European security. Before that from 1987 to 1991 he was a Free Lance Journalist on problems of international economy and foreign policy in various Italian journals and newspapers. He is the author, editor, and co-editor of several volumes and articles on European security, area studies on Central and Eastern Europe, Balkans, CSI.

Hedges, Chris

Mr. Hedges was the Balkan Bureau Chief for *The New York Times* from 1995 to 1998. He was the first reporter to write about The Kosovo Liberation Army in February 1997. In April 1997, he did the first interview with a senior commander in Switzerland and in early 1998 made the first trip with an armed rebel band inside Kosovo, shortly before the rebellion began. Hr. Hedges carried out a large investigation of Hashem Thaci's rise to power in the KLA this summer for *The New York Times*. It chronicled how Mr. Thaci murdered rivals within the organization to seize control. Mr. Hedges also wrote the cover story this spring on Kosovo for *Foreign Affairs*. He currently writes projects for *The New York Times* based out of New York.

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Christopher R. Hill was appointed as Special Assistant to the President and Senior Director for Southeast European Affairs for the National Security Council in August 1999. Immediately preceding his assignment to the NSC, Ambassador Hill served as U.S. Ambassador to Macedonia and Special Envoy for Kosovo. Prior to his assignment in Macedonia, Ambassador Hill was Director for the Office of South Central European Affairs during which time he was also a member of Ambassador Richard Holbrooke's Bosnia negotiating team. Ambassador Hill is a Career Foreign Service Officer and has also served in Belgrade, Warsaw, Seoul, Tirana, and on the Department of State's Policy Planning Staff.

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Mr. Hoge is Editor of *Foreign Affairs*, a magazine of analysis and commentary on international affairs and public policy, at which he initiated a complete redesign, increased it's frequency to bimonthly, and expanded the range of its content. Mr. Hoge's career in newspaper journalism spans three decades. In the 1960s, he was a Washington correspondent, covering the Congress, national politics, and a number of international assignments. During the 1970s and 1980s, he was editor and publisher of metropolitan newspapers in Chicago and New York. Under his leadership, the Chicago Sun-Times won six Pulitzer Prizes and the New York Daily News one. He serves as a director of number of civic, international affairs and journalism organizations. Mr. Hoge graduated from Yale University in 1958, and received his

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Mr. Ilievski is Macedonia's Undersecretary for Foreign Affairs. From 1994 to 1998, he was Macedonian ambassador to Sweden. Before Macedonia became independent, Mr. Ilievski was Director General of the Macedonian Radio and Television and for two years was member of the Administrative Council of the European Broadcasting Union (EBU). He also served three years as Deputy Secretary of Information at the Former Yugoslav Government. From 1982 to 1996, Ilievski was a member of the Executive Council of the Republic of Macedonia and President of the Committee of Information. Ilievski also was Representative at the Inter-Governmental Council for Development of Communications in UNESCO (IPDC), from 1988 to 1991.

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Dr. Kofos is currently Senior Adviser on Balkan affairs at the Hellenic Foundation for European and Foreign Policy (ELIAMEP) of Athens, and a member of the Board at the Institute for Balkan Studies (IBS) of Thessaloniki. He was Visiting Fellow at Brasenose College, Oxford, during the academic year 1995-1996. Prior, he served for many years as Special Consultant on Balkan Affairs at the Ministry of Foreign Affairs, and retired with the rank of ambassador. He has participated in various international conferences on Kosovo and written several publications. Dr. Kofos holds a B.S. in Journalism from Ohio University, M.A. in International Relations from Georgetown University, and a Ph.D. in History from Birbeck College, University of London.

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Jeffrey Laurenti is Executive Director of Policy Studies at the United Nations Association of the USA (UNA-USA). Responsible for coordinating the organization's policy studies on U.N. agencies and multilateral issues, Mr. Laurenti has written widely on U.N.-related issues. Mr. Laurenti has undertaken UNA's extensive work on U.S. public attitudes toward the U.N. Before joining UNA-USA in 1987, Mr. Laurenti served as senior issues advisor to the Mondale/Ferraro presidential campaign (1984) and as program officer for the Twentieth Century Fund. He was a candidate for the U.S. House of Representatives in 1986. From 1978 to 1984 he was Executive Director of the New Jersey Senate. A member of the Council on Foreign Relations, Mr. Laurenti is a graduate of Harvard College (1971) and earned his Master's degree in Public Affairs from Princeton's Woodrow Wilson School of Public and International Affairs (1974).

Levitsky, Jonathan

Jonathan Levitsky is Counselor to the Permanent Representative of the United States to the United Nations. He is the primary author of the Rambouillet Accords, and was closely involved with the drafting and negotiation of the Chernomyrdin/Ahtisaari agreement and United Nations Security Council Resolution 1244. Prior to assuming his current position, Mr. Levitsky was a Member of the Policy Planning Staff at the U.S. Department of State, and a Law Clerk to Justice John Paul Stevens of the United States Supreme Court.

Loras, Damien

Mr. Loras is a Secrétaire of foreign affairs in the French Foreign Ministry. Since 1997 he has served in the office of judicial affairs. Mr. Loras was a member of the French delegation at the Rambouillet/Paris conference in 1999.

Luers, Wendy W.

Wendy W. Luers, founder and President of The Foundation for a Civil Society, was a journalist with *Time*, edited *San Francisco Magazine* and was a commentator for KQED-TV. She was a presidential appointee to the National Council of the Arts (NEA) (1988-1994); Chair of the NY White House Fellows Selection Committee; founder and President of the Friends of Art and Preservation in Embassies; a CSCE (now OSCE) Public Delegate and a member of the Presidential Delegation to observe the 1996 Bosnian national elections. Mrs. Luers serves on numerous nonprofit boards in Central Europe, including the Independent Journalism Initiative and the Civic Education Project. She is a Director of the Oppenheimer Central Europe Value Fund, a member of the Council on Foreign Relations; and a member of the Board of the Annenberg School of Communications at the University of Southern California. Mrs. Luers has been decorated by the Foreign Minister of the Czech Republic and the President of Slovakia for the Foundation's contribution to civil society and representation abroad of their respective countries. In September, 1999, the global conflict resolution and reconciliation of the Foundation, The Project on Justice in Times of Transition, became an inter-faculty project of Harvard University with the continued involvement of Mrs. Luers. Mrs. Luers resides in New York with her husband William H. Luers, former Ambassador to Czechoslovakia (1983-1986) and Venezuela (1978-1982) who currently serves as the President of the United Nations Association. She is a graduate of Stanford University, is fluent in Spanish, competent in French and Italian and basic Czech.

Luers, William H.

William Luers is Chairman and President of the United Nations Association of the USA (UNA-USA). Prior to joining UNA-USA in February 1999, Mr. Luers served for 13 years as President of the Metropolitan Museum of Art, New York City. Mr. Luers served for 31 years in the Foreign Service as U.S. Ambassador to Czechoslovakia from 1983 to 1986, and to Venezuela from 1978 to 1982. He has held numerous posts in Italy, Germany, the Soviet Union, and in the Department of State, where he was Deputy Assistant Secretary for Europe from 1977 to 1978 and for Inter-American

Affairs from 1975 to 1977. Mr. Luers has been a Visiting Lecturer at the Woodrow Wilson School at Princeton, at George Washington University in Washington, and at the School of Advanced International Studies at Johns Hopkins University. He has also been a Director's Visitor at Princeton's Institute for Advanced Study. Mr. Luers is an active member of the Council on Foreign Relations and other public policy organizations, serving on numerous corporate non-profit boards, including the Eurasia Foundation and the Rockefeller Brothers Fund. Mr. Luers received his B.A. from Hamilton College and, after four years in the United States Navy, his M.A. from Columbia University, completed graduate work in Philosophy at Northwestern University and received honorary doctorate degrees from Hamilton and Marlboro Colleges.

Malinverni, Giorgio

Professor Malinverni is currently professor of constitutional law and of international law of human rights at the Faculty of Law, University of Geneva, since 1980. He has served as the Swiss member of the European Commission for Democracy through Law (Venice Commission) of the Council of Europe since 1990. From 1989 to 1993 he was Head of the Public Law Section at the University of Geneva and from 1983 to 1989 served as Director of the Department of Constitutional Law. Professor Malinverni has been a Visiting Professor at the Universities of Paris II, of Nice, of Neuchâtel, and of Lausanne. From 1971 to 1977, he served the International Committee of the Red Cross as Legal Adviser and then member of the delegation to the Diplomatic Conference on International Humanitarian Law. He received his M.A. from the University of Fribourg and Ph.D. at the Graduate Institute of International Studies at the University of Geneva. Professor Malinverni has written extensive articles, essays, and publications.

Markert, Thomas

Thomas Markert currently is Head of Section in the Secretariat of the European Commission for Democracy through Law. Mr. Markert was responsible for activities concerning Kosovo Legal Adviser to EU negotiator Wolfgang Petritsch during the negotiations in Rambouillet and Paris in February-March 1999. Since 1989, Mr. Markert has served as a staff member of the Council of Europe. Mr. Markert has studied at the College of Europe in Bruges, the Fletcher School of Law and Diplomacy at Tufts University, and received a Doctorate of Law from Tübingen University.

Mustafa, Muhamet

Muhamet S. Mustafa, Ph.D., is Professor of Cybernetics and Introduction to Informatics and Management of Investment Projects at the Faculty of Economy - Prishtina University. He is also President of the Board of Riinvest Institute for Development Research, a private non-profit think tank established in 1995. From 1984 to 1986, Dr. Muhamet was Minister for Development of the Government of Kosova, and from 1986 to 1989 was Minister Coordinator for Development in the government of the former Yugoslavia. He is the author of several publications including Economic

Activities and Democratic Development of Kosova (research report 1998), and Organization of Investment System and Development of Kosova (1985).

Owen, David

The Rt Hon the Lord Owen CH was an MP from 1966-1992 during which, under Labour Governments, he was Navy Minister, Health Minister and Foreign Secretary. He was a founder of the Social Democratic Party and its leader from 1983-1990. From 1992-1995 Lord Owen was the EU co-chairman of the International Conference on Former Yugoslavia. He is currently spearheading the pro-EU, anti-euro New Europe organization. During the 1980s and 1990s, he served as a member of the Palme Commission on Disarmament and Security Issues, the Independent Commission on International Humanitarian Issues and the Carnegie Commission on Preventing Deadly Conflict.

Racine, Bruno

Bruno Racine has served as Director of the Académie de France in Rome since 1997. From 1993 to 1997 he was advisor for Strategic and Defense Affairs to Prime Minister Alain Juppé. Mr. Racine served as Director of Culture for the City of Paris from 1993 to 1998. He also was Director of the Centre d'Analyse et Prévision (Planning Staff) in the French Foreign Office. Prior, from 1986 to 1988, Mr. Racine served as advisor for Strategic and Defense Affairs to Prime Minister Jacques Chirac. He has been a Member of the Cour des Comptes since 1979.

Reisman, W. Michael

W. Michael Reisman is currently Myres S. McDougal Professor of Law at the Yale Law School where he has been on faculty since 1965. He has been a visiting professor in Tokyo, Hong Kong, Berlin, Basel, Paris and Geneva. He is a Fellow of the World Academy of Art and Science and a former member of its Executive Council. He is a member of the Advisory Committee on International Law of the Department of State, co-Editor-in-Chief of the American Journal of International Law; Vice-Chairman of the Policy Sciences Center, Inc.; a member of the Board of The Foreign Policy Association; a member of the International Business Council of the International Chamber of Commerce; and has been elected to The Institute of Law. He has served as arbitrator and counsel in many international cases and was Vice-President and then President of the Inter-American Commission on Human Rights of the Organization of American States, and Vice-President and Honorary Vice-President of the American Society of International Law.

Ronzitti, Natalino

Natalino Ronzitti is Professor of International Law at LUISS University, School of Law, in Rome. He is a Member of the Italian Bar (Corte di Cassazione), and is Scientific Advisor at the Istituto Affari Internazionali in Rome. From 1980 to 1996 he was Professor of International Law at the School of Law of the University of Pisa. On leave from the University of Pisa, he served as Legal Advisor to the Permanent

Representative of Italy on the Conference on Disarmament in Geneva from 1991 to 1995. He is the author, editor, and co-editor of several volumes and articles on international law, law of international institutions, EC law, law of the sea and private international law.

Sako, Mirosh

Since February 1994, Mr. Mirosh has been Director of Regional Affairs Department in the Ministry of Foreign Affairs in Albania. Mr. Mirosh has been a lawyer and journalist on Balkans Affairs, 1994; a Counselor and Charge d'Affaires, Rome, 1989; Director a.i. Department of Regional Affairs, MFA, 1987, and Desk Officer for Yugoslavia at the MFA, 1980. From 1970 he was at the publishing house Naim Frasheri. Mr. Mirosh was educated at Tirana University, Faculty of Juridical Sciences.

Serwer, Daniel

Daniel Serwer is Director of the Balkans Initiative at the United States Institute of Peace. Formerly a Senior Fellow at the Institute working on Balkans regional security, especially Serbia, he was until 1998 a Minister-Counselor at the United States Department of State. He served as State Department director of European and Canadian analysis from 1996 to 1997, and from 1994 to 1996 he served as U.S. Special Envoy and Coordinator for the Bosnian Federation. He was Deputy Chief of Mission and Charge d'affaires at the U.S. Embassy in Rome from 1990 to 1993. Co-author of recent USIP publications on Serbia, Kosovo, Montenegro, and Croatia, Dr. Serwer received his Ph.D. from Princeton University.

Sklar, Richard

In June 1999, Ambassador Sklar took on the leadership, on the ground in Europe, of the US program for economic reconstruction and development in Southeast Europe as the Special Representative for the Southeast Europe Initiative. Based in Rome, Sklar is working with the U.S. government agencies including USAID, TDA, OPIC, and the Department of Commerce; coordinating programs with European Union, World Bank, IMF, and other donor countries, and through the U.S. Embassies with the countries included in the Southeast Europe Initiative.

Prior to his current assignment, Sklar served as U.S. Ambassador to the United Nations. In 1998, he acted as a special mediator in gaining Croatian and Bosnian agreement to two key treaties, establishing both Bosnia's only sea access and the basis of bilateral relations between Croatia and the Federation of Bosnia-Herzegovina. In 1996, Sklar began his government service as Special Representative of the President of the United States for Civilian Implementation of the Bosnian Peace Accords. He entered Sarajevo behind the NATO forces to lead international community efforts to repair basic infrastructure, re-start the economy, and persuade the local leadership to convert to a market economy. Sklar received his bachelor's degree from Cornell University, served six years as an officer in the U.S. Army, built heavy construction machinery manufacturing business from 1959-1973, and then served various management capacities for the City of San Francisco for ten years. From 1983-1996,

Sklar served the construction management firm of O'Brien Kreitzberg, eventually as Corporate President.

Sriram, Chandra

Chandra Sriram has recently completed her Ph.D. in the Politics Department at Princeton University. Her dissertation, entitled "Truth, Justice and Accountability: the ways that transitional regimes address the human rights violations of previous regimes," explores the practical and normative dilemmas and trade-offs that transitional regimes face with respect to the treatment of past abuses and the consolidation of democracy, with case studies of El Salvador, South Africa, Honduras, Sri Lanka, and Argentina. She also holds a J.D. with an emphasis in international law from Boalt Hall School of Law at the University of California-Berkeley. Her current research projects include a comparative study of the developing jurisprudence and practices surrounding the European Court of Human Rights and the Inter-American Court of Human Rights, and an examination of the theoretical and practical import of conceptions of reconciliation and community in transitional situations.

Surroi, Veton

Mr. Surroi, a native of Pristina, is the publisher and founder of KOHA Ditore, Kosovo's leading Albanian language daily newspaper, in 1996. Since 1992, he has been a leading member of Kosovar negotiating teams involved with negotiations with the Belgrade authorities, and afterwards in the Rambouillet and Paris negotiations. In 1990, he founded the KOHA newsmagazine, KOHA weekly. From 1991 to 1992, Surroi was president of the second largest Kosovar political party, the Parliamentary Party.

Tharoor, Shashi

Sashi Tharoor is Director of Communications and Special Projects in the Office of the Secretary-General of the United Nations. He directs the Organization's communications strategy, with particular responsibility for ensuring the coherence and effectiveness of the external message of the United Nations as well as maintaining contact with local and international media. He also undertakes special projects for the Secretary-General on a range of other issues, in particular to human rights. Mr. Tharoor prior was Executive Assistant to Secretary-General Kofi Annan. Prior to this assignment he served as Special Assistant to the Under-Secretary-General for Peacekeeping Operations. From 1992 to 1996 he led the team responsible from the United Nations peacekeeping operations in the former Yugoslavia. Mr. Tharoor's United Nations experience began in May 1978 on the staff of the UN High Commissioner for Refugees, including two stints at UNHCR Headquarters in Geneva and 3 ½ years as Head of the UNHCR office in Singapore at the peak of the Vietnamese "boat people" crisis. Tharoor is the author of numerous publications, articles, op-eds and reviews and is the recipient of several journalism and literary awards. He received his Ph.D. at Fletcher School of Law and Diplomacy at Tufts University, where he also earned two Master's degrees.

Thimonier, Christian

Mr. Thimonier is Conseiller des Affaires Étrangères in the Ministry of Foreign Affairs in France. Since October 1999, he has been in charge of Balkans in the "Centre d'Analyse et de Prevision". From October 1997 to 1999 he served as Deputy Head of Mission (DHOM) in Kiev and from November 1998 to June 1999 as Political Advisor for the DHOM at the OSCE mission in Pristina, Skopje. He was DHOM in Belgrade from October 1994 to 1997, and from 1990 to 1994 served in the European Department in Paris dealing with German and then CIS affairs.

Toscano, Roberto

Roberto Toscano is Coordinator for Policy Planning at the Ministry of Foreign Affairs in Rome, since January 1999. From 1994 to 1999 he served as Minister Counselor (Deputy Permanent Representative) at the Italian Mission to the United Nations in Geneva. Prior he was Head of Policy Planning (Department of Political Affairs) at the Ministry of Foreign Affairs in Rome. In 1998-99 he was first Counselor, Political Section, and then Deputy Chief of Mission at the Italian Embassy in Washington, DC. Mr. Toscano is the author of several essays on international themes.

Uvalic, Milica

Born in Belgrade, Ms. Uvalic is currently associate professor of economics and political science at the University of Perugia. In the early 1980's she was research assistant at the Istituto Universitario Europeo in Florence. She has been coordinator at the European level in many research groups regarding Western European countries and has been a member of the training program for Cei countries in transition.

Vejvoda, Ivan

Ivan Vejvoda is currently Executive Director of the Fund for An Open Society - Yugoslavia. He has taught political science and European studies at the Sussex European Institute, University of Sussex, at Macalester College Minnesota and most recently at the Government Department of Smith College, Massachusetts. He is a member of the Institute for European Studies in Belgrade. Mr. Vejvoda is one of the founders of the Democratic Forum in Belgrade in 1989, and the Belgrade Circle - Association of Independent Intellectuals in 1992. He is co-editor of *Yugoslavia and After: A Study in Fragmentation, Despair and Rebirth* (Longman, 1996), and of *Democratization in Central and Eastern Europe* (Cassell Academic Publishers, 1999).

Weller, Marc

Marc Weller is the Deputy Director of the Centre of International Studies at the University of Cambridge and a member of the Faculty of Law. He is one of the Counsel for Bosnia and Herzegovina in the International Court of Justice. Mr. Weller also served as a legal advisor to the delegation of Kosova at the London, Rambouillet and Paris conferences. He is a Fellow of the Lauterpacht Research Centre for International Law, a Fellow in International Relations of Hughes Hall, and the Director of Studies in Law of Darwin College, Cambridge. Mr. Weller has written several publications.

Woodward, Susan L.

Susan L. Woodward is a Senior Research Fellow at the Centre for Defence Studies, King's College, University of London. In 1994, she was Head of the Analysis and Assessment Unit in the office of the Special Representative of the Secretary General for UNPROFOR, and in the 1998 election period, she was a special advisor to the head of the OSCE Mission to Bosnia and Herzegovina. Ms. Woodward has been a Senior Fellow at the Brookings Institution in Washington, from 1990 to 1999, and a professor of political science at Yale University from 1982 to 1989, as well as at Williams College, Mount Holyoke College, and Northwestern University from 1972 to 1982. She is the author of several articles and publications on Southeastern Europe, the post-communist transition in Eastern Europe, state failure, peacekeeping, and post-conflict reconstruction.

UNITED NATIONS ASSOCIATION OF THE UNITED STATES (UNA-USA)

The United Nations Association of the United States of America (UNA-USA) is a nonprofit, nonpartisan national organization dedicated to enhancing U.S. participation in the United Nations system and to strengthening that system as it seeks to define and carry out its mission. UNA-USA's action agenda uniquely combines education and public research, substantive policy analysis, and ongoing U.S.-U.N. dialogue.

Origin

The Association traces its founding to 1943 and the birth of the American Association for the United Nations (AAUN), a citizen-based organization led by Eleanor Roosevelt and dedicated to educating Americans about the U.N. and global issues. In 1964, the AAUN merged with the U.S. Committee for the United Nations, composed of 138 national organizations supporting the work of the world body, thereby creating the United Nations Association of today.

UNA-USA Today

UNA-USA is a leading center of policy research on the United Nations and global issues such as environment, security, narcotics, development, and human rights. With 23,000 members nationwide, UNA combines broad grassroots outreach with high-level policy studies involving scholars and government officials from many parts of the world in order to identify fresh ideas and areas of potential cooperation. Through a series of programs, UNA-USA brings together leaders of business, Congress, academia, non-governmental organizations (NGOs), and the U.N. community for discussions of pressing problems on the international agenda.

UNA-USA continues to pioneer efforts to involve the American public in the discussion of foreign policy priorities as well as to provide information and educational materials for Congress, the Executive Branch, the corporate community, NGOs, the media, and the public at large. Through its national network of over 170 community-based Chapters and Divisions, and through its

145-member Council of Organizations, UNA-USA reaches out to millions of concerned citizens who want their voices heard in Washington and at the United Nations.

Headquartered in New York City just a few blocks from United Nations headquarters, the Association operates with a staff of over 30 full-time employees and an annual budget of approximately \$4.3 million. Funding is provided by private foundations, corporations, individuals, and membership dues rather than by the U.S. Government or the United Nations.



Istituto Affari Internazionali

October 1999

The *Istituto Affari Internazionali* (IAI) was founded on 11 October 1965 on the initiative of Altiero Spinelli, its first director, with the support of the *Fondazione Adriano Olivetti* / *Associazione di cultura e politica "Il Mulino"*, *Centro Studi "Nord e Sud"* and the *Ford Foundation*.

In 1991 the Institute moved to the Palazzo Rondinini, an elegant eighteenth century Baroque building in the hearth of Rome where the main activities organized by the Institute take place.

A non-profit organization, it is funded by individual and corporate members, public and private organizations, maior international foundations, and by a standing grant from the Italian Ministry of Foreign Affairs.

The main objective of the Institute is to promote understanding of the problems of international politics through studies, research, meetings and publications, with the aim of increasing the opportunities of all countries to move in the direction of supranational organization, democratic freedom and social justice (IAI Bylaws, Article 1).

RESEARCH

An interdisciplinary approach and policy-oriented objectives characterize the Institute's analysis of international events. The IAI strives to maintain a global perspective, evaluating Italian positions with respect to those of other international actors. To this end, the Institute has involved an increasing number of foreign researchers in its projects, and has strengthened its ties with similar institutes abroad through regular bilateral and multilateral meetings.

In addition, the IAI belongs to the following international networks of research centres: CAEC (Council for Asia-Europe Cooperation); CPN (Conflict Prevention Network); ESG (European Strategy Group); EuroMeSCo (Mediterranean Study Commission); ISN ((International Relations and Security Network) and TEPISA (Trans European Policy Studies Association).

Principal fields of research

- Italy, integration and international competition
- the evolution of European integration and European policy
- new issues in the security and defence field
- the transition in Eastern Europe
- relations with the southern shore of the Mediterranean
- Europe-Asia relations

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INFORMATION

Istituto Affari Internazionali

CONFERENCES

The conference activities of the IAI are organized broadly as follows

- public meetings and conferences
- bilateral meetings with other Italian institutes and foreign counterparts
- study groups and seminars related to research topics
- meetings of the *Fora*
- lectures by foreign and Italian guest speakers

All these activities are organized with the purpose of furthering the understanding of topical issues in international relations.

The seminar series *Fora* are detailed below as worthy of particular mention.

The *Fora* are groups which further debate and the dissemination of information among corporate members and which are also open to leading experts on topical issues, civil servants, businessmen etc.. They are a response to the need of their members for a deeper understanding of the connections between domestic and foreign policy which are of particular relevance in the context of the rapid transformations occurring on both the Italian and the international scene. They are organized in four main subject areas:

- Economic Forum, which explores issues relating to international economic cooperation and interdependence.
- Eastern European Forum, which follows political developments in the Balkans and the eastern European areas of the Commonwealth of Independent States.
- Mediterranean Forum, which focuses on developments occurring to the south of Europe, particularly in the Mediterranean, the Near East and the Gulf
- Security Forum, which examines issues regarding international security and the role played by Italy in these issues.

Laboratory of International Affairs and Economics

A new service that the IAI offers to companies. Small working groups on subjects selected by the IAI and the companies themselves work out guidelines for an Italian international strategy. Subject under examination at the moment include:

The working groups that are starting up in the fourth year of the Laboratory's activity are:

- the future of Mercosur: between enlargement and internal crisis
- the Maghreb (Algeria, Morocco and Tunisia) and Libya: prospects for development and integration
- launching the WTO Millennium Round and Italy's priorities
- reconstruction and mid-term prospects for the Balkan area: Italy's role

LIBRARY

The library was set up in 1965, the year the Institute was founded, and provides a high level of service to Italian experts and researchers in the area of international issues. It contains more than 18000 volumes, including past issues of periodicals and the "open" collection of reference materials. The library's contents are currently being catalogued in an on-line data base, and contains 14.000 entries. The library is a participant in the "European Information Network on international Relations and Area Studies", an international project for libraries and data-banks which was launched by the Stiftung Wissenschaft und Politik in Ebenhausen. The project brings together a large number of European research centres and holds an annual conference to discuss the implementation of its program.

PUBLICATIONS

- **Quarterly Journal** (in English): **THE INTERNATIONAL SPECTATOR**, Fratelli Palombi Editore, Rome

1999 Subscription rates:

	Italy	Elsewhere
Regular	Lit. 65.000	Lit. 80.000
Cover price	Lit. 19.000	Lit. 25.000

Orders should be sent to:

Fratelli Palombi Editori, Via dei Gracchi 183, 00192 Rome

c/c n. 31825003

e-mail: palombi@mail.stm.it

- **Book Series: LO SPETTATORE INTERNAZIONALE**, Franco Angeli Editore, Milan

Recent Issues

- *COMANDO E CONTROLLO NELLE FORZE DI PACE E NELLE COALIZIONI MILITARI. Contributo alla riforma della Carta delle Nazioni Unite*, Natalino Ronzitti (Ed), 1999, 338 pp., Lit. 40.000.
- *ITALIA SENZA EUROPA? Il costo della non partecipazione dell'Italia alle politiche dell'Unione Europea*, Gianni Bonvicini, Paolo Cecchini, Pier Carlo Padoan, Natalino Ronzitti (Eds), 1997, 236 pp., Lit. 38.000

Orders should be sent to: Franco Angeli Editore Viale Monza 106 20127 Milano

A Collection of Essays: IAI QUADERNI Price per copy: Lit. 10.000

- *Politica di sicurezza e nuovo modello di difesa*, by Giovanni Gasparini, n. 9 (forthcoming)
- *Il Millennium Round, il WTO e l'Italia*, Isabella Falautano and Paolo Guerrieri (Eds), n. 8 (October 1999)
- *Trasparenza e concorrenza nelle commesse militari dei paesi europei*, by Michele Nones and Alberto Traballes, n. 7 (December 1998)

Orders should be sent to:

Istituto Affari Internazionali, Library, Via A. Brunetti 9, 00186 Roma

e-mail: iai_library@iai.it

- **IAI Working Papers: DOCUMENTI IAI** Price per copy: Lit. 5000

Orders should be sent to:

Istituto Affari Internazionali, Library, Via A. Brunetti 9, 00186 Roma

e-mail: iai_library@iai.it

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PALAZZO RONDININI

The 18th-century Palazzo Rondinini ranks among the premier buildings of Baroque Rome. It was built for the Marquis Giuseppe Rondinini by the architect Alessandro Dori, who sought to create a palazzo that was at the same time both a home and a museum, fulfilling the desires of the Marquis, a keen archaeologist and art collector of Lombard origin. Dori extended a pre-existing building, the home of the 16th-17th century painter Giuseppe Cesari, and completed the work in 1764, whereupon the Marquis brought his collection of antiquities, mostly of Roman origin, to the palazzo.

The rooms, full of light effects, often with "Venetian-style" floors finely inlaid with precious marbles, were frescoed by Garnelin and Francia, eclectic painters of the period, with allegoric and floral motifs with a perspective that created an optical illusion of space, as in the ballroom, richly decorated with stuccoes and giltwork, and in the Gallery, which is possibly the most characteristic room.

With the Risorgimento it became the seat of the Russian embassy, passed back into the hands of prominent Roman families in the 20th century, and in 1947 was acquired by the *Banca Nazionale dell'Agricoltura*. After restoring the palazzo and exhibiting its historical and artistic possessions to advantage, *Banca Nazionale dell'Agricoltura* chose it as its office of representation.

UNA-USA and IAI are grateful to the *Banca Nazionale dell'Agricoltura* for allowing conferees the use of the palazzo.

VILLA MEDICI

The Villa Medici, one of the great Renaissance villas of Rome, was erected by A. Lippi in 1546 on the site where the Roman senator Lucullus had his gardens in the 1st century before Christ. Originally the home of Cardinal Ricci di Montepulciano, the villa passed to Cardinal Ferdinando de' Medici in 1576.

In 1803 Napoleon Bonaparte transferred the French Academy in Rome, which dated from 1666, to the Villa Medici. Since that time, young French artists selected for the "Prix de Rome" have spent periods of one to three years at the Academy developing their art. The villa's collection includes much of the work of those who have studied there. The villa has a rich interior façade and a suggestive park adorned with ancient statues.

SUPPORTING INSTITUTIONS

Better World Fund

The Better World Fund is a sister organization of the United Nations Foundation, established by a historic gift of \$1 billion by Georgia-based businessman, media pioneer, and philanthropist R.E. (Ted) Turner that was announced at the UNA-USA annual dinner in 1997. The Foundation's mission is to support the goals and objectives of the United Nations and its Charter, in order to promote a more peaceful, prosperous and just world - with special emphasis on the U.N.'s work on behalf of social, environmental and humanitarian causes. In pursuit of its mission, the U.N. Foundation provides grants for successful and innovative programs of the United Nations; promotes efforts to strengthen U.N. institutions and encourage support for U.N. causes in cooperation with the Better World Fund; and, though the Better World Fund, sponsors outreach efforts aimed at educating the public, especially in the United States, about the U.N.'s unique role in addressing global issues and forging international cooperation.

German Marshall Fund of the United States

The German Marshall Fund of the United States is an independent U.S. foundation created to serve the trans-Atlantic community. The Fund's mission is to deepen understanding, promote collaboration and stimulate exchanges of practical experience between Americans and Europeans, particularly those in the national and local policy communities. The Fund was created in 1972 by a gift from the German people as a permanent memorial to postwar Marshall Plan aid. The Fund's grantmaking promotes the study of international and domestic policies, supports comparative research and debate on key issues, and assists policy and opinion leaders' understanding of these issues.

Howard Gilman Foundation

The Howard Gilman Foundation, based in New York, supports public interest causes and has taken a particular interest in recent years in refugee policy issues.

European Commission

The European Commission is the executive arm of the European Union.

Institute for Strategic Studies

The Institute for Strategic Studies is the think-tank of the Western European Union, the intergovernmental organization that seeks to provide an autonomous multilateral defense framework for European nations in affiliation with, but distinct from, the North Atlantic alliance.

CONFERENCE SCHEDULE

Saturday, 11 December

Participants arriving during the day

8:30 p.m. *Dinner**

Ristorante: **Porto di Ripetta**

Via di Ripetta 250 (near Piazza del Popolo)

Tel (+39) 06.361.2376; Fax (+39) 06.322.7089

**Participants arriving Saturday who wish to take this dinner together should contact Nathalie Champion, by e-mail at n.champion@iai.it or by fax at (+39) 06.3224363.*

Sunday, 12 December

7:15 p.m. *Vans depart from conference hotels*

7:30 p.m. *Reception*

8:45 p.m. *Dinner*

Venue: **Villa Medici (Académie de France)**

Viale della Trinità dei Monti, 1

Tel. 06 67611 - Fax. 06 6761305

Monday, 13 December

Palazzo Rondinini

Via del Corso, 518

8:45 a.m. Session I: Kosovo and the region: Warring aspirations. *(Plenary)*

10:30 a.m. Session II: Kosovo political life: Past as prologue? *(Plenary)*

11:45 *Break*

12:00 noon Session III: Kosovo Economicus: Does viability matter? *(Plenary)*

1:45 p.m. *Lunch / Pranzo*
Palazzo Rondinini

3:30 p.m. Session IV: Presentations *(Plenary)*
Internal Order, External Security: Looking beyond KFOR.
Constitutional options for self-determination: What works (elsewhere)?

4:30 p.m. Discussion sections
A: Constitutional options: What works (elsewhere)? *(IAI conference room)*
B: Internal Order, External Security *(Salotto)*

5:15 p.m. *Break*

5:30 p.m. Session V: Discussion sections
A: Constitutional options for self-determination: What fits (Kosovo)?
B: A political process toward final status.

7:00 *Adjourn*

8:30 p.m. *Dinner*
Venue: *Grand Hotel Plaza (Salone Mascagni)*
Via del Corso, 126
Tel. 06 69921111

Tuesday, 14 December
Palazzo Rondinini

Via del Corso, 518

9:00 a.m. Session VI
Plenary discussion: Constitutional options
Report from Section A

10:45 a.m. *Break*

11:00 a.m. Session VII
Plenary discussion: Security and political process
Report from Section B

12:15 p.m. Session VIII: Guaranteeing a settlement.

1:30 p.m. *Concluding luncheon*
Venue: *Palazzo Rondinini*

Participants with Wednesday departure are invited to share dinner at:

8:30 p.m. *Dinner**
Ristorante: *TBA*

**Participants departing Wednesday who wish to take this dinner together should contact Nathalie Champion, by e-mail at n.champion@iai.it or by fax at (+39) 06.3224363.*

Options for Kosovo's Final Status: "Quo Vadis UNMIK?"

Rome, 12 - 14 December 1999

David Owen, Chair

United Nations Association of the United States (UNA-USA)
Istituto Affari Internazionali (IAI)

Agenda

Sunday, 12 December

Villa Medici (Académie de France)

Reception and Dinner

Welcomes and Expectations for the conference:

William Luers (UNA-USA)

Cesare Merlini (IAI)

Overview: *Carl Bildt, Special Envoy of the Secretary-General for the Balkans*

Via della Trinità dei Monti

7:30 p.m.

Monday, 13 December

Palazzo Rondinini

Via del Corso, 518

Session I:

8:45 a.m.

Kosovo and the region: Warring aspirations.

Presentation: *Susan Woodward, Center for Defence Studies, King's College*

Discussant: *Jiri Dienstbier, U.N. Human Rights Rapporteur for former Yugoslavia*

*The war may have gotten the Belgrade government's forces out of Kosovo, but it left the future of the territory as murky as ever. The Security Council agreed on a seemingly contradictory mandate for the international mission that was to take over the province: achieve Kosovar self-determination within Yugoslav sovereignty. Can the circle be squared? Does it matter if it isn't? Are options on final status—and attitudes toward them—affected by the interim decisions being made by administrators of the U.N. mission in Kosovo on economic, legal, and security problems in the territory? The outcome of the war has created a condition of *de facto* self-determination, but some see a precedent of state-shattering self-determination as threatening to several countries in the region and to regional and European stability generally. What are the expectations, concerns, and essential interests of Kosovo's inhabitants, Kosovo's neighbors, and governments beyond? How important is Kosovo's status to long-term interests of, and relations among, the members of the Security Council?*

Session II:

10:30 a.m.

Kosovo political life: Past as prologue?

Presentation: *Veton Surroi, Koha Ditore*

Discussant: *Ivan Vejvoda, Fund for an Open Society/Yugoslavia*

How does Kosovars' experience of political life since 1945—circumscribed first by Communist ideology (with constraints on competition but also constitutional guarantees of autonomy and of protections for ethnic communities) and since 1989 by the Milosevic regime's abrogation of those guarantees, an experiment in underground democracy, and ethnic war—condition their future? With this political experience behind it, how can Kosovo's prospects for development of a democratic political culture be enhanced? How can the international community nurture the emergence of a democratic leadership and set in motion a political process assuring democratic selection of leaders in the territory? Of what relevance to Kosovo's political evolution is development of a democratic culture in other parts of the former Yugoslavia? What kinds of constitutional and international protections for minorities may be needed to assure a working democratic system in Kosovo—and would such protections be workable in Kosovo's new politics?

Session III:

12:00 noon

Kosovo Economicus: Does viability matter?

Presentation: Vladimir Gligorov, Vienna Institute for International Economic Studies

Discussant: Muhamet Mustafa, Institute for Development Research (Riinvest)

How might Kosovo's economic viability be affected by possible political arrangements for its future—and how are UNMIK's interim decisions on economic policy affecting those political options? Are economic considerations even relevant for decisions on political identity? What are the economic prospects of Kosovo on its own—looking at its resource and industrial base, its traditional and “natural” trading partners, and its economic infrastructure? What are Kosovo's revenue capabilities for support of government services, both for the short term of UNMIK's trusteeship and in the long term? What investment and resources can it generate from within? What external economic support can the territory expect to receive from the donor community in the short and long term, and how may “final” political arrangements affect the flow of international support? To what extent is economic integration in the wider region relevant to the economic prospects of individual parts, such as Kosovo itself? Can a regional stability pact with economic dimensions have significant impact on the viability of political arrangements?

Session IV:

3:15 p.m.

Internal Order, External Security: Looking beyond KFOR.

Presentation: Espen Barth Eide, Norwegian Institute of International Affairs

Discussant: Shashi Tharoor, Director of Communication, Office of the United Nations Secretary-General

As UNMIK proceeds painstakingly to create a territorial police force capable of maintaining public safety, concerns are mounting about inroads by organized crime; at the same time, the main wartime armed faction is accorded recognition as a “protection force” of uncertain mandate, resources, and accountability. How can the public administration address internal security concerns arising from organized crime networks and from ethnic antagonisms—and, given those antagonisms, what are the impacts on the peace-building process of the recruitment and training of local security forces? What may be the external security challenges facing Kosovo and its neighbors? On what kinds of security guarantees from its neighbors, or countries beyond, might the territory rely? How might the security constellation within Kosovo relate to the security perceptions of others in the region—including Serbia—and how might the international community credibly and affordably underpin security in the region? How might various alternatives for Kosovo's future political status impact on the structures that would be needed for the territory's security?

Session V:

5:00 p.m.

Constitutional options for self-determination: What works?

Presentation: Markku Suksi, University of Turku

Discussant: Natalino Ronzitti, LUISS University

Polities have experimented with a wide array of options for exercise of self-determination, sometimes blurring or pooling notions of sovereignty—from autonomous republics to federated states to loose confederations to associated status to outright separatism and recognized statehood. What formulas have shown some success at reconciling a group's self-determination vis-à-vis a larger entity, and under what circumstances? How have international institutions and arrangements supported or subverted the success of those models?

7:00

Adjourn

8:30 p.m.

Dinner

Venue: Grand Hotel Plaza (Salone Mascagni)

Via del Corso, 126

Tel. 06 69921111

Tuesday, 14 December
Palazzo Rondinini

Via del Corso, 518

Session VI:

9:00 a.m.

Constitutional options for Kosovo: What fits?

Presentation: Wolfgang Danspeckgruber, Center for Self-Determination, Princeton University

Discussant: Marc Weller, Cambridge University

How do the various options for self-rule and sovereignty fit Kosovar and Balkan realities? What are the internal and external resources available to sustain any option? To what extent do developments in what remains of the Federal Republic of Yugoslavia affect the viability of Kosovo's continued association with that polity? Would Yugoslav "democratization" make a difference for the expression of Kosovo self-determination—and how could the international community guarantee the durability of such democratization? What guarantees can the international community credibly extend to support a constitutional arrangement? How do constitutional options relate to the structures of political cooperation that may be emerging in the wider region? How is the viability of various options affected by opposition from internal factions—or from the international community at large?

Session VII:

11:00 a.m.

A political process toward final status.

Presentation: W. Michael Reisman, Yale University

Discussant: Ettore Greco, Istituto Affari Internazionali

What kind of political process can best facilitate both internal and external agreement on Kosovo's final political status? Inside Kosovo, what sequence of steps might be taken in the exercise of the inhabitants' self-determination—including perhaps elections to a territorial assembly, provision for civic debate over options, or direct referendum? What parallel political process might operate within the region to address issues with respect to sovereignty? How might such a process relate to a wider international process aimed at strengthening political ties and links among political units in the Balkans? How can UNMIK and the United Nations Security Council—along with regional agencies like the OSCE, NATO, and the European Union, and individual states—nurture that process and bring it to a generally accepted resolution? What if the parallel tracks produce no generally accepted resolution?

Session VIII:

12:30 p.m.

Guaranteeing a settlement.

Presentation: Chris Bennett, Director, European Stability Initiative

Discussant: Jan Krzysztof Bielecki, European Bank for Reconstruction and Development

What is the international community prepared to commit—and then deliver—to support the final settlement of Kosovo's status and maintain peace and stability in the Balkans? What are the realistic constraints on support—in terms of time, troops, personnel, and money—that the international community can provide? What has been the performance till now of the international community in making and fulfilling commitments for Kosovo and the region? Are there ways in which the process of making, sharing the burden of, and delivering on commitments can be made more reliable? What are the consequences for regional peace?

Chairman's Conclusions:

Lord Owen

1:30 p.m.

Concluding luncheon

2 p.m.

The conference has been underwritten by the Better World Fund, the German Marshall Fund of the United States, the Howard Gilman Foundation, the European Commission, and the Institute for Security Studies of the Western European Union.

CONFERENCE RULES AND PROCEDURES

Citations. All meetings and events of the conference are off the record, and *no statement by any participant may be quoted* outside the conference— whether in published reports, internal memoranda, or any other account— without the express permission of the participant being quoted. The organizers will prepare a report within a month of the conference summarizing the principal ideas and points of view expressed here; this report too shall protect the confidentiality of the discussants. The *papers* commissioned by the organizers are drafts only, and are *not for circulation or quotation* publicly or privately, without the express permission of the author and of UNA-USA. Paper writers have three weeks from the close of the conference to revise their drafts; papers may be freely circulated, in their revised form, by any participant as of January 10, 2000.

Interventions. The generous commitment of time to the conference by so many invited participants means that the Chairman will need to ration strictly the time for presentations and interventions, and the organizers ask participants' understanding of and indulgence in our scrupulously limiting them. The time limitations are intended to promote free-wheeling and spontaneous discussion, not stifle it.

In the 75 minutes allocated for each session, the paper presenter will have *8 minutes* to open the argument, and a designated lead-off discussant will be given *6 minutes* to critically assess that argument and offer alternative perspectives. Thereafter, participants may intervene in the order recognized by the Chairman, speaking for no more than *4 minutes* at each intervention

In order to leave some room in this structure for quick, spontaneous exchanges, the Chairman at his discretion may recognize a participant who asks urgently to jump the queue of intervenors with "a quick followup on the point just made," but to keep such exchanges quick and spontaneous these "*two-fingered interventions*" *will be limited to 1 minute*, with no more than two of them in succession.

Sections Because the number of participants exceeds expectations, the organizers have refashioned the conference schedule to create smaller sections for more intensive discussion of key issues. The two sections (A and B) will consider the constitutional and the security/process themes respectively.

Session IV will convene after the lunch break to hear presenters and lead-off discussants both on the question of internal order/external security and on the topic of constitutional experiments for self-government in other polities. The session will then break into 2 sections (see list attached), each of which will explore one of those subjects. The sections will continue to meet for Session V, hearing and reacting to presentations on what possible constitutional options might fit Kosovo (in A), or on the political process that could lead to a final status agreement (in B). Time limits on interventions will continue as prescribed above for plenary sessions.

One participant in each section will act as rapporteur. When the conference reconvenes on Tuesday morning for sessions VI and VII, the scheduled presenter for each of those two sessions (Kosovo constitutional options and political process) will make an abbreviated introduction (*5 minutes*). Then the section's rapporteur will summarize the views and arguments debated in the discussion group (*8 minutes*). Discussion will then ensue, with the usual limits on interventions.

Group A

Luers, W.H. (chair)
Ashdown
Bildt, C
Brimmer
Danspeckgruber(P)
Darmanovic
Gruber
Hedges
Ilievski
Morconi
Lavrov
Loras
Malinverni*
Markert
Marko
Pelletier
Pinelli
Ronzitti (D)
Rossin
Serwer
Suksi (P)
Surroi
Toscano
Vejvoda
Weller (D)

Group B

Brecht (Chair)
Bennett
Bielecki
Bildt, A.M.
Dassù
Daviet
Demes
Dienstbier
Donnelly
Eide (P)
Gardner
Gligorov
Greco (D)
Hill
Hoge
Kofos
Laurenti
Levitsky
Luers, W.W.
Mirachian
Moreno
Mustafa
Oliveri
Poggioli*
Racine
Reisman (P)
Russell
Sako
Spasskiy
Tharoor (D)
Thimonier
Triantaphyllou
Uvalic
Woodward
Xhaferi



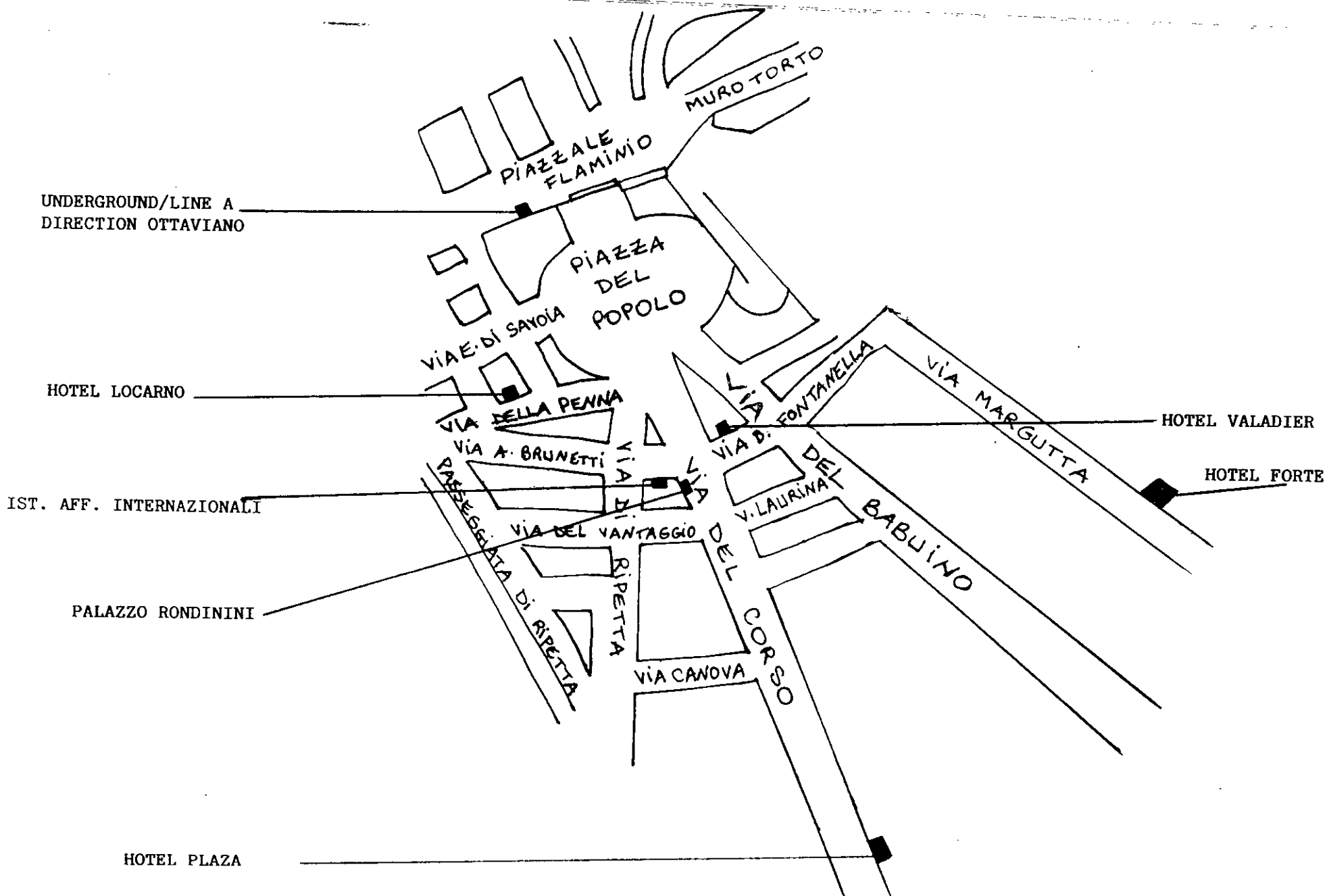
Hotel
Valadier

Villa Medici

Palazzo
Rondinini

Hotel
Forte
Hotel
Plaza

HOTELS' MAP



LOGISTIC INFORMATION

I. ACCOMMODATION

Hotel Forte Via Margutta 61 00187 Rome Tel. 06 3207625 Fax. 06 3202707	Hotel Locarno Via della Penna 22 00186 Rome Tel. 06 3610841 Fax. 06 3215249 locarno@venere.it	Hotel Plaza Via del Corso 126 00186 Rome Tel. 06 69921111 Fax. 06 69941575 plaza@grandhotelplaza.com	Hotel Valadier Via della Fontanella 14 00187 Rome Tel. 06 3610880 Fax. 06 3201558 valadier@venere.it
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II. CONFERENCE VENUE

Palazzo Rondinini
Via del Corso 518
Rome
Tel. 06 3210543
Fax. c/o IAI Office

III. IAI OFFICE

Via Angelo Brunetti 9
00186 Rome
Tel. 06 3224360
Fax. 06 3224363
iai@iai.it

IV. CONTACT PERSONS

- For IAI: Mrs. Nathalie Champion, Mrs. Susanna Valeriani
- For UNA-USA: Mrs. Valerie Jordan, Mr. Daoud Mikhail, Mrs. Chandra Sriram, Mr. Alessandro Bacci

V. SOCIAL EVENTS

- **Sunday, December 12th: Dinner at 7.30 p.m.**
at the Villa Medici c/o the French Academy
Viale Trinità dei Monti 1
Tel. 06 67611 - Fax. 06 6761305

- **Monday, December 13th:**
 - ☐ 1.30 p.m.: lunch at Palazzo Rondinini
 - ☐ 8.30 p.m.: dinner at the Plaza Hotel

OPTIONS FOR KOSOVO'S FINAL STATUS

12-14 December 1999

REQUEST FOR TRANSPORTATION REIMBURSEMENT				
Name				
Social Security Number <small>(For U.S. citizens and residents)</small>		Phone		
Organization				
Address				
Receipts	1	Description:	Currency:	Amount:
	2	Description:	Currency:	Amount:
	3	Description:	Currency:	Amount:
	4	Description:	Currency:	Amount:

Mail completed transportation reimbursement form with receipts by January 15, 1999 to:

Daoud Mikhail
 Program Administrator, Policy Studies
 United Nations Association of the United States of America
 801 Second Avenue
 New York, New York 10017
 U.S.A.

January 15th
Address & date change have been made.

Evaluation of Conference

I. The Conference

A. Quality of presentations and discussions

Were important issues addressed in a fresh and stimulating way? Were the papers and discussants useful in sharpening the debate?

Session I: Kosovo and the Region: Warring Aspirants

Comments:

Overall assessment of session: ☐ excellent ☐ good ☐ fair ☐ useless

Session II: Kosovo Political life: Past as prologue?

Comments:

Overall assessment of session: ☐ excellent ☐ good ☐ fair ☐ useless

Session III: Kosovo Economicus: does viability matter?

Comments:

Overall assessment of session: ☐ excellent ☐ good ☐ fair ☐ useless

Session IV: Internal Order, External Security: Looking beyond KFOR

Comments:

Overall assessment of session: ☐ excellent ☐ good ☐ fair ☐ useless

Session V: Constitutional Options for self-determination: What works?

Comments:

Overall assessment of session: ☐ excellent ☐ good ☐ fair ☐ useless

Session VI: Constitutional Options for Kosovo: What fits?

Comments:

Overall assessment of session: ☐ excellent ☐ good ☐ fair ☐ useless

Session VII: A political process towards final status

Comments:

Overall assessment of session: ☐ excellent ☐ good ☐ fair ☐ useless

Session VIII: Guaranteeing a settlement

Comments:

Overall assessment of session: ☐ excellent ☐ good ☐ fair ☐ useless

B. Quality of the conference rooms

Were discussions audible?

☐ yes ☐ somewhat ☐ no

Was the room conducive to discussions?

OPTIONS FOR KOSOVO'S FINAL STATUS

A Policy Conference organized by
United Nations Association of the United States of America
and Istituto Affari Internazionali
Rome, December 12-14, 1999

"Kosovo and the Region: Consequences of the Waiting Game"

Susan L. Woodward
Centre for Defence Studies, King's College London

Introduction

The internationalization of the conflict over Kosovo by NATO military action in March-June 1999 was defined and given legal standing according to humanitarian and human rights principles. The Serbian and Yugoslav governments were held to be in violation of international humanitarian and human rights conventions, and by causing a humanitarian crisis that included large population displacement into neighboring states, posed a threat to regional security and peace.

United Nations Security Council Resolution 1244 recognizes the territorial integrity of the Federal Republic of Yugoslavia and its continuing sovereignty over Kosovo, while requiring Serbian and Yugoslav military and civilian authorities to hand over control of the province to a transitional international administration. This is an extraordinary precedent. In contrast to the United Nations Transitional Administrations in Eastern Slavonia (Croatia) or East Timor (Indonesia) -- where the political status of the territory was settled (reintegration into Croatia in the first case, independence in the second) but international assistance was considered necessary to protect the human and minority rights of these respective populations while the transition took place -- the

international presence in Kosovo has temporarily deprived a country of the right to rule over part of its territory and population. According to NATO powers and the United Nations Security Council, sovereignty is not inviolable but subject to a higher law; by violating that law in their treatment of the Albanian population of Kosovo for almost a decade, Yugoslav authorities have temporarily lost the right to rule Kosovo.

The acts of internationalization and temporary protectorate, however, have irrevocably changed the Kosovo issue. Although the goal of this transitional authority is declared to be the restoration of extensive autonomy for the province, according to the constitutional rights accorded by the 1974 Constitution of the Socialist Federal Republic of Yugoslavia, the UNSCR includes as a basis for that autonomy the draft political agreement presented at Rambouillet in February and its presumption of a referendum in Kosovo at the end of three years on the province's final political status. Accordingly, the international rhetoric of human rights during Operation Allied Force has been replaced by the language of sovereignty and the right of national self-determination said to belong to any ethnic majority in a land. Like the creation of a Palestinian nation, but in a radically shorter period of time, the term *Kosovar* (the Slavic word for a person from Kosovo) is now widely used for the Albanian population of Kosovo, not as before March 1999 for all people regardless of ethnic and national identity originating from Kosovo. In addition, the task of establishing and running an international protectorate that is simultaneously *within* a country but not subject to its rule -- for which there are no international rules -- has reinforced the separate status of the province. The United Nations Mission in Kosovo (UNMiK) has approached the problem of currency, customs, power, police, and security, to take a few examples, by establishing independent political, economic, and

military institutions that in some instances, such as the choice of the Deutsche Mark as local currency, represent *sovereign* prerogatives and may not be easily reversible.

A Third Way? The Option of Delay

Whether the argument is based on the brutality of the Serbian regime in Kosovo in the 1990s or on the *faites accompli* of the international response (the Rambouillet proposals, the NATO bombing campaign, and the decisions of UNMiK and the NATO-led Kosovo Force (KFOR)), the options for Kosovo now include the very real possibility of independence. To square the circle between the international commitment to Yugoslav sovereignty, made clear in UNSCR 1244 and held strongly by many states in the world including in Europe, and the current reality, supported by other states, the architects of policy toward Kosovo are focusing on the *political process* that should evolve in Kosovo over the next few years. This focus has shifted the nature of current options: from a choice between extensive autonomy (tantamount to separate republican status within the Yugoslav federation) or independence, to a debate over timing. For some, independence should be declared immediately, while for others, a decision must be delayed and emerge out of the political process.

Accordingly, the debate is ever less about independence but the consequences of ambiguity and a postponed decision. For those who advocate an immediate decision, if that status is not clear, the evolving political process cannot be about anything except Kosovo's political status, rather than the goals of democracy, good governance, and reconstruction. The logic is simple. If borders are unsettled and the bearers of sovereignty are unclear, people do not know where to direct their political loyalty, their expectations of citizenship rights, or their universe of political participation; there cannot

be a true political process. International financial institutions can only have negotiations and programs with sovereign units, and foreign investors cannot operate without knowing who is accountable, who has authority. However drawn out a path toward EU membership – the great advance of the Stability Pact that this is now possible – it cannot even begin until there are states, which includes not only Kosovo but the rest of the F.R. Yugoslavia and possibly the neighbors that will be affected by Kosovo's status.

For those who advocate delay, however, ambiguity is a virtue, allowing people to focus on creating a capacity for local administration and democratic accountability in Kosovo until political conditions clarify the best choice. Faced with very real fears among neighboring states as far as Romania and northward about the precedent being set, delay is said to prevent by postponement a new chain of demands for self-determination and separation and the preemptive maneuvering within states that this opportunity engenders. Postponement is also intended to act as an incentive to opposition forces in Serbia to overthrow Slobodan Milosevic and regain the right to govern Kosovo. Above all, given the extraordinary effort to create unity among NATO powers to intervene with force and the current disagreement over the final status of Kosovo among the major powers, including the permanent five members of the U.N. Security Council, delay avoids risks to that unity, which was wearing thin by the end of May 1999, or a serious row among the major powers.

Indeed, the choice has already been made in favor of delay and ambiguity for reasons of international disagreement and major-power politics, not for reasons of the best course to stability in the region. No state is currently ready to violate Yugoslav sovereignty and UNSCR 1244 and to recognize a change of borders. Those who prefer

the independence option believe that this will be the outcome of the political process in any case, so why not let it happen and avoid creating a major-power conflict or violating international norms (including the UN Security Council Resolution 1244 and KFOR commitment in the Military Technical Agreement with Yugoslav forces). Those who oppose independence out of fear of the precedent regarding the change of borders, after holding the line for so long and with such tragic consequences in the wars of the Yugoslav dissolution, can be reassured or at least lulled into confidence. The decision to delay *is a decision not to decide* so as to maintain the international coalition created by the NATO campaign and the effort made in the summer of 1999 to restore relations with Russia and China.

The Precautionary Principle¹

The question of Kosovo's final status, however, is not primarily a question of independence or autonomy. It is (1) whether the question of Kosovo is about the status of the province or about the Albanian national question, with its wider implications in the region, and (2) the catalytic and indirect effect of the Kosovo question on the political conditions that are supposed to change. The question of timing is not about the best way to manage this choice but about the interaction between the political process within Kosovo and the political dynamic in the region. The conflict over Kosovo, at least since 1981, has always been more about its external consequences, not its internal order. This remains true today. Both choices -- independence or autonomy -- are statements about a relationship -- between Kosovo and its neighbors, Serbia, Montenegro, Macedonia, Albania, and other territories that may become subjects of sovereignty in the area. The

status of Kosovo is as much about the criteria for restoring Yugoslav sovereignty – having deprived Yugoslavia temporarily of sovereignty, what criteria for changes in Serbia would justify restoring sovereignty? The Albanian national question is as much about the survival and stability of Macedonia, Montenegro, and Albania. And the very issue of independence has a direct effect on the separate processes of state formation and reformation in the neighborhood.

What happens to Kosovo primarily is, and should be, about the consequences of the decision on final status and, equally, of the way that the decision is made. Those consequences are largely about its effects on its neighborhood, and only minimally about the people of Kosovo. One cannot discuss the options for Kosovo without an understanding of its regional context and the implications for the region of each option. In fact, there is no solution to the Kosovo conflict apart from a regional solution.

After illustrating the regional character of the Kosovo problem, I will return to an assessment of the consequences of a waiting game and then propose the elements of a regional approach that might prevent more war.

Background: Regional effects of the Kosovo conflict

For Albanian nationalists and the neighboring states of Kosovo, the question of Kosovo is an Albanian national question. What are the rights of the people of Albanian identity living outside Albania -- minority rights or national rights to self-determination, and if the latter, to equal rights to governance with other nations of the state in which they are citizens (such as Macedonia or Montenegro) or to separation and the goal of joining all "Albanian lands" in one nation-state? Kosovo plays a special role in this national

The legal principle in environmental law that says, if one is not sure an action will not bring disastrous consequences, one must think before acting, and if one acts, take the consequences into account. My

question ever since 1912 and the first Balkan War, when the major powers decided that the territory contested between Serbs and Albanians should be given to Serbia rather than the new state of Albania. Particularly as a result of demographic changes since 1912, nationalists argue that the question of Kosovo cannot be a question of minority rights or of national rights within another state but a question of historical error and territorial sovereignty, either as an independent state or a part of a larger Albanian state.

The external effects of the issue of Kosovo are, in fact, far more complicated. In part this is because all national questions are reflexive – national identities are formed in oppositional relationship to other national groups, and questions of self-determination are ones of relative rights between two or more nationally defined groups. In areas such as the southern Balkans where state borders do not coincide with national borders and each state contains national minorities, minority rights and national identities are necessarily questions of regional security. But in a political context in which identities and states are being reformed, redefined, and reconstituted, including changes in borders, the case of Kosovo has been a catalyst or instrument of these reformulations throughout former Yugoslavia and the wider region.

The relation between Kosovo and its neighborhood can be illustrated in three periods of the Yugoslav crisis: its beginning around 1981, its climax in 1985-90, and the current situation after the bombing in 1999.

1981

Although the dispute over Kosovo (or Kosovo-Metohija, as Serbs call it) has been a feature of Yugoslav politics throughout the century, student riots over lousy cafeteria food at Pristina university in 1981 reignited awareness of the conflict when the

thanks to Roberto Toscano for this information.

demonstrations unexpectedly escalated into demands for separate republic status within the Yugoslav federation. Although the demand, in effect to secede from Serbia – to be “masters in their own house” as they said – would appear to be about Pristina-Belgrade relations, its effect was far more threatening than it seemed on the surface. Raising the question of borders throughout the country for the first time since the catastrophic events of 1967-71, associated largely with Croatian nationalism that included demands for a separate seat in the United Nations (citing the Ukraine parallel), and in the first, uncertain year of the transition to a post-Tito era (Tito died in May 1980), the demonstrations provoked concern throughout the country over the status of the internal borders and the country’s integrity. The greatest reaction, in fact, was not in Serbia but in neighboring Macedonia, where a large Albanian minority was also partly concentrated territorially in an area that bordered Kosovo. Tensions between the Macedonian government and its Albanian minority in the 1990s have roots, it is argued, in the government’s reaction to the perceived threat of 1981 and the reduction in Albanian minority rights during the 1980s. But even in distant Slovenia, the Albanian demand for recognition of national rights on the basis of *numbers* revived the periodic concerns of Slovenes about the fate of the numerically smaller nations in Yugoslavia. Because Albanians were a national minority with full cultural rights but not national rights in the Yugoslav constitution – like all non-south Slav citizens of Yugoslavia, they did not have the status of constituent nation – their claim was a simple democratic one which threatened to replace the collectively defined privileges of constituent nations with the principle of majority rule. Facing pressures at the time from economic reformers and the IMF program to gain greater efficiency in federal decision-making through majority rule (such as in the Central

Bank), in a context within Slovenia where Slovene cultural and intellectual nationalists were reviving the 1920s debate about the fate of small nations and a Slovene nation-state, the Slovene government intensified efforts to protect the political instruments of consensus rule, to use the veto in federal organs ever more assertively, and whenever that failed, to opt out of federal legislation and declare republican supremacy, paving the way toward independence whatever the intention.

Evidence that suggested a role in the surprising radicalization of the student demonstrations, from bad food to national rights, by the Albanian secret police in the neighboring regime of Enver Hodza was also perceived as a threat by the various members of the Yugoslav security apparatus, such as the intelligence community and the army, because it revived concerns that there were still external enemies opposed to the country's borders such as those they had faced in the 1960s from Germany and elsewhere in regard to Croatia. The reaction of the federal League of Communists, indeed, was to treat the demands as "counterrevolutionary" and impose martial law. Although this decision had to be approved by the leaderships of all eight federal units, it had an insidious effect on what was at the time a highly decentralized political system, including a balance in favor of the territorial defense forces of the republics as against the federal army. Aside from the drastic nature of the measure, martial law raised doubts about the use of the army (always seen as an instrument of central power) to restore internal order.

In Serbia itself, the protest fed directly into the political debate occupying much of the 1970s within Serbia proper over the 1974 Constitution, the place of Serbia in the federation, the fragmentation of Serbs by the federal borders, and the formidable problem of governance that the extensive provincial autonomy granted Vojvodina and Kosovo in

that constitution presented to the republican government.² There were also few issues more likely to act as a lightning rod of Serbian nationalism than Kosovo because of its central role in the development of Serbian national consciousness and identity. The Serbian leadership at the time were middle of the road economic reformers, trying to find a way under declining economic fortunes to regain control of republican finances for modernization and liberalization but without igniting the national question. Even if the International Monetary Fund program of 1982 for macroeconomic stabilization and debt repayment had not required political and economic reform that included the federal-republic relationship, this link between the republic's capacity to govern and promote economic prosperity under market reforms, on the one hand, and the national question made it increasingly difficult for the centrist leadership to hold the line against Serbian nationalists, increasingly anti-communist and anti-Titoist at the time, and their historicist and cultural approach to Serbian national identity and ideology.

1985-90

The relation between Slobodan Milosevic's rise to power in Serbia and Kosovo has been repeated so often that it has taken on the status of popular folklore, both in areas of former Yugoslavia and in the world at large. More important in the light shown on the current relation between Kosovo and its neighborhood is the role that Kosovo played in the political dynamic of late 1980s Yugoslavia and its disintegration into nation-states. Two aspects of that dynamic are particularly important: the efforts during the mid-1980s by Serbs and Montenegrins from Kosovo to gain public attention in Serbia to their complaints of discrimination and pressure to leave the province at the hands of an

² On this, see Susan L. Woodward, *Balkan Tragedy: Chaos and Dissolution after the Cold War* (Washington: Brookings Institution Press, 1995), and *Socialist Unemployment: The Political Economy of*

Albanian-majority government, and the use made of the issue of Albanian human rights by Slovenia and Western powers in the fateful policies of 1990-91. Through a complex political dynamic at the Serbian and federal level, the protests and governmental reaction provided an opportunity for those who wanted change.

In Serbia this was anticommunist nationalist intellectuals who by 1986 used the plight of Serbs in Kosovo in support of their strand of Serbian nationalism that included a concern with Serbs outside Serbia proper. In Slovenia this was both intellectual and official nationalists who wanted to make the case for republican supremacy by arguing that only nations can protect human rights. By 1987, in an attempt to preempt this growing challenge to League-of-Communists rule and to break the paralysis in Serbian reforms seen to be caused by the autonomy of its two regions, Slobodan Milosevic recaptured the nationalist cause of Serbs in Kosovo for the party. With the theme of injustice and the obligation to protect Serb minority rights *and their claim to the land* in place of the technocratic language of the party and its political silence in the face of growing grievances, Milosevic linked Serb cultural idioms and the defense of Kosovo as part of Serbia and as an issue of borders. Within half a year, he had engineered an inner party coup; the next year he used demonstrations by Kosovo Serbs to pressure for changes in the leadership of Vojvodina, and a year later, in Montenegro. By March 1989, he exploited a strike of Albanian miners in Kosovo, who were protesting the replacement of their leadership, to obtain parliamentary approval for the new republican constitution.³ Slovene officials had already been moving gradually toward independence, until 1987 by

Yugoslavia, 1945-90 (Princeton, New Jersey: Princeton University Press, 1990).

³ This episode is described in Susan L. Woodward, "Diaspora or the Politics of Disintegration: The Serbian Model in Perspective," forthcoming in Michael Mandelbaum, ed., *The New Diasporas of Eastern Europe* (New York: Council on Foreign Relations, 2000).

non-compliance with federal rules and regulations considered contrary to Slovene interests, and by October 1987 in a series of vetoes against federal economic and constitutional reforms (including a refusal to pay into the special fund for Kosovo any longer). But they, too, took advantage of the Kosovo Albanian miners' strike. At an extraordinary mass rally in Ljubljana on February 27, 1989, the Slovene President, Milan Kucan, declared the miners' strike a defense of the "AVNOJ constitution" (1943) and thus associated territorial sovereignty of the eight federal units (not only the six republics) with human rights. This direct challenge to the Serbs and Montegrins from Kosovo, to Slobodan Milosevic, and particularly to the nationalist position in the Serbian community that saw "Tito's borders" as a deliberate effort to weaken Serbia by fragmenting the nation among different republics, was not, however, an effort to promote democracy and human rights throughout Yugoslavia but to justify republican (and provincial) sovereignty and an exit from Yugoslavia. By linking two Helsinki norms – democratic governance and human rights – with the republics, they made an argument against the territorial integrity of Yugoslavia (another Helsinki norm), they framed the Yugoslav crisis for outside observers that eventually worked. By the fall of 1990, for example, even the U.S. Congress had agreed that the "problem" of Yugoslavia was the violation of "Albanian human rights" in Kosovo, and imposed, in effect, sanctions on the federal and Serbian governments (by restricting aid to the Slovene and Croatian republics until significant improvements occurred in Albanian human rights).

1999

Operation Allied Force was a politically conservative mission. Its stated goals were to restore the military status quo of October 1998, by demanding through force that

Milosevic implement his agreement with Richard Holbrooke and the resulting U.N. Security Council Resolution, and the political status quo of 1989, by creating the conditions that would enable the restoration of Kosovo's pre-1990 autonomy. The result of the series of international policies leading to and including the bombing campaign, however, was a fundamentally changed situation in the region.

First, of course, was to bring the aspirations of pan-Albanianists much closer to their goal – so much so that they “can smell it.” In addition, the population shifts as a result of the expulsion of Serbs and other non-Albanians from Kosovo since June 9 combined with the influx of Albanians from northern Albania over the uncontrolled border, particularly into the northern part of Kosovo, strengthens the claims for independence of Kosovo, and it links much more directly through personal and family ties (as did the refugee exodus into Albania during the bombing) the populations of north eastern Albania and Kosovo. This interchange and the nearly open border with Albania and Macedonia has led to a new stage in relations among Albanians in the three territories, a process of familiarization, cultural exchange, and exploration of what it means to be part of one nation.

In addition, reliance by Western powers on the Albanian leadership in Tirana to assist in the negotiation phase – such as getting Hashim Thaqi to Rambouillet, or helping to unify the Kosovo factions and leaders – and during the bombing has grown into a set of expectations of Albanian responsibility for Kosovo. This expectation also reinforces, however, a trend developing from the start of the first Berisha administration, to make Kosovo a domestic issue in Albanian politics. But Albanian political development is still at the phase of deep polarization – a phase familiar to other post-communist transitions

that can be passed – and the Kosovo issue directly reinforces that polarization. Instead of a process that should soften those divisions and mature into identities associated with policy and performance in government, the association of the two political camps with region (North and South), with clans (Gheg and Tosk), and with historical scars (both World War II and the communist period) is strengthened by the Kosovo dimension. Instead of a process of building an Albanian nation-state by orienting to Tirana and finding civil society approaches to reconciliation, the Kosovo issue orients many to Pristina. The links between the Kosovo Ghegs and the Democratic Party, between the KLA training and equipping and former President Berisha, and between Kosovo Albanians and the fascist struggles of WWII reinforce fears of Tosks, southerners, and Socialist voters that the demographic preponderance of the northern Ghegs, the association of Kosovo Albanians with anti-communism, and the perceived arrogance toward Albanian Albanians of those Kosovo Albanians who have been in Albania during the 1990s will overwhelm Albanian political development. It is not clear whether the fragile Albanian state has the resources to withstand these stresses and suspicions, let alone the increased opportunity for organized crime groups in the new conditions. Although the recent Montenegrin assertiveness in the Yugoslav federation would not in itself affect this dynamic, the pull of Pristina on northeastern Albania could result in a push on northwestern Albania along a Shkodra-Podgorica axis that would add another obstacle to Albanian state formation.⁴

In Macedonia, the links between Kosovo Albanians and Albanians living in the northwest of Macedonia (both Macedonian citizens and the large community originating from Kosovo) – the “Tetovo-Pristina axis” -- predates the bombing and the altered status

⁴ I wish to thank Miranda Vickers for her insights into this problem.

of Kosovo by two generations. Nonetheless, the timing of the bombing campaign, as mentioned above, was particularly unfortunate for political developments in Macedonia. A new government, installed only weeks before, had been elected on the basis of minority Albanian votes and formed a coalition with the nationalist leader, Arben Xhaferi, of the more radical Albanian party, the Party for Democratic Prosperity of Albanians in Macedonia. But the refugee exodus of hundreds of thousands of Albanians into Macedonia, combined with massive international attention to their plight, instead caused enormous tensions between average Macedonians and the Albanian minority of Macedonia in focusing their anger at their international impotence, the costs they were having to pay without compensation, and the lack of attention for almost a decade at their economic impoverishment and high unemployment under international policies toward the region. Whether this genie can ever be put back into his bottle is an open question, but it certainly erased the hopes for the new government's approach to ethnic relations. The prospect of Kosovo's independence, in addition, revives fears that Xhaferi's repeated proposals for federalization of Macedonia, especially given his very close links to the UCK (Kosovo Liberation Army), are in fact a stalking horse for separatism.

The new Macedonian coalition had also just risked a Chinese veto of the United Nations Preventive Deployment (UNPREDEP) in its desperate search for economic assistance (accepting Taiwanese aid) on the assumption and hope that NATO would have to fill the vacuum and move their European agenda faster. Instead, the cancellation of UNPREDEP and a series of international agreements (such as one with Bulgaria attempting to end the stalemate over language that has been plaguing their relations) rapidly eroded the edifice of international protection for a Macedonian state -- at the same

time that the Kosovo crisis deepened the threat from the north. In place of a NATO force being actively discussed in western capitals prior to the bombing, UNPREDEP was replaced by a NATO presence oriented to the Kosovo campaign: in place of the protection they sought, Macedonians view NATO antagonistically as a "Kosovo force." The view that they can be abandoned in favor of Kosovo is reinforced by the outcome of the NATO operation. The international creation for the third time, however unwitting, of an ethnically homogeneous political entity out of former Yugoslavia (Croatia in 1995, Bosnia and Herzegovina after 1993, and now Kosovo) is particularly threatening to Macedonia, not only to its commitment to a multiethnic state but also from the prospect of Kosovo's independence and the fact that the Kosovo protectorate actually acknowledges for the first time in the Yugoslav saga that borders can indeed be changed.

In Serbia, the result has been to raise the Serbian question once again, including its influence on Serbs in Bosnia. The bombing campaign increased manyfold the problems facing the Serbian opposition, for it deprived them of the one platform that joined otherwise quarreling parties – that of Europeanization and economic reform – and gave Milosevic a powerful argument against them in accusations of treason. The NATO action discredited the opposition, as in many other countries from Bulgaria to Russia, but with far more serious consequences. It interrupted the substantial progress toward local democracy, media freedom, and civil society development during the previous two years. By causing the conditions of a possible humanitarian disaster this winter and reimposing sanctions, instead of rewarding the full compliance of the Yugoslav forces with the Military Technical Agreement (MTA), the campaign once again made Serbian citizens dependent on Slobodan Milosevic and his government's resources for sheer survival.

Because the Kosovo operation was the long-sought basis for the Hague Tribunal indictment on war crimes of Slobodan Milosevic, his strengthened position has occurred in a context where he has nothing to lose, as the increasing violence and lack of restraint since May demonstrates. The bombing damage and the reimposition of economic sanctions also handed him a propaganda weapon of immense historical meaning: harking back to the Tito-Stalin conflict of 1948-49 when all of the world was against Yugoslavia, Milosevic has revived the slogans of the campaign for self-reliance (*na sopstvene snage*) of that earlier struggle for survival and an independent defense as he rebuilds bridges, roads, and hospitals that Western powers refuse to do.

Although the constitutional and policy disputes between Montenegro and Serbia, including a Montenegrin proposal for a confederation in 1998, preceded the bombing campaign, the crisis sharply accelerated the independence momentum. From refusing to send Montenegrin soldiers to the Kosovo front to obtaining international exemption from the reimposed sanctions and enormous international attention to the Montenegrin project, the Djukanovic coalition has moved far faster in the direction of independence than ~~prudence recommends~~. Although still hoping to move with caution in hopes of avoiding violence and under international pressure to do so as well, the fact that sanctions were not removed after the MTA has substantially worsened the motivations for most Montenegrin politicians of their separatist moves. Facing dire economic conditions, they had grown increasingly impatient over their inability to reform their economy or open normal relations with the outside world. But the bombing campaign not only intensified their impatience and panic at the trap they feel in but it also lost them a great deal of time in moving slowly toward some altered arrangement. On an electoral mandate filled with

promises of improved standards of living, Djukanovic's coalition are running out of time in any case if they must show results before the next election on their democratization and reform project. The prospect of Kosovo's independence, including its effect on the Albanian minority in Montenegro, gives even less time for reflection if they do not want to be trapped as well by the unpredictable consequences of Kosovo going first.

Finally, the Kosovo crisis diverted donor attention from Bosnia and Herzegovina to Kosovo at a moment when the upcoming start of repayment of principal on their foreign debt is their primary policy concern. Most aid and international activity for Republika Srpska screeched to a halt during the campaign at what appears to have been misplaced fears of attack on international personnel. Even the possibility of a break-up of F.R. Yugoslavia, much hastened by the events, introduces new and potentially disruptive elements into the Bosnian political scene – such as what will happen to Sandzak and the important role of Sandzaklije in Bosnian politics, or how Serb politicians will reorient to Serbia – at a moment when the passage of time since the Dayton signing and the High Representative's Bonn powers have together seemed to be having effect, in moving toward moderation and normalization.

Consequences of the Waiting Game

Political processes do not stand still, especially when economies are a disaster and the NATO security presence encourages people to feel free to take political risks with impunity in achieving their ambitions that could threaten war. The idea that the political process in Kosovo and the region under international protection in Bosnia and Kosovo will promote stability, on the argument that quick decisions are more likely to be destabilizing and possibly even violent, ignores the effect of uncertainty on behavior.

The waiting game over Kosovo without serious compensatory actions in the region increases uncertainty, risk taking, and defensive positioning. The literature on cooperation is very clear: greater uncertainty does not lead to cooperation, but the reverse. Peace and stability, in fact, occur in a context of rules and regulations such that rational expectations can be calculated and have predictable consequences. And it is states, or the equivalent in regional/international alliances and organizations, that legislate and enforce those rules and regulations.

Moreover, in addition to the waiting game surrounding Kosovo, the external context for all of former Yugoslavia remains ambiguous and capricious. Bilateral relations predominate, based on the principle of conditionality. That principle is unevenly, arbitrarily applied. And eventual membership in the EU and NATO – the sole vision for the region – is decades away, given that it cannot even begin until borders are settled and democratic governments installed. The relative absence of the EU, of regularized economic relations, and of some overarching concept for the region's place in Europe has led to a quasi-military approach through NATO, by default. Yet that NATO-ization of policy toward the region also lacks an underlying policy. While people explain the repeated failures of economic reform, such as in Romania, and of economic revival, such as in Bulgaria and Macedonia, or the growth of organized crime in Albania, Kosovo, Macedonia, or Bosnia and Herzegovina, by local factors, such as political will, populist politics, and habitual corruption, the fact is that the appalling external environment bears much responsibility. The post-communist transition cannot succeed, as we see thus far in the differences between the cases of success (e.g., the Central

Europe three) and failure (e.g., the southeastern states), without a nurturing external environment.

One of the crucial consequences of the Kosovo intervention and current waiting game is on these processes of state formation and reformation in the area -- processes that create states that can be treated as legitimate partners -- and therefore on the definition of borders. The current undefined status of Kosovo is currently having a negative impact on the process of state formation, including disintegration, throughout the region.

In Albania, for example, despite the remarkable efforts of Albanian leaders and external donors to assist its post-communist transition, a stable state requires redefining its national identity. As mentioned above, the processes of reconciliation with the past, of building a post-communist national ideology focusing on commonalities and oriented to Tirana, and of reducing the destabilizing level of political polarization have all been pushed in the wrong direction by the fortunes of the UCK (KLA) and the new prospects for Kosovo's independence. Orientation around Albanian national commonalities, ties, and obligations instead of state-building within current borders will inevitably dominate, despite the great differences between the populations, cultures, and political traditions of Kosovo and Albania. Even the foreign interest in Albania has shifted from its internal stability and reform progress to the Kosovo question. At the same time, the extraordinary cooperation over the refugee crisis and with NATO during the bombing campaign was in part due to expectations in Tirana that the temporary NATO security guarantees would continue and that the NATO presence would aid their economy. These have already been disappointed, with as yet unknown costs.

Another consequence of the waiting game on Kosovo is that events in Kosovo will take a course, either directly or indirectly, undesired by international actors but which they cannot control. For example, as if to compensate for delay on deciding Kosovo's final status, there is growing consensus by the players who matter on holding early elections at the municipal level. Despite the lessons of Bosnia and Herzegovina and the absence of a voters' register, they believe that the political process requires an early creation of elected authorities within Kosovo. Yet this haste has immediate consequences for Montenegro and possibly for Albania and Macedonia. It reduces the credibility of those who argue that Montenegro should move cautiously, particularly those who are convinced that Hashim Thaqi will win those elections and use his network already installed, de facto, in local government to declare independence. From there many imagine rapid steps toward political cooperation across Albanian communities that would result, at least de facto, in a change of borders: for example, along the model of the Dayton accord, a federation of Ghegs and Tosks in Albania that establishes confederal relations with Kosovo and Western Macedonia. Even a low probability of this happening has changed perceptions of relations with Albanian minorities in neighboring states: the fact that Albanian national parties are making similar demands in separate states – to display their flag, change textbooks and curricula, and have Albanian educational institutions through university level – is increasingly perceived to be part of an overall plan, with resulting increase in political tensions. The prospects of such an outcome as early as the spring of 2000 is pushing some Montenegrins toward preemptive action and has intensified fears in Macedonia about Xhaferi's plans and motives. Because Xhaferi has already been emboldened by the strength of his party's showing in the first round of

the Macedonian presidential elections, his assertiveness is being perceived as linked to Kosovo independence. In feeling it necessary to respond to his campaign rhetoric, moreover, the socialist party candidate, Tito Petkovski, used language that is now being identified as similar in its anti-Albanian tone to the rhetoric in late 1980s. Such perceptions, which cannot be separated from the effect of the options for Kosovo, is leading to increasing political polarization in Macedonia after such success under the Gligorov regime at keeping passions calmed. The next step is likely to be Macedonian government actions to seek support in the region to replace that which the international community had once provided – perhaps, as some argue, to lean more on Bulgaria or even Serbia, with implications again for borders and politics.

Most critical to the waiting game is the view that time will permit changes in Serbia and the possibility of a renegotiated relationship between Kosovo and a democratic, post-Milosevic Yugoslavia. But the economic and political consequences of the NATO operation have not only set democratization in Serbia back by years, but it also worsened dramatically the conditions that any new government will face and thus reduces the likelihood of rapid change, even if a way is found to be rid of Milosevic. Instead of removing the sensitive issue of Kosovo and Albanian rights from Serbian domestic politics, the undefined status of Kosovo and international attention has made it more important in conditions of popular anger that will not permit opposition parties politically to do as the international community wants.

The delays also have effects on less directly involved states. What prospects are there for Bulgarian success in its EU accession talks that are now to begin if the external conditions necessary to meet EU conditionality are not forthcoming? The result of long,

drawn out talks, whatever the cause, will be to dishearten reformers and pro-Europe forces, particularly in the context of the rise in anti-Western opinion over the bombing campaign and the feeling of betrayal throughout the region (including Russia) by pro-Western reformers on whom the West is counting for democratization, stability, and markets. In Bosnia and Herzegovina there is the threat that its fate will once again be derivative of events elsewhere, in Croatia but especially in F.R. Yugoslavia as the reality of a Serbian national state begins to drive politics within Serbia. The economic damage to Republika Srpska resulting from effects of the bombing campaign, closed border, and reimposition of sanctions, when it is still lagging seriously in external assistance, complicates seriously the efforts by its political leaders to ignore any serious movement to create a Serbian state. In general, ambiguity does not encourage investment.

Elements of a Regional Approach

The experience of Northern Ireland currently or Belgium in the past twenty years must be taken seriously. In the case of Northern Ireland, EU membership was critical in turning the conflict toward peace and a negotiated settlement because relations between Ireland and the United Kingdom were no longer confrontational but embedded in something much larger. In addition, the resulting economic growth gave self-confidence to the Irish population and redirected the focus on the national question onto improved lives and diversions. Those who write about the Belgian case stress the same: that the management of ethno-linguistic tensions that have repeatedly threatened the country's integrity has been possible because of its incorporation into the EU, just as the Benelux arrangement for regional stability. If there is no regional framework in which to embed the Kosovo options, then the political dynamic currently in process leads to further

disintegration and the redrawing of borders – whether by *fait accompli* or international conference. Because there is no possibility of an international conference in sufficient time, that means the likelihood of several more wars and a process by which irredentism moves northward without any brakes. The alternative to a regional framework is continuing instability, crisis, and probably war. The only question is how many borders are changed before international patience runs out.

At the same time there is general recognition that the Stability Pact is the closest we will get to a grand strategy. But within that shell, there is much that can be done to manage the consequences of the Kosovo operation.

1. Border regimes: a preventive deployment on the Kosovo-Macedonian border and the Kosovo-Albanian border could be the start of restoring some confidence in the international position on borders and reducing the fears that lead to preemptive, destabilizing actions. To counteract the threat of the “Albanian national question” and of the “Serbian national question,” explicit transborder relations among Albanians and among Serbs that respects the current borders should be structured by international actors. Specific joint projects of cooperation on very pragmatic issues will enable people to learn how to cooperate, an experience sorely lacking in this decade.

U.S.
not unprepared
q.

2. Self-determination and sovereignty: the undefined status of Kosovo has now made the redefinition of the Montenegrin-Serbian relationship a matter of some urgency. Montenegrin independence or Kosovo independence will most likely lead to movement by Sandzak autonomists to go all the way, but Sandzak is not confined to Serbia proper but includes two counties in

Montenegro. If the international community wants to protect the Dayton accord for Bosnia and Herzegovina, then it should immediately assist the negotiations in Yugoslavia: substantial foreign aid to Montenegro to strengthen the Djukanovic coalition against very real inroads of the Bulatovic-led opposition with the Montenegrin voters and as a far better alternative than military contingency plans; as fast as possible, the end to the isolation of Serbia and identification of partners who can help revive negotiations over a confederation that aids Montenegro in avoiding a final, abrupt step of independence. As for Macedonia, international consensus must all be developed immediately on how to resolve a conflict between the Macedonian government and the ethnic Albanian majority in the northwestern counties, should it come to the point of national self-determination. A set of procedures for negotiating conflicts over self-determination and borders, agreed among the major powers, could serve the way doctrine does for armed forces: facilitating rapid and disciplined response to a known challenge that is effective. Reliance on military responses to make up for policy failures (particularly as the United States enters a season of presidential electioneering) cannot be sustained.

3. An end to the sanctions regime, whatever method can be found, such as a distinction between the Tribunal indictments and the sanctions on Serbia. Until region-wide normalization occurs, the consequences of waiting will be negative. The psychological and political consequences of the sanctions regime on the opposition to Milosevic needs to be addressed directly. Above

Need a permanent perspective - problem - Bosnia

*Bosnia
Peace settlement not a reality
para 11 (c) facilitating the peace settlement
cannot wait but must be committed to Albanians.
(war all efforts are on the table)*

*Should consider against
have choice of the sanctions to which sanctions are effective.*

all, if the waiting game is based in part on a change of government in Serbia, then outsiders must give the opposition parties an issue on which they can win.

4. A region-wide security regime: it should surely be the strongest lesson of this past decade that stability does not occur if international action waits until there is violence. A NATO policy is urgently needed that goes beyond its peacekeeping role in Bosnia and Herzegovina and in Kosovo, and its policy of staged membership in NATO itself. What role does a third-party, international force play in an unsettled political situation? Kosovo is not Bosnia and Herzegovina. Greater coordination between UNMiK and KFOR on strategy appropriate to this political process should replace efforts focused on how to draw down KFOR. And as long as the murder of Serbs in Kosovo continues, it will keep alive the revanchist forces in Serbia. A KPC and KFOR deterrence against a return of Yugoslav forces does not address the primary security issue of Kosovo. Expectations by Albania and Macedonia, and increasingly Montenegro, that NATO will in the end provide a security guarantee must be addressed directly, in place of the competition among the three – for example for basing rights to assist NATO logistics. The essential role that NATO played in the success of the Marshall Plan should not be forgotten.
5. Economic policy by the multilateral and bilateral donors to countries in the region should address more directly the widespread calls for demilitarization. A policy of regional arms control and security sector reform is urgently

needed and will only occur if donors take this need directly into account in their advice and assistance.

6. Massive policies to engage the younger generation of the region, who are both the largest proportion of the population in Kosovo, Albania, Montenegro, and Macedonia, and who are those understandably most impatient for change.
7. Europeanization: above all, a policy to embed Kosovo's political process in an environment conducive to peaceful resolution must be one that addresses the common aspiration throughout the region and the only one that has been shown in western Europe to have such an effect: an explicit policy of Europeanization, not limited to drawn out, conditionality-based policies of eventual accession.

Conclusion

The current policy, to let the political process under international protectorate determine the final status of Kosovo, will not work in isolation. The political process is not separable from political developments and populations in neighboring states. Those states are also undergoing processes of uncertain, potentially radical redefinition, processes that are contingent in part on what happens in Kosovo and that simultaneously influence options and developments there. The political status of Kosovo is, by definition, a *relationship* with its neighbors that must be negotiated and accepted if it is to be stable and peaceful and that in any case will require adjustments, at a minimum, by Serbia, Montenegro, Macedonia, and Albania. It may well be, for example, that the best policy for Kosovo would be a policy toward Serbia, or toward Montenegro, rather than a

policy toward Kosovo itself. The options for Kosovo must be discussed in terms of a regional or sub-regional strategy that includes policies to facilitate the non-military management of this process. This is the only way that Western powers can have their cake and eat it, too: to avoid resolving their own disagreements over Kosovo's future by leaving the outcome undefined and praising the virtues of ambiguity while assuming that the NATO action brought the region closer to resolution and long-term peace.

KOSOVA POLITICAL LIFE: PAST AS PROLOGUE?

VETON SURROI

Paper presented at the Policy Conference of
United Nations Association of the United States

Istituto Affari Internazionali

Rome, Dec.12-14

I. *The legacies of state building in Communism*

Seventy percent of Kosova's population is under the age of thirty, which means that seventy percent of the population was born after 1969. If there weren't a collective memory of times before this birth date, this high percentage of youth in the kosovar population would've gone through two short and basic historic processes. One is state building, which the kosovar leadership undertook within the Communist party framework, staying as close to Marshall Tito ("the source of legitimacy and legality") as possible. The other, resistance to a violent decomposition of Kosova as a state, a decomposition that started with the pressures on the kosovar communist leadership since 1981-1982, immediately after Tito's death (therefore the death of the "source of legitimacy and legality" for Kosova's state building process within the Communist framework) and ended with a scorched earth offensive of the Serbian police and military in spring of 1999.

If one were to look back to history just for a second, it could be seen that the similar, clashing processes were present since the beginning of the century. The end of the Ottoman Empire was the stage for the state building aspirations of the kosovar Albanians versus the anchluss of Kosova in the expansionist move of Serbia, which had already become a state, therefore denying the state building process of the kosovars. However short historically (1968-1989), the life of Kosova as a state (within the double hat of autonomy in the Federation and an autonomy within Serbia), has created the identification of kosovars (mainly Albanians) as its state citizens. The kosovars, with their Constitution, Parliament, laws, government, police,

University, Central Bank, have gone through an experience by which Kosova was seen irreversibly as a state in its own right. Furthermore, this was happening to a population that in its overwhelming majority (more than 90 percent) was illiterate after the Second World War.

At this stage, both the regime and its opposition at the time coincided on the bottom line. The regime saying that Kosova was a state and that in terms of realpolitik it was more or less impossible to make further constitutional advances (a Republic status in the Federation, no links with Serbia). The underground opposition was claiming, in demonstrations of 1969 and 1981-1982, that Kosova needed more statehood, breaking cosmetic links with Serbia and achieving Republic status within the Federation, which would give Kosova the ultimate Constitutional description as a Federal unit apt to use self-determination. Neither the kosovar regime nor its opposition was claiming the need for less statehood, and one could certainly claim that the opposition was determined to, through street protests, speed up the process that was initiated already by the kosovar regime, statehood within Yugoslavia.

This position of both the regime and the opposition will be important in the future, as we will see in the period of 1989-1999, because the idea of statehood will not be abandoned even in the worst of the conditions of Milosevic's occupation of Kosova. And, as we have seen, Milosevic will not, with the exception of half a dozen Albanians, find any significant or insignificant political force with the kosovar Albanians that can create a Vichy regime or Quisling policies. The idea of statehood had, by that time become a living reality for the kosovars.

The conditions in which this state building process was conducted, though, would be highly influential for kosovar political life. Communism, however, liberal it was under Tito compared to Eastern Europe, did not create conditions in which the debate of the regime and the opposition could be conducted. Whether Kosova should be more or less of a state was an issue that was not raised in the public debate, but in field battles between the police and the demonstrators, and in courts, controlled by the Communist party. The repression of dissent made the opposition radicalized, and inclined towards support from abroad, in this case the Communist hard-line Albania. In this sense, the debate over statehood of Kosova was set up in an ideological debate between two concepts of Communism.

This kind of debate, restrictive of rights of the citizens of Kosova to freely express their political beliefs, was maybe highly symbolic of the notions of the state-building process. The building of the kosovar state

concentrated its efforts in the direction of eliminating whatever influence Serbia could have over Kosova and creation of autochthonous institutions of a state, in this case of a Communist state. Never, during this process, did the question of the democratic legitimacy of these institutions appear. Mainly, with very brief exceptions, this question did not arise neither in Yugoslavia as a whole. The whole process then could be described as, in a paraphrase of the T.Roosevelt doctrine towards Latin American rogue countries as "it is a repressive state, but it's ours".

Nevertheless, there was an exception to the whole notion of state-building in Kosova. It was the Serb community, which in the period of 1945-1968 had been ruling the Province that saw with little affection any move towards greater autonomy in the affairs of Kosova. One could describe the position of the kosovar Serbs as being either not supportive of the state-building drive, or in the latter stages, clearly engaging in suppressing the autonomous rights of Kosova, asking for direct rule from Belgrade. This position clarified itself in 1989, when the Serbs of Kosova, who even until then had a privileged position in decision making at all levels of kosovar life, became administrators of Milosevic's rule. The Serbs, by adopting this position were clashing directly with the will of the majority of the kosovars, and were perceived by their Albanian co citizens as protectors of the interest of Serbia, not Kosova. This will, as we can see today, have serious consequences on interethnic relations.

II. Protecting the achieved and the Fall of the Wall

Two events, in two different years may manifest the way in which the kosovars tried to defend what they had achieved in very difficult conditions of Tito's Yugoslavia. The first was the miner's strike in Trepca in 1988 and 1989. The miners had decided to take to the streets in creating popular support for a not very popular leadership of Kosovars that had been under intense pressure from Milosevic to change the constitutional guarantees of autonomy that Kosova had until then. The miners went to the streets with the banners of Yugoslavia and the Albanian flag, and with the picture of Tito. The protest, that at the time would mobilize almost the whole Albanian population was broken violently by orders from Serbia and, would bring about two symbols. One would be of peaceful resistance that since then would become a

concept for the future kosovar politicians, and the other of the death of the symbols of Yugoslavia. Neither Tito's picture nor the Yugoslav flags would be sufficient to legitimize resistance against Milosevic.

This would be seen more clearly in the demonstrations of the end of 1989 and the beginning of 1990. By that time, the Berlin Wall was going down, and the chant on the streets was "Democracy". A new movement of kosovars was being established, with new concepts.

The difference of one year, with the fall of the Berlin Wall in between, meant that protecting the achievements of state building could not be done any more. The process of protecting the autonomy, with symbols of Yugoslavia was over, in came a new process, of building a Republic of Kosova within the process of disintegration of both Communism and Yugoslavia.

The new kosovar leadership, symbolized by dr.Rugova, would try to create a new political culture. In came new parties, with competing programs; over was the period of one party monopoly. The words peaceful resistance and parallel institutions characterized much of the period of the nineties. Peaceful resistance meaning basically handing over without any resistance the institutions of autonomy to the new Serb authorities (including enterprises, schools, hospitals) and parallel institutions meaning trying to create a pretense of a state wherever it could be possible.(The educational system was the most visible and probably the most successful of the parallel structures. The teachers and pupils conducted classes without the agreement of the Serb authorities and in many cases outside the school buildings. A tax system was built in also in parallel to the Serb system to ensure the financing of the parallel education). This pretense was soon converted in a self-illusion. Dr. Rugova's party, the LDK, drove for "multiparty elections" that created both the illusion that there was a democratically elected body and in fact that there were political institutions that conducted political life in Kosova. This collective self-illusion lasted until the Drenica uprising, despite quite shattering evidence: for example dr.Rugova proclaimed that his government had a Ministry of the Interior , leading to the arrest and sentencing of many former Albanian kosovar policemen who had been fired by their Serb counterparts.

Nevertheless, the collective self-illusion had also the benefit of attracting international support from the Great Western powers. In the beginning through lip-service and photo-opportunities for dr.Rugova with Western dignitaries , ending with a bombing campaign against Milosevic's Serbia.

And the most important advance in this era was that the ideas of statehood were not interlocked anymore in the debate of what Communism is better (Yugoslav or Albanian), but the ideas of statehood were linked to the decisive support Kosova needed from the West, the victor of the Cold War. An important element that helped was the end of Communism in Albania. Once opened, Albania showed to the kosovars the extent of devastation that Enver Hoxha inflicted on his own society.

In interethnic terms, this period created even bigger problems for the future. The Serb population of Kosova relied heavily on Milosevic's policy of war for the Greater Serbia. Vis-à-vis the Albanians, the Serb political behavior became one of guardians of apartheid and communism at the same time.

A positive fallout of this period was the newly acknowledged power of the civic initiative: the Kosovar Albanians, not being able to rely on the state to deliver to them services like health or education, turned to their own self. Kosova could probably, and not to jokingly, be called the biggest NGO in the world at the time.

III. War and the end of an era

The Drenica uprising and the subsequent war demonstrated two basic things to the Kosovar Albanians.

One, that the self-illusion of the state was not sufficient to get one, and that the way things were established by the Dayton agreement, no further advance was possible without violence. Second, that it was impossible to reach to any stage without a Western support.

These two basic lessons were within themselves contradictory. During much of the decade of the nineties, it was actually nonviolence and the pretense of a democratic (underground) rule that drew much of Western support for the kosovars. Violence, it was said in the West, would lose support for the kosovars.

On the other side it was violence that ultimately triggered more focused Western attention. The first attempts for serious negotiations (The Contact group initiative, Holbrooke's mediation, Hill's shuttle) came only after the Drenica uprising and the Serb massacre. Furthermore, the Rambouillet negotiations came only after the Serb authorities had decided to eradicate any form of Albanian armed struggle, through massacres, like the one in Recak.

But, again in a paradox, the Western military intervention came only when the initial Albanian violence turned the majority of the Albanians in victims. The Albanian force wasn't sufficient to liberate Kosova; in

fact it was sufficient only to trigger a massive scale military operation by the Serbian forces that could lead ultimately to genocide.

Western support ultimately lead to the liberation of Kosova from Serbian forces.

The war with its end, brought to the kosovar political behavior agonizing truths. Neither the passive resistance nor the armed resistance ultimately made the historic change possible by themselves. It was only when both of these policies combined themselves and handed over the issue to the Western powers (and the Western powers accepted it) that the qualitative change was possible.

But the recognition of this fact will take time, and so will the debate over who the victor on the Albanian side in this war is, who started first opposing Milosevic, with what means, with what effects, etc.

In the interethnic sense, war was the biggest historic gamble for the Serbs. Having relied on Milosevic, the kosovar Serbs fought actively the war against NATO and the Albanians. A war in which the bet was "a final solution" for the Albanian problem in Kosova (massive deportation, combined with massive killings, looting and burning of property) made the end of it dramatic for the Serbs as losers.

IV. International administration in the interregnum : managing what to where?

Where will Kosova be in 10 or 20 years from now? This is a question not only for the international analysts, but is basically a question that every generation of kosovars has grown up with ever since the dissolution of the Ottoman Empire. The question is more or less addressed by the UN Security Council Resolution 1244 in terms of defining the today as a movement towards the establishment of a democratic self-administration and tomorrow as a period in which the permanent status will be established.

Kosova could be therefore qualified as being in a fluid situation by which in the first stage it will have to establish institutions of self-rule and in the second stage the overall state framework in which these institutions will function.

Self-rule for the kosovars means establishment of a state, and this is a point of convergence for the kosovars and the UNSC Resolution 1244. There are two other elements, though, that accompany the notion of state building: democratic and viable.

There are evident positive factors in the society today that favor a development in making Kosova a democratic and viable state. The more evident is the development in the nineties, in which the state-building process lost its ideological context and subsequently was inclined towards getting Western

attention and support. Ultimately, the Western democracies are present in Kosova, either through the military participation in KFOR or through civilian participation in UNMIK. Furthermore, there is also a pledge in aid, both short term and reconstruction aid for the society by major Western countries.

In this sense, there is an outside umbrella for democracy, an umbrella that should protect Kosova from the possible negative effects of the regional instability.

But is the umbrella sufficient to build a democratic and viable state? Not, if there isn't recognition that building the new state will mean a radical reform of the society. The kosovars will have to make the transition from communism to democracy, from apartheid to majority rule, and from conditions of violence to nonviolence. These three very painful processes will happen rather at the same time, and the mission for the International administration will therefore be not only administering, but also reforming.

Given the extent of the problem, the task of the international community in fostering democracy can be divided in three phases:

- a) Post conflict management (i.e. stabilization)
- b) Re-structuring /reform (building of democratic institutions)
- c) Permanent status decision making

All of the phases are interlocked and may appear simultaneously. For example, the issue of security, which would belong to the first phase, is highly linked with the issue of building an independent judiciary, which nominally belongs to the second phase. Or the constant pressure in a public debate on the third phase, what kind of status will Kosova have, could influence the second that of reform, and building democratic institutions. The intensity of this interlocking makes the political landscape even more difficult.

Nevertheless the issues arising in the kosovar society today are derived from issues of administration, and the future of the democratic processes depends on it.

The questions of democracy, market economy, tolerance in interethnic relations become almost rhetorical in conditions of insecurity of citizens, lack of policemen, courts and laws. Or in conditions of lack of wages for public servants. Furthermore, the situation will get even more complicated if any of the kosovar political forces (such as is the case now) claims to have an administration of his own, that again cannot deliver on anything that the citizens need.

V. The consensus

The kosovar society, and the international community involved with it, cannot make any further steps towards building a viable democracy without establishment of a consensus in the society as a whole. In transitions of Eastern Europe, the transformation of the society could begin with free and fair elections and be pursued further by whatever political forces would be legitimized. In Kosova, free and fair elections will take some time to be organized, and the interregnum could create more problems that will have to be solved than there are now (crime, economic and political monopolies created on lawlessness, atmosphere of collective fear, restrictions of freedom of expression and political affiliation, etc). Lacking free elections, nor a democratic heritage, the kosovar society will have to develop a consensus on the basic questions of the present and the future of Kosova.

On this point there ought to be a convergence also with the International administration. Not being able to administer on a colonial basis, the International community will need the kosovars in the task of leading Kosova through the double step-approach of self-rule and status determination.

This point of convergence could be explained further on qualitatively. The kosovars' main preoccupation, during the century, that of state-building and achieving independence has dealt mainly with trying to develop mechanisms of defense against Serbia (be they the whole Constitutional framework of 1974, dr. Rugova's policies of the nineties or the armed uprising). For the first time, the kosovars have the opportunity to direct their attention to the quality of the institutions under which they live, in terms of satisfying citizens' needs, regardless of the position of Serbia. This means a possibility to build democratic institutions that create long-term stability for the kosovars. Furthermore, the status issue will be linked with the quality of the functioning system in Kosova, and that would mean: the quality of the institutions of democracy, the quality of economic transformation, the level of tolerance in the society and the quality of relations that Kosova can establish with its neighbors. And, this is both the conditionality clause for the international community as well as its opportunity to identify the kosovar interest as its own.

It is the time for this type of questions for the kosovars and the international community:

- a) What kind of mechanism of inclusion is needed in the post conflict management phase to have the basic forces of the kosovar society within UNMIK? What are the points on which the kosovar

political forces have shared views? What is the Charter of the new legitimacy of the political forces of Kosova?

- b) How to create the reform of the kosovar legal system between the pre 1989 precedent and the European law of today? What kind of Constitution of Kosova and when?
- c) What will be the optimal model for the transformation of the economy, especially taking into account the restructuring of the non-private property?
- d) What is necessary to create the conditions for the Serbs and other minorities to feel and live Kosova as their own state?
- e) What kind of economic and political incentives are needed for closer cooperation of Kosova and its neighbors

The questions presented aren't part of the public debate, or of a round-table format. Maybe the way to proceed further in the ways of nurturing the process of democratization would be to start from here.

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Kosovo Economicus: Does Viability Matter?

Paper prepared for UNA-USA/IAI Conference on "Kosovo's Final Status" to be held in Rome, 12-14 December 1999.

Abstract

It is argued that the size of Kosovo and the availability of productive factors are not decisive for the economic viability of Kosovo. Other criteria are, of which the trade regime and the quality of public governance are decisive. Both the economic history of Kosovo and the current political settlement do not guarantee that these criteria will be satisfied any time soon. The options for the final status of Kosovo cannot be expected to satisfy these criteria too. Finally, the regional economic situation does not really help and the same could be argued for the international efforts too. The final solution is indeed irrelevant, the movement towards it is all that matters.

Introduction

There are some, more or less, informal debates going on about the viability of Kosovo in the economic sense of that word. The same question pops up in the case of Montenegro, Bosnia and Herzegovina (or parts thereof) and even in the case of Serbia proper. Some of the issues can easily be applied to the other countries in the so-called Western Balkans and indeed to most of the post-socialist Balkans. These discussions are informal because it is not made clear what is meant by "viability in the economic sense". What can be gathered from the context is that by viability some fuzzy set of characteristics is being assumed; one that includes at least some degree of development, self-sufficiency, coherence, optimality, and self-governance. These characteristics have not been made as precise as they should be in order to check them against the reality of Kosovo. To partly contribute to a more focused debate, I will, in this paper, first, review some of the arguments about the "viability in the economic sense". Then, I will look at some empirical discussions about the viability of small states and develop some criteria of viability. I will then check those against the description of the economic situation in Kosovo (both current and that in the past), and, finally, discuss some of the economic consequences of alternative political arrangements that Kosovo may be facing. I draw some conclusions at the end.

Size Does Not Matter

In the recent years Alesina (together with a number of collaborators) has developed a theory of the size and number of nations.¹ The basic thesis is that the spread of free trade and democracy increases the number of states. Free trade between states makes the size of the state almost irrelevant while democracy leads to the stronger influence of the political preferences for specific levels, structure and financing of public goods.

The argument in terms of free trade is straightforward. One advantage of a larger state is that it supplies its economy with a larger market. To the extent that "growth is limited by the extant of the market", as Adam Smith argued, this may be advantages enough to suppress the possible centrifugal political forces that might exist in such a state. However, in the world of free trade, the advantage that goes with the size of a state disappears: small states can benefit from the world market and thus the political considerations may become more important than the economic ones.

There is an additional argument from free trade. In such a regime, every state has access to the full menu of world products that are produced by the world's endowment of

¹ See Alesina and Spolaore (1997) and Alesina (1998).

productive factors. As a consequence, the local availability of productive factors becomes irrelevant. Thus, the traditional debate about how rich in natural resources Kosovo is becomes irrelevant for the economic viability of this area, though not from the business and investment points of view.

If in addition to free trade democracy is adopted in a country or in a region, then these mainly political considerations will get the upper hand. Pressures will build up to increase the level of political autonomy of different territorial units, states, regions or provinces. The reason is straightforward: democracies represent the views of the majority, but local majority may be a minority globally and thus it may choose to separate and put up an autonomous political unit especially if this decision does not change the access of the new state to the outside markets.

Therefore, trade liberalisation and the rise of democracy make the size of a state less relevant for its economic viability. In a sense, it could be argued that, in these circumstances, states come into existence and perish on purely political grounds, the economic grounds being essentially irrelevant.²

Size Matters

The argument that the extension of free trade makes the size of a state less relevant from the point of view of its economic viability does not mean that the size of a state has no economic consequences for the state in question. On the contrary, it has been argued on both theoretical and empirical grounds that size indeed matters in a number of ways.

One argument is that larger states, in terms of territory and population, tend to have smaller governments, in terms of the share of public expenditures in the country's Gross Domestic Product (GDP). One reason given is that there are economies of scale in the production of public goods. For instance, the costs of security may be smaller on *per capita* basis for larger than for smaller states. The same may be true for other public goods.³

Another argument is that small states have larger governments because they face more frequent shocks because they tend to be more open precisely because they are small. As a consequence, they tend to rely on policies of fiscal adjustment and for this reason need larger budgets to stabilise the demand shocks than do bigger states.⁴

² This is not to be taken to imply that in reality it is ever otherwise. It is just that in these circumstances, the importance of political considerations becomes even more important than they are in protectionist and non-democratic environments.

³ For a review see Begg and Wyplosz (1999).

⁴ See Rodrik (1999).

Finally, there is an argument to the effect that smaller states tend to have larger governments because they are more homogeneous and thus tend to be more sensitive to the demands for the redistribution of income. Thus, small states rely more on the so-called welfare state than larger states do precisely because the level of diversity in the latter makes it more difficult to arrive at a consensus about the level of "social justice" that is appropriate for such a state.

There are empirical studies that show that what goes for small states does not go for so-called micro-states, i.e., states with less than one million inhabitants.⁵ Any number of reasons could be put forward why this might be the case. One thing to notice is that these micro-states can be perfectly viable in the sense that they can be prosperous, enduring and stable. However, they tend to have smaller governments. This is obviously because they cannot hope to have all the functions that bigger states have or at least these functions cannot be performed in the same way and as fully as is the case with the bigger states. Thus, for instance, micro-states cannot hope to provide for external security in the same way in which this may be connected with some standard notion of a state. Thus, it is sometimes said that this or that small state is not really viable because it cannot do everything that a bigger state may do almost as a matter of course. But, of course, this begs the question as to what viability in fact is.

There are other ways in which the size of a state matters. For instance, a small state may be smaller, in one sense or another, than most multinational companies are. That may bring about quite peculiar relations between the business and political interests. On one hand, business interests may be much more important than political ones. On the other hand, the large companies may not be interested in "running the state" because their interests in that market may be quite limited. Whichever way the relationship is established, the social consequences for those living in a small state may be considerable. This may bring up the issue of the social viability of a small state in the way in which this issue does not arise in bigger states, at least not at the national level.⁶

These considerations lead to the following conclusions:

1. Size of a state does not necessarily matter for its viability as long as its economy is open, i.e., is liberalised externally and internally.

⁵ See Easterly and Kray (1999).

⁶ It is, however, well known that capitalism on the local or municipal level in large states may be quite similar to that which can be found in small capitalist states.

2. Size may matter for state's viability if a state is diverse enough, in one sense or another, and if it is a democracy because the political preferences of the people living in different parts of that state may be incompatible.
3. Smaller states should be more open than are bigger states if they are to grow and prosper.
4. Smaller states may have to have larger governments for the purposes of stabilisation and distribution, but that may not be the case with the very small states because those may not be able to afford to have all the functions that a larger state has. Indeed, this is a relative matter and to the extent that a state is economically integrated it may choose to base its viability only on some public functions rather than on all of them.
5. Smaller states with a homogenous population (in terms of culture, income, or some other relevant characteristic) may have difficulties to adjust socially to growing integration, which is in the basis of their economic viability.

The stress on the significance of the size of a state is not excessive because this characteristic stands for a number of others that may be considered to be important for the viability of a state in the economic sense. For instance, it can be expected that a large state will be endowed with diverse factors of production and that it can supply a diverse set of products thus satisfying the needs of its consumers. Also, it may be expected that it will not be constrained by its geography, so that it will not be cut off from the world markets.⁷ Thus, it is believed that the access to a sea is quite important for development and a small state may have more chances to be landlocked than a large one. On the other hand, the access to a sea contributes significantly to the viability of a smaller state.

For these reasons, it is important to concentrate on the size of a state. Indeed, size matters in a number of other ways and not only for economic reasons. Socially, politically and culturally, size matters in more ways than one, and as these factors have economic consequences, it matters for the economy of a state in these indirect ways also.

Economic Regime and Policy

Other criteria than size, however, are also important. Those are connected with the functions that a state has usually to perform. Those are connected with the supply and the regulation of the economic regime and there are also those that are connected with economic policy, both in the short run and in the longer run. The latter include, among others, monetary,

⁷ On the importance of geography for development see Galup and Sachs (1998).

fiscal, and the policy of regulation. How are these policies connected with the viability of a state?

The discussion of the monetary viability of a state has been mainly coached in the terms of the theory of the optimal currency area.⁸ A state should have its own currency if it can be described as an optimal currency area. Such a state may not only have its own currency, but it may also rely on flexible exchange rates with the other currencies. There is no reason here to go deeper into these issues.⁹ It is enough to say that the fact that a state is not an optimal currency area does not necessarily imply that it should not have its own currency or that it has to rely on fixed exchange rates with the other countries. Indeed, most of the countries in the Balkans cannot be considered to be optimal currency areas, but that does not necessarily mean that they should give up their local currencies. Also, the fact that they may indeed join a currency union, as the standard theory of optimal currency areas would suggest, does not mean that they are not viable as states.¹⁰

The significance of the fiscal regime and policy for the viability of a state in the economic sense is another matter, however. It is difficult to have a viable state that cannot pay its own bills and has to depend on one or another source of aid. Of course, the fiscal viability of a state is not always easy to determine. A state may be in default on its foreign and its domestic obligations (as is currently the case with Serbia), but that may be temporary. Also, a state may rely on aid for a while until it manages to put up a viable fiscal system and starts running a viable fiscal policy (as is the hope in Bosnia and Herzegovina). But it is obvious that a long-term dependence on external sources or on the confiscation of domestic resources (either through high inflation or through defaults) will rise serious questions about the economic viability of a state.

Finally, the policy of regulation may be important for a state, especially if the state is small. The issue here is one of efficient allocation and of corruption. Regulation has become extremely sensitive as the experience of privatisation in transition countries underlines the problems that are associated with it. More often than not, laws and other regulation will be drawn not so much with the public interest in mind, but in conformity with the so-called special interests. There is no doubt that the economic and indeed every other viability of a state depends very much on whether it can present an image of an agency that serves the public interest or rather the opposite image of the one that is captured by special interests, i.e., whether it is seen as fundamentally corrupt or not.

⁸ The classical statement is in Mundell (1968).

⁹ The idea has become controversial with the author though less so with the other practitioners of international economics and international political economy

Therefore, the key to the viability of a state in the economic sense, at least as far as economic policy is concerned, is centred on its fiscal regime and policy and on the quality of its laws and regulations. These two basic political functions of a state constitute, together with the other aspects of regime and policy, the composite characteristic of public governance, the quality of which is certainly central to the viability of a state. Most of the criteria of viability have to be found there rather than in the more traditional ones that are connected with the abundance of the factors of production and the optimality of the economy in question.

Criteria of Viability

From the above, the following, certainly incomplete, list of criteria of viability in the economic sense¹¹ can be derived:

1. Openness – the smaller the state the more open it should be, both in terms of foreign trade regime and in terms of actual level of foreign trade.

This is especially true for developing states. They have to borrow money to upgrade their production and have to pay for those with growing exports so that their external sector has to be relatively big as a share of those states' GDP.

2. Diversity – the smaller the country (up to a point) the more homogenous it should be.

This is a variant of the concept of optimality, but as it is not to be expected that a small state would be an optimal trading or currency area, the weaker concept of homogeneity has to be used. However, it is difficult to define homogeneity as a number of quite different and incommensurable dimensions may be involved.¹² Still, whatever it is and to the extent that it may present problems for the political viability of a state, it will be more visible in a small state than in a large state (but that may be sensitive to the development of the means of information). In other words, *ceteris paribus*, a smaller state is more sensitive to diversity than a larger state. This sensitivity may not directly threaten the viability of the state, but it will influence its policies. In general, it may be argued that a small, heterogeneous state would have to be open and rely heavily on consensual types of decision-making.

3. Responsiveness – the smaller the state, the more democratic it should be.

¹⁰ This implies that monetary sovereignty does not belong to the proper notion of the sovereignty of a state.

¹¹ Viability in political, social and other senses is not discussed here, at least explicitly.

¹² Here I do not have in mind primarily the ethnic or similar criteria of diversity. I have in mind the diversity or rather homogeneity of public preferences as well as of the production structure. Discussing the issue of ethnic (whatever that may be) homogeneity as a condition for the viability of a state (at least in Europe), Timothy Garton Ash (1999) argues that the share of the majority ethnic group in total population should be at least 80% for that state to be politically viable. He gives no reason why this should be so and how are the exceptions to that rule, that certainly exist in Europe, to be explained.

Responsiveness stands for the ability of the state to reveal legitimately the political preferences of its population. Smaller states may be more sensitive to corruption and to the capture of the state by special interests. To the extent that this is the case, legitimacy is more important in a small state than in a larger one. In current political circumstances, legitimacy is secured the best in democracies.

4. Public governance – legality and rule-based policy generally should be conducive to the viability of a state in the economic sense.

This criterion is, again, more important for smaller states because they tend to have bigger governments, *ceteris paribus*. Therefore, bad public governance makes it more likely that the state will indeed fail to deliver the desirable economic policies.

5. Self-government – a state is more viable if it offers opportunities to all its inhabitants.

This is not to be confused with either the concept of sovereignty or with the concept of self-sufficiency, as both are not directly applicable to the notion of viability in the economic sense. But, a state cannot be viable in the economic sense if it cannot provide for a decent level of employment. Indeed, it may be argued that smaller states, for a number of reasons, should have lower unemployment rates than a bigger ones to be economically viable.

Some of these criteria could be formulated in the either-or manner, but are in fact to be taken in degrees. This is so also because it is not the case that these criteria are to be seen as either necessary or as sufficient conditions for viability in the economic sense. Obviously, an autarky, like the former socialist Albania, is not to be judged to be viable, but that does not mean that it did not provide for some kind of economic life of its citizens. In that sense, economic viability is almost trivially satisfied by more or less every political entity. Therefore, economic viability has to be defined more precisely. The criteria listed above taken together imply an economic system that is sustainable, self-governable and developing. Thus, it may be the case that a state may in fact fail, not only politically but economically too, if it does not satisfy some or all of these criteria. In other words, the criteria listed above allow for economic non-viability as well as for viability.

How is non-viability to be defined? One way is by pointing to an example. Certainly Kosovo today is an example of a non-viable political entity. It fails to satisfy any of the above criteria under any reasonable interpretation of those. This is pointed out here only in order to be made clear that the question of the viability of Kosovo in the economic sense is not to be tested simply by inspecting the current economic situation in Kosovo. Indeed, the above criteria should be checked against the reasonable expectations about the economic

development of Kosovo given the circumstances as they are now, given the economic potentials and given the political circumstances in which Kosovo will most probably find itself in the future.

Kosovo as It Is

The description of the current economic circumstances in Kosovo is not an easy one because it has still to be based more on anecdotal than on proper statistical evidence. It is however clear, as has already been stated, that, as a political entity, it is currently not economically viable. This conclusion can be arrived at even without checking the current situation against the list of characteristics drawn up above. Clearly, the key goal in Kosovo is its economic reconstruction and Kosovo cannot finance it on its own. In addition, even the day to day functions of the public institutions have to be financed from international aid. Finally, Kosovo lacks almost all the instruments necessary for self-governance.

The more detailed description will not change the above judgement. Though the resourcefulness of the population in Kosovo has impressed the international observers, it is undoubtedly the case that not even quite elementary needs can be satisfied without the international help and aid. Thus, aid is needed to get the population through the winter in terms of housing, heating, food and of course all the other social and public services. In the following years, it is contemplated that quite significant investments will have to be made in more or less all the productive economic sectors as well as in the utilities in order to put Kosovo on the path of sustainable development.¹³

At this moment, however, it is not at all clear whether Kosovo is economically viable even in the limited sense of the ability to absorb in the proper way the international and domestic efforts at reconstruction. This is so because of the still precarious security situation in Kosovo, but also because of the lack of legal and legitimate institutional infrastructure. Both obviously cannot be substituted with either institutional or monetary aid.

This problem is aggravated by the fact that there are quite a number of uncertainties that surround the current security, political and economic arrangement in Kosovo. The basis of the current effort is the resolution by the Security Council of the United Nations which, however, does not provide for a clear-cut resolution of the political status of Kosovo. Even if it can be assumed that the current mandate of the international presence in Kosovo could be prolonged as long as it may happen to be necessary, the uncertainty about the final status of Kosovo will weigh heavily on its economic viability.

¹³ For details see World Bank (1999).

Looking at the current situation more concretely, the economic non-viability of Kosovo can be expressed in the following way:

- people rely on international aid even for their everyday subsistence,
- the trade and current account deficits, which are not precisely known at this point in time, have to be financed from international donations,
- public services are financed also from international sources,
- recovery of all economic activities, except when it comes to trade and some services, is yet to happen.

The barriers to reconstruction and recovery are easy to determine. Checking against the criteria of viability listed above, it is obvious that:

- Kosovo is not an open economy, but an aid and subsistence economy,
- it is not homogeneous because of a number of conflicts that persist and do not seem to be disappearing quickly,
- the responsiveness of the institutions is practically non-existent because the entity is run in paternalistic manner,
- public governance is poor or non-existent due to quite a number of factors that will be discussed in more detail below, and
- self-government does not exist either *de facto* or *de jure*.

This judgement, i.e., that Kosovo is currently not economically viable should not come as a surprise. Indeed, the current international financial involvement is pretty much presumed on it. It is also not the case that Kosovo is a striking exception in the region. Most of its neighbours are also not economically viable, though often to a lesser degree than Kosovo. This is true of Albania, Bosnia and Herzegovina, Montenegro and Serbia, and to a lesser extent of Macedonia too. In fact, most of the region is on shaky grounds when it comes to the economic viability. However, this regional aspect of viability will be picked up later in this paper.

Kosovo as It Was

Viability is path-dependent. In other words, if a country was economically viable, it can be expected that it will remain viable. Of course, the case of former Yugoslavia is a counterexample, in some sense. This is, however, not the case for all the successor states of former Yugoslavia. Though economic viability is not necessarily assured for some of those, it seems to be the case that some of them have proven that indeed they have inherited a viable

economic system from former Yugoslavia.¹⁴ Again, looking backwards, it can be argued that these then republics of former Yugoslavia had viable economic systems even when they were members of the Yugoslav federation.

This does not seem to have been so in the case of Kosovo. Most of the disequilibria that exist now have been present in the past too. This is not the place to review the economic history of Kosovo. However, there is no doubt that most of the criteria of viability listed above were not satisfied by Kosovo throughout the post-World War II period. This is not to say that there was no development and growth in Kosovo in that period.¹⁵ On the contrary, quite a marked transformation went on there in the last fifty or so years. However, this economic development was excessively dependent on certain features of former Yugoslavia that made that country in the end politically non-viable and thus also economically non-viable.

For one thing, Kosovo depended on the rest of former Yugoslavia for budget-support. Though it is difficult to say how much of total public expenditures in the province were financed from the Serbian and the Yugoslav budgets, a conservative estimate would put that at more than 25%. Thus, Kosovo was not fiscally viable.

For another thing, the unemployment rate was constantly higher in Kosovo than in the rest of Yugoslavia reflecting the high rate of population growth. As a consequence, the outward migration from Kosovo was significant in the whole period.

Finally, Kosovo depended a lot on the transfers from abroad, on workers' remittances, to close the gap in its trade within former Yugoslavia and with the outside world. These remittances have continued to play the key role in the nineties and are to be expected to continue to play a significant role as they also continue to do in the rest of the so-called Western Balkans.

Other criteria of viability were also not satisfied by Kosovo in the past for reasons that are quite important. To quickly clarify what I mean, I will make a comparison between the development in the other former-Yugoslavia republics with that in Kosovo. One can distinguish between two types of post-Yugoslav developments. In the case of Slovenia and Macedonia, there was certain continuity in the process of nation building in former Yugoslavia and in the years after these countries became independent. Certain, though much more tenuous, continuity can be detected in the political development of Croatia and even in the case of Montenegro. In the case of Serbia and Bosnia and Herzegovina, there was a

¹⁴ As I argued in Gligorov (1994), former Yugoslavia was conducive to the process of nation building that was going on in the republics of which it consisted.

¹⁵ Some information can be found in Riinvest (1998)..

discontinuity that led to the sharp change in the process of nation building in Serbia and Bosnia Herzegovina (in the latter case it may be more appropriate to speak about the process of nation destruction rather than building).

In the case of Kosovo, the process of nation building was less continuous throughout the post-World War II period.¹⁶ In the nineties, the shadow president of Kosovo, Ibrahim Rugova, followed the policy of continuity, relying on the institutional resources inherited from former Yugoslavia. Given the overall position of Kosovo as a province in Serbia in the nineties, a set of parallel institutions developed which again had hard time to acquire legitimacy due to the fact that they could not rely on legal institutions. This policy failed, however, for variety of reasons, and Kosovo has to start the process of nation building more or less from scratch.

As a consequence of these series of failures at nation building, Kosovo faces quite challenging tasks in its attempt to establish itself as a self-governing entity with the appropriate institutions of public governance. Given the history of failures, there is no guaranty that this time around it will be successful. Indeed, the chances should be evaluated realistically, because the current process of nation building is to develop in circumstances that may turn out to be quite similar to those that the province faced in former Yugoslavia and in Serbia. Today as before, Kosovo will have to develop at least partly as a parallel polity and society. The circumstances may change, but they may also prove to be even more challenging than they were before.

In any case, this brief survey of the economic viability of Kosovo in the past points to the fact that, unlike in the case of some other former-Yugoslavia states, Kosovo cannot rely on favourable path-dependence in its institutional development. Indeed it may have to face the continuation of unfavourable political circumstances. Because of that, the process of nation building may not be smooth and successful. It is not really warranted to presume that Kosovo will prove to be economically viable given the history of failures and given the current political circumstances.

Kosovo as It Could Be

Not only viability, but non-viability is path-dependent too. Still the case that Kosovo has never been a viable economic entity does not necessarily mean that it could never be. For this to happen, however, some of the economic listed above have to be satisfied. Also, some political conditions have to be satisfied. That this is the case can be made clear by pointing to

¹⁶ The literature on that is large. There is no point to review it here.

the experience of Bosnia and Herzegovina. There, the political conditions are certainly such that they do not provide for economic viability, and indeed this is still economically a non-viable state. Reading the documents of the Dayton agreement, it becomes obvious that the provisions made there do not meet the criteria for economic viability even if those were to be strictly implemented. It is, however, generally recognised that four years into the Dayton peace process, the implementation of the agreements has been incomplete at best and has failed if assessed realistically.

Looking at the existing projects for the reconstruction and the future development of Kosovo, it is fair to say that those presume but do not imply the future economic viability of this political entity. For Kosovo to have a viable economy it has to satisfy at least two conditions out of those listed above:

First, it has to be integrated with the economies in the region at least in terms of trade and financing.

Second, it has to be a democracy, i.e., a system of popular sovereignty has to be put in place and institutionally secured.

The second condition cannot be satisfied as long as Kosovo is not a state or is not included in a state. This is not the place to enter the discussion on what is a state and what is meant by sovereignty. However, democracy is impossible without the sovereignty of the people and that sovereignty has to extend at least to the legislative branch (how it should extend and what is the relationship between the national and the international law is another matter).

The first condition is not satisfied now and it is difficult to see how it is to be satisfied in the near future given the unresolved conflict between Kosovo and Serbia. Given that the current political settlement does not resolve this conflict and does not even give an indication as to how this conflict is to be resolved, it is to be expected that the first condition will not be satisfied in the near future too.

It is of course possible to speculate about the economic viability of Kosovo under possible political arrangements. Those speculations would also clarify further the possible economic developments in this political entity.

Albanisation. It is possible that with or without the formal political integration between Albania and Kosovo the latter will be albanised in the sense that the economic and the political regime as it exists in Albania today may prevail in Kosovo too. This warrants a discussion of the economic viability of Albania, which cannot be entered into here. Still, it is

safe to say that Albania is certainly far from being an example of an economically viable state. On more or less all the counts of viability mentioned above, Albania fails. However, Albania has an advantage over Kosovo in that it is formally a state. So, chances are that the albanisation of Kosovo will produce even less economically viable state of affairs than in Albania itself.

This does not mean that the possible greater Albania, consisting of Albania proper and of Kosovo, may not be economically viable. As argued at the beginning of this paper, more or less any political unit may be economically viable if it satisfies certain conditions, some of which have been discussed above. However, a rather long process of nation building should be envisaged during which the economic viability of the new state cannot be assumed.

Protectorate. It is possible that the current political status of Kosovo is extended into the future and it is run as a *de facto* protectorate. In that case, one can be sceptical about the economic viability of Kosovo. There is no logical necessity that a protectorate cannot be economically viable, but the odds in this case are rather unfavourable. This scepticism casts doubts over the programmes for reconstruction and development of Kosovo which effectively assume away that this will be a self-governing political entity.

European integration. Not only in the case of Kosovo but also in the case of Albania, Bosnia and Herzegovina, Macedonia and even in the case of the other post-socialist Balkan countries, economic viability is presumed on their membership in the European Union. This option has to be treated with care.

It is certainly true, as argued in this paper, that integration is an important condition for the economic viability of a small nation. However, in the case of the European Union, the accession to the membership in the Union is conditional on the aspiring state being economically viable. That requirement is meant to serve as an incentive for the candidate states to run policies and introduce reforms that would be convergent with the European Union. In that, they can be expected to be helped by the Union, but it is not the case that the Union would be ready to take over the obligation to govern the process itself.

Because of that, it is essential to evaluate how strong is the incentive for integration in the case of Kosovo? Given the enormity of the task, it is fair to say that the prospect of Kosovo becoming a member of the European Union is a distant one (and it remains distant even if Kosovo joins Albania at some point). Thus, it can be safely concluded that the strength of the incentive of the prospective membership in the European Union for the current political

and economic decisions in Kosovo is very small indeed. Thus, it should not be expected to contribute all that much to the viability of this province.

Independent state. This is not politically a viable option. It is not viable in the sense that it is time-inconsistent. What it means is that the today's commitment to an independent state of Kosovo will prove to be non-binding and thus unstable once this independence is achieved. At that point, the preference for integration with Albania will be politically preferable. Thus, this is really not a separate option and whatever was said about albanisation applies here too.

Other options. There are other options that are one or the other variant of the already discussed options. It can be noticed that the option of Kosovo remaining a part of Serbia is not considered because it is not politically realistic. This fact is not inconsequential for the economic future of Kosovo, however. As has been argued above, a small state can hope to be viable in the economic sense only if it is an open economy, i.e., if it is integrated within its region at least in terms of trade and financing. In the case of Kosovo, the additional consideration is the history of economic integration with Serbia and also the natural advantage of the access of the Serbian markets for Kosovo's products. That may not be seen as all that important at this moment because the economy of Kosovo is not even at the level of subsistence economy at this point. However, once production recovers, the availability of local markets will become quite important. Thus, in the future, the normalisation of relation with Serbia may be quite important for the economic viability of Kosovo.

This survey of the consequences of alternative political arrangements for the economic viability of Kosovo leads to a rather pessimistic conclusion that this may not be easily achievable. Indeed, bad or unresolved political problems can cast a long shadow over the economic prospects of a country. In the case of Kosovo, this is even worse because it is not at all clear how is it to become a state or a part of a state. All the other alternatives, as argued here, fall short of securing economic viability for Kosovo.

Regional Aspects

If a region is economically viable, parts of that region are economically viable too. This may not be true literally, but it is close to being true. It seems reasonable to assume that it would be easier for Kosovo to prosper economically if the Balkan region is prosperous too. Unfortunately, this is not the case. The Balkans is still a depressed area. Indeed, the

neighbouring countries of Albania, Montenegro, Serbia and Macedonia are practically the very centres of the depression. This being the case, the viability of Kosovo depends significantly on the viability of these other countries too. This is a rather distant prospect at this point. The economic take-off in the region can only come with the significant influx of foreign investment, but the area keeps attracting aid and aid agencies, rather than entrepreneurs and businesses.

Looking at the effects of aid and reconstruction efforts, the danger is there that Kosovo will be another aid-dependent economy rather than a self-sustainable and self-governing one. Though the amounts of money that are earmarked for Kosovo are not huge and are not being disbursed regularly, they are still significant taking into account the level of economic development of Kosovo. If the money spent on the consumption of the forces and agencies operating there are taken into account, there is no doubt that this is a serious shock to the local economy.

The effects of this shock on the neighbouring states are similar to those in Kosovo, though the degree of the shock may vary. On one hand, the structure of the local economies is changing rapidly in the direction of de-industrialisation and the growth of services and the increase in the share of agriculture. On the other hand, incomes of the population are being supported through aid and the consumption of the international people. The key problem with these developments is that these sources of income and employment may become necessary conditions for the viability of the local economies. In other words, they may not be viable once aid and international presence have to be discontinued.

In this context, the regional approach of the European Union and also of the so-called Stability Pact has yet to make a difference. These initiatives are still structured in such a way that security issues are more important than the developmental ones. The same is true for the international efforts in Bosnia and Herzegovina. Because of that, they cannot be expected to have a decisive influence on the economic viability of either the particular states in the Balkans or of the region. It is to be hoped that they will develop in that direction, but it is difficult to see at this moment how is that to be done.

Kosovo as It Should Be

There is a difference between discussing the issue of Kosovo's economic viability while taking into account the national and international constraints and looking at it as if these constraints can be changed. It does not make sense to slip easily from the one into the another. In this case this would be theoretically extremely easy indeed, because all one needs to say is

that Kosovo should choose such a political and economic arrangement that satisfies the criteria for economic viability. But how is this choice to be made is really the key issue. In the current circumstances it is not even clear whose decision is it to make? And even if the decision-makers could be identified, it is still not clear whether there is a valid procedure for this kind of decision making and whether the international procedure of decision-making, if it were to be found, could be trusted to produce a decision, let alone a satisfactory decision. For the latter, there has to be an agreement between the countries and peoples directly concerned, a consensus in the region, and an international approval. In that case, Kosovo can be afforded the political status that may enable it to start building the regime and policy infrastructure for a viable economy.

Such an agreement is not in the making at this point. The second best solution is to let the process of nation building to proceed and to try to influence it so that it will develop in the desirable direction. The issue here is whether the international community has the necessary instruments of influence. The set of conditionalities that the European Union, the International Financial Institutions and the other international and regional organisations and initiatives have at their disposal is not sufficient to guarantee the positive result and may not even be consistent and coherent. Thus, the process of nation building in Kosovo and in Albania may not converge to economic viability, at least within the relevant time horizon.

Climbing down one more step closer to reality, it should at least be expected that the process of restructuring would proceed in a reasonable manner. This is in keeping with the current approach of the international community to put off the resolution of the most fundamental problems and to concentrate on security and reconstruction. This approach, as already stressed, presumes that Kosovo will not be economically viable for quite some time and looks for solutions that are appropriate for such a situation. In that context, it should be expected that trade, financial, monetary, fiscal and regulatory regimes and policies should be designed that would approximate the criteria for economic viability if they would not immediately satisfy those. It is too early to say whether the steps taken so far are in conformity with such an aim.

These comments were intended to highlight the fact that normative thinking about Kosovo is a messy affair. Decisions have to be made about the monetary system, about the fiscal system, about the trade system, about the legal systems and the like, which almost by design exclude the first best solutions. In such circumstances, it would be at least desirable that those who are going to bear the costs make the decisions. This is also excluded more or less by design. Thus, only paternalistic solutions remain, and those are as a rule inferior even

if a determined and benevolent despot makes them. In this case, however, the determination is questionable, benevolence is difficult to define and there is a plurality of despots. It is undoubtedly challenging in these circumstances to advise on what should be done.

Conclusion

In this paper, I have argued the following:

First, the size of an economy is not relevant for its viability at last in a world of free trade and democracy.

Second, size matters for the way that the economic viability can be achieved and may constrain the design of the economic system.

Third, a small state or economic area like the Kosovo one has to be open, homogeneous, democratic, accountable and self-governing.

Fourth, that Kosovo does not currently satisfy these criteria and has never satisfied them in the past.

Fifth, that the current political set-up and the most likely future developments will not guarantee that these criteria of viability will be satisfied any time soon.

Sixth, that the countries in the region and the region as a whole may be facing the problems of economic viability, though for different reasons.

Seventh, that international aid and overall effort are constrained in the same way as the Kosovo and have additional problems of their own.

Eighths, that outside of the utopian world, it is difficult to advise any of the actors about the best course of action.

Bibliography

Alesina, A., E. Spolaore (1997) "On the Number and Size of Nations", *Quarterly Journal of Economics* 112: 1027-56.

Alesina, A. (1998) "Too Large and Too Small Governments", paper to be found at www.imf.org.

Begg, D., Ch. Wyplosz (1999) "How Big a Government? Transition Economies Forecasts Based on OECD History", paper to be found at <http://heiwww.unige.ch/~wyplosz/>.

Easterly, W., A. Kray (1999) "Small States, Small Problems?", The World Bank Policy Paper 2139, June.

Gallup, John and Jeffrey Sachs with Andrew Mellinger (1998) "Geography and Economic Development", presented at the Annual Bank Conference on Development Economics, World Bank. April.

Garton Ash, T. (1999) "Cry, The Dismembered Country", *The New York Review*, January.

Garton Ash, T. (1999), "The Puzzle off Central Europe", *The New York Review*, May.

Gligorov, V. (1994), *Why Do Countries Break UP? The Case of Yugoslavia*. Uppsala.

Mundell, R. (1969) *International Economics*.

Palairret, M. (1997), *The Balkan Economies c. 1800-1914. Evolution without Development*. Cambridge University Press.

Riinvest (1990), *Economic Activities and Democratic Development of Kosova*.

Roddrik, D. (1999) "Institutions for High-Quality Growth. What They are and How to Acquire Them", paper to be found at www.imf.org.

Todorova, M. (1997), *Imagining the Balkans*. Oxford University Press.

World Bank (1999) "Toward Stability and Prosperity".

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KOSOVA ECONOMICUS : DOES VIABILITY MATTER
Discussion paper for the Conference "Options for Kosova's
Final Status"

United Nations Association of the United States
Istituto Affari Internazionali
Rome , December, 12-14 1999

Introduction

Economic aspects, very heavy weighted in the Kosova issue, were neglected in the debates about the solutions and gateway. Domination of historical aspects and medieval sentiments were very often used as a camouflage for real problems in the economic matrix.

The economic aspects are reflected on the stands of both sides about:

- Exploiting and managing of natural and other resources which used to be important in former Yugoslavia and are still relevant in the regional relations
- Controlling of the Kosova's market, which especially in the last ten years was restructured and strictly controlled by Serbian regime.

The solution for Kosova's final status is a part of the dissolution process of former Yugoslavia. Within new realities in South- East Europe collapse of socialism resulted the creation of new countries and new movements toward market economies and democratic societies. The solution of Kosova issue means also overcoming its colonial position especially during the last ten years.

Despite practices that newly created states has not been based on feasibility studies or cost benefit analyses it is obvious that economic viability could be affected by political arrangements and that economic considerations have to be taken into account for the decisions on political identity.

In this paper I will review some arguments about the importance of building up open market economy and economic independence of Kosova within regional and European integration for future developments in Kosova and also regional cooperation and stability.

1. VIABILITY AND ACTUAL CONDITIONS

Current situation is characterized by the energy of the kosovars shown to return and restart new life. In most of cases that doesn't mean just continuation of the pervious life in the conditions before march 1999, but creating conditions for new businesses and family environment. Really the lack of statistical data and overall post war environment is not a situation for well based estimations on current and future economic viability. But there are some helpful indications. According to our survey with 3500 kosovar families on war consequences on family economies and budgets:

- only 12% of families reminded in their residences during the period march-June 1999 (24% were displaced in other parts of Kosova, 64 % deported out of Kosova)

- 92 % of deported / displaced families returned in their municipalities and residences, but more than 40% had to find solution for new housing because of destroying of their houses to the extent that couldn't be repaired
- The sources for family budgets were reduced from 3 (in average per family) to less than one (including humanitarian aid which participate 47% in post-war family budgets); the family budget is reduced about 70%
- more than 80% of housing equipment was robbed or destroyed
- Expected sources for reconstruction and rebuilding of houses : 78% humanitarian aid and assistance and 22% own participation
- About 70% of families restarted or wanted to restart private businesses; needed financial assistance 1000 – 20000 DEM in 72% of the cases with participation of their own sources about 24%;
- Three main problems in Kosova are : Kosova's status (36%) , economic and social problems (29%) and democratization of Kosova (29%)
- The role of the protectorate is much more seen in peace keeping and security area 50,2% than integration of Kosova in the region and Europe 20 % and less in the financial assistance near 12% etc.
- Success of the protectorate according to the respondents will depend more cooperation between international and kosovar factors 33%, more by engagements of kosovar subjects 31%, more by international factor 29%
- More than 88% of respondents consider that the situation will improve significantly after 5 years

The main conclusions are :

- There is a large scale of devastation of living conditions and we have to deal with huge and complex reconstruction project
- Strong determination of the population to rebuild new lives to restart and develop economic activities
- Preoccupation with peace and security, and Kosova's status is very high
- The sensitivity toward the economic and social problems, democratization and regional integrations
- The success of protectorate have to be relied on cooperation between international and kosovar subjects
- There is a high degree of optimism

The main problem now is how to accept this readiness and energy and to manage an efficient reconstruction which will activate kosovar resources to overcome emergency stage dominated by humanitarian assistance and "aid economy". That will depend mostly on:

- Enhancing absorption capacities
- Coordination of the activities between different actors in reconstruction
- The reconstruction costs

(a) **Enhancing** absorption capacities will require focusing on improving the knowledge on market economy management, management and entrepreneurship education and building up institutional infrastructure of open market economy. That is connected to the human capital development and to advancement of governance.

(b) **The coordination** of activities between many actors that are participating in the renewal and reconstruction processes is a key factor for more synergy and effectiveness. The experiences during this very early stage in Kosova's reconstruction are that:

- There are many international organizations involved and institutions working in the same issues without many coordination
- Many international NGO and institutions are working in different areas without partnership with local partners which means lost of opportunities for development of local capacities for participation in reconstruction

(c) **The reconstruction costs** are influenced by possibilities for more local suppliers and contractors especially in construction materials, transports and trade. Also the way of reconstruction management and transparency could highly impact reconstruction costs.

The UNMIK activities in creating institutional and legal environment have been started three months ago and are progressing quite slowly. There is a regulation about border taxes and customs and also regulations for banking and payment system. Fiscal authority within UNMIK proposed budget for the year 2000 with estimations for 425 mil DEM expenditures which have to be covered by 225 mil DEM (or 53%) by tax revenues and 200 mil. DEM (47 %) by donations. There are estimations that with further developments of fiscal infrastructure there is more space for reducing budget gap and deficit.

Private sector reached significant results in restarting and development of their activities. Based on some preliminary results from the survey of private companies many of them have reached before the war volume of operation.

Social – state owned companies faced many obstacles due to the mismanagement in last ten years, lack of investments and technological progress. Some companies already restarted with new managerial structures and staff but many others are waiting for legal environment for privatization and restructuring.

Infrastructure reconstruction and rehabilitation is expected to restart next spring.

It can be outlined that after five months we have some promising signals for recovery of economic activities in the private sector, commitments to reshape the social/ state companies and we are in the early stage of establishing legal environment of an market economy.

2. ECONOMIC PROSPECTS AND VIABILITY

It is obvious that after all that happened Kosova have to built its economic viability versus surviving with aid economy. The process of self-governance and self-determination is in the high development stage and irreversible. There is no lack of the subject and it is quit clear who “ is to make the decision” and take the responsibility for the future after the transitional interim governance in Kosova.

What are the opportunities for economic development? There are strengthens and weaknesses that should be taken into account.

Strengthens

Weaknesses

(1) Human capital- young population,	(1) Low level of economic and social
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relatively educated	development
(2) Entrepreneurial spirit and energy	(2) Institutional environment and legal framework
(3) Natural resources (minerals, land)	(3) Political and security condition in Kosova and region
(4) International community commitment	
(5) Positive attitude toward transition and reforms	

Open market economy is decisive for development of competitive economic structure and efficient exploiting of development strengthens. Two main problems for reaching viability are : (1) Budget and (2) Payment Balance

(1) Budget imbalances and gaps could be reduced within an medium term after an substantial phase of reconstruction which include : (1) offensive strategy for development of SME sector and family businesses ; (2) Infrastructure reconstruction and development , (3) technological regeneration , restructuring and privatization of construction, food and export sector. That could create conditions for an GDP about 1,3 bil. US\$ (similarly to 1990), in next 3-5 years. Let us estimate the share of public consumption in GDP about 40% which will be sufficient to cover budget expenditures within an budget gap under 10%. In meantime it is understood that, within reconstruction policy , public infrastructure will improve significantly.

(2) Open economy as a key precondition for economic viability depend on export opportunities . Export sector could include: electricity, metals, metal processing sector, batteries, traditional industries, rubber products and services. Emigrants inflows (around 300 mil. US\$) and exports (250- 300 mil. US\$) create conditions for an Payment Balance equilibrium by the end of the mentioned medium term.

Of course these are opportunities . The effectiveness in using these opportunities will depend on creating institutional and legal framework and rule of law, in better political and security conditions. The role of international community in that area is of key importance not only in ground activities but also in assisting for creating modern, competent and responsible administration.

Based on these opportunities and resources it can be concluded that economic viability of Kosova have chances to be built and economic independence could be budgeted. In comparison with neighboring countries these opportunities are not in a bad shape.

3. LESSONS FROM THE PAST

The development level of Kosova (1997 about 350 / 500 US\$ per capita depending on including the emigrants inflows) is consequence of political reflection of long term unsolved Kosova issue:

- The colonial position of Kosova in so called old Yugoslavia.
- The postponing of industrialization processes in Kosova compared to other parts of former Yugoslavia up to 1967 and especially during the seventies when Kosova reached the same institutional economic infrastructure as other parts of former Yugoslavia's federation .
- The development conflicts which had been reproduced by former Yugoslav economic system with contradictory elements expressed with stimulating measures for economic development (Federal Found for crediting of undeveloped federal units and supplementary budget funds) and on the other side negative impacts of centralist economic system and economic policies measures (price policy, foreign trade regimes and export stimulation's which had influenced unfavorable income redistribution for Kosova
- The abrogation of the autonomy and destroying of legal institutional structure after 1989, by installing authorities which have imposed an typical colonial policy and infrastructure in Kosova, leaded by repressive apparatus

The reflection of unsolved Kosova's issue since 1912 resulted in preventing Kosova's population to govern its own resources. The progress in building up Kosova's autonomy and development of this autonomy in late sixties and at the beginning of seventies resulted with subjectivity in the former Yugoslavia federation and significant progress in viable economic system of Kosova with the same mechanisms , authorities and position as other members of federation – republics. That was a period of more successful social and economic development, but not sufficient to overcome created development conflicts and obstacles from the previous period of inferior position. Budget was covered by 75% by kosovar incomes and 25% from the federal budget (not from the serbian) due to the necessity for huge investment in neglected , for a long time, of social infrastructure. The trends in improving economic viability were interrupt by aggravating of the political and economic situation in former Yugoslavia during the eighties which resulted with Yugoslavia's dissolution and de facto putting of the Kosova's under the colonial position. The state companies were occupied, around 70% of Albanians in the state and public sector were dismissed.

After that surviving of Kosova population was managed through development of private initiative and private economy (about 50% of GDP) and funds sent by kosovar emigrants in western countries.

It should be noted that during this time albanian kosovar population being excluded from public sector developed its own budget which covered expenditure for institutions of peaceful resistance (parallel institutions) during nineties – for 24000 public employees (mostly in education sector) with similar or better salaries compared to neighboring countries.

It was a period of very specific economic viability of Kosova.

Former Yugoslavia experiences had verified that in the conditions of the significant differences in the economic development level of different entities within a country, with historical burdens, economical problems usually are transformed into national and political problems, generating conflicts and making permanent disintegration focus. In such conditions consensus for economic policy is very problematic and difficult. On the other side centralist governance and measures produce different effects in entities with significant differences in development level, which become source of conflicts. Independent economic system is a precondition for economic viability, for clear accounts and identifying common interests for economic cooperation.

4. ECONOMIC VIABILITY AND POLITICAL ARRANGEMENTS

Different options for future developments in Kosova could have significant impacts on economic viability. Past experiences and other circumstances make not feasible the economic viability within Serbia/ Yugoslavia. Development of open market economy and economic independence within regional and European cooperation is gateway for Kosova issue. Other solutions could result with less effects in activating development resources and energies and create more problems in the region. On the other side regional cooperation is a precondition for increasing economic viability not only for Kosova but also for other South Eastern European countries. This is a precondition for a new era of relations between Kosova and Serbia based on partnership within regional cooperation. It is a precondition for identification of common interests and cooperation free of the historical burdens and animosities.

5. REGIONAL STABILITY PACT

Aftermath of Kosova's war and the introducing of the international protectorate creates more relax in the Balkans and more condition for easing of political and ethnic tensions as a precondition for regional cooperation. On the other side the Stability Pact for SEE provide an strategy for overcome many borders and limits in the Balkans tired from the past and history. These two events could interact in inducing positive changes which will create more space for a solution of final status of Kosova based on democratic declaration of the will and self-determination in a process that is less painful. It seems that the role of international community in managing stability pact components have to be decisive, at least in its initial stage, having in mind that Balkan countries hasn't shown enough affinities for economic cooperation. The Stability Pact is an alternative to put up new conditions in the region free from the tendencies of domination. The simultaneous acting in the promoting the development of infrastructure, private sector and SME and democratic institution building is of vital importance for increasing economic development performances of countries in the region. Other alternative is returning in the previous tectonic processes.

References:

- Economic Activities and Democratic Development of Kosova (Riinvest, 1998)
- Post War Order for South – East Europe, Kosova's Country paper (Riinvest, 1999)
- War Consequences on Family Businesses and Budgets (Survey, Riinvest 1999)
- Building Peace Through Sustained Growth (World Bank, 1999)

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*Paper prepared for UNA-USA/IAI Conference on 'Kosovo's Final Status'
Rome, 12-14 December 1999*

The Internal Security Challenge in Kosovo

1. Introduction: Public Security in the Absence of a Final Settlement

This paper discusses the current internal security in Kosovo as it has developed since the end of the Kosovo war this spring. The record so far gives ample reason for concern, and the current state of affairs hardly lives up to the standards originally expected by the countries that intervened into the war over Kosovo in order to stop ethnic violence and to defend human rights and multicultural cooperation. The paper argues that if a major reconsideration of the current allocation of tasks within the public security area does not happen soon, the situation may rapidly deteriorate even further. A continuation along the current path will reduce the international community's ability to influence the long-term development of effective and legitimate law and order mechanisms in Kosovo, and it may eventually appear that the international community has ended up failing in fulfilling its aims for Kosovo.

We should distinguish between the short to medium-term needs for law and order on the one hand, and the long-term requirements on the other. I will argue that the long-term goal of the international community must be that a local police, judiciary and penal system based on internationally recognised standards is institutionalised in Kosovo. There is no alternative to eventually handing the task over to some kind of local government. However, such a system cannot become effective without a political settlement, as law and order is one of the primary expressions of recognised, sovereign authority and not merely a 'service' that someone has to provide.

In the short to medium-term run, basic law and order functions must be provided by the international community's military and civilian presence in Kosovo. In contrast to the situation prevailing in most other cases of international peace support, there are no established local authorities and no local police to cooperate with in today's Kosovo. For the first time ever, the UN has attempted to take over the role of executive policing itself, which is very different from the traditional UN CIVPOL approach that has focused on supporting, monitoring, assisting, restructuring and training. This fundamental change in concept, however, took place rather haphazardly, and parts of the current problem may relate to this possibly over-ambitious attempt by the UN to relaunch itself after the marginalisation it experienced during the Kosovo

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war this spring. More importantly than the frequently heard complaints about the international police force's lack of personnel and resources this should be seen as a fundamental structural problem. The paper discusses the shortcomings of this model and suggests ways of improving the short- to medium term protection of public security by enhancing the role of KFOR and increase cooperation with UNMIK in these areas.

2. No Law, Little Order

Over half a year after the entry of KFOR and UNMIK, the law and order situation in Kosovo remains dire. Compared to the initial period after the Yugoslav withdrawal, the level of ethnic violence directed against Serbs, Roma and other minority groups may have been somewhat reduced, but only after a substantial number of the non-Albanian population has been forced to leave the province. In proportion to the total number of non-Albanians, it remains unacceptably high by most standards. Furthermore, the violence frequently flares up, as it did during the celebration of the day of Albanian flag on 29 November.² There is little doubt that some of this violence has been caused by despair and frustration as well as a desire to revenge atrocities committed during the systematic and violent expulsion conducted by Yugoslav authorities during the spring of 1999. This is, however, only part of the story. Much of the recent ethnic violence seems to have a strategic purpose as a contribution to the *de facto* cleansing of Kosovo's remaining minorities. Systematic targeting of individual Serbs and persons belonging to other minorities escalating from repeated warnings, intimidation, harassment, violent acts to murder, indicate a level of planning which can hardly be explained by emotional affect alone. Yet other parts of the current ethnic violence seem to be mere expressions of organised crime, which is benefiting from the near-absence of public order. For instance, a number of reported 'commercial evictions' – gangs forcing people to leave their homes after having been paid to do so by would-be occupants desiring to move in – merely illustrates the existence of a grey zone between the political and the criminal in today's Kosovo.

International media has understandably focused at this continuing *ethnic* violence, which frequently is referred to as 'reverse ethnic cleansing'. It is a serious challenge in itself to the international community, and in particular to those involved in the *humanitarian intervention* that followed the breakdown of the Rambouillet accords in March 1999.³ Needless to say, the situation in Kosovo is much better than it was during the months of war. But then again, one would also expect higher standards in a situation where NATO provides over 40.000 troops and the UN some 1.700 international police officers precisely in order to protect the victory claimed by the new international 'humanitarianism backed by force'. A continued impression of *reverse ethnic cleansing* obviously challenges this impression of a victory for human rights and multicultural tolerance, as it eventually merely comes to resemble the victory of one group over another. Hence, most of the critical light that has been shed

² During the week 27 November to 4 December 1999, 22 murders were reported in Kosovo.

³ On the lessons of the Kosovo war, see: Ivo H. Daalder and Michale E. O'Hanlon (1999): 'Unlearning the Lessons of Kosovo' in *Foreign Policy*, Fall 1999, Adam Roberts (1999): 'NATOs 'Humanitarian War' over Kosovo in *Survival* Vol 41 No.2, Autumn 1999, Michael Mandelbaum (1999): 'A Perfect Failure: NATOs War Against Yugoslavia in *Foreign Affairs* September/October 1999.

on the internal security situation in Kosovo has focused only on the inter-ethnic dimension of the problem.

When taking a closer look at today's Kosovo, however, it appears that this is only a small part of a larger picture. It is not solely the remaining Serbs, Gypsies and other minority groups that are victimised. Ordinary Kosovars are also threatened. In the security vacuum created after the withdrawal of the Serbian forces, organised crime has taken a firm grip over substantial parts of the province. The informal networks and alternative power-centres that grew to noticeable wealth during the blockade of Yugoslavia, through specialising in smuggling and trafficking of people, are making sure that they have a conformable level of control over the new situation. Nowhere else is this as strongly felt as at the municipal level, where the extent of effective control by the international community is significantly lower than at the central level.

The key reason for this structural security vacuum seems to lie in the combined effect of the absence both of an agreed path towards a final settlement and the simultaneous absence of an effective occupation government.⁴ It was indeed predictable that this situation had to create a very difficult situation in the public security area.

Today's Kosovo is impatiently spending its days in the 'waiting lounge', and it could hardly be otherwise. International efforts to support peace settlements have developed a long way from its Cold War focus on maintaining some kind of *status quo* to its contemporary focus on *managed change*. Protracted transitional periods are in many cases the best way to ensure that a particular country or region develops from something it wants to leave behind, into a new situation that is to be both different from and qualitatively better than the preceding one. The purpose of international support for such transitions is both to influence the direction of change and to make sure that this change takes place without (further) violence. In the post-Cold War, a number of UN-assisted transitional processes have actually proven relatively successful. Just to name a few, the international community assisted in the transition into democracy and majority rule in Namibia (UNTAG 1989-90), Cambodia (UNTAC 1992-93), Haiti (UNTMIH 1997-present), and in the return to Croatia of formerly Serbian controlled *Eastern Slavonia* or Danube Region (UNTAES 1996-1998). In all these cases, a substantial international military, civilian and police monitoring presence was required in order to keep an agreed process on track and to ensure that both the former and the new forces in charge lived up to their promises. These countries and regions had to spend time in the international waiting lounge too, but the major difference being that they all had got their ticket to the final destination issued before they went in. This meant that inhabitants and interested international players alike could start making preparations about their future already while in the midst of the transitional phase. Furthermore, it meant that while much political

⁴ The concept 'occupation' is here used to illustrate a situation where a foreign military force takes complete control over a territory with the intention to stay for a substantial period of time, and where an international administration is introduced instead of local government. The UN/NATO role in Kosovo should be understood, however, as a (at least intentionally) *benign* occupation. See below on the parallel to Germany or Japan. This argument runs contrary to, for instance, early statements by UN chief administrator Bernard Kouchner who insisted that 'we are not an occupational force'.

arguing would still have to take place, there was less reason to challenge the overall direction that the developments were taking.

Kosovo, on the other hand, has been sent into the waiting lounge with no ticket and no clue about its final destiny. In principle, the issue of final status that brought the province to war, remains as open as when the conflict erupted. Shall Kosovo stay an integral part of Serbia, become a republic in FRY, achieve independence, or even join Albania? These are, of course, issues of utmost importance for anyone planning for a future in the province. And as long as they remain open, the political process will continue to be centred around them. The assumption apparently held by several key international actors in Kosovo, that 'normalisation' will lead the inhabitants to think of more 'practical' issues than where the province is heading, seems rather optimistic in this light.⁵ It seems more likely that the situation will generate increasing rather than decreasing pressure for settling this overarching issue. Early signs of growing Kosovar discomfort with this permanence in an undefined transitional phase can clearly be seen. At the outset, most Kosovars saw NATO as liberators and the establishment of a UN administration (UNMIK), protected by KFOR, as a logical step on the way to full independence. At least at the highest level, the level of cooperation with the international administrators was extensive.⁶ The UCK and NATO were allies during the war, fighting against a common enemy, and apparently for a common cause. After the war, on the other hand, NATO and the UN are presiding over the formal continuity of Kosovo within Serbia against the will of most Kosovars, while Serbian sovereignty over the province is temporarily suspended. The initial perception of a joint cause is therefore increasingly substituted with a perception of working at cross-purposes. While disagreeing internally over methods and means, most Kosovars want the independence that the International Community is not prepared to give them. The resistance from the international community's side is both based in the very sound concern for regional stability in the case of an independent Kosovo, and in defence of the principle that the solution to post-Yugoslav conflicts cannot be an eternal circle of further fragmentation into mono-ethnic states. The consequence for Kosovo, however, is that the current situation of non-settlement is unlikely to change for quite some time: It is rather unlikely that the international community will cede, at least in the short- to medium-term, on the recognition it made through Security Council Resolution 1244 (1999), which acknowledged the continued integrity of Yugoslavia's borders and it is even more unlikely that during the same time-span, the majority of the Kosovars will renounce its claim to independence. Thus, a situation is evolving where the only thing that stands between the Kosovars and independence now that the Serbs are out, is the presence of NATO soldiers and UN administrators.

⁵ In October, the author conducted a series of interviews with key players at the various international institutions involved in the security field in Pristina (UNMIK HQ, UNMIK Police, OSCE HQ, the OSCE Police Academy, and KFOR HQ).

⁶ The UCK leadership has distanced itself from the acts of violence committed in its name. Still, a recent OSCE report suggests that the links between the UCK leadership and these activities requires further investigation. See OSCE Pristina: Human Rights in Kosovo: As Seen, As Told (available at www.osce.org/kosovo/reports/hr/index.htm).

3. Law & order isn't just a technical issue

Internal security is the *sine qua non* of stability, conflict prevention and long-term progress, in the Balkans as well as elsewhere. While much attention is devoted to the issue of policing and the provision of law and order, much of the discussion seems to reflect a fundamental misunderstanding of the nature of these issues. Therefore, a few general remarks should be made at the outset:

- First, internal security it is not only an issue of *policing*. Police service is just one (albeit very important) leg of the broader internal security spectrum, or the *triade* of police, judiciary and penal system. Reform efforts in any of these sectors must take the other sectors into account. There is little use in reforming one leg on its own. For instance, there is little use in apprehending criminals if there is no court to take them to, and a sentence imposed gives little meaning without a penal system. In fact, imbalances within the security sector may even lead to human rights violations, like for instance when the police (for lack of a due process of law or a legitimate penal system) takes care of its own sentencing or punishment.
- Secondly, the provision of law and order is not merely a technical service that has to be provided by someone. It is different from water supply or garbage collection. Legitimate and effective policing rest on a complex relationship between the citizens and the state, and require that the law is generally supported by the citizens (in practical terms, that means by most of the citizens most of the time) and that the citizens see the police as legitimate representatives of a government they recognise (if not necessarily agree with). If these conditions do not prevail, the police becomes either ineffective or an illegitimate instrument of oppression. It is practically impossible to build and train a police force without reference to the governmental structure within which it is going to work.
- Thirdly, in situations where there is no government you can not simply expect the police to emerge from nowhere, and one should indeed be concerned if it still does, as this typically will be the first step towards establishing a new, 'alternative' order.

There may, however, be cases where law and order cannot be performed by local authorities, either because such no longer exist, are completely illegitimate, or fractioned. Torn-apart or 'failed states' sometimes represent such a picture of total anarchy. In principle, the international community may then decide to introduce certain minimal state functions in the benefit of the local population and of a long-term return to peace. That route, however, should go via the establishment of a protectorate or trustee government and be based on an effective occupation. There are historical examples of such policing based on a military occupation. For instance, during the post-World War II occupation of Germany, the US Army established a US Constabulary (USCON), which was in charge of public security in most of the US-controlled sector. It's structure reflected the new German administrative structures (Länder, Regierungsbezirk, Kreis). It was a quite successful set-up but it is very important to note that this was based on a full occupation situation: Power resided

with the US commanding officers, *not* with local German authorities.⁷ The occupational force did not only perform policing as such, but were also overseeing and in part responsible for the re-establishment of effective and legitimate judiciaries and penal systems. A legitimate, internationally mandated trustee government might combine these functions. There might be situations where the majority of the local population welcomes such an arrangement as the lesser evil, as it for instance keeps war from returning. Still, few people would want such a model to persist for a very long time. First, it easily becomes very costly to conduct, secondly, public support might easily deteriorate. If economic growth, for instance, is delayed for some time, the population might blame the foreign government, and the cry for expelling the foreign occupants might become an easy rallying-ground for local political leaders. The international community will therefore probably be reluctant to institutionalise such regimes. If it chooses to do so anyway, it will probably be in the form of a transitional authority that takes power but from the very first day starts planning for a future withdrawal and reestablishment of a locally founded government.

The purpose here is to underline that the international presence may *either* assist a local government in its law and order functions *or* choose to take over the government, but that *intermediate* solutions easily will prove futile. Involving oneself in actual policing, for instance, including the detention of perpetrators, but then leaving the detainee to the local authorities for punishment, may turn out to be disastrous either for the individual in question, the prestige of the international police force, or both. In Kosovo, no effective judiciary system has developed, hence most detainees are released in spite of ample evidence of guilt. If the international community involves itself in such acts, it must also take the moral responsibility for the future fate of the persons detained. In some settings, this means ensuring that the physical treatment and legal process against a detainee is consistent with international human rights covenants and legitimate local laws. In other settings, the local detainee might actually have committed an offence but is protected by a corrupt or politically governed local court system and hence freed instead of being put to trial. Both situations illustrate the problems of having a police force based on an international mandate and a judiciary and penal system based on local political realities.

4. Experiences from Security Sector Reform in Bosnia and Croatia

At the end of a decade that has seen numerous civil wars as well as internationally-brokered peace agreements, there is an emerging understanding of the role of *security sector reform* as an intrinsic part of any peacebuilding process. So far, CIVPOL has typically been understood as little more than yet another dimension of peacekeeping, closely related, but still separate, from the military side. Increasingly, this view of CIVPOL as a standard component of any peacekeeping operation is being supplemented with a vision of security sector reform as an essential feature of post-

⁷ For a thorough description of the US occupation of Germany, see Hans-Jürgen Schraut (1993): "U.S. Forces in Germany, 1945-1955" in: S. Duke, W. Krieger (eds.), *U.S. Military Forces in Europe. The Early Years, 1945-1970*, Boulder, CL: Westview Press, 1993. Germany was for an infinite number of reasons a different case from Kosovo: First of all, the war was definitely over as Nazi Germany had won. In the case of Kosovo, the Yugoslav government is still in power but has its sovereign control over Kosovo suspended. Secondly, it was made clear to the German population that the allied forces intended to stay for as long as it took to bring peace back to Germany. There was no other option than peace, so to speak. In Kosovo, the duration of the international presence is uncertain.

conflict reform and state-building. A third approach is to see international support for security sector reform as a way to come to grips with transnational problems like the issue of organised crime. The argument is that the international community should engage in the establishment of effective law and order services in the Balkans not only in the interest of peace in the region, but also in its own interest – the alternative is that the region remains a leading exporter of criminal activities to Western Europe.⁸ In other words, to the extent that there is a window of opportunity in influencing the shaping of the future security sectors of the countries in the Balkans, this is a chance Europe simply cannot let go.

The international community has now for a number of years been active in post-conflict security sector reform processes in Bosnia, Croatia and Albania. In particular, the experiences from Bosnia and Croatia merit a closer look in order to see which lessons have been learned so far. To a large extent, the efforts have been concentrated on the issue of policing. Only to a limited extent has the efforts been focused on legal and judiciary reform. Beyond human rights monitoring, the penal system has received the least attention of the whole law and order triad.

Although there have been international police officers serving with the peacekeeping forces in the Balkans since UNPROFOR was established in 1992, the relevant cases for this study are to be found in the operations that were institutionalised *after* the wars in Bosnia and Croatia had been terminated. In Bosnia, an United Nations *International Police Task Force (IPTF)* was introduced shortly after the entry into effect of the Dayton Peace Agreement. The entities that jointly constituted the new Bosnian state commanded existing police forces, on which the future reform process was to be built. These were excessive in size and overly militarised rather than under-resourced, hence an important part of the reform process was actually related to making the police forces smaller and more 'civilian'. Since the Dayton Agreement stipulated that the parties themselves were to perform police functions, the UN's IPTF was not given executive authority. In stead, it was supposed to assist the entity-based police forces (Federation Police and RS Police) in its transformation into modern and decent police services. Thus, they became involved in police reform as well as in traditional 'monitoring' of the behaviour of the local police forces.

Even so, the IPTF quickly came under criticism for not contributing sufficiently to upholding law and order in Bosnia. Formally, this was of course not the mandate the IPTF had been entrusted with, but as it became clear that the local parties were rather reluctant to effectively reform their police forces (and in particular, to steer away from the close link between the political leadership and the police) people began to talk about a *public security gap* existing in post-Dayton Bosnia. The recognition that such a gap actually existed, led to a discussion about the introduction of a 'third force' to be provided by the international community - an instrument in between the military peacekeeping force and the unarmed police observers. This argument was particularly emphasised by American protagonists, who were critical of the slow development on the public security side in Bosnia and Herzegovina. While recognising that there was indeed a 'security gap' between the local police not

⁸ On the international extent of Kosovo-based organised crime, see Holm, Tor Tanke (1999): *Organised Crime and Corruption in the Western Balkans Region*. Contribution to the CPN/EUAELC study on security issues related to Balkan Stability (München: CPN/SWP, forthcoming-99).

performing as expected despite being monitored by the IPTF on the one side, and heavily armed military peacekeeping troops being unprepared for 'policing' functions on the other, critics of the 'third force' idea argued that taking over the policing role from the local authorities is more easily said than done, and it should definitely not happen half-heartedly.⁹ This whole issue is closely related to the issue of sovereignty. In principle, the international community has two possible solutions to this. One can either ask the local authorities to do policing (according to certain agreed principles) or it can take on the role itself. There is no middle ground here. The police have to relate to sovereign power, i.e. either to the national authorities or to an occupational force. Secondly, if the UN IPTF or some other international organisation was to take over the role of policing in Bosnia, it would also have to take over responsibility for the other elements of the triad (judiciary and penal system).

The 'third force' idea was finally dropped. Instead, two developments took place: The IPTF increased the pressure on the local police and, from 1997 onwards, it entered into a much closer co-operation with SFOR in the conduct of their tasks. Examples could be found in joint checkpoint policies, joint patrolling, and in joint operations in disarming the local Special Police. Some battalions even used CIVPOL as advisors when SFOR had to take on crowd control and similar tasks in the grey area between policing and peacekeeping.

The second development came in the form of a re-thinking of what SFOR could actually do *within its mandate*. Originally, the emphasis on *no mission creep* had been very strong. Now, the underlying assumption that the military cannot perform police-type functions was challenged. As a consequence, a *Multinational Specialized Unit (MSU)* was set up within the framework of SFOR and manned with servicemen recruited from the French *Gendarmerie*, Italian *Carabinieri*, Spanish *Guardia Civil* and similar types of services. It should be noted, however, that this is *not* the third force discussed above. The MSU operates within the framework of the SFOR mandate. It is not a police force, but a specialised military force stepping in when the daily tasks of peacekeeping requires it.

One of the lessons to be learnt from Bosnia seem to be that, given a Dayton-type framework (which recognises the local parties as the legitimate rulers of Bosnia) one should not attempt to provide the police function in a foreign country. This would lead to an unhealthy compromise with sovereign authority, and, particularly in the Balkans, one should be aware that the day a third force is established, the international community will be blamed for mostly everything that happens in the country as it takes away much of the responsibility of the parties themselves. The only real alternative is, thus, an occupation or transitional administration, but that was not the model chosen in Dayton.

The experiences from Eastern Slavonia (Croatia) are quite different from those of Bosnia and Herzegovina. In the aftermath of the peace talks in Dayton in November 1995, negotiations were held in the town of Erdut in the easternmost corner of Croatia, more precisely in what was then known as Eastern Slavonia and which today is known as the Danube region. This was the last remaining part of the *Republika Srpska Krajina (RSK)*, which during the war in Croatia used to control as

⁹ Calic, Marie-Janine and Espen Barth Eide (1998): *Was Kommt Nach der SFOR? Politische und Militärische Optionen der Internationalen Friedenssicherung auf dem Balkan*. SWP-AP 3063, März 1997. (Ebenhausen, Stiftung Wissenschaft und Politik).

much as 1/3 of Croatia's territory. The *Krajina* and *Western Slavonian* parts of this self-styled republic had been taken back by Croatian military offences *Flash* and *Storm* earlier in 1995. But now that peace had been brought to Bosnia, there was little international support for further military action in Croatia and as an alternative, a non-violent solution was sought and indeed found in Eastern Slavonia. In what emerged as the *Erdut Agreement*, sovereign control over this part of the country was to be transferred to Croatia after two years, and the RSK should cease to exist. In stead, a UN transitional administration was to run the area in the meantime. Hence, the *United Nations Transitional Administration in Eastern Slavonia (UNTAES)* operation was launched as a *de facto* temporary occupation of Eastern Slavonia. One of its most innovative aspects was the active role it played in the establishment of a *Transitional Police Force* (TPF) consisting of roughly equal numbers of Serbs and Croats. This was to be the real police force in the region, providing an effective police service and thereby contributing to establishing a climate where both returning Croats and the Serbs that did not leave could live together. Despite serious problems underway in establishing such a multi-ethnic police force, the attempt largely did succeed, and what was established as a transitional police force is now integrated into the ordinary Croatian police.¹⁰ It remains to be seen, however, whether its multiethnic composition will survive this shift in the longer run.

What seems to have been the key to the (relative) success in Eastern Slavonia is that the locally recruited police force (TPF) was established directly under the UN's control and in a framework where the UN Operation (UNTAES) was the only real power in the region. The Serbian forces had been disbanded, the structures of RSK abolished, and the military part of UNTAES had effective control over the territory (which after all is rather small and with an easily accessible topography). The Transitional Administrator - serving as a kind of Governor or *vice-Roy* of Eastern Slavonia - was in charge of the entire UN operation, i.e. both the military and the civilian parts of it. Other organisations working in Eastern Slavonia were simultaneously subject to UN coordination.

Thus, the set-up was substantially clearer than the rather messy Dayton model in Bosnia, and this seems to have provided better conditions for police reform in the area. UNTAES was an example of a region that was placed in a transitional situation for a defined period and with a clear and agreed goal: The eventual return of the province to Croatian control. Thus, while it had to pass through the metaphorical waiting lounge, it already had a ticket to its final destination when it entered. The practical task conducted under UNTAES' supervision was the introduction of Croatian personnel into the transitional police force while simultaneously reducing the number of Serb officers by vetting. The aim was to achieve a rough 50-50 situation in order to provide credible security to both the local population groups.

In 1998, the responsibility for internal security was transferred back to Croatian authorities, and a smaller observer group (the United Nations Police Support Group) was established to monitor the takeover and the first nine months of Croatian sovereign control. The 15 October 1998, this task was handled by the OSCE.

¹⁰ See Holm, Tor Tanke: 'UN CIVPOL Operations in Eastern Slavonia, 1992-98' in Tor Tanke Holm and Espen Barth Eide (1999): 'Peacebuilding and Police reform', special issue of *International Peacekeeping*, Vol. 6, no. 4.

5. The Security Vacuum in Kosovo

By June 1999, Kosovo represented an arch-typical *security vacuum* situation. There had hardly been 'normal' policing in Kosovo for more than a decade, since the totally Serbian-dominated Yugoslav police (and in particular the special police, MUP) had been much more oriented towards controlling the local population than in serving them. Still, some rudimentary 'law and order' had resulted even from this starting point. Now, after the withdrawal of all Serbian security forces, there were no local institutions at hand to take care of the public security function. Immediately, a rush began between KFOR/UN and the UCK to fulfil this as well as most other functions related to the civilian administration of Kosovo. While the UN is formally in charge, the UCK and other political forces have the upper hand in several areas, and neither of the two has anything close to full control over the situation. A thin balance is maintained between cooperation and confrontation.

In stead of the expected post-war normalisation, parts of the country have experienced the development of a rather anarchic state of affairs. It should be remembered that Kosovo was not a particularly well-ordered society *before* the war either. The police was an instrument of oppression, and on the other side, strong traditional structures of *kanun* laws emphasising blood revenge and self-styled 'policing' prevailed. The state – whoever was trying to set it up – has never been very successful in Kosovo. What to a certain extent did prove successful was the establishment of a parallel society and a parallel government in Kosovo from 1989-1990 onwards (*the Republic of Kosova*). The current self-styled takeover of public functions, this time by the UCK in opposition to NATO/UN, actually bears some resemblance to the 1989-1998 period of *parallel sovereignty* in Kosovo.

The absence of effective control has led to the continuation of some of the worst patterns of war. It is a repetitive pattern from conflicts around the globe that many warlords of the past become the magnates and political leaders of tomorrow, and Kosovo is only in one aspect an exception from the rule: In Kosovo, those *conflict entrepreneurs* that were active on the Serbian side have largely gone as there is no room for them in the current set-up.¹¹ Those on the Albanian side, however, have actively taking part in the war, and are now demanding their fair share of the victory. While wars, blockades and exceptional situations are devastating for the majority, they create breeding ground for certain types of economic activity that proves particularly effective in the absence of order. The people that benefit from such activities see few reasons to support the re-establishment of effective public control. Past warlords frequently become the *spoilers* of peace processes.¹²

Experience shows that if the internal security challenge is not handled early, these 'old' habits and structures will continue to prevail for a long time, undermining other efforts aimed at enhancing post-conflict settlement. The immediate aftermath of any civil war is the ideal breeding ground for organised crime, revenge attacks, arms proliferation, looting and theft. The structures that emerge may quickly reach a level where it will be difficult to combat them at a later stage.

¹¹ Eide, Espen Barth (1997): Conflict Entrepreneurship: 'On the 'Art' of Waging Civil War' in Anthony McDermott (ed.): *Humanitarian Force*. (Oslo: PRIO report 4/97).

¹² On the phenomenon of *spoilers* in peace processes, see Stephen John Stedman: 'Spoiler Problems in Peace Processes' in *International Security*, Vol. 22:1, Fall 1997

The separation between political power and the greyer shades of the economy is not always very clear in the Balkans. Due to the exceptional situation that has prevailed in Kosovo and Serbia for a number of years, with vast unemployment, a very young population and many types of jobs inaccessible to Albanians, the Kosovar diaspora population is dramatically high. While in no way representative of the majority, it is no secret that some elements within this diaspora have been heavily involved in international organised crime, operating not the least in Western Europe.¹³ Clan- and family ties keep these activities within closed circles and inaccessible to police investigators in the host countries. This has led to a worryingly high level of Kosovar Albanian involvement in international criminal circles. Furthermore, the economic recovery and reconstruction assistance that is beginning to flow into post-war Kosovo and the neighbouring states is becoming a magnet not only for local criminals, but also for Albanian and other foreign Mafia structures. The same thing happened, for instance, in Bosnia and Herzegovina. This threatens to reinforce the political – criminal relationship, and even to bring it uncomfortably close to the international donor community. For these reasons, there is substantial interest in the further developments in Kosovo and elsewhere in the Balkans within international police quarters.

6. Short-to-medium term: UN CIVPOL or KFOR Constabulary?

In the absence of a final settlement, Kosovo is *de facto* occupied by NATO's KFOR and formally administered by the UN through its UNMIK mission. In choosing such a model, the international community has taken a much wider responsibility than it normally does for the future of the province. Even in most of the more ambitious peace support operations that have been launched in the post-Cold War era, the normal 'mode' is that the international presence is in place to keep the war away and to *support* a transition process for which the local authorities are ultimately responsible themselves. This was, for instance, the case both in Bosnia (IPTF) and in Eastern Slavonia (UNTAES).

In the hastily drawn up structure of the UN administration in Kosovo, UNMIK, not KFOR, was to be responsible for the everyday maintenance of public order. KFOR's role in this area was only to establish rudimentary public security at the very outset of its campaign (until the UN could effectively take it over), and then to provide the general climate of security that would make UNMIK's operations possible. The UN was asked to provide an all-purpose civilian police force with full executive authority for law enforcement in Kosovo, and this force should be operational 'as soon as possible'. This is quite a novelty in the history of UN CIVPOL. While the UN has gathered substantial experience in the CIVPOL area, it has concentrated on supporting, monitoring, advising, reporting and training – the so-called *SMART* concept.¹⁴ The UN Secretariat in New York contains a specialised CIVPOL unit within the Department of Peacekeeping Operations (DPKO) that is responsible both for the practical administration of on-going police operations and for

¹³ See Holm, Tor Tanke *op.cit.* and Cilluffo, Frank and George Salmoiraghi (1999): 'And the Winner Is... The Albanian Mafia' in *Washington Quarterly* Vol 22:4 pp. 21-25.

¹⁴ For an overview of a number of international CIVPOL operations during the 1990's, see Holm, Tor Tanke and Espen Barth Eide (1999): "Peacebuilding and Police reform", special issue of *International Peacekeeping*, Vol. 6, no. 4.

contributing to the conceptual thinking around this engagement. Together with most other relevant parts of the UN Secretariat, it has consistently, and probably wisely so, warned against actually taking over the day-to-day policing in the countries where it has been active. This is, in part, based on a number of important lessons learned. First, the contributing countries are never ready to send enough police officers for this kind of service. Personnel shortage is an endemic problem even for regular police monitoring, and attempting to recruit policemen to executive, armed policing was believed to prove even more difficult. Secondly, actually becoming the police of other people's countries has been understood as extremely difficult. UN CIVPOL contingents themselves represent a plethora of police cultures and policing concepts, which was believed to reduce efficiency and increase the danger of armed executive operations. Thirdly, it was assumed that international policemen would encounter overwhelming obstacles when trying to get sufficiently on the 'inside' of the sub-cultures of the country of operation in order to combat mafia-related and other forms of organised crime - or for that sake even petty crime. At the same time, the risk of being subject of revenge if one actually succeeded has been seen as too high to try. Fourthly, there has been a common understanding that if the UN took over this job, it would remove the responsibility from the local authorities, which would prove unhelpful in the peace stabilisation effort.

The well-established UN CIVPOL model was, however, not practicable in the case of Kosovo, where the UN and NATO were to take over a province without any kind of recognised government. Thus, the international community *had* to take on the exceptional job of providing internal security itself. It was, to a certain extent, understood that this was not like Bosnia and Herzegovina. In Bosnia, there were recognised government structures to work with. The issue was, therefore, not one of *whether* but of *how* the international presence in Kosovo should prepare itself for performing this task.

Looking back at earlier examples of international occupations, the function of internal security has been associated with the role of the military occupational force. It is in part surprising, though, that internal security was not understood as an intrinsic element of the role of the KFOR.

Still, a large part of the explanation should be sought within NATO. As the war with Yugoslavia drew to an end, there was little enthusiasm in the alliance about taking on the task of policing. This job can arguably be seen as the most complicated and dangerous one, once the Serbian forces had been forced to leave Kosovo. It is also in this area where the interface with the Kosovars threatens to become most difficult. NATO was already strained internally after the war itself, and did not need new adventures beyond the provision of a peacekeeping force as such. Some NATO members, and in particular the United States, have for years been warning against mission creep in peacekeeping operations like the one in Bosnia and Herzegovina, and the same argument came up over Kosovo. Thus, a concentration on what is understood as more 'military' tasks is the preferred option.

Parts of the explanation should be sought at the UN Headquarters. Under normal conditions, the United Nations secretariat would clearly be sceptical about the proposed portfolio of tasks. For years, substantial pressure has been put on the UN in order to change its attitude from the one represented by the SMART concept to one of actively providing policing itself. The United States, among others, have argued for such a shift in the context of different ongoing operations, whereas UN officials and a

number of member states contributing to peacekeeping operations have warned against. However, 1999 has not been normal for the UN, which feels marginalised by the US and NATO and which steadfastly has been trying to regain a leading role over the handling of Kosovo. In the settlement that ended the NATO-Yugoslav war, the UN suddenly got two major tasks to fulfil: organising the overall civilian administration of Kosovo and the role of police force. In this situation, the 'offer' to take on the police function was hard to refuse.

The OSCE could conceivably have been used as a platform for the police pillar, and it actually did begin to plan for a international Kosovo police force that could substitute its ill-fated *Kosovo Verification Mission (KVM)* experience. But to the surprise of its Chairmanship it was in the end not the body selected. After all, the OSCE's record after this troubled year is not particularly encouraging, and parts of the explanation may simply be that this new policing job was too big for the OSCE at this stage. In stead, the OSCE was charged with the task of establishing a new local Kosovar police force.

It is unfortunate that NATO did not devote more time into discussing the nature of its post-war engagement in Kosovo. Indeed, a more comprehensive role could have been achieved already then. It appears that NATO's understanding of how to work in a peacekeeping environment has improved substantially since the first NATO peacekeeping operation was launched on 20 December 1995 (IFOR). Then, the mantra of 'no mission creep' was the answer to all the questions raised by the civilian pillar of the implementation process, and only gradually, IFOR and later SFOR broadened its outlook to the wider issues involved in long-term peace-building. With KFOR, the understanding that KFOR is in place to help and underpin all the civilian reconstruction efforts was introduced already with the first commander, General Michael Jackson, and continued with the second KFOR commander, General Klaus Reinhardt.¹⁵ Indeed, the whole KFOR operation is in several respects more 'European' than was IFOR, as the American quick-fix approach is much less visible in Kosovo than it was in Bosnia. Significantly, the first two commanders have been European, the force composition of KFOR is overwhelmingly European, and the operational concepts are much more European than American. A discussion about the further Europeanisation of KFOR is underway.¹⁶ This is a better starting-point, but it remains to be seen whether this will do the trick in keeping violent conflict out of Kosovo and the countries surrounding it.

7. Long-term: A Kosovar police force?

The international community cannot be responsible for policing Kosovo forever. A home-grown *internal security sector* - encompassing police, judiciaries and penal system, and representing a codified legal system - has eventually to be developed in Kosovo. The international community should assist in the establishment and formation of such services. There are many technical challenges in this area - who shall foresee the training, who shall select and 'vet' the officers, who shall pay them

¹⁵ General Reinhardt confirmed his vision of a broad and encompassing operation, focusing on supporting the civilian side, in an interview with the author on 7 October 1999, the day before he took over as Commander of KFOR.

¹⁶ The issue of making the *Eurocorps* responsible for KFOR was discussed at the Franco-German summit of 30 November 1999.

and which legal system shall be applied, just to name a few. In contrast to other post-conflict situations, the task is particularly huge in Kosovo, as there is hardly any pre-existing core of officers to build on. Practically all police officers used to be Serbs, and are now out of the province. A new police force must furthermore reflect the ethnic composition of the population, which today is overly Albanian. Most of the ethnic Albanian officers left or were decommissioned during the Serbian purges of Albanians in public service at the beginning of the 1990s. With a few exceptions - officers that served with the Yugoslav police for more than 10 years ago - new cadres have to be identified, vetted, and trained before an authentic Kosovar force is introduced. A specialised institution - the OSCE Police Academy in Vucitrn (Vushtri) - is already in place. It would probably be most cost- and time-effective to concentrate on a *train the trainers* approach, also in order to allow the development of an independent institutional identity. The first group of students are graduated from the School, which anyhow is substantially below schedule compared to the initial aim of producing 3000 local police recruits per year.

There is a clear danger that the important tasks relating to the recruitment, training and formation of a new local police force looses out in the competition for attention and resources in a situation like the one prevailing in today's Kosovo. The problem is that while being of paramount importance for the future, pitfalls and shortcomings on this side are not as visible today and thus will not lead to the same level of media critique as the failure to provide public security in the short term.

But yet again, the overarching problem in this area is not first and foremost an issue of models and resources, but of the same, underlying issue: the absence of a final settlement over Kosovo. The 'law and order' sector has to represent an established political and legal system, the full transfer of authority to competent local authorities is pending on, among other things, a settlement of the underlying political issue: What is to be the future status of Kosovo? Simply put, the new police officers need to know which government they represent, whom they are to report to, and which law to apply, and this has fundamental consequences also for those responsible for training them.

While the OSCE Police Academy is systematically, albeit belatedly, training an embryonic core of police officers, other institutions have also been referred to as pointing in the direction of a future police core as well. The September 1999 agreement between KFOR/UN and the UCK illustrates the point: Here, a *Kosovo Protection Force* (KPF) is established as a follow-up of the now formally disbanded *Kosovo Liberation Army* (UCK) but accounts vary about what it is to be used for: A disaster relief organisation, a reconstruction brigade, the embryo of a local police force, a 'National Guard', or the future army of independent Kosovo. In the difficult negotiations about its nature, much emphasis was placed on the issue of the number of small arms it was entitled to control. In a country where weapons abound anyhow this seems to be somewhat off focus. What remains is that a framework organisation is kept in the place of the old UCK and this organisation can then later be used for a variety of possible purposes, including that of re-establishing a military organisation at a later stage. The shape that the relationship between the Kosovo Protection Force, the embryonic local police force, that is to be trained by the OSCE, and the international security presence will take in the months to come, may become a key to the understanding of the future shape of a home-grown security sector in Kosovo.

8. The Lack of Judiciaries Further Deteriorates Public Security

There is little use, however, in even a well-functioning local police force, if the rest of the legal system is not up to the job. This sector also suffers from the limbo situation Kosovo finds itself in, where neither local authorities nor international administrators are able to perform a number of key public functions. Recent reports conclude that the judiciary sector in Kosovo is basically not working, and that detainees are released without punishment while others are not even brought in for questioning. The lack of legal response seems to have led to even more violence, killings, and criminal activity, while reducing the general perception of a 'sense of security' among the population in general and the minorities in particular.¹⁷ A recent report from the *Lawyers Committee for Human Rights* finds shortcomings across the board in this sector: It points at constraints, interferences and pressure against the rudimentary new justice system, to impartiality on behalf of certain judges, whereas others abstain from sentencing people because of fear of the consequences, a continued disunity on which version of Yugoslav legal code to apply (pre-1989 or current), non-payment of salaries and general lack of resources – just to name a few.¹⁸ UN sources admit that over 40% of the detainees are released more or less immediately, and only 24 individuals have made it to a courtroom trial while several hundreds have been arrested, and all of them have been in Prizren, which is the only city in which a system of judges is actually working.¹⁹ Even if street policing improves, there is little hope of improvement in the general law and order situation as long as this sector remains in crisis.

9. A regional challenge

So far, I have focused on the situation internally in Kosovo. None of the issues discussed above are, however, unique to Kosovo. The entire Western Balkans region is characterised by a whole series of intertwined challenges, many of which can be meaningfully met only at a regional level. While politicians build borders and obstacles to normal inter-regional trade, criminal networks extend throughout the region as well as beyond. Attempting to combat crime in one country on its own only solves part of the problem. Beyond assisting in the security sector reform process as such, with the aim to help establish both effective and legitimate security sector triads at a country level, one of the most relevant contributions international actors can make lies in the support for international crime prevention efforts throughout the region. The challenge will be to help the emerging national authorities to communicate, share information, and cooperate in the investigation and prosecution of international crime. The 'window of opportunity' that is provided by the fact that the national authorities in most of the countries in the region currently allow for an international participation in the security sector should also be used to establish as good working relations as possible to the services working in this area. This might be a very fruitful way to get to grips with the high level of crime spillover that flows from the Balkans and westwards. This seems to be a suitable task for Europol, which therefore should be

¹⁷ International Crisis Group: *Violence in Kosovo: Who's Killing Whom?* IGC Balkans Report #78, Pristina, 2. November 1999.

¹⁸ Lawyers Committee for Human Rights (1999): *A Fragile Peace: Threats to Justice in Kosovo and A Fragile Peace: Laying the Foundations for Justice in Kosovo* (Washington, Lawyers Committee for Human Rights).

¹⁹ 'In Kosovo, Legal Crisis Hampers Prosecutions'. *Washington Post*, December 5 1999.

brought more directly into the efforts already provided by the UN and the OSCE in this area.

10. Conclusion: Time for Reconsideration?

Half a year into the UNMIK/KFOR operation in Kosovo, several signs indicate that the international efforts after the conclusion of the war have been largely unsuccessful, at least if judged by the hopes and aspirations for the future of Kosovo expressed in Western circles during the recent war. In this paper, I have argued that in the law and order area, as well as in several other important sectors, the absence of a final settlement and a vision about the way forward have had a dismal effect on the development both of local capacities in this area and on the ability and willingness of the international presence to perform its duties effectively. At one level, the conclusion is that the process towards a political settlement has to be speeded up. That is, however, easier said than done, given the current situation in Kosovo as such, as well as in Yugoslavia in general. The other conclusion is that a major review of the entire international effort in Kosovo is required.

With UNMIK, a whole set of new ideas and concepts concerning international police support were introduced. This was not the culmination of a long-term process of lessons learned and an international debate on possibilities and limitations, but an *ad hoc* attempt to respond to novel challenges. This is, often, the nature of political decisions and there are cases when there is no alternative at the time. The more important is the mid-term review: As the model applied to Kosovo is one that is never tested before, it should come as no surprise that it does not develop exactly as the proponents expected in the high-stress situation surrounding the initial deployment. Institutional prestige, however, easily comes to undermine such assessment efforts, as key individuals may feel that criticising the concept is equal to criticising them. Intra-institutional politeness in the public realm, combined with infighting and criticism in closed quarters, are unfortunately parts of the game of complex international involvement in peace processes. Thus, rather than stimulating oversight and periodical reassessment, the outcome is that the institutions defend their turfs and their prerogatives once they have achieved them.

The steady flow of bad news about the security situation in Kosovo may, however, make a fast reassessment unavoidable. On the issue of short- to medium-term policing, this may take two alternative paths. The radical path would be to recognise that the ambition of sending an all-purpose civilian police force for Kosovo, which would be an effective guarantee against further ethnic violence and escalation of crime, was overly ambitious, and hence hand parts of the task over to KFOR. This would mean that KFOR became a more 'normal' occupation force which recognised its duties in the public security field. In effect, this is to a large extent already the situation in several KFOR sectors.

Obviously, such a formal extension of KFOR's role would require substantial reorganisation of its military organisation. Ordinary soldiers are not trained as policemen. To a certain extent, existing units could be more effectively used for general patrolling, crowd control, etc. Still, new elements would have to be introduced into KFOR, as effective policing also requires investigation, prosecution, and police intelligence skills. While some KFOR contingents already have units with civilian police experience (Carabinieri, Guardia Civil, Gendarmerie), other troop contributors might consider recruiting police experts at home and introduce them as advisers and

specialists into the KFOR chain of command. A Constabulary Unit, resembling the one provided by the US in post-1945 Germany, could be placed under the control of the Commander of KFOR, as his key asset in the public security area. Various synergetic effects could come out of such a set-up. First, KFOR already controls substantial manpower that is already involved in daily patrolling etc. Now, this work could be more closely related to the public security role. Secondly, unlike UNMIK, KFOR includes a large intelligence apparatus, which in the conduct of its regular duties relating to strategic assessment, force protection etc., produces 'surplus information', which the authority responsible for policing could use (today they cannot have this due to its NATO classification). Thirdly, the Constabulary would be better placed than UNMIK to draw on the overall authority of KFOR when necessary, both in a psychological and in a physical sense.

The moderate version is that the current division is maintained, but that co-operation between KFOR and UNMIK police is dramatically improved. The traditional UN CIVPOL approach of lumping people together all down to the lowest unit level works fine for monitoring, but presents serious shortcomings for executive police duties. National UNMIK police units could be co-located together with their national police contingents, a close liaison established between the military and the police contingent commanders, and *de facto* cooperation might be significantly improved. This 'moderate' rearrangement could be easier to achieve, as it can happen within the scope of existing mandates rather than by reshuffling the overall responsibilities.

It should be remembered, however, that whatever the solution found with respect to international provision of law and order, this can not be more than an intermediate solution. It should merely be an attempt to stabilise the situation in the period that Kosovo remains in the 'waiting lounge'. In the long run, a local internal security system must take over the responsibility, and there is an urgent need to enhance the efforts in this area. The OSCE Police Academy has been able to graduate its first students but still it lies far behind schedule, and the UNMIK Police may have had too much to do within its attempts to perform everyday policing in order to concentrate on the other very important part of its job: To assist in the development of a local police force, which has to be selected, trained, equipped and monitored. A partial liberation of the executive part of its mandate could improve UNMIK's capacity to concentrate on this long-term effort. It might even prove to be a benefit that there is a certain separation of tasks between the force providing day-to-day internal security and the one responsible for the development of local capacities.

Furthermore, substantially more attention must be given to the other legs of the internal security sector, i.e. the development of independent judiciaries and penal systems. All the efforts on the policing side will be in vain if performance within these sectors are not radically improved. This would also have to form part of a comprehensive reconsideration of the nature of the international effort in Kosovo.

Markku Suksi

CONSTITUTIONAL OPTIONS FOR SELF-DETERMINATION: WHAT WORKS?¹

1. Background

U.N. Security Council Resolution 1244(1999) deals with the situation in Kosovo and refers to the need to develop self-government and/or substantial autonomy in that region. However, most inhabitants of Kosovo would probably prefer an independent State because they for understandable reasons oppose living under Serb rule. In fact, many Kosovars see the withdrawal of Serb forces, negotiated as part of the settlement that ended the war, as opening the way to statehood. Nevertheless, secession is not what the S.C. Resolution and the settlement with Yugoslavia provides. While it is possible that the international community might eventually change its mind, at the moment it seems to prefer finding a way to implement the settlement embodied in S.C. Res. 1244 (1999) rather than nullify it by embracing, at this stage, statehood for Kosovo.

The resolution does not at all refer to any self-determination that could be exercised by any population in the territory of Kosovo, but departs from the understanding that the Federation of Yugoslavia is in the possession of its sovereignty and self-determination, as initially restricted by the action of the international community. The issue is, therefore, the extent to which the self-government or autonomy in Kosovo can be viewed as constituting a share of the self-determination of Yugoslavia. Or, even more specifically, what kind of a share in the internal self-determination of Yugoslavia should be accorded to Kosovo by means of an institutional arrangement that involves self-government and autonomy and how should this take place? This paper is rather long precisely because the combination of self-determination with constitutional options in the topic, given to the author by the organisers of the Conference, introduces elements that complicate the review of the constitutional issues.

A set of questions have been presented for further inquiry against the background of self-determination: 1) what kind of efforts exist to fashion constitutional arrangements in other divided polities; 2) what formulas have shown some success at reconciling a group's self-determination *vis-à-vis* a larger entity, that is, what are the ingredients of success and the reasons for failure, 3) and under what circumstances? 4) How have international institutions and arrangements supported or subverted the success of those models? 5) What are the points of contact between self-determination on the one hand

¹ This paper relies heavily on previously published works by the author, such as Markku Suksi (ed.), *Autonomy – Applications and Implications*. Dordrecht: Kluwer Law 1998, Markku Suksi: *Frames of Autonomy and the Åland Islands*. Meddelanden från Ekonomisk-Statsvetenskapliga fakulteten vid Åbo Akademi, Ser. A:433. Åbo: Åbo Akademi, 1995, Markku Suksi, 'The Åland Islands in Finland', pp. 193-220, in *Local Self-Government, Territorial Integrity and Protection of Minorities*. International Colloquium, Lausanne, 25-27 April 1996. Zürich: Schulthess Polygraphischer Verlag, 1996, and Markku Suksi, 'On Mechanisms of Decision-Making in the Creation (and Re-Creation) of States – with Special Reference to the Relationship between the Right of Self-Determination, the Sovereignty of the People and the *pouvoir constituant*', pp. 426-459 in *Tidsskrift for Rettsvitenskap* 3/97.

and self-government in the form of autonomy or federalism, on the other? What kind of parallels can be drawn to the situation in Kosovo? We will, however, not try to answer the question whether the Kosovars possess a right of self-determination, but only concentrate on the institutional issue. The purpose of this paper is hence to explore the interface between the concept of self-determination at the level of international law and the institutional solutions for its realisation that are available at the level of national constitutional law.

The paper starts with the issue of self-determination at the level of international law and proceeds thereafter to conceptualise the constitutional options for different institutional arrangements. In the latter context, the position of three European structures in respect of sub-State entities is indicated. Two case studies are used to explore the contents of sub-State arrangements in situations, which in one way or another involve the issue of self-determination. The case of the Åland Islands is often referred to as a success story in the field of international conflict resolution and seems to have produced a stable institutional solution. The case of Russia and especially the Republic of Tatarstan as a part of the Russian Federation is an example of a recent attempt to institutionalise self-determination at the constitutional level. Finally, a few remarks will be given concerning the issue of "what works".

2. Institutional options for internal self-determination under international law

Self-determination is a multi-faceted term. As an element of the international legal discourse it can be located in a narrow form already in the Versailles Peace Treaty after World War I, at which point it mainly concerned border adjustments between States by means of the referendum or other forms of popular consultation. Here the point was that a minority in one State could, in some instances, choose the sovereignty under which to live. In most cases, the other State was one where the majority population was of the same "ethnicity" as the minority population in the area in which the referendum was organised.

A broader notion of self-determination emerged after World War II, and it seems as if it would have developed itself into a concept that is able to establish a bridge between constitution-making at the level of national constitutional law and the protection of certain rights accorded at the level of international law. On the latter level, self-determination has been formulated as a legal right that contains such concepts as the free determination of the will of the people and the people's right to political participation. The principle of self-determination focuses not only on the immediate national setting, but complicates the picture by adding to the scene a number of options provided under public international law and especially under human rights law. However, self-determination is rarely a term under national constitutional law. It seems that in the OSCE area, only the legal order of Moldova contains an institutional arrangement that connects autonomy with self-determination. Namely, Section 1 of the Law on the Special Status of Gagauzia, an organic law adopted on the basis of Article 111 of the 1994 Constitution of Moldova, stipulates that Gagauzia is "an autonomous territorial entity with a special status as a form of the self-determination of the Gagauz, forming an integral part of the Republic of Moldova". The Gagauz, of Turkish origin but with the

Orthodox Christian faith, are hence recognised, at least under the national legal order of Moldova, as a distinct people entitled to certain institutional arrangements.

In the context of international law, the position of the people is encapsulated in the concept of self-determination and its two sub-categories, external and internal self-determination. The former refers to the existence of a State as a sovereign subject of public international law and is widely recognised as a peremptory norm of international law. The latter is used to refer to sovereign states in a number of ways, for instance, in the sense that the population determines by means of elections the composition of its government. It may also refer to different autonomy or sub-state arrangements within the borders of sovereign states and even to the freedom for a minority from oppression by the central government.

The doctrine of self-determination was at least originally used to undermine the right of acquisition of territories by means of conquest, which seldom paid any attention to the interests of the people living in the territory in question. The idea was first built in to Article 1, Sub-section 2, of the Charter of the United Nations and developed, for instance, by Resolution 1514(XV) of the United Nations General Assembly in 1960 that includes a Declaration on the Granting of Independence to Colonial Countries and Peoples. Sub-section 2 of the Declaration affirmed that *all* peoples have the right to self-determination, on the basis of which they freely determine their political status and freely pursue their economic, social and cultural development.

The forcefulness of the principle of self-determination was boosted by the inclusion of self-determination in Common Article 1 of the 1966 UN Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. According to that Article, *all* peoples, not only those under colonial domination, have the right of self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development. The two Covenants clearly state the existence of the concept of self-determination as a right under public international law. It seems as if it were considered a collective right that can be viewed as a precondition for the realisation of most other human rights.

The realisation of the right of self-determination has consequences both at the level of international law and national law. *First*, a people in an established State shall not be subjugated by another State (non-interference and territorial integrity). This is actually an understanding of self-determination that relates to the principle of the sovereignty of States and protects State sovereignty. *Second*, if there is a subjugated people, it shall have the right to free itself and become independent. This was especially the case with colonies after World War II and relates to de-colonisation. *Third*, a people's right to self-determination can be understood as a right of (a certain part of) the population to choose the State under which authority they live. This was a common concept with respect to territorial changes after World War I and, it should be stressed, concerned almost exclusively areas inhabited by a minority population. In most cases, its purpose was to facilitate the integration of a minority population in one country into the population of the kin-State. As sub-categories of territorial self-determination may be mentioned the possibilities of the population to attain autonomy, and perhaps even the option of secession. *Fourth*, there seems to exist a right of a people to create, and perhaps re-create, their own political system, a right which is more or less overlapping with the concept of

the *pouvoir constituant*. *Fifth*, self-determination is in conjunction with Article 25 of the UN Covenant on Civil and Political Rights often referred to as the right of the people to participate in government and determine the content of policies. The first and the second category relate to external self-determination, while the fourth and the fifth category mainly denote internal self-determination in its various manifestations. The fourth and the fifth categories also conform with the main interpretation of the exercise of self-determination in a post-colonial situation, which is that the reference to the right of self-determination of all peoples is a reference to the total populations of the existing States regardless of their internal sub-divisions. The third category may be viewed as a special or perhaps as an intermediate case. The third, fourth and fifth categories are particularly relevant for national constitutional law and necessitate substantial legislative action at that level.

The UN Declaration on Friendly Relations of 1970 recalled the existence of the concept of self-determination and, more importantly, accounted for the modes of implementing the right of self-determination by a people. These modes are:

- a) the establishment of a sovereign and independent State;
- b) the free association or integration with an independent State; and
- c) the emergence into any other political status freely determined by a people.

Hence self-determination is still, in line with the post-World War I situation, a determination of sovereignty over people under certain forms, but the broader legal concept is not only designed for a minority so that it can choose the sovereignty under which it will live, but it is designed so as to make possible the creation of a new State or sovereign for the population on the one hand and the integration of the population into an existing State or sovereign on the other. In so far as the exercise of self-determination is a determination of under which law, that is, under which sovereignty, a people will live, then the constitutional devolution of legislative powers to sub-State entities is simultaneously a limited devolution of both sovereignty and self-determination to such an entity. It is submitted here that the concept of self-determination exists parallel to sovereignty and that the culmination of both self-determination, especially in its internal form, and sovereignty in its internal form, is the exercise of the highest decision-making authority over a certain territory. Hence, just as law-making powers of autonomies are a devolved part of the internal sovereignty of the country in question, the law-making powers of autonomies may constitute a devolved part of the internal self-determination of a country. Hence exclusive law-making powers granted to a sub-State entity can be viewed as constituting a share in the internal self-determination of that State. This conclusion would, however, be valid under international law only in so far as devolution has concerned peoples or at least certain distinct groups or populations. It is thus possible that an autonomy arrangement becomes, if it is accepted by the population or group in question either through their representatives or directly through the referendum or through long-time practical acceptance, an exponent of their self-determination and wins legitimacy under international law so as to be protected under international law. Such protection under international law would involve a prohibition of the weakening of the autonomy arrangement against the will of the population concerned.

International law is, however, careful in pointing out that the exercise of the right of self-determination shall not be disruptive of the territorial integrity of the existing

States, and at a European level, this is sustained by the principles contained in the various OSCE principles adopted by the participating States. According to public international law and under certain conditions provided therein, the Security Council of the UN is the only body that can authorise actions by the international community or by third States that are in breach of the sovereignty of a State and of its territorial integrity.

The constitutional consequences of the realisation of these categories of self-determination are manifold. The establishment of a sovereign and independent State means that a moment of exercise of self-determination takes place. This moment is apparently simultaneously of a pre-constitutional character and can be described in terms of the *pouvoir constituant*, which may contain in itself the adoption of a constitution for the new State or result as a consequence in another constitutional action at which the constitution is adopted either by means of a referendum or through an elected assembly. This parallelism between the exercise of self-determination to create a new State and the exercise of the *pouvoir constituant* is necessarily not a feature that has drawn much attention from the international community. Whereas international law grants the right of self-determination and is interested in its realisation, it has had very little to say about the next step, that is, about what should take place after the exercise of self-determination. How should the new State be organised? Should its method of governance be democratic? Of course, if the exercise of self-determination is democratic according to the UN criteria, it could perhaps be assumed that the emerging State, too, will be democratic. However, a more legal link to the participation of the people in a democratic manner is established if Common Article 1 is read together with Article 25 in the CCPR, which further on involves at least the adjacent political rights of expression, association and assembly as well as equality and non-discrimination. Hence human rights law can today be interpreted so as to require the enactment of the first constitution of a new State with at least these rights. During the past decade, the international community has, in fact, been involved in the State-creation processes in a number of places. The UN was very active in Namibia and gave, by means of incorporating the document into a UN decision, a certain legitimacy to an internal agreement between the parties in Namibia on constitutional principles and on the adoption of the constitution. The elections in 1989 under UN supervision to the constitutional convention, the enactment of the Constitution of Namibia on 9 February 1990, and the formal Declaration of Independence on 21 March 1990 illustrate an interesting path of decision-making that combines the right of self-determination at the level of international law and the *pouvoir constituant* at the national level. The international community is also actively involved in Bosnia and Herzegovina through the Dayton Agreement, which creates the country as a federal State with a number of institutions that have been designed against the background of democratic concepts. The existence of sub-state entities or units of governance that have their own and exclusive legislative powers is one part of the Bosnian solution.

What would paragraph b) mean in constitutional terms, that is, what is implied by the possibility of a people to free association or integration with an independent State? Firstly, it would seem to mean that there exist two different entities, a people that wants to associate or integrate with an existing State and a State that is willing to receive such a people. Secondly, in harmony with Principles VII-IX of UN General Assembly Resolution 1541(XV) of 1960 on the Principles which should guide Members in

determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter, that is, principles concerning Non-Self-Governing Territories, it seems that association with an independent State implies a confederal or at least a loose federal constitutional setting in which the associated territory retains the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. Such a people shall continue to have the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes, a freedom that may actually amount to a right of secession or lead in the other direction, towards various forms of closer relationship with the "receiving" State. The constitution of the confederation should probably contain a provision establishing the right of secession. Integration is clearly more far-reaching and may even be interpreted as the creation of a unitary State, because the peoples of both territories should, according to these Principles, have equal status and rights of citizenship and equal guarantees of fundamental rights without any distinction or discrimination. Both peoples should, according to the Principles, have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government.² Representative government and effective participation are hence the objectives of international human rights law.³

Between these extremes that could be chosen by a people in the exercise of their self-determination, that is, an independent State or a State in a confederation on the one hand and a unitary State on the other, there seems to remain a sphere of constitutional options that are covered by point c) in the Declaration on Friendly Relations, namely the emergence into any other political status freely determined by a people. This is a position that could cover all constitutional solutions ranging from a federation through various kinds of autonomy arrangements and arrangements of devolution to cultural autonomy. However, there does not seem to exist much guidance at the level of international law as to what kind of institutional arrangements point c) exactly covers. This is not surprising, because public international law normally leaves the organisation of the national administration at the discretion of the State and establishes in the best of situations only principles that should be implemented by the national administrations, which is quite

² The requirement of effective participation was in 1992 introduced in the U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (G.A.Res. 47/135(1992)). Article 2.2. of the Declaration emphasises the right of the persons belonging to minorities to participate effectively in cultural, religious, social, economic and public life, while Article 2.3. stipulates that persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

³ It is in this respect interesting to point out that General Recommendation No. 21 of the CERD Committee (U.N.Doc. CERD/48/Misc. 6/Rev. 2/1996) distinguishes between internal and external self-determination of peoples and holds that there exists a link between internal self-determination and the right of every citizen to take part in the conduct of public affairs at any level, as referred to in Article 5(c) of the CERD. In its General Comment on Article 25, Par. 2, of the CCPR, the U.N. Human Rights Committee makes a somewhat similar connection between Common Article 1 and Article 25 of the CCPR (U.N.Doc. CCPR/C/21/Rev. 1/Add. 7(1996)).

different than the requirements in human rights law concerning, for instance, courts of law.

The conclusion is, however, that public international law can, under the right of self-determination, tolerate almost any institutional arrangement at the sub-state level, provided that the people concerned has determined its status in a free process. Concerning the term "autonomy", which term was used for the sub-state status of Kosovo under the 1974 Constitution of Yugoslavia until 1989, we can probably still agree with the view of Hannum & Lillich, according to which autonomy could be viewed as "a relative term which describes the extent or degree of independence of a particular entity, rather than defining a particular level of independence which can be designated as reaching the status of 'autonomy'".⁴ However, it should be kept in mind that no express right to autonomy or to federalism is created at the level of general international law. To the extent the right of self-determination has any effect at all for the internal legal orders of States, it may imply that a sub-state arrangement, for instance, an autonomy, is protected under that right, provided that the beneficiary of the arrangement is a distinct people. This may be the case, for instance, concerning the Gagauz in Moldova, *supra*. In other respects, the institutional solution is entirely in the hands of the constitution-maker of the State. This does not preclude the possibility that a State agrees in a special treaty to create a sub-State entity. Such a deal was stricken between Italy and Austria in Paris Peace Treaty of 1946, in which Italy agreed to "grant autonomy coupled with measures for the cultural identity of the German-speaking minority"⁵ for South Tyrol.

However, the Kosovars have been denied both representative government and effective participation through the actions that started in 1989. At the moment, the international community is in the process of designing legal mechanisms through which Kosovo could re-emerge as a part of the Federal Republic of Yugoslavia. According to U.N. Security Council Resolution 1244(1999) of 10 June 1999, the aim of the international community is to promote "the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo," taking full account of annex 2 in the Resolution and of the Rambouillet accords (S/1999/648). Annex 2, in turn, starts "[a] political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions". A position as an international protectorate reminiscent of the position of the Free City of Danzig on the basis of Articles 100-108 of the Versailles Peace Treaty between the Allied and Associated Powers and Germany should thus be excluded, so also a situation which the Saar had after World War I and World War II. Hence the discussion concerns institutional

⁴ Hannum, Hurst & Lillich, Richard B., 'The Concept of Autonomy in International Law', in Yoram Dinstein (ed.), *Models of Autonomy*. New Brunswick, London: Transaction Books, 1981, p. 249.

⁵ Schreuer, C., "Autonomy in South Tyrol", in Yoram Dinstein (ed.), *Models of Autonomy*. New Brunswick and London: Transaction Books, 1981, pp. 53-65.

solutions within the Yugoslav constitutional setting to restore representative government and effective participation for the Kosovars.

What could be a somewhat comparable situation is the position of the Memel Territories in Lithuania after World War I. Under Article 99 of the Versailles Peace Treaty of 1919, Germany ceded Memel to the Allied Powers and promised to accept any settlement concerning the status of Memel. The territory, inhabited by Germans, Jews and Lithuanians, was put under the administration of France and was some kind of a protectorate of the League of Nations, but Lithuanian troops occupied the area in 1923. A council of ambassadors of the Allied designed a new status for the territory which made Memel an autonomous region within Lithuania with its own representative body that possessed some legislative powers. In 1938, the National Socialists won the elections in Memel, and in 1939 Germany demanded the return of Memel to Germany, with which demand Lithuania complied. Here, the international community had an active role under the established rules of international co-operation, but the promising development of the autonomy arrangement was interrupted by World War II.

3. Conceptualisation of the constitutional options (unitary State – autonomy – federation) and the relationship between the European institutions (OSCE, CoE, EU) and sub-State entities

The unitary State has long been regarded as the principal form of State. A unitary State is a State in which all legislative powers are vested in one legislature at the national level and in which no delegation of exclusive legislative powers or even significant devolution of specifically delineated regulative powers exist. In Europe, for instance, Sweden could be an example of a pure unitary State.

However, at the moment, more than half of the countries in Europe are not totally unitary States, because they display features of devolution of regulative powers or of delegation of legislative powers either to self-governing regions or autonomous territories (e.g., Great Britain and Italy) and because a number of them are federal States (e.g., Germany and Austria). Hence the polities are much more varied than one might think at a quick glance and provide evidence of human inventiveness through the different forms of sub-state entities.

A core definition of a federation can contain two different elements. Firstly, the federal legislative body is organised so as to provide for equal representation of the constituent states of the federation in one chamber of the legislature, while the other chamber is normally directly elected by the inhabitants of the constituent states in a way which guarantees the proportional representation of the population in the federal legislature. Hence the "upper house" displays a symmetry by granting an equal number of seats to all constituent states, while seats in the "lower house" are distributed according to the number of inhabitants in the several states. Secondly, in a federation, the federal legislature and the central authorities have enumerated powers, which means that they are in the possession of special competencies or certain specified functions that, at least in theory, have been transferred to the federation by the constituent states. The latter, in turn, remain in the possession of the residual competencies, which allows the characterisation of the basis of their powers as a general competence. Hence the constituent states are

empowered to deal with all the matters which are not explicitly reserved to the federal level. The idea underpinning the distribution of powers between the federal level and the state level and actually the whole definition of the federation is that the constituent states have retained at least some traces of their original sovereignty, albeit in a way profoundly circumscribed by the federation. For instance, the amendment of the federal constitution would, as a general rule, require the participation and consent of the constituent states. (In a confederation, the constituent States would retain a much more substantial part of their sovereignty.) In Europe, the following countries can be described as federations: Germany, Switzerland, and Austria as well as Belgium and Russia, which, however, display certain features that modify their federalism. Nevertheless, federalism is normally a fairly symmetrical mode of organisation.

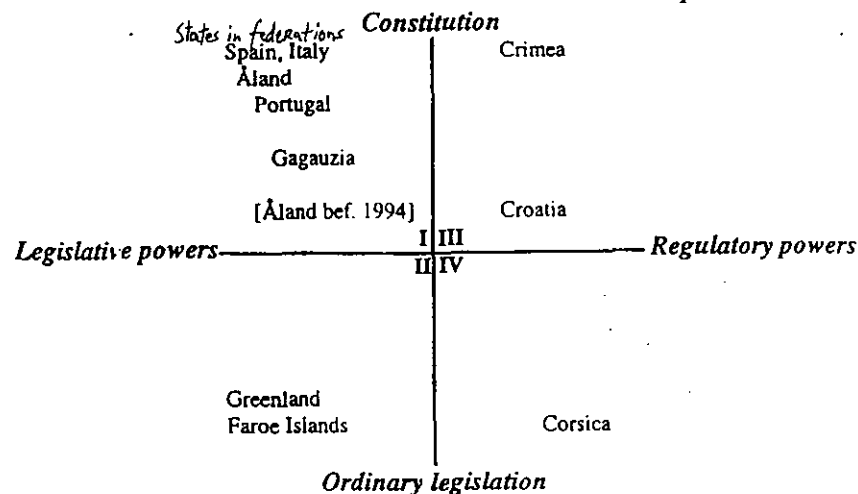
There does not exist any solid theory about autonomy or devolution, perhaps because autonomy arrangements are often very pragmatic *ac hoc* solutions that escape generalisations. However, if a provisional definition of autonomy were to be developed, the relationships between the central level and the sub-State level would be turned upside down. Firstly, the legislative body of the State would normally not consist of any organ, which would incorporate the official representation of the sub-State entity, although the inhabitants of an autonomous region might be granted a certain number of seats in the legislative body filled by means of elections in that particular constituency. Hence at the same time as the inhabitants of the autonomous territory have the right to elect their own self-governing bodies they participate in national elections on an equal basis with the other citizens of the State. This seems to be the idea incorporated in the Rambouillet Accords. Secondly, as concerns the powers held by the autonomous sub-State entity, the legislative powers would be enumerated and specified so that a special competence is created for the sub-State entity in certain fields, while the central government and the legislature of the State would at least in principle retain the general legislative competence or the residual powers. The idea underpinning this characterisation is that the sub-State entities do not possess any original sovereignty: they are constitutionally created and defined entities entrusted with powers transferred to them by the central state. Such autonomies would normally not have any great influence in, for instance, amendments to the national constitution, at least not in cases that do not affect the autonomy arrangement. The issue of legislative powers is crucial for the understanding of autonomies and their functioning. These powers constitute, at the level of the State, the core of the internal sovereignty of the State. Making laws is equal to the effective exercise of power over the territory of a State. In states where autonomies exist, a share of that internal sovereignty may have been devolved under the constitution of the country in such a way that both the legislature of the State and the legislature of the autonomous entity have exclusive legislative powers even in relation to each other, although they may also have concurring jurisdictions.

In Europe, at least the following countries create varying degrees of autonomy in their legal order: Finland, Denmark, Great Britain, France, Spain, Portugal, Italy, Ukraine and Moldova. Not all of these entities are created as exclusive legislative jurisdictions, but remain as jurisdictions with a certain measure of regulative powers. At least in Spain, where by the way Article 2 of the Constitution formulates a right to autonomy, the "autonomisation" of the country is so far-reaching that it approaches a federative

arrangement. Autonomy arrangements introduce an asymmetrical element in the governance of the country. This is the case, for instance, in respect of the United Kingdom, where three distinct territories, Scotland, Wales and Northern Ireland, display a varying degree of devolution organised in form of self-government. The Northern Ireland arrangement, agreed upon in April 1998 between the parties to the conflict, there among the United Kingdom and the Republic of Ireland, was brought into force through an Act of the Parliament of England on 2 December 1999. The arrangement is actually to a certain extent a re-introduction of self-government of the kind that existed between 1921 and 1972. The significant feature of the British devolution is, however, that the law-making powers vested in the popularly elected assemblies of Scotland and Northern Ireland should conform to the Acts of the English Parliament according to the principle of the sovereignty of Parliament. Hence, in the absence of a formal written constitution, there exist no such exclusive legislative powers in the UK, which would be independent of the legislative powers of the Parliament of England. It should nevertheless be remembered that at least some of the States that contain autonomy arrangements, such as Italy, define themselves formally speaking as unitary States.

On the basis of Article I.5(a) of the Rambouillet Accords, the Legislative Assembly of Kosovo seems to have such enumerated legislative powers. However, under Articles I.3 and I.4, the powers of the Federal Republic of Yugoslavia and the Republic of Serbia are enumerated, too, which does not conform to our provisional theory of autonomy (see above). Hence it seems that there will exist three different legislative powers in Yugoslavia which all have exclusive law-making powers in relation to each other in areas that are enumerated in the Rambouillet Accords.

Jurisdiction of a legislative or a regulative kind has, as indicated above, been created in sub-State entities in many countries, and the results of such activities have produced a number of federal states and states with autonomies. The powers accorded to the sub-State entities are of a varying character and vary from case to case according to the specificities of the aims to be achieved displayed by the arrangement. The various sub-State arrangements do not seem to follow any general pattern. For instance, the minority protection component is not present in all the sub-State arrangements, not even in all of the autonomy arrangements. The variation in the creation of the arrangements is particularly interesting in respect to the norm-hierarchical level at which any sub-State arrangement is established. The combined variation in the powers of the sub-State entities and the level of legislation is illustrated in Table 1, *infra*.

Table 1.: The constitutional variations sub-State entities in Europe⁶

It is possible to conclude on the basis of the dimensions in the Table that all constituent states in the European federations can be placed in Section I of the Table. Furthermore, it is possible to conclude that at least those autonomies that have been placed in Section I are autonomies proper. These entities are organised on the basis of the national constitutions of their respective "host-countries", and special jurisdictions involving exclusive law-making powers have been created for them against the background of the national constitutions. The material fields of activity they possess vary a lot, but because they are entitled to make laws of their own, they exist within the ambit of Article 3 of the First Protocol to the European Convention on Human Rights (free elections at reasonable intervals by secret ballot). They may also, on the basis of their legislative powers, be able to enact such restrictions to the rights and freedoms guaranteed by the ECHR which are allowed by the various Articles of the European Convention.

Entities in Section II of the Table lack the formal constitutional delegation of law-making powers, but they nevertheless make their own laws, in this case on the basis of ordinary legislation adopted by the parliament of the State. From a formal point of view it could perhaps be possible to exclude them from autonomies proper, but the powers they exercise in spite of this make them, for all practical purposes, autonomies.

Although the entities in Section III have a certain constitutional basis, it would, however, seem as if their powers were of a non-legislative kind, limited to regulative or administrative jurisdiction and subordinated to ordinary legislative powers of the country concerned. Here the use of the term "autonomy" could already be qualified. Section IV represents cases which perhaps should not be discussed in terms of autonomy, but rather as special administrative regions.

It is difficult, on the basis of the 1974 Constitution of the Socialist Federal Republic of Yugoslavia, to fit in the "revoked" Autonomous Province of Kosovo in the Table. On the basis of Article 1 of that Constitution, the State was a community of voluntarily united nations and of their Socialist Republics and of the Socialist Autonomous Provinces of Vojvodina and Kosovo. Kosovo was, under that Article,

⁶ Markku Suksi, 'On the Entrenchment of Autonomy', in Markku Suksi (ed.), *Autonomy – Applications and Implications*. Dordrecht: Kluwer Law International, 1998, p. 169.

regarded a constituent part of the Socialist Republic of Serbia. Article 4 of that Constitution tried to explain what an Autonomous Province is: it is an autonomous socialist self-managing democratic socio-political community based on the power of and self-management by the working class and all working people, in which the working people, nations and nationalities realise their sovereign rights, and when so specified by the Constitution of the Socialist Republic of Serbia in the common interests of the working people, nations and nationalities of that Republic as a whole, they do so also within the Republic. Hence the details of the autonomy of Kosovo were dependent on the Constitution of Serbia. However, the level of regulation of the position of Kosovo was clearly constitutional. At the same time, the powers accorded to Kosovo were probably (and please note this is pure speculation) such that they should not be exercised against the constitutions of Yugoslavia and Serbia or even the laws of Yugoslavia and Serbia. Therefore, the powers of Kosovo were, until their revocation in 1989, probably mainly of a regulative kind. This kind of a position for the powers of Kosovo would place Kosovo (1974-1989) in Section III of the Table. The reference to "substantial self-government" and to "substantial autonomy and self-government" for Kosovo in the S.C. Resolution 1244(1999) should probably be interpreted so as to mean the creation of an institutional solution in harmony with the principles of Section I of the Table. The Rambouillet Accords would meet this wish. However, Article 6 of the 1992 Constitution of the Federal Republic of Yugoslavia leaves it to the competence of a member republic, that is, Serbia and Montenegro, to organise its government and local self-government under its own constitution. Therefore, the institutional solution created by the Rambouillet Accords should actually, at least under the Yugoslav Constitution, be inserted in the Constitution of Serbia, which in turn would make Kosovo a sub-sub-State entity.

The position of the different European structures in respect of sub-State entities varies considerably due to the normative aims the different structures have. Actually, only the OSCE is directly concerned with institutional arrangements for divided polities, mainly because of its conflict-prevention function. It is, however, not to be excluded that the other two structures, the Council of Europe and the European Union, could have an impact on divided polities through their mechanisms.

It was already concluded above, that the entities in Section I of the Table are relevant at least under Article 3 of the First Protocol to the ECHR. Hence the European human rights system probably does not protect such entities, but at least covers them. Moreover, the Council of Europe seems to treat all these entities as possible expressions of self-government of a higher order, as is evident, for instance, on the basis of the Draft European Charter of Regional Self-Government,⁷ which has been drawn up under the

⁷ "Article 2 - Foundation of regional self-government"

1. The principle of regional self-government shall be recognised as far as possible in the constitution.
2. The scope of regional self-government shall be determined only by the constitution, the statutes of the region, national law or international law.
3. The statutory provisions determining the scope of regional self-government shall, as far as possible, afford the regions specific protection by virtue of the procedures or conditions for their adoption.

Article 3 - Principle

1. Regional self-government denotes the right and the ability of the largest territorial authorities within each State, having elected bodies, being administratively placed between central government and local

auspices of the Congress of the Local and Regional Authorities in Europe. What self-government means, albeit at a local government level, within the framework of the Council of Europe is perhaps best expounded by the European Charter of Local Self-Government of 1985. According to Article 3.1. of the Charter, local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. In this context, self-government implies, *inter alia*, elected assemblies, meaningful powers, safeguarded territorial boundaries of local government, and adequate financial resources of which at least a part derive from locally determined taxes and charges. The self-government intended for Kosovo under the Rambouillet Accords seems to meet the requirements of the European understanding of self-government.

The OSCE principles adopted at the Human Dimension Meeting in Copenhagen in 1990 connect autonomy and minority protection in Paragraph 35(2), according to which the "participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned". This connection has been further elaborated by the OSCE, for instance, in Ukraine, where the OSCE has been intensively involved in the negotiations leading up to the establishment of the Crimean Autonomous Republic, and in the 1999 Lund Recommendations on the Effective Participation of National Minorities in Public Life, a work commissioned by the OSCE High Commissioner on National Minorities. Hence it could be said that the OSCE facilitates the use of all kinds of pragmatic solutions to issues involving minority populations within the borders of the existing States. The OSCE's support for pragmatic and *ad hoc* institutional solutions can probably produce sub-State entities across all Sections in the above Table.

The position of sub-State entities in the European Union may be problematic in many ways, but especially in respect of their powers. Because the division of competencies in the Union is predominantly a matter between the Union and the Member States, the territorial sub-divisions of a Member State do not play any role. In fact, many of the sub-State entities, for instance, the Åland Islands, have experienced a decrease in their competencies due to the exclusive powers of the Union. Therefore the ever closer union between the Member States of the Union may, in fact, lead to problems concerning the sub-State entities and can even threaten their meaningful existence, at least in so far as the competencies of the Union overlap with the competencies of the sub-State entities. Anyway, autonomies created in the legal orders of the Member States of the European Union would normally qualify as regions and be entitled to seats in the Committee of

authorities and enjoying prerogatives either of self-organisation or of a type normally associated with the central authority, to manage, on their own responsibility and in the interests of their populations, a substantial share of public affairs, in accordance with the principle of subsidiarity.

2. In conformity with the provisions of the present Charter, the scope of regional self-government shall be determined by the domestic law of each State on the conditions set forth in Article 2, paragraph 2."

Regions under Article 263 ECT. Hence at the same time as the European Union may cut down the competencies of the sub-State entities, it incorporates them in a formal body of the EC structures and gives them an advisory role. However, autonomies may also be treated as special regions of some kind under EC law, as is the case, for instance, with the Åland Islands that were granted certain exceptions from the regular application of EC rules at the point when Finland joined the European Union.

4. A case from the 1920s: the Åland Islands

When discussing territorial autonomy and minority protection, the model of the Åland Islands is often brought to the fore, and not without good reason. The Åland Islands may be presented as a case in which autonomy helped to solve a conflict situation. It is said that the Åland Islands today constitute the oldest autonomy in the world. The autonomy of this area has its background in the dispute about the national affiliation of the inhabitants of the Åland Islands. However, before analysing the Åland arrangement, some initial parameters should be set within which the situation before 1920 is recapitulated. The purpose of this is to indicate that solutions of this kind may not be universally relevant and applicable, but are tied to the particular circumstances surrounding the case in question. Therefore, instead of speaking about a model of autonomy one should probably mention the Åland Islands as a laboratory of autonomy.

Firstly, Finland and Sweden formed a single kingdom until 1809, when Finland was conquered by Russia and taken into the Russian Empire as an autonomous Grand Duchy, leaving a substantial Swedish-speaking population in Finland in the coastal areas of Southern, South-Western (including the Åland Islands), and Western Finland. Some Swedish-speakers may have retained a longing for a reunification with Sweden until the 20th century. Secondly, the Åland Islands are geographically near to Stockholm, the Swedish capital. The Islands' strategic importance derived from this close proximity. Moreover, from the Åland Islands, it was possible to control large areas of the Baltic Sea.

Thirdly, a treaty under international law was concluded in 1856 between Russia, Great Britain and France on the demilitarisation of the Åland Islands leading to a distinct status of this territory in respect of military installations. Fourthly, it deserves to be repeated that Finland was an autonomous Grand Duchy of the Russian Empire. This arrangement was created in 1809 and codified in Article 2 of the 1906 Constitution of Russia, which concluded that "(t)he Grand Duchy of Finland, while it constitutes an indivisible part of the Russian State, is governed in its domestic affairs by special institutions on the basis of a special legislation". Apart from the plausible attempt to anticipate the 1921 decision of the League of Nations (see below) and the possible "model-effect" of the creation in 1919 of the Free City of Danzig under the Treaty of Versailles, the then recent Finnish experience as an entity with (relative) autonomy may be cited as an important factor conducive to the recognition of the Ålandic autonomy in 1920 and in 1922.

Fifthly, Finnish independence at the end of 1917 resulted in the separation of Finland from the multiethnic Russian Empire and in the creation of Finland as an independent state with one dominant linguistic group, parts of which aimed at the creation of a nation state (in the Form of Government (Constitution) Act of 1919, however, a nation with two equal languages, Finnish and Swedish). This development was probably perceived

quite negatively on the Åland Islands. Sixthly, during the First World War, Russia deployed troops on the Islands and built military installations. Moreover, the Finnish Civil War at the beginning of 1918 resulted in the presence of military forces of the Whites, as well as units of the German and Swedish Army. The demilitarisation of the Åland Islands was in danger.

Seventhly, before the creation of Ålandic autonomy, the population of the Åland Islands was hardly viewed as a separate linguistic minority, but constituted a part of the Swedish-language population of Finland. Nevertheless, because of its geographically separated position (the area was quite difficult to reach before 20th century methods of communication were in place) the population of the Åland Islands developed the characteristics of a community and displayed distinct political aspirations (see below). However, whether the Islanders constitute a minority is debatable.⁸ Currently the inhabitants of the Åland Islands display a strong "Ålandic" national identity in comparison with the Swedish-speaking population in Finland, which in general strongly identifies itself with Finland. Of a total population of 5.1 million inhabitants in Finland, some 300,000 (5.8 per cent) speak Swedish. The population of the Åland Islands amounts to more than 26,000 inhabitants, of which 25,100 are Swedish-speaking and 1,200 Finnish-speaking. Eighthly, when the Form of Government (Constitution) Act was enacted in 1919, provisions providing language rights and facilitating even general systems of self-government of a higher order were incorporated into the Constitution. The former were realized in the form of linguistic guarantees on an equal footing for both language groups, but the latter never led to anything concrete (with the exception of a committee and its subsequent "emergency drafting" of the Ålandic autonomy legislation, see below). It should be noted that the Swedish-language population in Finland is not considered as a minority in Finnish law, but a population which has the same linguistic rights as the Finnish-speaking population. The Language Act (Statutes of Finland, SOF 148/22) that implements Sections 14 and 50(3) of the Form of Government (Constitution) Act combines the personal principle (the right to use one's own language in his or her case) with the territorial principle, which determines the linguistic character municipalities and administrative subdivisions as unilingually Finnish-speaking, unilingually Swedish-speaking or bilingual (with either Finnish or Swedish as the dominant language).

On the basis of these background elements, it is possible to conclude that the Ålandic autonomy arrangement is very much tied both to international and national politics and to international and national law.

⁸ See, e.g., Hannikainen 1993a, p. ff. and Hannikainen 1993b, p. 20, in which it is concluded that the Swedish-speaking population of the Åland Islands forms a distinct national community which should be considered as qualifying in international law as a national minority or equivalent to national minority, although not all of the most common criteria for minority status are fulfilled by the population of the Åland Islands. The criteria used by Hannikainen are using are 1) numerical inferiority to the rest of the population; 2) non-dominant position; 3) possession by the members of the minority of ethnic, religious or linguistic characteristics differing from those of the rest of the population; and 4) the display by the members of the group, even if only implicitly, of solidarity directed towards preserving their culture, traditions, religion or language. While the last criterion is of a subjective character, the other ones are of a more objective character. While the population of the Åland Islands would not seem to fulfil the third criterion, it could be argued that the decision of the League of Nations in 1921 recognised the Ålandic population as one possessing the necessary qualities.

But why is the Ålandic solution so attractive? In the contemporary world, its appeal seems to depend on its close relationship with the international law concept of self-determination. This concept, again, has various interrelated dimensions, some of which are relevant for areas which form parts of a state. In this respect, people's right to self-determination can be understood, *inter alia*, as a right of (a certain part of) the population to choose the state under whose authority they want to live (see above). This quite narrow version of the concept of self-determination had a tremendous appeal on the Åland Islands at the end of the 1910s and the beginning of the 1920s and resulted, *inter alia*, in the organization of two petition campaigns on the Islands advocating secession from Finland and accession to Sweden. However, the narrow principle of self-determination was not really applicable on the Åland Islands situation: there was no minority population which, on the basis of a peace treaty, was given the opportunity to exercise its self-determination with a view to choosing national affiliation. What the League of Nations actually did was that it applied certain conflict resolution techniques on the dispute between Finland and Sweden and confirmed the existence of an autonomy that had been created by Finnish law already a year earlier: the Council of the League of Nations replaced the population as the decision-making organ and the Covenant of the League of Nations with its dispute settlement mechanisms replaced the peace treaties. However, the end result was probably not given, but the result could perhaps have been the same as with the exercises of self-determination after World War I: the separation of the Åland Islands from Finland and the integration of the Islands with Sweden. After the consolidation of the position of the Åland Islands as an autonomous part of Finland, however, this issue has, with certain smaller exceptions of a mainly internal character, ceased to be contentious.

Already in August 1917, an unofficial assembly of the inhabitants of the Åland Islands had proposed that the area would secede from Finland and join Sweden. Moreover, the Åland Islands question involves two instances which are often termed unofficial referendums or opinion polls. Soon after the Finnish Declaration of Independence, at the end of December 1917, a petition campaign was undertaken on the Åland Islands to establish and support the wishes of the inhabitants to secede from Finland and to join Sweden. Of the approximately 21,000 inhabitants of the Islands, approximately 12,500 persons had the right to vote, and about 8,000 of these were presented with a petition on the issue. 7,135 persons signed the petition addressed to "the king and people of Sweden" asking for measures to be undertaken leading to annexation by Sweden. A majority of persons with the right to vote can thus be said to have been in favour of union with Sweden.

Soon thereafter, a dispute about the Islands arose between Finland and Sweden. Although Sweden was not a party to the 1856 treaty establishing the Åland Islands as a demilitarized area, the matter was laid before the Paris Peace Conference in 1919 in order to make it possible to follow a similar path as Denmark had followed with regard to Schleswig. This plan did not succeed, although it was supported by another petition campaign, which was completed on 29 June 1919. This second petition was signed by 9,735 persons who supported union with Sweden, while 461 persons refused to sign the petition. In 1920, the League of Nations took the matter up on proposal by Great Britain, which was a party to the 1856 treaty. At this point, an Act on the Self-Government of the Åland Islands (SOF 124/20) was enacted by the Parliament of Finland, probably at least partly as a preemptive measure, the preparations for which had begun already in 1919. With

this Act, the province of the Åland Islands gained its own Legislative Assembly with a general competence in fields that were not included in the enumeration of exclusive legislative powers of the Finnish Parliament. Hence the original grant of autonomy was more in conformity with the theory about federal organisation than with the provisional definition of the creation of autonomies in unitary States. However, because the inhabitants of the Åland Islands felt that the self-government legislation had been imposed upon them, the Assembly did not convene until 1922.

The position of the Provincial Governor as the representative of the President of Finland caused dissatisfaction and distrust with the arrangement. According to this Act on Self-Government, the President had, upon receiving an opinion from the Supreme Court, an absolute veto over the legislative enactments of the Legislative Assembly if the Ålandic Act violated the exclusive legislative powers of the State, or if the Act was in conflict with the good of the Republic. Courts of law of the State were in charge of interpreting the Ålandic Acts, too. At this point, the Åland Islands also received the right to use the proceeds of certain taxes and to levy some additional taxes and charges connected to these general State taxes. Many of these taxation powers were subsequently diminished and faded away altogether by the 1950s because the State abolished the relevant categories of taxes when restructuring its general taxation. However, at the same time the Åland Islands became entitled to a certain economic equalisation by the State determined by a delegation, if the taxes for the self-government functions rose above the average for corresponding functions elsewhere in Finland.

The Act on Self-Government included no specific right of domicile. Nevertheless, the inhabitants of the Åland Islands, that is, persons who were registered as residents of the Ålandic municipalities under a regulation that covered all Finland, were exempted from military service, a provision which has an obvious connection to the demilitarised status of the Islands. The Act contained provisions concerning the language of State officials in the Åland Islands, which was to be Swedish. The Supreme Court of Finland was given the competence to rule on disputes that may arise concerning the powers of the Governor, the Legislative Assembly, and the Government of the Åland Islands under the Act on Self-Government.

The Act on Self-Government was enacted on the basis of Section 60 of the 1906 Diet (Constitution) Act as an Act of Exception, following the amendment formula for the Constitution. This method of enactment constituted the Ålandic autonomy arrangement as an exception to the constitutional structure of administration, but, however, without as such making the Act on Self-Government a part of the formal Constitution of Finland or without declaring the Act a constitutional law. The special features of this legislative measure were included in Section 36 of the Act, according to which the Act on Self-Government could be amended only in the way established for the amendment of the Constitution and with the consent of the Legislative Assembly of the Åland Islands.

When the matter was dealt with by the League of Nations, Sweden requested in her submission to the Council of the League that the matter be decided by the inhabitants of the Åland Islands in a plebiscite. Although plebiscites were fashionable in such questions after the First World War, no popular vote was ever organized, but the investigation of the matter was carried out by two commissions. The first one, the so-called Commission of Jurists, concluded that the Åland Islands issue fell within the jurisdiction of the League of Nations,

and the second one, the so-called Commission of Rapporteurs, maintained that the Åland Islands should remain under the sovereignty of Finland. On 24 June 1921, the League of Nations decided the territorial dispute in favour of Finland on condition that guarantees aiming, *inter alia*, at the Islanders' prosperity and happiness, would be established and that measures would be taken to demilitarise and neutralise the Islands. The guarantees relating to the inhabitants were to be included in the Act on Self-Government and would deal with the maintenance of the Swedish language as the language of school instruction, the maintenance of real estate in the possession of the inhabitants, the establishment under reasonable terms of the acquisition of the right to vote of persons who move to the Islands, and the appointment of a person as Governor who enjoys the confidence of the inhabitants. The final solution agreed upon by Finland and Sweden and adopted by the League of Nations confirmed the existing autonomy of the Åland Islands and supplemented it with some additional features (for the text of the Agreement in the French language, see Appendix I) mentioned above.

Although this so-called Åland Agreement was not a treaty under public international law, in Finland it led to the enactment of the Act containing Certain Provisions concerning the Inhabitants of the Åland Islands (SOF 189/22) or the so-called Guaranty Act in 1922. This Act was an amendment of and an addition to the Self-Government Act of 1920, enacted in the order prescribed for constitutional amendments. It regulated the adoption of the Governor by the President with the agreement of the Chairman of the Legislative Assembly (Section 1) and stipulated that the Legislative Assembly and the Ålandic municipalities are not obliged to maintain or support other schools than those in which Swedish is the language of instruction (Section 2). Moreover, in State schools located in the Åland Islands, the Swedish language would be the language of instruction. Finally, the Finnish language was not to be taught in primary schools maintained or supported by the State or a municipality unless the municipality in question consented to this. According to Section 3 of the Guaranty Act, a citizen of Finland who moves to the Åland Islands acquires there the municipal and Ålandic right to vote only after he or she has been legally resident in the Åland Islands for five years. Finally, under Section 5, a restrictive regulation concerning property was introduced: if a piece of real property had been sold to somebody whose legal residence was not in the Åland Islands, the authorities of the Åland Islands, the municipality within which the property was situated, or a private person legally resident in the Åland Islands had the right to redeem the piece of property at a certain fair price. None of these laws created any right of domicile, limited to the inhabitants of the Åland Islands, but the regulations concerning the right to vote contained the basis for such a concept.

The League of Nations settlement gave the rights granted under this autonomy arrangement a collective character. Section 6 of the Guaranty Act of 1922, supplementing the first Autonomy Act of 1920, contained provisions for a situation where the Legislative Assembly of the Åland Islands might present complaints or notes about the implementation of the Self-Government Act and Guaranty Act. In such a situation, the Government of Finland would add its own observations to the complaint or note and pass on the issue to the Council of the League of Nations so that the Council could supervise the implementation of the provisions and, in case the matter is judicial, obtain an opinion from the Permanent Court of International Justice. This procedure became a desuetudo when the League of Nations system collapsed, but it was eliminated from Finnish legislation only in 1951, when

the new Autonomy Act repealed the Acts of 1922 and 1920. However, despite the disappearance of the mechanism of supervision, the autonomy arrangement itself has been regarded as one of customary law,⁹ while at least the demilitarisation and neutralisation may perhaps be regarded as a so-called objective regime under international law.¹⁰

The 1951 Autonomy Act (SOF 670/51) confirmed the basic elements of the arrangement of the 1920s, but created at the same time a *specific right of domicile*, which defined the group of persons who were to be considered beneficiaries of the special features of autonomy, that is, the right to vote and stand as candidate in municipal and Ålandic elections, acquisition and possession of real estate,¹¹ the right to carry out so-called regulated branches of trade,¹² and exemption from military service. The definition of the right of domicile created at this point a distinction between the inhabitants of the Åland Islands and those of mainland Finland that was more protective of the former than under the previous legislation, while the definition may have had a discouraging effect on persons from the mainland as concerns their intention to move to the Åland Islands. This Autonomy Act made the contours of autonomy more specific and provided more detailed regulations concerning the powers and functioning of autonomy. At this point, an enumerated list replaced the more general clause in defining the competences of the Legislative Assembly. From this point on, the division of powers between the Parliament of Finland and the Legislative Assembly of the Åland Islands conformed better with our provisional theory about autonomy. As concerns the administrative tasks and possible conflicts between the administrative authorities of the State and the Åland Islands in respect of these, the Supreme Court was given the competence to rule on them upon an opinion of the Åland Delegation. Within the framework of the legislative powers, the boundaries of the law-making capacity of the Legislative Assembly could be efficiently supervised by the President of the Republic, who could veto an Ålandic Act upon receiving an opinion from the Supreme Court. However, the authorities of the Åland Islands received no corresponding remedy for situations in which the legislature of the Republic of Finland interfered with the legislative powers of the Legislative Assembly. This asymmetry is one element distinguishing the Ålandic arrangement in Finland from a federative arrangement.

The current Autonomy Act was enacted in 1991. The 1991 Autonomy Act strengthened the self-government of the Åland Islands and restricted the State's supervision. This was carried out especially by expanding the legislative competences of the Åland Islands (e.g., regulations concerning use of the flag of the Åland Islands, leasing, historical

⁹ Lauri Hannikainen, *Ahvenanmaan itsehallinnon ja ruotsinkielisyyden kansainoikeudelliset perusteet*. Turku: Åbo Akademin ihmisoikeusinstituutti, 1993, pp. 79-102.

¹⁰ Ibid., pp. 103-130.

¹¹ A special Act on the Purchase of Real Estate (SOF 3/75) was enacted for the first time in 1938 (SOF 140/38) and amended in 1951 (SOF 671/51). The important change that took place in 1975 was that under the previous law, anybody could buy real estate on the Åland Islands, but faced, in the absence of the right of domicile, the risk of the property being redeemed by the categories mentioned. However, under the 1975 Act, an advance permit by the Government of the Åland Islands is required of persons who are not in the possession of the right of domicile before they can purchase the property.

¹² However, the right of trade was not exclusively reserved for those who had the right of domicile, but regulated trades could also be carried out by persons who had had uninterrupted legal residence in the Åland Islands for five years.

sites, social care, sub-soil resources (in respect of which there is a divided competence with the State), the sale of alcoholic beverages, archives, postal affairs, radio and telecommunications) as well as giving the Åland Islands more administrative powers (for the legislative powers of the Åland Islands and the State of Finland, see Appendix II).

A more detailed regulation concerning the language of instruction was included in the Act to provide more protection of the cultural identity of the inhabitants of the Åland Islands. Moreover, the acquisition of a certain proficiency in the Swedish language as a condition for the right of domicile was added to the Act. The special rights tied to the possession of the right of domicile were kept more or less in the same form as in the 1951 Autonomy Act, with the exception that the right of a person without the right of domicile to exercise a trade or profession in Åland for personal gain may be limited by an Ålandic Act.

The monopoly of the Swedish language on the Åland Islands may, however, create a so-called 'minority in minority' problem in respect of Finnish-speaking persons (about 1100 or 4.5 per cent of the population) residing in the Åland Islands. Although Finnish-speakers could, if they wanted, create a private school on the Åland Islands, the language provisions may contain conflicts with the provisions of the 1960 UNESCO Convention Against Discrimination in Education. The *Belgian Linguistics Case* of the European Court of Human Rights would, in turn, seem to indicate that there is no such discrimination against Finnish-speaking pupils in the Åland Islands that would be prohibited under the European Convention on Human Rights: there would seem to exist "legitimate and objective grounds to keep the schools of the Åland Islands monolingually Swedish" at the same time as the present system would not seem to "involve disproportionality between the means employed and the aim sought".¹³ There has been a certain discussion concerning the relationship between the Ålandic arrangement and the various human rights conventions binding on Finland. It has been suggested that the 1921 decision of the League of Nations could be considered a *lex specialis*, but it would seem as if most legal experts gave precedence to Finland's obligations under human rights conventions according to the principle of *lex posterior*.¹⁴

The position of the Åland Islands was and is special at the level of the formal Constitution. In the multi-documentary Constitution of Finland consisting of the Form of Government (Constitution) Act, the Parliament (Constitution) Act, and two constitutional acts pertaining to the form and procedure of the Court of the Realm, which all have been enacted in accordance with the qualified procedure prescribed for legislation at the constitutional level and which all define themselves as constitutional laws, the Åland Islands used to be referred to only in Section 33 of the Parliament (Constitution) Act. Before 1 March 1994, this article stated that "(s)eparate provisions shall apply on the right of the Åland Legislative Assembly to submit initiatives" to the Parliament of Finland. According to an amendment to the Form of Government (Constitution) Act, creating Section 52a which entered into force on 1 March 1994, the Åland Islands have self-government in accordance with separate enactments. At the same time, Section 33 of the Parliament (Constitution) Act was amended so as to include a provision according to which the procedure of enactment

¹³ Lauri Hannikainen, *Cultural, Linguistic and Educational Rights in the Åland Islands. An Analysis in International Law*. Helsinki: the Ministry of Foreign Affairs, 1993, p. 38 f.

¹⁴ *Ibid.*, p. 53 f.

concerning the Autonomy Act of Åland Islands and the Act on Acquisition of Land on the Åland Islands is the one established in these laws. Moreover, Section 33 contains a provision according to which the Legislative Assembly of Åland has the right to present legislative initiatives to the Finnish Parliament according to separately enacted provisions.

Does the above characterization mean that the Åland Islands enjoyed a very weak constitutional status before 1994? On the contrary, despite the fact that the Åland Autonomy Act and the Act on Acquisition of Land on the Åland Islands do not declare themselves to be constitutional laws, it could even be possible to conclude that their hierarchical status may, in fact, be *higher* than that of the other four constitutional laws: both the Autonomy Act and the Land Acquisition Act stipulate (Section 69 and Section 17, respectively) that amendments to these laws are made only in the order established for the amendment of the Constitution in Section 67 of the Parliament (Constitution) Act¹⁵ and with the consent of the Legislative Assembly of Åland. However, the Finnish Constitution does not regard these two Acts relating to the Ålandic autonomy arrangements as Acts of a formally higher order than the other Constitutional Acts, but rather as Acts of Exception to the Constitution. As concerns Ålandic consent to amendments to the Autonomy Act, Section 69 of this Act requires materially identical decisions of the Finnish Parliament and the Legislative Assembly of Åland, so that the Ålandic decision is made by a two-thirds qualified majority. The Land Acquisition Act does not, in the first place, according to Section 17, require any super-majority in the Legislative Assembly of Åland, but leaves this particular entrenchment and the raising of the decision-making threshold to the two-thirds level to be determined in an Ålandic Act (which itself must be enacted in that manner).

Already before 1994, the position of the Åland Islands was therefore clearly entrenched: the Finnish legislature could not rid itself of the Åland Islands or alter Åland's formal or material status by using only those legislative means which are at its own disposal. With the amendments of 1994 to the Finnish Constitution, the position and self-government of Åland have been properly anchored in the Constitution of Finland and thereby further entrenched. Hence the Åland Islands seem to enjoy a strong position: we may describe the constitutional setting of the Islands before 1994 in terms of a special and regional entrenchment, special meaning here the requirement of the constitutional amendment formula with a two-thirds majority in Parliament for alterations of the Autonomy Act and regional meaning here the requirement of Ålandic consent for any modifications to the Autonomy Act. Moreover, after amendments to the Finnish Constitution on 1 March 1994, it now also includes a clear general entrenchment of the Åland Islands arrangement. In this way, the constitutional setting of the Åland Islands has become even more fixed than it was before.

Referring to the material Constitution, Section 1 of the Act on the Election of Members of Parliament (SOF 391/69) creates the Åland Islands as one constituency from which one MP shall be elected to the Finnish Parliament. This is a special arrangement that undoubtedly contains a strain of federalism, but it must at the same time be noted that the Ålandic constituency has more or less the same number of voters as the average number of votes in relation to the seats in the Parliament elsewhere in Finland.

¹⁵ A simple majority in favour of the amendment in one Parliament and a two-thirds majority in a new Parliament convening after elections or, a decision on urgency of the amendment with a five-sixths majority and adoption by two-thirds by the same Parliament.

5. A case from the 1990s: Tatarstan and "Accommodative Federalism" in Russia

The Russian Federation is a federal State. According to Article 5 of the 1993 Constitution of the Russian Federation, the Russian Federation shall consist of republics, territories, regions, federal cities, and autonomous regions and autonomous areas, which shall be equal subjects of the Russian Federation. As a subject of federation, each republic shall have its own constitution and legislation, while a territory, region, federal city, autonomous region and autonomous area shall have its own charter and legislation. The federated structure of the Russian Federation shall, according to the same Article, be based, *inter alia*, on the equality and self-determination of the peoples in the Russian Federation. Hence the concept of self-determination is here used in an internal meaning and its scope made dependent on the contents of the federal constitution. Under Article 65, in all 91 different kinds of subjects of federation can be identified, and the listing of the subjects indicates that a number of peoples, not only populations, are involved in the constitutional structures of Russia. Hence there is a constitutional concept of self-determination for the various peoples that results in the creation of certain law-making powers in their institutions (see below). Although the point of departure is equality between the different subjects, the republics have a specific right to institute their own state languages, which shall be used alongside the state language of the Russian Federation in bodies of state power, bodies of local self-government and state institutions of the republics.

Article 71 of the Federal Constitution creates an exclusive jurisdiction for the federation, while Article 72 provides for a joint jurisdiction of the Russian Federation and the subjects of the Russian Federation. An exclusive jurisdiction is created for the subjects of federation by Article 73 outside of the jurisdiction of the Russian Federation and the powers of the Russian Federation and outside the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation. Concerning these matters, framed as residual powers, the subjects of the Russian Federation shall exercise the entire spectrum of state power. Because the subjects of federation have these residual powers and because these subjects seem to give expression to the existence of certain peoples or populations, it seems as if a certain self-determination in the meaning of self-government were indeed created for the various subjects. To the extent that federal laws are enacted within the framework of the exclusive jurisdiction of the federation or the joint jurisdiction of the federation and the subjects, laws and other regulatory acts of the subjects shall conform to the federal laws, as well. This clear-cut hierarchy of norms is, however, inverted inside the exclusive jurisdiction of the subjects of the federation, where, according to Article 76, Paragraph 6, the norm of the subject shall apply.¹⁶ On the basis of this, it should be

¹⁶ According to Article 5, Paragraph 2, a republic, that is, a constituent state or a subject of federation, shall have its own constitution and legislation. A territory, region, federal city, autonomous region and autonomous area shall have its own charter and legislation. See also the Federation Treaty (Treaty on the Delineation of Spheres of Jurisdiction and Authority Between Federal Government Bodies of the Russian Federation and the Government Bodies of the Sovereign Republics Belonging to the Russian Federation) of 31 March 1992 and an attached Protocol to the Federation Treaty, Treaty on the Delineation of Spheres of Jurisdiction and Authority Between Federal Government Bodies of the Russian Federation and the Government Bodies of Krays, Oblasts, and the

possible to conclude that the subjects of federation have a position, which according to Table 1, above, would justify a place in Section I.

What the reference to self-determination in the Russian Constitution could mean is perhaps illustrated by the so-called Tatarstan case from the first Constitutional Court of Russia,¹⁷ handed down before the enactment of the 1993 Constitution, which was dealt with above. Here, the national level is perhaps a little bit more illuminating than the international level as concerns judicial interpretations that relate to self-determination and the *pouvoir constituant*. It must be remembered when reading this decision that the Constitution of 1993 had not yet been adopted when the decision was handed down by the court.

A referendum was planned for 21 March 1992 in the Autonomous Republic of Tatarstan within the Russian Federation on the following question: "Do you agree that the Tatarstan Republic is a sovereign state and a party to international law, basing its relations with the Russian Federation and other republics and states on treaties between equal partners? Yes or no?" The Constitutional Court of the Russian Federation ruled, *inter alia*, that the the Referendum Law of Tatarstan conformed to the Constitution of the Russian Federation. However, the referendum itself was held to be unconstitutional under Articles 70, 71, and 78 of the Constitution of the Russian Federation with respect to that part of the question which considered Tatarstan a subject of international law and which stated that the relations between Tatarstan and the Russian Federation, other republics, and States were based on treaties between equal partners. The reason for its unconstitutionality was the unilateral alteration of the national and governmental structure of the Russian Federation, which would have meant that Tatarstan did not belong to the Federation. By submitting the definition of the position of the republic to a referendum, the Supreme Council of Tatarstan had tried to make it into a norm of the highest order, approved by the people. Therefore the measure was not only of an implementing character in relation to the Declaration of Sovereignty issued by Tatarstan on 30 August 1990, but also a normative issuance which would determine the direction and content of the legislative process. In this respect, the Court seemed to understand the referendum as an exercise of the *pouvoir constituant* of some kind (although it was not entirely an instance of constitution-making) and of the right of self-determination,¹⁸ but considered such a possibility as pre-empted under the 1978 Russian Constitution at least to the extent it might involve a unilateral secession.¹⁹ The Court also raised objections concerning the unclear formulation of the question.

Cities of Moscow and St.Petersburg of the Russian Federation and an attached Protocol to the Federation Treaty of 31 March 1992, Treaty on the Delineation of Spheres of Jurisdiction and Authority between Federal Government Bodies and the Government Bodies of the Autonomous Oblast and Autonomous Okrugs Belonging to the Russian Federation of 31 March 1992, and the Decree of the Congress of People's Deputies of the Russian Federation on the Federation Treaty of 10 April 1992, all published as an appendix to the 1993 Constitution of Russia in Blaustein - Flanz (eds), *Constitutions of the Countries of the World*, as issued in May 1994.

¹⁷ Decision no. 671 of 13 March 1992 by the Constitutional Court of the Russian Federation

¹⁸ Such an understanding is not too far-fetched against the background of, for instance, the fact that the territory concerned was conquered by the Russians in 1552, the fact that half of its population consists of ethnic Tatars, and the fact that there does seem to exist a certain "national sentiment" in Tatarstan.

¹⁹ In its judgment in the so-called Chechnya Case of 31 July 1995 (translated into English by the Federal News Service Group and published by the Council of Europe/European Commission for Democracy through

However, the argumentation of the Court was not only based on the (extensively amended) 1978 Constitution of the Russian Federation, but also involved considerations of international law. The Court stated that Tatarstan had the right to submit a question on its constitutional status to the people, because this right followed from the people's right of self-determination. This right was guaranteed domestically as well as internationally. As to the latter, the Court referred to common Article 1 of the Covenants of 1966, ratified by the Supreme Soviet of the USSR on 18 September 1973, to the UN Declaration on Friendly Relations,²⁰ to Article 29 of the Universal Declaration of Human Rights, to the UN General Assembly Resolution 41/117(1987) on the Indivisibility and Interdependence of Economic, Social, Cultural, Civil and Political Rights,²¹ and to the CSCE commitments Russia had taken upon itself.²² The Court viewed the international documents as emphasizing that the right of self-determination should not be invoked for the purpose of disrupting the unity of a state and a nation. Hence without denying the people's right of self-determination, which could be realized by means of a legal act of will, such as the referendum, the Court concluded that two elements of international law, namely the requirement of territorial unity and the observance of human rights,²³ did limit the right of self-determination. Therefore,

Law, CDL-INF(96)1 on 10 January 1996), the Constitutional Court of the Russian Federation concluded that state integrity is one of the foundations of the constitutional system of the Russian Federation and that the status of a subject of the Russian Federation may only be changed by mutual agreement between the Russian Federation and the subject of the Russian Federation in accordance with the federal constitutional law.

²⁰ In its judgment in the so-called Chechnya Case of 31 July 1995 (translated into English by the Federal News Service Group and published by the Council of Europe/European Commission for Democracy through Law, CDL-INF(96)1 on 10 January 1996), the Constitutional Court of the Russian Federation concluded, by referring to the Friendly Relations Declaration of 1970, that the constitutional goal of preserving the unity of the Russian State accords with the universally recognised international legal principles concerning the right of nations to self-determination, which could not accept the dismemberment or complete disruption of territorial integrity or political unity. In the judgment, the Court also discussed Article 15, part 4, of the Russian Constitution, according to which the universally recognised principles and norms of international law and international treaties are a component part of the Russian legal system and must be observed in good faith, including by being taken into account in internal legislation. It would seem that this decision employs the same open attitude to prescriptions of international law as the Tatarstan Case, but perhaps only to the extent that grounds can be found that support the integrity of Russia.

²¹ This Resolution confirms the GA Res. 32/160(1977) concerning Alternative Approaches and Ways and Means within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms.

²² Helsinki 1975, Vienna 1986, Copenhagen 1990, "and other documents of international law". The treatment of the rather political OSCE documents as sources of law is very interesting, but they may be understood here as expressing and sustaining principles of hard international law, found, *inter alia*, in treaty law.

²³ Territorial integrity is a notion which has been used, for instance, in the Declaration on Friendly Relations, *supra*, but the notion of human rights as limiting self-determination may be somewhat confusing: normally, a better realization of human rights is sought by means of self-determination. However, in this case the reference to human rights might be understood as the human rights of the Russian population in the territory declaring independence. This reading of the decision could make sense against the background of the often negative

and because the Constitution of the Russian Federation did not contain any right of secession for a republic, Tatarstan's attempt to acquire more self-determination than the Republic already had was considered impermissible.

This decision seems to indicate that, at least according to the former Constitutional Court of Russia, the *pouvoir constituant*, especially when understood as an equivalent to the right to self-determination, is to some extent limited by international law.

The chaotic situation in Russia at the time of the decision is illustrated by the fact that the decision of the Constitutional Court had no effect in Tatarstan: the referendum was held on 21 March 1992 according to the plans that had been declared unconstitutional by the Court, and in the referendum, a clear majority of the voters answered the above question in the affirmative. After the vote the legislature of the Republic of Tatarstan adopted and declared a new Constitution in accordance with the result of the referendum and thus tried to give effect to the notion of the *pouvoir constituant*. However, despite the popular decision and the new Constitution, Tatarstan found no ways to assert its "independence": it has since claimed to be a sovereign State that has voluntarily joined the Russian Federation and that it consequently is free to leave the Federation at any time, but the Republic was nevertheless included as one of the Subjects of the Federation in Article 65 of the 1993 Constitution of the Russian Federation, and finally in February 1994, the Republic of Tatarstan signed a formal Agreement of Federation with Russia, which guarantees to Tatarstan a better position in the Federation, for instance, concerning economic decision-making than the other subjects of the Federation generally speaking have. Tatarstan has kept its own Constitution (which it has the right to under the 1993 Constitution of the Russian Federation) and claims to have associated itself with Russia, but not to have acceded to or integrated itself with the same. Perhaps the reference to association with the Russian Federation should, according to the interpretation of Tatarstan, be understood as association in terms of the Friendly Relations Declaration (see above).

6. Concluding Remarks

This paper suggests that self-determination can imply self-government both at the State and at the sub-State level. In so far as self-determination is created against the background of international law, it should also at a sub-State level produce an institutional arrangement which acquires a share in the totality of internal self-determination of the State in question. To this end, elaborate constitutional mechanisms are required for the creation of a devolved share of exclusive legislative powers in the sub-State entity, which may be a constituent state of a federation or an autonomous territory.

Very little research has so far been conducted in the area of the reasons for the success and failure of sub-State arrangements. The durability of autonomy arrangements may be regarded as one indicator of success, and results indicate that significant international involvement in the establishment process of an autonomy as well as in the

experiences that the Russians forming ethnic minorities in territories of the former Soviet Union have got when these territories have declared themselves independent and tried to cut the ties to Moscow.

post-implementation of the agreement correlates in a positive way with a high durability level. This certainly was the case in relation to the Åland Islands, and it should be an encouraging element in relation to the situation in Kosovo. However, "the higher the degree of militarisation of a conflict preceding the establishment of an autonomy, the less likelihood there is of high autonomy durability".²⁴ The cases of the Åland Islands and Tatarstan never escalated into military actions, which may be one reason for their durability. There is no doubt, however, that the degree of militarisation was and is considerable in relation to Kosovo, and against this background, the prognosis is not too good, unless a controlled decrease of militarisation is achieved.

According to the existing research, the internal conditions for autonomy nevertheless seem more important than the external. Hence the emphasis on constitutional and political solutions at the national level is important. The processes aiming at internal solutions started by S.C.Res. 1244(1999) and followed up, for instance, by IAI and UNA/USA are certainly necessary against that background. The cases of the Åland Islands and Tatarstan offer many pieces of valuable information about institutional design. Recent research suggests, however, that "autonomies within democratic states are more likely to be durable than other autonomies".²⁵ The Åland Islands has existed in a democratic State from the beginning, while Tatarstan is a part of a newly democratised State which still lives through a certain period of transition, although the constitutional components have already been established. No such democratisation has yet taken place in Yugoslavia (or Serbia, for that matter) which would work in this direction and support the durability of any autonomy solution for Kosovo. The internal dimension may also be more important than the international in terms of the possible breaking up of autonomies. For instance, "a major threat to autonomies is major structural changes in the state system that affect the central government".²⁶ No such changes have occurred in Finland since the creation of the autonomy of the Åland Islands, while the Tatarstan case suggests that situations of change may open a door of opportunity for a development of the constitutional position of a sub-State entity. Such dramatic changes may take place also in Yugoslavia in the future, and the function of the international community could then be to speak for the necessary sub-State solutions.

"It seems that 'weak states' make 'weak autonomies'". However, the picture is not that simple. As was argued concerning the connection between democracy and autonomy, the economic factor may be important, but some cases show that this is not necessarily true. Economically weak states, then, may not necessarily make weak autonomies. Politically weak, or unstable, states may be a greater threat to an autonomy. Having a different political structure within one's borders may provide a tempting excuse for governments that seek explanations for political failures. This is, however, only one side of the coin. The political stability and culture of an autonomy within a politically weak state, is probably not so different from that of the central government. Thus,

²⁴ Kjell-Åke Nordquist, 'Autonomy as a Conflict-Solving Mechanism – an Overview', in Markku Suksi (ed.), *Autonomy – Applications and Implications*. Dordrecht: Kluwer Law, 1998, p. 72 f.

²⁵ Ibid.

²⁶ Ibid.

challenging political manoeuvres against the central government may well have their source in internal autonomy politics."²⁷

The durability issue may, especially in its internal form, translate itself to the method of entrenchment which the sub-State arrangement is subject to. With entrenchment is meant various legal guarantees for the permanency of the arrangement. It is possible to distinguish between at least six forms of entrenchment. Firstly, there may exist a *general entrenchment*, which means that sub-State arrangements are established in the national constitution. A *semi-general entrenchment* can be distinguished in situations where the sub-State arrangement is originally created in an organic law under the constitution of the country. Secondly, it is possible to distinguish a *regional entrenchment*, which means that a separate regional reaction through the representative assembly of the sub-State entity or through a regional referendum is envisaged whenever the legislation concerning the sub-State arrangement is being amended. Thirdly, a *special entrenchment* exists in situations in which the statute outlining the more practical modalities attached to the sub-State can be amended only according to a special amendment rule that complicates the amendment of the statute. Fourthly, an *international entrenchment* may come about in situations in which the international community guarantees a sub-State arrangement in the creation of which it perhaps has participated. Fifthly, a *treaty-based entrenchment* is present when, for instance, two States agree in a formal treaty that one of them creates a sub-State arrangement for a minority in its territory. Sixthly, it is possible to envision an *entrenchment under the right of self-determination*, which could protect existing sub-State arrangements against weakenings against the will of the population, provided that the beneficiaries of the arrangement could be characterised as a people.

The Åland Islands case involves at least the general, regional, special and international forms of entrenchment and is a pointer to the direction that elaborate and overlapping methods of entrenchment may create stability for the arrangement. The Tatarstan case, in turn, is a pointer in the direction that such entrenchment may be important also for the State so that no unilateral changes in the status of the sub-State entity can take place and lead to the disruption of the territorial unity of the State. Both the Åland Islands case and the Tatarstan case point in the direction that there exist no generally applicable solutions, but the solutions must be, at least to some extent, tailor-made in respect of the particularities of the case. However, at the same time as a sub-State arrangement is designed for a certain population and their representative government and effective participation is guaranteed, it is important to make sure that the arrangement contains safeguards for a possible "minority in minority" situation so that the majority population in the State or other smaller populations would not feel themselves threatened by the sub-State arrangement. This is important, because the sub-State entity would normally have exclusive legislative powers within certain areas, and on the basis of these powers, the authorities of the sub-State entity may be in a position to exercise public powers in relation to the minorities within that entity.

The idea behind the creation of all kinds of special jurisdictions in the form of sub-State entities is to make all parties more or less happy. None of the parties can have

²⁷ Ibid.

its way completely, but already a substantial influence over issues that are important for the situation at hand may help to create a positive atmosphere. The Åland Islands may be seen as a practical illustration of this: a medical survey was conducted in Finland with a view to finding out why the general level of health of the Åland Islanders was higher than that of the rest of Finland, and the relevant factor that could be established as an explanation was the positive effects of the self-government of the area on the possibilities of the inhabitants to meaningful self-realisation of their needs and aspirations. At least in this respect, the basic aim of the 1921 Settlement before the Council of the League of Nations have been realised.

The international community does not have any established procedures to deal with situations of the kind that have emerged in Kosovo. However, case by case, certain patterns may develop. It may be premature to speak about the necessity of the parties to submit to such patterns as established in advance for this kind of situations, but it would probably be important to develop, within the framework of the United Nations, some models of action that can be lifted in where needed and on the basis of which more permanent solutions can be sought for.

APPENDIX I:

PROCÈS-VERBAL DE LA DIX-SEPTIÈME SÉANCE DU CONSEIL, 27 JUIN.

Présents: Tous les représentants des Membres du Conseil et le Secrétaire général.

L'Espagne est représentée par M. DE REYNOSO, et le Brésil par M. BLANCO.

Les représentants de la Finlande et de la Suède prennent place à la table du Conseil.

M. HYMANS rappelle que le Conseil a reconnu que la meilleure manière d'arriver à une solution, en ce qui concerne les garanties, serait de la rechercher par un accord entre les représentants de la Finlande et ceux de la Suède, avec le concours d'un Membre du Conseil. Il déclare que les conversations prévues ont eu lieu sous sa présidence et qu'il en apporte le résultat sous la forme d'un texte précis qui sera, si le Conseil l'adopte, joint à sa résolution du 24 juin.

Il donne lecture du texte suivant, qui contient l'accord auquel sont arrivées les deux parties:

"1. La Finlande, résolue à assurer et à garantir à la population des Iles d'Aland la préservation de sa langue, de sa culture et de ses traditions locales suédoises, s'engage à introduire à bref délai dans la loi d'autonomie des Iles d'Aland du 7 mai 1920 les garanties ci-dessous:

"{2.} Le Landsting et les Communes d'Aland ne sont, dans aucun cas, obligés d'entretenir ou de subventionner d'autres écoles que celles où la langue d'enseignement est le suédois. Dans les établissements scolaires de l'Etat, l'enseignement se fera également dans la langue suédoise. Sans le consentement de la commune intéressée, la langue finnoise ne peut être enseignée dans les écoles primaires entretenues ou subventionnées par l'Etat ou par la commune.

"3. Lorsqu'un immeuble situé à Aland est vendu à une personne qui n'a pas son domicile légal dans la province, toute personne y domiciliée légalement, ou le Conseil de province, ou bien la commune dans laquelle l'immeuble est situé, a le droit de racheter l'immeuble à un prix qui, faute d'accord, sera fixé par le tribunal de première instance (Häradsrätt) en tenant compte du prix courant.

"Des prescriptions détaillées seront fixées par une loi spéciale concernant la procédure du rachat et la priorité entre plusieurs offres.

"Cette loi ne peut être modifiée, interprétée ou abrogée que dans les mêmes conditions que la loi d'autonomie.

"4. Les immigrants dans l'archipel d'Aland jouissant des droits de citoyen en Finlande n'acquerront le droit de suffrage communal et provincial dans les Iles qu'après cinq ans de domicile légal. Ne seront pas considérées comme immigrantes, les personnes qui ont eu précédemment cinq ans de domicile légal dans les Iles d'Aland.

"5. Le gouverneur des Iles d'Aland sera nommé par le Président de la République finlandaise, d'accord avec le Président du Landsting des Iles d'Aland. Au cas où cet accord ne pourrait se réaliser, le Président de la République choisira le gouverneur sur une liste de cinq candidats, désignés par le Landsting et présentant les garanties requises pour la bonne administration des Iles et la sécurité de l'Etat.

"6. La province d'Aland aura le droit d'employer pour ses besoins 50 % des revenus de l'impôt foncier, outre les revenus prévus par l'article 21 de la loi d'autonomie.

"7. Le Conseil de la Société des Nations veillera à l'application des garanties prévues. La Finlande transmettra au Conseil de la Société des Nations, avec ses observations, toutes plaintes ou réclamations du Landsting d'Aland au sujet de l'application des garanties susdites, et le Conseil pourra, au cas où la question serait de nature juridique, consulter la Cour permanente de Justice internationale."

Le Conseil approuve unanimement les termes de cet accord et décide de l'annexer à sa résolution du 24 juin; il adresse ses remerciements à M. Hymans pour l'heureuse réussite des négociations.

Les représentants de la Finlande et de la Suède se retirent.

[Quoted from Tore Modeen, *De folkrättsliga garantierna för bevarandet av Ålandsöarnas nationella karaktär*. Åbo : Åbo Akademi, 1973, pp. 190-191.]

APPENDIX II:

Legislative powers of the Åland Islands and the State/Sections 18 and 27 of the Autonomy Act.

Section 18

Legislative authority of Åland Islands

Åland Islands shall have legislative powers in respect of

- 1) the organisation and duties of the Legislative Assembly and the election of its members, the Government of Åland and the officials and services subordinate to it;
- 2) the officials of Åland, the collective agreements on the salaries of the employees of Åland and the sentencing of the officials of Åland to disciplinary punishment;
- 3) the flag and coat of arms of Åland and the use thereof in Åland, the use of the Åland flag on vessels of Åland and on merchant vessels, fishing vessels, pleasure boats and other comparable vessels whose home port is in Åland, without limiting the right of State offices and services or of private persons to use the flag of the State;
- 4) the municipal boundaries, municipal elections, municipal administration and the officials of the municipalities, the collective agreements on the salaries of the officials of the municipalities and the sentencing of the officials of the municipalities to disciplinary punishment;
- 5) the additional tax on income for Åland and the provisional extra income tax, as well as the trade and amusement taxes, the bases of the dues levied for Åland and the municipal tax;
- 6) public order and security, with the exceptions as provided by section 27, subparagraphs 27, 34 and 35; the firefighting and rescue service;
- 7) building and planning, adjoining properties, housing;
- 8) the appropriation of real property and of special rights required for public use in exchange for full compensation, with the exceptions as provided by section 61;
- 9) tenancy and rent regulation, lease of land;
- 10) the protection of nature and the environment, the recreational use of nature, water law;
- 11) prehistoric relics and the protection of buildings and artifacts with cultural and historical value;
- 12) health care and medical treatment, with the exceptions as provided by section 27, subparagraphs 24, 29 and 30; burial by cremation;
- 13) social welfare; licences to serve alcoholic beverages;
- 14) education, culture, sport and youth work; the archive, library and museum service, with the exceptions as provided by section 27, subparagraph 39;
- 15) farming and forestry, the regulation of agricultural production; provided that the State officials concerned are consulted prior to the enactment of legislation on the regulation of agricultural production;
- 16) hunting and fishing, the registration of fishing vessels and the regulation of the fishing industry;
- 17) the prevention of cruelty to animals and veterinary care, with the exceptions as provided by section 27, subparagraphs 31-33;

18) the maintenance of the productive capacity of the farmlands, forests and fishing waters; the duty to transfer, in exchange for full compensation, unutilised or partially utilised farmland or fishing water into the possession of another person to be used for these purposes, for a fixed period;

19) the right to prospect for, lay claim to and utilise mineral finds;

20) the postal service and the right to broadcast by radio or cable in Åland, with the limitations consequential on section 27, subparagraph 4;

21) roads and canals, road traffic, railway traffic, boat traffic, the local shipping lanes;

22) trade, subject to the provisions of section 11, section 27, subparagraphs 2, 4, 9, 12-15, 17-19, 26, 27, 29-34, 37 and 40, and section 29, paragraph 1, subparagraphs 3-5, with the exception that also the Legislative Assembly has the power to impose measures to foster the trade referred to in the said paragraphs;

23) promotion of employment;

24) statistics on conditions in Åland;

25) the creation of an offence and the extent of the penalty for such an offence in respect of a matter falling within the legislative competence of Åland;

26) the imposition of a threat of a fine and the implementation thereof, as well as the use of other means of coercion in respect of a matter falling within the legislative competence of Åland;

27) other matters deemed to be within the legislative power of Åland in accordance with the principles underlying this Act.

Section 27

Legislative authority of the State

The State shall have legislative power in matters relating to

1) the enactment, amendment, explanation and repeal of a Constitutional Act and an exception to a Constitutional Act;

2) the right to reside in a country, to choose a place of residence and to move from one place to another, the use of freedom of speech, freedom of association and freedom of assembly, the confidentiality of post and telecommunications;

3) the organisation and activities of State officials;

4) foreign relations, subject to the provisions of chapter 9;

5) the flag and coat of arms of the State and the use thereof, with the exceptions provided by section 18, subparagraph 3;

6) surname and forename, guardianship, the declaration of the legal death of a person;

7) marriage and family reasons, the juridical status of children, adoption and inheritance, with the exceptions provided by section 10;

8) associations and foundations, companies and other private corporations, the keeping of accounts;

9) the nationwide general preconditions on the right of foreigners and foreign corporations to own and possess real property and shares of stock and to practice a trade;

10) copyright, patent, copyright of design and trademark, unfair business practices, promotion of competition, consumer protection;

11) insurance contracts;

12) foreign trade;

13) merchant shipping and shipping lanes;

14) aviation;

15) the prices of agricultural and fishing industry products and the promotion of the export of agricultural products;

16) the formation and registration of pieces of real property and connected duties;

17) mineral finds and mining, with the exceptions as provided by section 18, subparagraph 19;

18) nuclear energy; however, the consent of the Government of Åland is required for the construction, possession and operation of a nuclear power plant and the handling and stockpiling of materials therefor in Åland;

19) units, gauges and methods of measurement, standardisation;

20) the production and stamping of precious metals and trade in items containing precious metals;

21) labour law, with the exception of the collective agreements on the salaries of the Åland and municipal officials, and subject to the provisions of section 29, paragraph 1, subparagraph 6, and section 29, paragraph 2;

22) criminal law, with the exceptions provided by section 18, subparagraph 25;

23) judicial proceedings, subject to the provisions of sections 25 and 26; preliminary investigations, the enforcement of convictions and sentences and the extradition of offenders;

24) the administrative deprivation of personal liberty;

25) the Church Code and other legislation relating to religious communities, the right to hold a public office regardless of creed;

26) citizenship, legislation on aliens, passports;

27) firearms and ammunition;

28) civil defence; however, the decision to evacuate residents of Åland to a place outside Åland may only be made with the consent of the Government of Åland;

29) human contagious diseases, castration and sterilisation, abortion, artificial insemination, forensic medical investigations;

30) the qualifications of persons involved in health care and nursing, the pharmacy service, medicines and pharmaceutical products, drugs and the production of poisons and the determination of the uses thereof;

31) contagious diseases in pets and livestock;

32) the prohibition of the import of animals and animal products;

33) the prevention of substances destructive to plants from entering the country;

34) the armed forces and the border guards, subject to the provisions of section 12, the actions of the authorities to ensure the security of the State, state of defence, readiness for a state of emergency;

35) explosive substances, as to the part relating to State security;

36) taxes and dues, with the exceptions provided by section 18, subparagraph 5;

37) the issuance of paper money, foreign currencies;

38) statistics necessary for the State;

39) archive material derived from State officials, subject to the provisions of section 30, subparagraph 17;

40) telecommunications; however, a State official may only grant permission to engage in general telecommunications in Åland with the consent of the Government of Åland;

41) the other matters under private law not specifically mentioned in this section, unless the matters relate directly to an area of legislation within the competence of Åland according to this Act;

42) other matters that are deemed to be within the legislative power of the State according to the principles underlying

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Preliminary Paper

Princeton University, Princeton, New Jersey, U.S.A.
December 1999

Kosovo

Conceptual Challenges, Practical Problems, Possible Future Lessons

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The Kosovo Crisis is about the search for maximum autonomy and potential independence by a relative majority, the Kosovo-Albanians, in the Serbian province of Kosovo (called Metohia by Belgrade), within the sovereign territory of the (rump) Federal Republic of Yugoslavia (FRY) and its internationally recognized borders. The plight of the Kosovo Albanians has become a problem not solely within and for the FRY but for the entire South Central European sub-region, since similar ethnic communities live in Albania, Macedonia, Montenegro and even Bulgaria.

In light of the presence of restless minorities in other states, this case is relevant to the international crisis management of similar self-determination conflicts. Key dimensions of the problem include sovereignty, borders, security, education, freedom of association, and minority rights. Moreover, religious-cultural and socio-economic differences, leadership interests, outside power involvement, conflicts between urban and rural populations, the influence of émigrés (the diaspora), as well as interests of other states add to the complexity.

Kosovo represents a microcosm of a greater sub-regional security dilemma, and thus raises numerous issues: suppression by a central government; demographic imbalance; intra- and inter-ethnic tensions (within the Kosovo territory as well as in neighboring Albania and Macedonia); mushrooming power and the influence of organized criminality in every-day life; and an estrangement of values in the entire region from Europe and the West. Stability and peace are only attainable by making Kosovo part of a stable region that is introduced rapidly into the European integration process (*Europeanization*). This step is fundamental in order to restore economic and political stability, decrease the relative value of sovereign borders, effectively combat organized crime, and offer the population greater hope for a peaceful and prosperous future.

The Balkan region knows *multiple realities*, both geographically and hierarchically distributed. As the efforts to implement the Dayton Plan in Bosnia-Herzegovina have demonstrated, and as other conflicts at the turn of the last century in the Balkans have taught us, a lasting and effective solution must address them or its effective implementation is doomed. In a 'quasi-pyramidal' structure the following three realities are crucial: i.) the international-governmental interaction with the Balkan leaders; which does generally exclude contacts with middle-administrators and the people; ii.) the relationship between the government and the population transferred downwards *via* administrators; and iii.) the everyday life of the population rather remote from government contact. Due to the catastrophic economic situation, the burden of daily life has encouraged also average citizens to go more and more also desperate and unlawful avenues in order to make means meet ends. Unfortunately, most of the negotiations and international involvement only touches upon the first two, thus increasing the dangers associated with trying to find a sophisticated solution for one particular problem – with much effort, time, and money – while neglecting crises evolving from other problems. Arguable the Milosevic leadership has successfully managed to quell popular unease or dissatisfaction until now. However, in the long run avoiding to deal with all three realities simultaneously explains also how unexpected and nationalistic developments, as results in elections, (as was the case in Bosnia and Herzegovina (despite hundreds of millions of dollars spent in the Dayton process) can happen, and why there is so rampant a feeling amongst much of the Serbian population still today, that the West does not really care for them. Geographically this relates to the critical juncture between solving the situation in Kosovo on the one hand, while having intra-ethnic problems in Albania and inter-ethnic tensions in Macedonia.

* The author is grateful to James Gow, LRPSD-Princeton University and King's College, London, for comments and to Melissa Magliana, LRPSD-Princeton University for assistance.

Background

Five dimensions had a significant impact in the aggravation of the Kosovo Crisis: i.) the demographic development; ii.) the border between Kosovo and Albania became increasingly porous therewith allowing interaction between the two communities and also permitting illegal elements to infiltrate into Kosovo, and the diaspora to hold an ever tighter grip; iii.) the increasing repression post-1987 of the Kosovo Albanians by Slobodan Milosevic personally for domestic political purposes in order to ride on Serbian nationalism; iv.) domestic crisis in Albania 1997 which eventually affected the developments/radicalization of the Kosovo Albanians; v.) the fundamental misperception and misunderstanding both in Belgrade and Brussels/EU and Washington. The domestic affairs in the United States that engulfed the U.S. Presidency and contributed to misconceived judgment on the part of Belgrade regarding its own strategies available for solving the Kosovo crisis.

Ad i.) the demographic development of the Albanians increased exponentially with families frequently having up to 11 children – though also those Serbian families in Metohia had large amounts of children; this was of course used by Serbian propaganda. Radko Anjelkovic, the president of the government of Kosovo and Metohia argued that some 600,000 Kosovo Albanians would be an acceptable level.¹ According to the 1991 census, which was not too precise as many Kosovo Albanians did not participate, there were around 1.8 million in Kosovo.

The instability in Kosovo has less threatened other ethnic minorities living there like the Turks, the Catholic group, the Gypsies, and the Romanians. Reports claim that Belgrade has tried to play the various communities against each other. For instance Serb special police units reportedly permitted Gypsies to ransack abandoned Albanian homes, once the security operation was terminated.

Ad ii.) the Serbian attitude against the Kosovo Albanians hardened considerably, therewith pushing the Albanian community in Kosovo de facto into establishment of a second society;

The above mentioned suppression of Kosovo Albanians by the Milosevic regime, their denial of regular school, even medical care and opportunity for professional advance

within the regular workforce begun to take its toll on the Kosovo Albanian political scene. However, due to the increasingly intense border traffic with Albania, the influx and influence of non-Kosovo Albanians increased as well. Kosovo was still much better off than Albania.

Two developments took place locally: on the one hand Dr. Ibrahim Rugova, preached non-violent resistance to suppression and finding a solution to the satisfaction of the Kosovars, but free of the use of force. On the other hand, an increasing radicalization took place, particularly amongst the young and led to the formation of a paramilitary unit called UCK or Kosovo Liberation Army (KLA) in Switzerland and Germany Fall of 1997. Financial supply was provided through a special 3% tax payable by all Albanians living abroad. In addition a wide range international network of illegal trade and other profitable activities contributed to increasing availability of hard "DMs" for the interests of Albanians living in Kosovo.

The hardship for the Kosovo Albanians also contributed to a phenomenon already rampant in Serbia for years: a large "brain train", not just of intellectuals and all those who could permit themselves to leave as they had family or friends abroad, but also a change in population as it concerns the moderates or sending women or children abroad to find better living conditions there or perhaps begin a new life or career. So it was not just the intelligencia, but also the more moderates who increasingly left as the situation got ever more exasperated. - and there was no real hope for serious international involvement.

Ad iii.) The situation changed dramatically in 1997 when following a change of government in Tirana with the voting out of President Berisha, Albania suffered a socio-economic collapse of its so called financial "pyramid-schemes" - an overbloated savings and loan disaster which reaped large parts of the population of all their savings and more, and threatened to break out in civil-war like clashes, causing the already depleted Albanian armed forces to disintegrate. As a consequence, arms caches and military supply depots were looted, and hundreds of thousands of light infantry weapons found their way into the streets—and over the mountains into Kosovo.

The Republic of Albania experiences a de facto division between its northern part under the control of the former President Berisha (a major supporter of Kosova

¹. Interview with Anjelkovic in *The New York Times*, April 1999

independence), and the south controlled by the Tirana Government. This adds crisis potential to the whole issue.

During President Tito's leadership, it was the Kosóvo Albanians who were the most elaborate amongst that ethnic community and even had their own university. So indeed it was them taking the lead in unifying all Albanians, if ever. Today, however, they feel more urge just to become independent and to free themselves from Belgrade's independence. Further casualties in Kosovo and police brutality will intensify this drive and will induce incentive among the Albanian neighbors, particularly in Albania proper, to aid or liberate the suppressed Kosovo Albanians.²

Ad iv.) it became increasingly clear that Slobodan Milosevic uses the whip-up and exaggerated Serb nationalism against the Kosovo Albanians ("the Tuerks") as a vehicle to get overall control of the Yugoslav political landscape.

Yugoslavia - domestic

Any outside observer may find considerable socio-cultural tensions in the relationship between Kosovo Albanians and the South Slavs -- today as in the past. A significant north-south "degradation" exists in Serbia -- both economically and perceptively; thus making anything south of Kragujevac and Nis an issue of much less importance for Belgrade. Unfortunately the recent international focus and assistance for Kosovo have dramatize this, as it makes the inhabitants in that region better off than other Serbs. Jealousy is but one element now dominating the sentiments of Serbs in other areas of FRY with a Milosevic Regime having lost already much of the former Yugoslav terrain and an increasingly impoverished and depressed society.³ Furthermore this socio-cultural tension includes widespread pejorative perception of Kosovo Albanians by other inhabitants -- and is comparable to the Serb "*ober-mensch*" versus the Albanian "*unter-mensch*" dictum.⁴ It is aggravated by a rather common Serb disregard of the Albanians in Kosovo and elsewhere as heirs of the former Ottoman oppressors, being impoverished and involved in illegal

². Tim Judah, "Impass in Kosovo," *The New York Review of Books*, October 8, 1998

³. Timothy Garton Ash, "Cry, the Dismembered Country," *the New York Review of Books*, January 14, 1999, p. 31.

⁴. *Report on Human Rights in Serbia for 1997*, Helsinki Committee for Human Rights in Serbia, Belgrade, January 1998. *Radicalisation of the Serbian Society: Collection of Documents*, Helsinki Committee for Human Rights in Serbia, Belgrade, December 1997.

operations. That explains in part the dramatic and emotional brutality of security operations and crimes against humanity on both sides.⁵

Unfortunately both Yugoslavia's politics and political culture suffer from de-Europeanization and increasing political apathy in the countryside. Western cultural-societal values were once quite strong here, but it is said that since the death of President Tito the country, its politics and economics have been in a downward spiral culminating in the war like situation since the breakup of Yugoslavia 1990/1991.

Today traditional western and European socio-political values in Serbia are completely suppressed by an authoritarian Milosevic regime. This turns any early hopes of democratization or rapid reconstruction of civil-society, i.e. the return to "normalcy" into an illusion. In addition, any publicized efforts for that -- as propagated in the United States in December 1998 -- backfires as it puts democratic elements in FRY at risk and diminishes President Milosevic readiness to cooperate if Western powers who apparently want to topple him. The Milosevic government controls the police, military, the judiciary and media, now even research and teaching, and thus contributes to a "bunker mentality" of entire Serbia. Under the influence of biting international sanctions this turns into a "pressure cooker syndrome" forcing large segments of the population to semi-legal or illegal (gray-market) economic activities, making them dependent on financial support from related *Gastarbeiters* (guestworker) abroad, and demanding more than one job. Obviously, that helps rampant nationalism both against the outside world, as well as increasing discrimination against other minorities in Serbia. This also explains the Serb historically based perception -- and inferiority complex -- to be once again the "unloved and indeed attacked appendix" of the West. The least this does assist the opposition in challenging the Milosevic leadership and its dependent clan-members, but rather helps 'nationalists-socialists' like Deputy Prime Minister Vojislav Seselj.

Organized criminality

The problem and influence of *organized criminality* in day-to-day life in the region is much more critical than generally accepted and the one with the potentially most destructive

⁵. *Albanian Terrorism in Kosovo and Metohija*, Federal Secretariat of Information, Belgrade, 1998. *Terrorism in Kosovo and Metohija and Albania: White Book*, Federal Ministry of Foreign Affairs, Republic of Yugoslavia Belgrade, September 1998. *Kosovo and Metohija*, Federal Ministry of Foreign Affairs, Republic of Yugoslavia Belgrade, May 1998.

power.⁶ As organized crime is partly a result of long-term economic sanctions, the south Balkans are alas a traditional harbinger for bands due to the geography and lack of governmental control. There is a criminal-geopolitical East-West and North-South cross-intersection from the Caucasus and Black Sea region to the Adriatic coastline and from Northern Greece into Hungary's Capital Budapest while spreading from there into Western Europe. It is only a question of time when the criminal network eventually crosses the Atlantic and reaches the United States -- hence the problem does directly concern U.S. national interest. But it really should mobilize EU crime-fighting capabilities and enhance related transatlantic collaboration. Criminality on an international scale increasingly influences all trades of daily life in the region, from law enforcement to governments, is much better organized, has more financial resources, and can draw on a sophisticated international support and communications network. Major European cities like Geneva and London report increasing influence of Albanian elements on organized criminality there.⁷ In a related effect this does not help the European public opinion on aiding those Kosovo Albanians in the region.

Ad v.) the influence of the international community's attention - or lack thereof - was significant, the problems of perception were significant. Slobodan Milosevic cleverly exploited U.S. attention at the crisis with Iraq and the UN verifiers there to clear up repeatedly in Kosovo, so in February, March 1998 in Dekani. In spite of protests by the Kosovo Albanians, Kosovo was deliberately excluded from the Dayton negotiations - what many saw as a concession to Belgrade. However it has to be understood that powers like China, England, France, and Russia were significant proponents for the argument that Kosovo with all its problems represented an internal affairs of Serbia and Yugoslavia. This was strongly underscored by Belgrade's argumentation that Kosovo is the cradle of Serb religious-cultural heritage. Thus, the Christmas warning from President Bush, 1991, there was little direct attention by the outside world till indeed the Dekani massacre by Serb security forces, February 1998.

⁶. See Wolfgang Danspeckgruber, "EU and US have an important role to play in beating organised crime in the Balkans," Letter to the Editor, *Financial Times*, January 6, 1999, p. 12

⁷. Reportedly, Western Intelligence Services put the income of the UCK (Kosovo Liberation Army) at up to US\$ 900 million. At least 50% is supposed to come from international drug smuggling.

This abstention was compounded by varying degrees of tensions between the United States and Iraq, the enforcement of UNSCOM and the no-fly zone, the intensification of the EU integration process through the introduction of the Euro, and the coming to end of the Kohl-government in Germany. The real cause for misunderstanding and misperception however became the affair around Monica Lewinsky, the White House and the American Presidency, which took not only a large part of western media attention, but also increasingly the attention of the White House itself.⁸ The perception abroad, and in Belgrade, that this would entail a lack of bipartisan support for any major U.S. operation, and hence free the back for significant security operations was as well understandable as it was dangerous, as the American public has proven repeatedly that it may react significantly different, i.e. unified and aggressive, to anything perceived as a challenge from abroad - even one to accepted fundamental human rights - than to public policy and party games at home.

Hence when on the onset after the failure of Rambouillet U.S. Secretary of State Albright together with her European allies wanted to use limited military force only to get the Serbs back to the negotiation table, Belgrade could not imagine that this would be more than a small and quick affair - in view of its evaluation of the situation in Washington. Inversely it begun to undertake what it had repeatedly warned - for instance German Foreign Minister Joschka Fischer - namely to clean out the Kosovo and reduce the Albanians there to roughly 600,000.⁹ Inversely, the more Yugoslav security forces completed their brutal ethnic cleansing, the higher the determination on NATO's part to stop that humanitarian catastrophe.

Conceptual Considerations

Quoted from the *Berliner Zeitung* in "UCK Income 'from drug smuggling,'" B92 Open Yugoslavia, Belgrade, Daily News Service, March 4, 1999, 17:00 cet.

⁸. For an excellent summary of the argument see *The New York Times*, Sunday, May, 1999

⁹. Information in interview with WFD.

The Kosovo crisis raises several conceptual issues, at the heart of which lies the issue of sovereignty.¹⁰ Traditionally sovereignty comprises the right of a national government to exclude outside influence from its national territory, and hence bestows upon the national government the right to wield legislative, executive, and judiciary powers within its sovereign boundaries.¹¹ On the international level sovereignty offers the sovereign government the ability to participate as an equal in international discourse with other sovereign members of the international community—though this depends on recognition of the state as a *conditio sine qua non*. In times of increasing education on the basic human rights, global real-time (CNN) information, and in an increasingly interdependent world, sovereignty has experienced mounting challenges. Particularly the right of a government to exert its power at home in *n'aporté quelconque* fashion is more and more under scrutiny. Recently for the first time even UN Secretary General Kofi Annan questions the possibility for a state to hide behind sovereignty while committing flagrant violations of human rights. He invokes “individual sovereignty” – namely the human rights and fundamental freedoms of each and every individual as enshrined in the UN Charter.¹² Kofi Annan also argues that “the state is now widely understood to be the servant of its people – and not vice versa.”¹³ Interestingly, Prince Hans Adam II. of Liechtenstein has argued in 1997 in similar kind in an exposee on “Democracy and Self-determination.” The state should principally offer services to its citizens, and they in turn should have the right to “choose their states and citizenships freely – in self-determination.”¹⁴ An accompanying problem concerns borders and boundaries. In effect any issue concerned with sovereignty is a problem relating to hard, external, sovereign boundaries. Kosovo has traditionally been considered a region within the FRY’s sovereignty and within its external boundaries. On the other hand, the constitution of 1974/79 offered Prishtina originally far-ranging rights and opportunities and hence introduced a soft internal administrative boundary between Kosovo and the rest of

¹⁰. James Gow, “Shared Sovereignty, Enhanced Security—Lessons from the Yugoslav War,” in Sohail H. Hashmi, ed., *State Sovereignty—Change and Persistence in International Relations*, The Pennsylvania State University Press, 1997, pp. 151-179

¹¹. Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination*, University of Pennsylvania Press, 1996; Ruth Lapidoth, “Sovereignty in Transition,” *Journal of International Affairs*, Winter 1992, pp. 325-346

¹². *The Secretary General, “Address to the United Nations General Assembly”* New York, 20 September 1999.

¹³. *Ibid.*

Serbia and the FRY. After the NATO operation against Yugoslav military and security forces in Kosovo, the critical question is once again the border. Will Kosovo in its entirety - or in part, south of Kosovoska-Mitroviza - obtain hard external boundaries, or not. The fallacy with each and any redrawing of boundaries rests in the historical truth: any redrawing of hard external boundaries will unavoidably create winners and losers.

The next problem lies in the scope and extent of rights of minorities within a sovereign territory.¹⁵ - In our case the situation of the community in questions - the Kosovo Albanians - changed suddenly dramatically once Slobodan Milosevic and the central authorities decided to nullify the bestowed level of autonomy and basically to introduce large scale repression.¹⁶ Finally, self-governance and self-determination are at the center of the problem. Self-Determination is defined as the ability to determine one's internal and external policy, and thus has an internal and external dimension:¹⁷ the existence of legitimate government and institutions at home, and the freedom of action in international affairs.

For the relevant international agreements see the UN Framework as well as those agreed upon within the Helsinki Process, i.e. the Helsinki Declarations and the Charter of Paris.¹⁸ The latter dimension raises the classical understanding of self-determination, namely the situation in which a given community strives for a maximization of autonomy within the existing national borders, with the clear implication that should this prove unsuccessful, an attempt at secession will be made.¹⁹ This begs the definition of "minority" and its relationship with other ethnic communities within the sovereign territory. On the other

¹⁴ H.S.H. Prince Hans Adam II. of Liechtenstein, "Democracy and Self-Determination," Schloß Vaduz 1997.

¹⁵ . For excellent treatment see Thomas D. Musgrave, *Self-Determination and National Minorities*, Oxford Clarendon Press, 1997

¹⁶ . Misha Glenny, *Fall of Yugoslavia--The third Balkan War*, Third Revised Edition, Penguin Books, 1996; Laura Silber, and Allan Little, *Yugoslavia--Death of A Nation*, Penguin 1996

¹⁷ . See Richard Falk, "The Right of Self-Determination under international law," in Wolfgang Danspeckgruber, ed., *Self-Determination of Peoples: Communities, Nations and States in Global Interdependence*, Lynne Rienner Publishers, 2000.

¹⁸ . International Covenant on Economic, Social and Cultural Rights (ICESCR); and The International Covenant on Civil and Political Rights (ICCPR) December 16th, 1966; Common Article 1; The Vienna Declaration and Program of Action 1993; for the Charta of Paris see Wolfgang Danspeckgruber with Arthur Watts, eds., *Self-Determination and Self-Administration--A Sourcebook*, Lynne Rienner Publishers, 1997.

¹⁹ . See the definition of self-determination in Richard A. Falk, "The Right of Self-Determination Under International Law: The Coherence of Doctrine Versus the Incoherence of Experience," in Wolfgang Danspeckgruber with Arthur Watts, eds., op.cit.

hand, as Antonio Cassese supports as well, certain legitimacy exists for an oppressed community to struggle and even fight for its independence.²⁰ Obviously the central government concerned will resist any outside pressure in favor of this community with the argument that this is interference into sovereign agenda, and indeed comes close to support of terrorism.²¹

The notion of self-determination as a potential forerunner of independence raises yet another set of complications, this time on a regional level. The three primary states concerned - Albania, Macedonia and Serbia/Yugoslavia - are all inhabited by substantial ethnic-Albanian populations; the future of Kosovo, with its 90% ethnic Albanian population, is extremely significant both for Albania as well as Macedonia, where ethnic Albanians compose one quarter of the population. Due to the potential regional repercussions for the struggle for greater autonomy - or even independence - the international community is also highly sensitive to its developments. Making the Kosovo province a new sovereign entity could potentially cause the break up of Macedonia, the unification of Kosovo with Albania hence the formation of a "greater Albania", or even both. Any of these options could upset the regional balance.

It is thus clear that the secession of territory such as Kosovo from Yugoslavia may cause problems both for neighboring states as well as for outside powers.²² In effect - and as was the case in Kosovo - when the strategic interests of outside powers are challenged, directly or indirectly via allies (e.g. Greece) intervention into the (domestic) affairs of the perpetrating sovereign state is a likely consequence. Largescale destruction and humanitarian crisis - refugees - are triggers. This is particularly probable if it was the government's policy of suppression that caused the minority problem in the first place.²³

²⁰. Antonio Cassese, *Self-Determination of peoples—A legal appraisal*, Cambridge University Press, 1995.

²¹. See the statements by Milan Milutinovic, President, Republic of Serbia, Press Release, 24/02. February 1999, and other such Press Releases by the Permanent Mission of the Federal Republic of Yugoslavia to the United Nations.

²². See Metta Spencer, ed., *Separatism—Democracy and Disintegration*, Rowman & Littlefield Publishers, Inc., 1998

²³. Stanley Hoffmann, "The politics and ethics of military intervention," in Stanley Hoffmann, *World Disorders—Troubled Peace in the Post-Cold War Era*, Lanham, Boulder: Rowman&Littlefield Publishers, Inc., pp. 152-176. Richard Haass, *Intervention: The Use of American Military Force in the Post-Cold War World*, Washington, D.C. Carnegie Endowment of International Peace, 1999.

Intervention, especially humanitarian intervention or "the *droit d'ingérence*"²⁴ challenges state-sovereignty not because of strategic interests of outside powers, but due to excesses in human rights violations by the targetted government and the effects of these violations upon the immediate neighborhood. Justifications for intervention include cost cutting - humanitarian, industrial, and reconstruction - as well as preemptive strategy to counteract further widening and intensification of the conflict at hand. A major argument of justification for the international community regarding costs relates to assistance in order to establish the situation as such that it corresponds with the *status quo ante* which poses a significant financial challenge.

Finally, another issue raised by the Kosovo crisis addressed the presence of other minorities within the territory; these are typically smaller communities, concerned about their own rights and possibilities. Such situations become of particular interest when the minority within the Province is representative of the majority in the State; such is the case in Kosovo, where the Serbs are represented by a relative. Minorities within the territory of an autonomy-searching community can become disadvantaged or mistreated,²⁵ particularly if they are perceived as representatives of the adversary.

Possible Solutions and a 'final status' for Kosovo:

The Case for Self-Governance plus effective Regional Integration²⁶

Principally seven / eight possibilities:

Either for the Region of Kosovo in its entirety or for the major (southern) part.

- ◆ (i.) Return to *status quo ante*, i.e. no change - the one end of the spectrum
- ◆ (ii.) Secession plus independence, i.e. *classical sovereignty* "19th cent. option" - the other end of the spectrum, with new external boundaries.
- ◆ (ii.a.) Secession of a part of the Kosovo territory, with new external boundaries

²⁴. Bernard Kouchner has called a right to intervention for humanitarian reasons "*droit d'ingérence*" as quoted in Stanely Hoffmann, "The politics and ethics of military intervention," p. 156

²⁵. "Good fences—Borders are arbitrary abstractions," *The Economist*, December 19th, 1998, pp. 19-22.

²⁶. See Wolfgang Danspeckgruber, "Self-governance: A futuristic concept for traditional European problems," Helsinki Group, Belgrade, November 1998.

- ◆ (iii.) Secession plus unification (with Albania, and/or with Western-Albanian-part of Mazedonia), i.e. redrawing the map and strategic balance of much of the Southern Balkans.
- ◆ (iv.) International *mandate* / a la High Representative and UNMIK civil authority
- with an as yet undefined 'final status' of Kosovo.
- ◆ (v.) *Lebanonization*, i.e. de facto outside control by one or more regional powers
- avoiding a final status for Kosovo but indirectly continuing strategic change in the Southern Balkans.
- ◆ (vi.) *Maximum autonomy* but remaining inside sovereign territory of FRY - though outside Serbia; perhaps as a third republic like Montenegro
- ◆ (vii.) New form of *self-governance*, i.e. maximum autonomy *plus* concrete programs/initiatives by the EU and OSCE and NATO for participation
in regional integration specifically tailored to the needs of the SEE region

In detail, the return to *status quo ante* (ad i.) seems certainly out of question for reasons including the many casualties and extensive suffering of Kosovo Albanians on the hand of the Serbs, and to a certain degree now also because of resistance by many Serbs who have increasingly to suffer on the hands of the Kosovo Albanians in retribution and revenge attacks against them and their elders.

Inversely, the secession of Kosovo, or even a certain part of it (ad ii., ii.b) depends immediately on several critical issues - besides redrawing boundaries and creating a sovereign government and territory. Such issues comprise certainly international recognition, legitimization, minority rights, and political culture.²⁷ Already the question of international recognition will introduce a gambit of problems and is far from being set. The P5 China and Russia will draw many an argument against recognition, hence an independent Kosova will be up for a very rocky start indeed on the plane of international recognition. - The adhesion to international organizations, an important consequence of being a sovereign

state, may hence become one of the first problem sets, if not casualty. A large target for criticism will be the problems of minority rights and protection of Serbs, Gypsies, and other minorities who have left in the thousands after they were aggressed and severely mistreated by returning Kosovo Albanians.

Many observers believe today, that behind these human rights violations seems to be systematic making it even less likely that important members in the international community may just glance over that problem in the case for recognition of an independent Kosova. It highlights the question of legitimacy (even if all Kosovars support a new Pristina government) as well as the issue of true democratization and equal rights for its citizens, independent of ethnicity and religion. It also begs the question of effective governmental control and enforcement of law and order within the sovereign boundaries of Kosova. This may also play to the disadvantage regarding international assistance as much as for further establishing regional peace and stability. Independence of Kosovo may influence the continuation of the Dayton Peace Implementations - in so far as Republika Srpska and Herceg Bosna may take similar arguments to try to opt out from Bosnia-Herzegovina. - Still, it ought to be argued, that in case the entire process of secession, particularly internally can be conducted according to accepted OSCE criteria, i.e. peaceful and under observance of democracy, protection of human rights, and in accordance with the Charter of Europe²⁸ then there should be no reason why the Kosovars should not exercise their right of classical self-determination. Questions of economic viability and participation in regional cooperation, and organized crime, ought still to be given particular prominence.

Secession plus unification - as indicated during the process - (ad iii.) represents perhaps the most dramatic solution for the Kosovo. On the one hand, it entails the future status and geostrategic situation of at least three states: the FRY, Albania, and/or potentially Macedonia; namely if considering a joining with the Western-Albanian- part of Macedonia; thus implies secession of that part of Macedonia. Thus it contributes to a redrawing of the map and alteration of the strategic balance of much of the Southern Balkans. It may again influence the continuation of the Dayton Implementation. On the other hand, the ramifications for the future of the Southern Balkans as well as the symbolic importance for

²⁷. For a good discussion of internal stability and recognition see James Gow, "Shared Sovereignty, Enhanced Security—Lessons from the Yugoslav War"

²⁸. For the latest version see www.OSCE.org.

comparable crises elsewhere (Chechnya) will be considerable. Reaction and resistance by important members of the international community can be expected to be appropriate. However, it is to be re-stated, that in case a mechanism could be elaborated which were to guarantee a free and fair decision making process in all states concerned about the eventual decisions and their implementations, and as long as this process were to be verified by OSCE mandate, once again, in the spirit of the European Charter, little could be held against. In case however such process were to lead to suffering, repression, bloodshed, and human rights violations, combined with again a heightened sense of injustice and instability - and personal insecurity; not even to speak about freedom and Council of Europe propagated democratic and human values, it ought to be rejected.

Secession plus unification implies - besides all the issues raised above regarding classical sovereignty - also the fate of at least Albania and Macedonia, and the respective populations. It may be assumed that less resistance can be expected from Albania, who shares same ethnicity and religion, though during the in tact Yugoslavia little love was lost from the side of the Kosovo Albanians vis-a-vis their then considered backward western brothers and sisters of a hermetically closed Albanian society under the rule of Envar Hodgar. So it is not predictable how the southern Part of Albania, compared to the northern will react. What is predictable is a potentially hostile reaction of Macedonia's Slav population who - not just in light of sometimes closer relations between Skopje and Belgrade - will certainly not welcome a splitting off of the area around Tettovo and may take up arms against such a process, without due preparation and education and seeing potential benefits. It is not even certain to which degree the relationship between Macedonia and Bulgaria will be influenced as well. What can be predicted with certainty is the impact an enlarged Albania, or Kosova plus parts of Macedonia, or worse both, would have on the strategic perspectives and perceptions of Greece. With or without bilateral defense agreements with NATO member Turkey, as the one of the early 1990s between Tirana and Ankara, Greece will certainly develop a perspective of instability and worry about its own northern part - as much as about the future of Cyprus. Athen's resistance on the international plane will henceforth be vociferous and accordingly. Some observers have even indicated such a development to be a potential *casus belli*.²⁹

²⁹ . See Dusan Sidjanski, "The War Against Yugoslavia," manuscript, Geneva, 1999.

On the conceptual plane secession plus unification is certainly of most complex character, raising issues such as legitimacy, identity, majority versus minority rights and interests, as much as problems of secession as a consequence in neighboring states (such as Macedonia) and, as a potential longer term effect, in Bosnia Herzegovina. Clearly that would be of critical influence upon the international recognition process for any new emerging entity. Such a combined solution also introduces again the concept of "greater" into emerging Balkan politics, hence raising a spectre in Croatia, Serbia, and potentially Bulgaria. Much will have to be done to alleviate doubts about actual legitimacy of the emerging central government in the emerging unit searching for state sovereignty and international recognition. Similarly huge will be the task to introduce democracy, assurances of human rights and minority protection in a territory which has suffered from precisely the inverse. - Dealing with fundamental issues regarding organized crime and corruption would be another Herculean task (see below). Without extensive and prolonged international assistance non of these tasks could be solved, let alone be addressed in their extraterritorial dimensions. This addresses a fundamental dilemma—the 'gordian knot': international cooperation and support is key in order to ascertain international assistance, which in turn again is required to tackle many of those challenges which are seen by the international community as a *condition qua non* whether or not to accept the outcome of such a complex and major final status in the first place.

Compared to these so complex options which all do entail a change of external boundaries, options iv - vii. do not seem to change the Southbalkans' strategic landscape to the same degree, though in the long run they may prove troublesome as well. - Though, admittedly, they may be much harder to accept for the Kosovo Albanians after all the drama, suffering, commotion, and repression of the not so distant past.

The existence of an international *mandate* / à la the High Representative of the International and UNMIK civil authority - with an as yet undefined 'final status' of Kosovo. (iv.) Much can be said for such a transitional solution which would enable to prepare the grounds for fundamental reform and restructuring in Kosovo, leading eventually to fair and just elections, and hence to the creation of a secure environment. But reality so far has taught many stories, and reality in Bosnia, which finds itself under a comparable international mandate right now, has demonstrated that in spite of significant financial support from the outside, and much international good will, the (former ethnic) antagonists

do not necessarily make the step towards peaceful cooperation and establishment of a working economy and infrastructure – above and beyond what serves their own very personal (and limited) interests. A most recent example of a concerted action by the OHR in order to remove obstructionist officials from their positions – to offer the implementation process a “kick-start” – has however demonstrated that a determined and engaging approach by the international community may indeed have the desired effects.³⁰

Remaining within the FRY but changing its status towards becoming a third republic like Montenegro and Serbia (vi.) does not imply a change of boundaries. Arguably this could be considered the ‘second worse’ solution close to a return to *status quo ante*, though it is not. Giving Kosovo considerably more in rights and responsibilities than even as it was offered by the 1974 and 1979 Federal Constitution would be a great atout. It is questionable to which degree not only the Kosovo Albanians would find it appealing to remain within Belgrade’s sovereign reach, and to what extent the Serbs themselves could befriend a situation within which they continue not only having Kosovo et Metohia within Federal FRY boundaries, but also having at least the same amount of Kosovo Albanian population there as in fall, 1998. Still somehow a reordering of the Federal System of the FRY could at once attempt to solve *both* the issues regarding Kosovo and Montenegro, and hence perhaps anticipate further aggravation of problems in the Sanjak. If this were to be combined with concrete measures which would offer the Kosovo Albanians ample advantages due to participation in regional integration, and could bring about the so highly lamented lack of Europeanization, then, this would be a further reason for appeal.

For completeness sake the option (v.) *Lebanonization*, i.e. de facto outside control by one or more regional powers - avoiding a final status for Kosovo but indirectly continuing strategic change in the Southern Balkans.

Finally, the presentation of a different kind of autonomy, both internally and externally through option (vii.) *self-governance*, i.e. maximum autonomy *plus* concrete

³⁰. Janez Kovaz described in interesting detail the sacking of 22 (hard line nationalist) Bosnian officials in a joint operation by OHR and OSCE. Interestingly, no public reaction followed. See *IWPR's Balkan Crisis Report, No. 98*: Janez Kovaz, “Mass sackings hope to kick-start Bosnian Peace Process”.

programs/initiatives by the EU and OSCE and NATO for participation in regional integration specifically tailored to the needs of the SEE region.³¹

“Self-governance” is defined as ‘maximum’ autonomy including the rights to self-administration in dimensions of culture, education, language, religion, financial, judicial administration and public safety, even certain industrial, energy, or infrastructure projects. It should allow administration of daily communal or regional affairs, while offering more freedom for creativity to adapt the administering institutions, organs, laws and regulations tuned to its specific needs. This exceeds self-administration on the local level which is basically the right to execute and administer according to predetermined rules. In turn, such enhanced rights however also oblige the community to recognize and respect the rights of minorities within its territory. It increases the value of internal/administrative borders with the remaining state, but does not make a new international entity.

The term “self-governance” introduces a concept more positive, humane, future oriented and less loaded with historical and legal-political package. The “self” is to address the community, very much in line with the traditional “self” as in “self-determination.” In contrast to self-determination “self-governance” — ought not necessarily lead down the slippery slope to state shattering and not result in immediate state-formation. Over some period of time however, borders, both internal and external can be altered by regional integration (automatically reducing their force) and a process according to accepted international norms, OSCE standards, and agreed upon by all parties concerned.

Self-governance may be seen distinct to “self-administration.” The difference includes a linguistic interpretation separate from the notion of pure administration (*Verwaltung*) according to predetermined rules and procedures. Thus self-governance is of a more flexible character which obviously includes administrative duties, but also tasks immanent to “self-government” with the appropriate organs and as agreed by all parties involved. Self-governance includes a hint of post-modern leadership considering increasingly accepted international standards such as rights for women, aspects of political correctness, non-discriminatory politics (religion, race, language), environmental concerns, and cultural flexibility.

³¹ . see Wolfgang Danspeckgruber Samoopredeljenje: Futuristički Koncept za tradicionalne (Evropske) Problem,” - “Self-governance: A Futuristic Concept for Traditional (European) Problems,” Helsinki Committee for Human Rights in Serbia, Belgrade, November, 1998

It should enable the classical concept of self-determination to advance from the traditional orientation of state-shattering towards a more benign, stable, and hence mutually satisfying notion of increased, indeed maximized autonomy within existing international boundaries while permitting rewarding participation in global economic integration.

Self-governance requires stability, predictability, and most important, communal security. This may thus demand an elimination of arms and armed forces or armed elements within the larger region. It also addresses the influence of criminal elements, organized locally or internationally. *Demilitarization and decriminalization* of the region are hence a requirement for the successful introduction of self-governance. Self-governance may even include *neutralization*, thus denying foreign actors the right to use the territory as a staging ground for military operations, as well, as reducing the danger of armed clashes. The guarantee of the inviolability of the rights of the community in question and its territory may have to be offered by regional powers or a regional organization. Self-governance should not include diplomatic representation abroad, the protection of sovereign borders, nor customs and national defense. These agenda should be left to the central government.

In many cases the community in question within the territory of a sovereign entity inhabits a region which represents a micro-cosmos of a *sub-region*. If the community inhabits a region divided by an external boundary resulting in the fact that members of the same community live in two or more different, neighboring, sovereign states, then this concerns borders: internal, soft administrative borders versus external, hard borders. The *process of integration* assists the increase of interaction between all the inhabitants of a region: trade, economic development, and socio-cultural exchange. This may potentially soften borders among the members of the region – hence change them from international to softer administrative borders and reduce their relevance, as the primary objective remains participation in the economic development and global market – ideally with the four (EEA) freedoms of movement of goods, services, capital, and citizens.³² Since the territory of the former Yugoslavia is surrounded by EU members and applicants for membership—the former being Austria and Greece, the latter being Hungary, Slovenia, Romania, Bulgaria—it

³². Stanley Hoffmann, "Yugoslavia: Implications for Europe and the European Institutions," in Richard H. Ullman, ed., *The World and Yugoslavia's Wars*, A Council on Foreign Relations Book, 1996, pp. 97-121.

would make tremendous sense if Brussels pushes through various incentives economic and technological cooperation.

Carl Bildt detailed the institutional forging of closer links between the EU and the Balkan states. He suggested that "the EU should provide clear blueprints for reforms that would pave the way" for closer cooperation and integration, "if not full-blown [EU] membership, ... [including] the possibility of making them part of a broader Euro-zone."³³

Examples of successful self-governance in Europe such as *Südtirol* and *Catalunya* demonstrate the importance of restrained on the part of outside powers—i.e. the absence of negative outside interference in the specter between central government and ethnic group that looks for autonomy. The more the central government shows flexibility, the greater the chance of peaceful solution; this all encouraged by international organizations (EU, UN). The interest of both Austria and Italy (in the case of Südtirol) in European integration and enhanced regional cooperation reduced the relative importance of the sovereign boundaries and increased trans-border trade and other direct contact between the communities.³⁴

Some fundamental aspects for successful negotiations include clarity of terms and mutual understanding; distinguishing between self-determination as a process and clear the objective, mutual trust, joint will and clear determination, and most importantly, the readiness to compromise.

- Critical accompanying measures for the successful implementation of any solution
 - democratization
 - demilitarization
 - demobilization and re-integration into 'regular and orderly' life
 - depolitization of municipal administration
 - decriminalization
 - de-traumatization/re-education - combat "oral history"

³³ Carl Bildt, "Embracing the Balkans," *Financial Times*, February 19, 1999, p. 14.

³⁴ See Wolfgang Danspeckgruber, "Self-Determination, Subsidiarity and Regionalization in Contemporary Western Europe," in *Sourcebook*.

Any 'final status' ought to comprise as well :

- The introduction and acceptance of *multiple identity* flexibility in defining the relationship between geographical living space and local/state/ regional hierarchies. Once multiple identities are accepted this eliminates influence of (militant) nationalism; e.g. one person can be proud to be a Catalan as well as a Spaniard, while being also a Mediterranean and a European. It is a question of understanding, education, and, perhaps, cultural inclination - and time.
- upon democratic values – introducing notions like tolerance, flexibility, forgiveness, compromise - allowing the role and contribution of minorities even within the community which searches for greater independence from the center. A positive and benign political culture however also demands the elimination of influences hostile to the establishment of a peaceful and just society. This requires the banning of illegal operations and organized local or international criminality.
- The degree of internationalization/Europeanization and hence consistent influence of European or Western values can be increased – parallel to reduced nationalization and opening of societal intransigence – by the establishment of a *standing commission* including all antagonistic parties involved and members of the international community. This commission should assist in creating – and helping to implement – fundamental legal and administrative regulations; in many ways it ought to ascertain the continuation of a peaceful process and to limit foreign interference. There should also be put in place a mechanism of sanctions in case of non-compliance.
- Urgent reconsideration of continued imposition of the economic sanctions against FRY and a revitalized EU integrative approach (see Susan Woodward *Foreign Affairs*) to the economic and industrial future of the region. This may entail the creation of a special international body (or sub section of OSCE and/or NATO) dealing in the future with crises in the Balkans.

Revised Version 12/9/99

Procedures for Resolving the Kosovo Problems

Michael Reisman, Monica Hakimi and Robert Sloane¹

¹ This draft was prepared in collaboration with Monica Hakimi and Robert Sloane and will be published jointly with them. Michael Reisman prepared most of the first section and Ms. Hakimi and Mr. Sloane prepared the historical reviews of diplomatic procedures.

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"The medium is the message"
Marshall McLuhan

"The United Nations' experience in Bosnia was one of the most difficult and painful in our history." With those words, Secretary-General Kofi Annan concluded the report (issued on November 15, 1999)² on the fall of Srebrenica. The difficulty and pain encountered in Bosnia-Herzegovina, far from being unusual, increasingly characterize more and more United Nations' missions. In Kosovo, in particular, the problems are aggravated because (i) the mission is based on a political mandate from the Security Council that is diametrically opposed to political objectives of some key local elites, whose cooperation is indispensable for advancing toward a diplomatic settlement; (ii) the international community is generally reluctant to add military force to back-up diplomacy and, in any case, has concluded that applications of military force are unlikely to appreciably improve chances of diplomatic settlement; (iii) the situation on the ground is unstable and, in terms of many of the international community's goals in Kosovo, deteriorating; and (iv) a short international attention focus and a rolling fatigue with old issues leads to popular insistence on rapid results to problems that ultimately depend on major social and psychological changes in the population which, under the best of circumstances, do not lend themselves to speedy accomplishment.

² Report of the Secretary-General pursuant to General Assembly Resolution 53/35, A/54/549, 15 November 1999 at page 108.

Diplomacy is often tasked with difficult if not impossible situations. It accepts the possibility that many initiatives will fail, but is expected to develop others, until some formula works, because it proves to be the "right" one or because the interests of local and external elites have changed and now coincide in securing a momentary or longer-term settlement. What more impatient outside observers may characterize as a sequence of failures may, if seen in context, be appreciated as stabilizations of the situation on the ground, the reduction of the expectation of violence, and enhancement of conditions necessary for productive economic activity. In some circumstances, merely establishing and maintaining diplomatic lines of communication that have no immediate outcome but that hold the promise of being used effectively at a more propitious moment in the future can be viewed as an accomplishment. In like fashion, initiating processes that adjust the perspectives of reciprocally hostile elites to incorporate minimum toleration for each other and to begin to understand the needs of the other may, themselves, be considered accomplishments.³ Achievements such as these are unlikely to register as diplomatic successes or to be nominated for peace prizes, since they often occur (perhaps must occur) at levels of consciousness so deep that the participants themselves are unaware of them. This is not to suggest that merely scurrying about and engaging in diplomatic exercises is always beneficial or that we should accept the illusion of progress as a substitute for real progress, but simply that apparent failure to achieve larger breakthroughs in rapid fashion does not necessarily mean that the diplomatic process has failed, especially when viewed over a broader time period.

³ One thinks, in this regard, of the remarks of George Mitchell at what appears to be the successful conclusion of the negotiations he mediated in Northern Ireland.

Our assignment has been to consider the procedural dimensions of international efforts to ameliorate the situation in Kosovo. We therefore accept as givens the essential guidelines established by Security Council Resolutions 1199, 1239, and 1244,⁴ and, in particular, "the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia",⁵ as well as the Rambouillet Accords on the Interim Agreement for Peace and Self-Government in Kosovo.⁶ Since the resolutions and Accords also call for return of refugees, they imply the need for institutional arrangements that permit the peaceful co-existence of the diverse ethnic groups of Kosovo within the Yugoslav Federation. Many students of this problem have remarked on the contradiction between facilitating dissolution of a multi-ethnic state into more ethnically homogeneous new states, but then insisting that each new state replicate the conditions of multi-ethnicity that caused the initial breakup of the now defunct composite state. We note that many reports suggest, until now, a general failure to replicate a tolerant and self-sustaining multi-ethnicity in many of the new states that have emerged from Yugoslavia.

⁴S.C. Res 1199, Sept. 23, 1998, 3930th mtg., U.N. Doc. S/RES/1199 (1998); S.C. Res. 1239, May 14, 1999, 40003d mtg., U.N. Doc. S/RES/1239 (1999); S.C. Res. 1244, June 10, 1999, 4011 mtg., U.N. Doc. S/RES/1244 (1999).

⁵S.C. Res. 1244.

⁶Interim Agreement for Peace and Self-Government in Kosovo [Rambouillet Accords], June 7, 1999, U.N. Doc. S/1999/648 (1999).

In the first part of this paper, we review principles with respect to the design of procedures and, in their light, propose, for group discussion, a network of procedures and initiatives. Given the political mandates we have reviewed, we do not anticipate a quick and efficient procedure and we think it unwise to create expectations of the possibility of such a nice and tidy outcome. Yet we think that the principles at stake make the fashioning and implementation of some procedures, even those unlikely to produce results, urgent. More generally, we would submit that merely establishing procedures may serve to secure some of the policy goals. Hence our adoption of McLuhan's famous apothegm that "the medium is the message". In the annex to this paper, we have assembled reviews of procedures and outcomes in other international initiatives in this century that may be instructive for Kosovo.

General Principles

There are many different possible procedural configurations. Since the purpose of our paper is to provide background and stimulus for an examination and appraisal of various options, it may be useful to identify a number of operating principles and considerations that may have to be addressed in any set of procedural arrangements:

1. Incorporating the Inter-state Dimension: Some internal conflicts are essentially endogamous, in the sense that they do not engage outside states. International criticism notwithstanding, East Timor was essentially a conflict between a central government that desired to retain a peripheral province and the elite and rank-and-file of that province that wished to separate. But other internal conflicts are inseparable from their relation to other states.

Resolution of the Cyprus problem cannot be conceived without the active participation of, at the minimum, Greece and Turkey. The apparently successful first steps in the settlement of the Northern Ireland problem could not have been achieved without the active participation of the United Kingdom and the Republic of Ireland. The Republic of Ireland's disavowal of its constitutional claim to Northern Ireland perforce changed the objectives of the IRA and Sinn Fein from "enosis" with Ireland and transformed their program into one of improvement of the condition of Catholics in the province, while the statement by the United Kingdom that northern Ireland was not vital to it from a strategic standpoint had a comparable effect on both the Unionists and the IRA.

Under some circumstances, "internationalizing" facilitates the resolution of essentially internal conflicts, as for example, President Nixon's incorporation of negotiations with China and the USSR as part of the settlement of - and United States extrication from --- the war in Vietnam. Security commitments from the United States to Israel are vital in shaping Israel's perception of the range of options available to it in negotiation with its neighbors.

Since the end of NATO's military campaign in Kosovo and Serbia, attention has sometimes focused on relations in the province between Kosovars and the shrinking Serbian and Romani populations. But accommodations on the intergovernmental level are just as indispensable to any stabilization, let alone amelioration, of the situation within the province. In contrast to Northern Ireland, however, the international dimension is larger, more complex, and more unstable. It must include the major states of western Europe, the United States, and Russia, without whose minimum agreement, accommodations can hardly be imagined. Such agreement seems unlikely at the moment because of significantly different geostrategic objectives pursued

by many of these actors. In addition, as a minimum, the governments of Yugoslavia, Albania, Macedonia and Greece must be involved, in varying degrees. Some of these governments are unstable; others have their ambit of negotiation constrained by internal forces; and some have little control over significant parts of their own territories, which could be exploited as bases for paramilitary actions that threaten to undermine international efforts within Kosovo. Since the Security Council Resolutions seek the maintenance of existing borders and affiliations, but some local and regional actors do not necessarily share those views, participation of key states in the international system, through guarantees and the enforcement of various military servitudes, could be vital. Hence, any procedures must address the intergovernmental dimension and provide, in some fashion, for the incorporation of indispensable external actors.

2. Laying the Basis for a Culture of Negotiation: A structural prerequisite for intergroup negotiation is understanding and acceptance of the culture of negotiation, *i.e.*, the shared expectation that there are reciprocal advantages to the mediation of subjectivities with adversaries with the common willingness to make adjustments in objectives and timetables for their fulfillment; that such negotiations and agreements between distinct and reciprocally hostile groups can lead both sides net better off; and that agreements once concluded between them are to be kept. These struts of political culture are the precondition for agreement. Actors who have internalized these cultural expectations may, on occasion, refuse to negotiate or intentionally defer agreement for tactical advantage, yet they still understand the culture of negotiation and, when it is convenient for them, they can participate jointly in them. But other participants, who

have been characterized as actors in "war systems,"⁷ have not internalized these expectations. Hence, the efforts of outside actors who are trying to initiate negotiations with a view toward short-term or longer-term accommodations encounter very special problems and may require different strategic approaches.

Even where a culture of negotiation exists, acute ethnic conflict can seriously erode it, to the point where negotiators' first target must be to reestablish it. But in a highly tribalized and ethnically diverse territory, without effective hierarchical institutions that can enforce peace, a micro-war system may ensue, in which group security and spatial rights are sustained by threats of violence such as the vendetta and the belief in the culture of negotiation wanes. It is particularly difficult to forge consensual arrangements in such circumstances, precisely because of the absence of a culture of negotiation.

In some circumstances, negotiations initiated by outsiders can incorporate members of the elite who are more familiar with the culture of negotiation and assume that any agreements they conclude can be sold to the rest of the elite and rank-and-file. That assumption presumes a degree of organization in the group concerned that may not obtain. If it does not, precisely those elite members who may appreciate the advantages of negotiated settlement also understand that espousing that view may undermine their position within their own group.

3. Legitimizing United Nations and NGO "Governance": One of the daunting features of the Kosovo situation is that the United Nations, through UNMIK, purports to govern the

⁷ Cite to private armies with quote of definition of war systems

province. From the Yugoslav perspective, that activity may be viewed as a usurpation of the Yugoslav Republic's sovereignty. From the perspective of the KLA, as well, it may be viewed as obstructing what its members believe are its entitlements and the fulfillment of its political aspirations. Over time, the question of the legitimacy of U.N. governance may become more acute, for any erosion of United Nations' authority could seriously undermine internal and external support for the activity and raise the costs of making it effective. Hence one negotiating objective, unrelated to the longer-term solution of the problem, must be to legitimize (at least) interim governance of the province. If some scenarios contemplate a longer-term U.N. governance, legitimization becomes all the more urgent. Legitimacy must be established among a wide range of actors: local groups, regional state actors, the NGO aggregate concerned with Kosovo, the media, etc..

4. Restoring Infrastructure and Providing Vital Services: Conceptually, one might expect the reconstruction of infrastructure and the provision of vital services as a set of activities that would follow the conclusion of negotiations. But in Kosovo these activities are already underway, are vital for the survival of major parts of the population and are, in many ways, a precondition for negotiations. Currently, the restoration of the infrastructure and the provision of vital services to the population are provided by UNMIK and a network of inter-governmental and non-governmental agencies, as well as by political factions within Kosovo. As many of these activities will be viewed by both inhabitants as well as interested states within and outside the region as effecting or having the potential for effecting changes in the political situation, the issue of the legitimacy of these activities is as important as their day-to-day efficiency. In a

situation of protracted negotiations, attention must be given to this dimension.

5. Inducing Outside Economic Assistance: Related to the preceding considerations is the need for the introduction of foreign assistance. Given the limitations on international public funds and the competition for them in many other areas of international concern, the necessary funds for minimum economic activities must also be raised from the private sector. Hence whatever the ongoing procedures that are envisaged must be structured to take into account the concerns and provide for the participation of international financial agencies, the private sector, and non-governmental organizations.

6. Dealing with the Putative Delinquency of One of the Parties: Establishing negotiating procedures with respect to Kosovo is further complicated by the indictment for war crimes and crimes against humanity of key and indispensable parties. The Government of Yugoslavia - in some formulations, the person of Slobodan Milosevic - have been characterized as internationally delinquent. Indeed, some external participants have conditioned economic cooperation with Yugoslavia on the removal of the Milosevic government from power. Yet Yugoslavia, with its current government, is an indispensable party in both short-term and longer-term negotiations and figures importantly in the achievement of many of the principles elaborated here. For example, the revival, in the most rapid and economic fashion conceivable, of many critical economic activities in Kosovo requires reestablishing links with Serbia. Given the international mandate to maintain Kosovo as a part of Yugoslavia, many infrastructural components in Kosovo are, and will remain, recognized parts of governmental, para-statal or

corporate entities in Serbia.

These internally inconsistent features exacerbate the relations between the United Nations and Serbia and make the incentives for negotiation among these and other parties more complex and uncertain. The United Nations, given its mandate and interests, would benefit from cooperation, at technical levels, by Serbian governmental actors; this would, moreover, be consistent with the continuing status of Kosovo as part of Yugoslavia. Yet, given other policy and strategic positions taken by the international community, any initiatives that legitimized the official position of Milosevic and others who have been indicted by the Former Yugoslav Tribunal could disserve other United Nations' purposes. Conversely, negotiations with the leadership of the KLA, with respect to performance of governmental functions within Kosovo may legitimate them, despite the fact that this consequence may impede the fulfillment of other United Nations' objectives, as well as intensify Serbian opposition.

All this creates a difficult procedural situation, but it is not unprecedented. In the Cyprus talks, the posture of United Nations or European officials ab initio has been that Turkey is delinquent. In many of the negotiations over Afghanistan, a comparable delinquency on the part of the Soviet Union was assumed by many of the negotiators. And, of course, negotiations with Iraq over Oil for Food or U.N. supervised disarmament must include representatives of Saddam Hussein.

In some circumstances, parties still have incentives to negotiate, despite a prior presumption of delinquency. For the putative delinquent, negotiation may present an opportunity to erode or change that presumption, or at least to put it in context. In Kosovo, ironically, Yugoslavia may have an incentive to participate, given the ground-rules that affirm continuing

Yugoslav sovereignty.⁸ Non-participation could erode that assumption. Yet any procedures that reestablish infrastructure and social and economic processes within Kosovo are likely to enhance the position of the KLA and its supporters. From the standpoint of the Government of Yugoslavia, any participation in (even interim) arrangements in Kosovo promises incremental gains in terms of general governmental authority, as well as influence within the province. But given the position of the United Nations, increases in incremental authority of the Government of Yugoslavia could, in general, increase the costs of achievement of other U.N. programs.

In deciding to engage in any type of negotiations, latent costs and benefits to the parties are always calculated. Procedures with respect to Kosovo will be no exception.

The Advantage of "Consultations" over "Negotiations"

Given these considerations, we would propose, as specific goals and as the overall design for procedures, the development of a negotiating system that will, at once, establish foundations for a culture of negotiation, begin a real exchange of views, and engage the participation of the indispensable actors, while structuring their participation in ways that can avoid participatory constellations likely to produce deadlock.

The characterization of these procedures themselves may therefore involve a delicate choice of terms, but diplomacy has been creative when obscurantist terms were deemed to be procedurally advantageous. Witness the invention of the term "non-paper" in international

⁸ It may also have a tactical interest in obstructing negotiations and administration in order to exacerbate the situation on the ground, stretch the resources of the UN and the other agencies operating in Kosovo and fatigue the international community.

multilateral negotiations. The word "negotiations" imports certain assumptions about the participants and the longer-term objectives of the procedure. Precisely because participation and objectives are so complex, it may be preferable to seek a more ambiguous term to characterize the proceedings. For example, the word "consultations" or "preliminary consultations" might provide the United Nations and other actors with more room to maneuver with respect to contacts with Yugoslavia and the KLA and its supporters. At the same time, it would facilitate their participation, since "consultations", with their preliminary and provisional implications, are less prejudicial to many of their exclusive objectives. Maneuverability might be further enhanced by using "without prejudice" formulas in the initial invitations and in the introduction to discussions. The words "provisional" or "interim" can modify any interim arrangements that could be agreed upon in the consultations. Since resistance may be expected in some quarters even to consultations, initial efforts might seek an even more ambiguous title, such as "informal inquiries" or "informal contacts".

Multiple, Simultaneous, Restricted Participatory Consultations

A wide range of international, regional and local actors must be incorporated in procedures, yet many of them view others as abominable or their mere presence at a negotiating table as itself a loss. As recently as the negotiation of the Algiers Accords between Iran and the United States, mediated negotiations, without principals meeting face-to-face, have produced agreements, but this mode of procedure does not contribute to the consolidation of a culture of negotiation. Where the parties can be insulated from one another without losing procedural effectiveness, compartmentalization or cameralization recommends itself. Where ostensibly

technical issues can be delimited, progress may be made, even though none can be achieved on larger and more comprehensive issues. In general, smaller groups may be able to operate more efficiently than very large, heterogeneous ones.

One procedure which strikes us as worth exploring would be to establish multiple simultaneous consultations, with different actors and different agendas. Since some of the actors in each consultative circle would be inclined to try to obstruct the processes, cameralizing or compartmentalizing the processes could insulate some consultations from others. The complex objectives of the United Nations in Kosovo and the need to engage many different categories of participants suggest that multiple, simultaneous consultations, each with a different group of participants and a different agenda, may prove most feasible. Thus, one may envisage consultations at the intergovernmental level concerning the status of Kosovo, relations with nearby states and larger constitutive issues with respect to the governance of the province. Simultaneously, a set of consultations would engage participants within Kosovo with respect to daily administration, reconstruction of infrastructure and economic processes. These consultations, in turn, would themselves be broken into different working groups, many of which would have different sets of participants, some recruited from local levels; the subject matters would range the gamut from economic and privatization issues on through to protection of religious places and procedures. Another set of consultations would involve non-governmental organizations, the private sector and international financial agencies, with respect to the provision of finance and development.

The broad scope, objectives and, at times, potential incompatibility, of the policies identified above - maximal participation, political legitimacy and efficiency (in particular,

effective governance) - reaffirm the need for a process of consultation that minimizes conflict between the interested parties. For this reason, negotiation should proceed along separate and parallel tracks that include at least two principal committees, several strategic working groups and participation by various advisory boards. The cameralization of procedures could facilitate the negotiation process and permit the simultaneous realization of the key policies outlined earlier.

In a very preliminary fashion, it might be useful to sketch in possible committees.

Consultative Committee on Interstate Matters

The first committee, which we will refer to as the "Consultative Committee on Interstate Matters", could assume responsibility for the diverse issues that have serious repercussions on international order. Given the history and circumstances presently prevailing in Kosovo, this Committee must include those parties already involved in the region, namely, the United Nations, NATO (in particular, the United States, France and the United Kingdom), Russia, the Federal Republic of Yugoslavia (Serbia and Montenegro) and Albania. This Committee would consider the short-term, mid-term and long-term goals for Kosovo in connection with military, social, political and economic relations. Solving problems of refugee return and family reunification, forestalling cross-border arms trades, establishing and policing military servitude, promoting long-term stability in the region and ensuring internationally guaranteed protections would be among the Committee's paramount objectives.

There is little reason to expect rapid progress in the First Committee on many of these issues. Its latent benefits would be the availability of a forum for states on these matters,

familiarization of personnel with the issues and with each other and, hopefully, the solution of interim problems

Consultative Committee on Provisional Internal Administration.

The second committee, which may be referred to for convenience as the "Committee on Internal Administration", would have a consultative jurisdiction over all matters currently discharged by UNMIK: for example, establishing uniform customs policies,⁹ restoring and maintaining postal and telecommunications systems,¹⁰ establishing civilian emergency services to provide humanitarian relief and assist in rebuilding Kosovo's devastated infrastructure,¹¹ recruiting and training new judicial and public prosecutorial authorities,¹² and regulating the sale and dissemination of petroleum products in Kosovo.¹³ Additional working groups would consider issues of local governance, infrastructure - including roads, water, airports, electricity, trusteeship of public utilities - and, perhaps most critically, law. As this issue is of central importance, we consider it briefly.

⁹UNMIK/REG/1999/3, Aug. 31, 1999.

¹⁰UNMIK/REG/1999/12, Oct. 16, 1999.

¹¹UNMIK/REG/1999/8, Sept. 20, 1999.

¹²See UNMIK/REG/1999/5, Sept. 4, 1999 (establishing an ad hoc court of final appeal and public prosecutor's office); UNMIK/REG/1999/6, Sept. 7, 1999 (creating an advisory commission to advise the Secretary-General on matters relating to the structure and administration of the judiciary in Kosovo); UNMIK/REG/1999/7, Sept. 7, 1999 (creating the "Advisory Judicial Commission", empowered, *inter alia*, to recommend candidates for judicial appointment to the Secretary-General).

¹³UNMIK/REG/1999/9, Sept. 24, 1999.

Pending an ultimate political settlement, maximizing stability and peaceful coexistence in Kosovo requires establishing or reestablishing the rule of law. Under the law of belligerent occupation, which "envision[s] eventual return of the territory to the antecedent power",¹⁴ the belligerent-occupant has been expected to continue to enforce the *status quo ante* legal regime. Modern international law similarly recognizes that "[e]xecutive and administrative powers may be exercised by alien authorities under the rules of belligerent occupation in time of war and by forces taking enforcement action under Chapter VII of the United Nations Charter".¹⁵ At the same time, the paramount concern with protecting the human rights of Kosovo's inhabitants - codified in the mandate of Security Council Resolution 1244, which authorizes the Secretary-General to establish an interim administration charged with, *inter alia*, "[p]rotecting and promoting human rights",¹⁶ - requires certain fundamental changes to the law of the former Yugoslavia, which precipitated the current problem. For example, UNMIK Regulation No. 10 expressly repeals discriminatory legislation in effect in Kosovo prior to NATO's action.¹⁷ And UNMIK Regulation No. 1, pursuant to which the former regulation was issued, sets forth the

¹⁴Henry H. Perritt, Jr. & John M. Shceib, *Rebuilding Kosovo: UNMIK as a "Trustee Occupant"* (unpublished article, on file with author), at 8.

¹⁵IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 380 (5th ed. 1998).

¹⁶S.C. Res. 1244, para. 9(j); *see also* UNMIK/REG/1999/1, July 25, 1999, para. 2 (AIn exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards).

¹⁷UNMIK/REG/1999/10, Oct. 13, 1999 (repealing discriminatory legislation respecting housing and property rights).

general framework for an interim legal regime in Kosovo, stipulating that,

[t]he laws applicable in the territory of Kosovo prior to 24 March 1999 shall continue to apply in Kosovo insofar as they do not conflict with the standards referred to in section 2 [which sets forth "internationally recognized standards"], the fulfillment of the mandate given to UNMIK under United Nations Security Council resolution 1244 (1999), or the present or any other regulation issued by UNMIK.¹⁸

The concept of preserving an occupied territory's antecedent laws and institutions, while implementing changes consistent with essential legal commitments of the administrator, is not new to international law. After the dissolution of the Ottoman Empire, for example, Britain administered the Palestinian West Bank as a "trustee-occupant",¹⁹ since its sovereignty remained ambiguous. The British administering authorities therefore promulgated regulations that provided that, in general, the law of the Ottoman Empire would remain in force, except insofar it violated certain principles of British common law.²⁰ Similarly, Bosnia-Herzegovina's legal

¹⁸UNMIK/REG/1999/1, July 25, 1999, para. 3 ("Applicable law in Kosovo").

¹⁹See Perritt & Scheib, *supra* note __, at 6-11 (citing Allen Gerson, *Trustee-Occupant: The Legal Status of Israel's Presence in the West Bank*, 14 HARV. INT'L L.J. 1 (1973).)

²⁰Article 46 of the 1922 Palestine Order in Council stated, "The jurisdiction of the Civil Courts shall be exercised in conformity with the Ottoman Law in force in Palestine on 1st November, 1914, and such later Ottoman Laws as have been or may be declared to be in force by Public Notice, and such Orders in Council, Ordinances and regulations as are in force in Palestine at the date of the commencement of this Order, or may hereafter be applied or enacted; and subject thereto, and so far as the same shall not extend or apply, shall be exercised in conformity with the substance of the common law, and the doctrines of equity in force in England, and with the powers vested in and according to the procedure and practice observed by or before Courts of Justice and Justices of the Peace in England, according to their respective jurisdictions and authorities at that date, save in so far as the said powers, procedure and practice may have been or may hereafter be modified, amended or replaced by any other provisions".

reconstitution after Dayton preserved the law of the former Yugoslavia but nullified those laws that contravened fundamental precepts of international law and human rights law.²¹

But in Kosovo, the belligerent-occupant rubric does not adequately capture the political dynamic that UNMIK or any other interim administration faces - namely, mediating between, on the one hand, a commitment to long-term protection of the international human rights of Kosovo's inhabitants, and, on the other, Security Council Resolution 1244's express reservation of sovereignty over Kosovo to the Federal Republic of Yugoslavia. The circumstances of Kosovo's interim administration are rather analogous to a "trustee-occupancy", whereby territory is administered first and foremost for the benefit of the inhabitants.²² Kosovo's interim legal regime would appear to have to incorporate the law of the Federal Republic of Yugoslavia, but only insofar as it conforms to fundamental principles of international law.

The working group devoted to developing the legal regime has the attendant function of establishing and training a competent police and judiciary to preserve public order during transition, a project already underway, but without a consultative procedure. Additional working groups will consider, *inter alia*, issues regarding minority rights, public health and the preservation of religious sites. In view of the substantial effects that decisions of the working

²¹ General Framework Agreement for Peace in Bosnia and Herzegovina, Bosn. & Herz.-Croat.-Yugo, Dec. 14, 1995 [hereafter GFA], *reprinted at* 35 I.L.M. 75 (1996); *see also* Dayton Agreement on Implementing the Federation of Bosnia and Herzegovina, Republic of Bosn. & Herz.-Federation of Bosn. & Herz., Nov. 10, 1995 [hereafter Dayton Agreement], *reprinted at* 35 I.L.M. 170 (1996).

²² Perritt & Sheib, *supra* note __, at 7, *quoting* Gerson, 14 HARV. INT'L L.J. at 40 (noting that in a trustee-occupancy, unlike a belligerent occupancy, the occupant may implement changes in the laws and institutions of the territory, provided these are in the best interests of its inhabitants, "since the *raison d'être* for requiring adherence to the *status quo ante* - preservation of the ousted legitimate sovereign's or reversionary interest - would no longer be relevant").

groups will exert on Kosovars' lives, participation must include, not only UNMIK, whose knowledge and provisional authority will help guide transition to an ultimate political settlement, but also Serbs, Kosovar Albanians and other organized political groups residing in the region.

Beyond the two core committees, and in order to maximize efficient participation, several advisory boards might also be established to counsel the relevant working groups. A religious council with delegates from the major traditions in the region might be established to mitigate the exacerbation of tensions or, at the very least, attempt to establish lines of communication between the several religious elites. Similarly, given the diverse difficulties associated with Kosovo's socio-economic development, an "International Development Council" could be established to recommend policies conducive to reconstruction. Given the many financial sources that will be needed for reconstruction, this Council could be comprised of delegates from financial agencies, the World Bank, economically-oriented NGOs, the International Monetary Fund, and the private sector. Finally, an NGO advisory council, including international humanitarian, human rights and public health organizations, could be created to lend support on these issues. We comment briefly on each of these consultative procedures.

International Development Council

Alan Gerson, a senior Fellow at the Council on Foreign Relations in New York, has been leading a group concerned with clarifying the role of the international financial agencies in the reconstruction of states or regions that have been disrupted by internal conflict. His starting point, like that of Boutros Ghali's Agenda for Peace, is that the move from merely stopping wars to establishing a self-sustaining and productive peace requires the recreation or creation of an

economy sufficiently robust and with sufficient opportunities to persuade people that they are net better off in a system of minimum order than in one of disruption. Since private capital is understandably wary of political uncertainty, the initial investments must come from the international financial agencies. Yet its officials often operate from perspectives of economic feasibility that are unfulfilled in situations of severe internal disruption. Hence, he adopts the James Wolfenson approach of the "partnering" of the international financial agencies with the institutions charged with the maintenance of international security to incorporate the financial institutions in the indispensable process of reconstruction. But even with an institutional link, there are simply not enough international public funds for the tasks. Hence Gerson proposes the incorporation of the private for-profit sector in the process of reconstruction. This is no easy task, for public funds are needed precisely because private investment, being risk averse, is unwilling to invest in situations of such profound uncertainty. Gerson proposes a council, composed of all these factors, whose members can conduct explorations of possible political and public financial arrangements that can induce private foreign investment as an indispensable part of the process of economic reconstruction.

Gerson's proposal seems particularly pertinent to the situation in Kosovo. As many of the factors are already present, it is essentially a matter of the World Bank taking the initiative. Reference is made, in this regard, to the study of the World Bank of November 3, 1999, "Kosovo: Building Peace Through Sustained Growth, The Economic and Social Policy Agenda".

Religious Groups in Kosovo

It would, of course, be a grotesque over-simplification to conceive of the Kosovo

problem as a religious war, but religious identities contribute to the problem and may be a potential instrument for ameliorating it. Religion creates a shared history that informs social choices and values and that defines individual and community identities. It is part of the social fabric that binds the members of a community and often isolates that community from its neighbors. The working group of religious representatives, comprised of persons from the major traditions in the region, should have a two-fold mandate: as an advisory council for the other negotiating bodies and as its own working group with tasks that focus on issues relating to religion. Its latent function would be simply to establish communication links between the communal religious leaders. In addition, this working group could address problems of restoration, maintenance and access to religious sites. It may seem fanciful at the moment, but the religious council might address the ways in which members of different religions can peacefully coexist.

NGOs

In the contemporary international community, it is obvious to the participants convened by the UNA and the Institute for International Affairs that non-governmental organizations (NGOs) exert substantial influence. Their presence and effective lobbying during the continuing negotiations for the establishment of an International Criminal Court exemplifies their prominent role in contemporary international law-making and their work on the ground in peace reconstruction is manifest. NGOs today perform crucial (at times indispensable) functions, providing resources, information, and practical assistance to political actors and elites, as well as to the constituencies they represent. Processes of negotiation and reconstruction in Kosovo

present strategic difficulties that span the full range of issues to which NGOs devote attention, including, *inter alia*, economic development, human rights monitoring and protection, humanitarian and refugee assistance, public health, education, and cultural preservation. NGOs are already heavily involved in the management and initial reconstruction of Kosovo. Given the limited financial resources available to UNMIK, the foreseeable depreciation in political will to devote and maintain a high level of governmental funding for Kosovo, and UNMIK's diverse human resource needs, it would be shortsighted to neglect the potential for exploiting the potential advice, resources and assistance that NGOs can provide. Some inter-governmental conferences have become weary of NGO activity, but it would be judicious to maximize the participation of NGOs in committees and working groups to which they can offer pertinent expertise, as well as to draw upon their (human and financial) resources subsequently.

At the same time, while we often speak of a monolithic "community" of NGOs, it bears emphasis that NGOs, no less than governmental (or quasi-governmental) actors represent diverse ideologies and champion different objectives and, at times, pursue goals in tension with one another. Similarly (and again no less than governments), some maintain inflexible agendas which could obstruct, rather than facilitate, the negotiation processes. The role for NGOs must therefore be carefully delineated to maximize their constructive participation in committees and working groups that may benefit from their presence, while constraining their ability to hamper negotiations elsewhere. We suggest, consequently, the possibility of establishing an NGO advisory council to mediate among the competing agendas and objectives of NGOs, as well as to cooperate with UNMIK in order to maximize their potential for contributing information, expertise and resources to the continuing negotiation and reconstruction processes.

Initiatives to Improve Personal Relations

A critical part of the Kosovo problem is, of course, the interpersonal relations of Serbs and Kosovars. The enmity between them has historical roots, severely aggravated by events over the past decade and continuing to the present. It may seem quixotic to try to improve the psychological and emotional perspectives of members of these groups, but until that process is set in motion, the maintenance of minimum order will depend on substantial external military and police investments or the removal of one of the groups from the territory. Hence any consideration of procedures should include the development of situations in which contacts can be established and attitudes examined. Yale's Fermeda workshop for Somalis and Ethiopians in 1969, for example, undertook to use T-group methods in the midst of a vicious boundary conflict in order to crack stereotypes and open participants to the possibilities for as of then unexplored integrative solutions.²³ It was unsuccessful, but the essential idea should be part of the agenda of consideration of procedures for resolving the Kosovo problem.

The Problem of Irresolvability and Second-Best Solutions

Ours is a world in which a pillar and testament of civilization is that human beings solve problems. We believe they can be solved and we want them solved quickly so that we can go on to others. It is a hubris so fundamental for us that recurring failure is denied at deep levels of consciousness and never permitted to be incorporated and to correct our sense of reality. In

²³ Doob, et al, Resolving Conflict in Africa: The Fermeda Workshop (1970).

international politics, the reality is that the community often lacks the power and the ideas for the solution of certain problems quickly. The collision of at least short term irresolvability of key problems with our hubris that problems can be solved means that second best solutions (a euphemism obscuring a range of various forms of stabilization of situations extending from reasonably satisfactory to quite unsatisfactory) often develop themselves, without being explicitly planned, provided for and appraised in terms of other feasible, but manifestly second-best solutions and in terms of the costs of changing them at some propitious moment in the future. Second-best solutions are solutions of a sort, in the sense that they stabilize a situation and permit the international community to turn its attention elsewhere, but they develop their own dynamics and some may prove as hard to change as the original problems for which they purport to be *ersatz* solutions. As the French say, *il n'ya plus permanente que la provisoire*. Hence the imperative to plan and act procedurally, even when the possibility of achieving highly successful outcomes may seem remote.

Annex

In this section, we have reviewed the negotiating procedures and arrangements of a number of international problems that bear some similarity to the Kosovo situation. There are no precise "cases in point", as lawyers say, but some of the features of these cases may be useful for purposes of discussion.

Aaland Islands:

Upon Finland's independence from Russia, Sweden pressured the international community to determine whether the Aaland Islands were a part of the new Finnish State or whether they should belong to Sweden because of their population's Swedish heritage. A series of unsuccessful negotiations forced the issue upon the League of Nations, which also could not resolve the matter diplomatically and which therefore set up two commissions to determine the islands' fate. The first commission, the Commission of Jurists, considered the legal arguments of each side. Finland argued that the Aaland Question was a domestic issue and therefore outside the scope of the Commission's jurisdiction. Sweden argued for the self-determination of the Islands' primarily Swedish population. The Commission adopted the Swedish view, explaining that Finland's territorial domain had not yet been definitively delineated.¹

The second commission, the Commission of Inquiry, rejected the argument for the Aalanders' self-determination and instead decided in favor of Finland. Three main factors

¹ See JAMES BARROS, THE AALAND ISLANDS QUESTION: ITS SETTLEMENT BY THE LEAGUE OF NATIONS

compelled its decision. First, the Commission considered Finland to be an independent State with rights of sovereignty over its territorial domain; it refused to acknowledge that a minority within a state had the absolute right of secession. Second, the islands connect geographically to Finland and therefore play a role in Finnish national security. Finally, Finland's behavior suggested that it would not necessarily accept a League decision in Sweden's favor; the Commission wanted to avoid potential conflict and to maintain its perceived effectiveness. The League of Nations accepted the proposals of the Commission of Inquiry.² It recognized Finland's sovereignty over the Islands but required Finland to ensure Aaland autonomy, to preserve the islanders' Swedish culture, and to "guarantee, to the Swedish people and to all the countries concerned, that the Aaland Islands will never become a source of danger from the military point of view".³

Bosnia-Herzegovina: Dayton (1995):

The 1995 Dayton Agreement⁴ that established a precarious peace in Bosnia-Herzegovina "was the culmination of some 44 months of intermittent negotiations, always at the initiative of

(1968).

² *Id.*

³ Agreement between Finland and Sweden relating to Guarantees in the Law of 7 May 1920 on the Autonomy of the Aaland Islands, Resolutions Adopted by the Council of the League of Nations at its Thirteenth Session, LEAGUE OF NATIONS O.J. Supp. 5, at 24 (1921), in DOCUMENTS ON AUTONOMY AND MINORITY RIGHTS 142 (Hurst Hannum, ed. 1993).

⁴ General Framework Agreement for Peace in Bosnia and Herzegovina, Bosn. & Herz.-Croat.-Yugo, Dec. 14, 1995 [hereafter GFA], reprinted at 35 I.L.M. 75 (1996); see also Dayton Agreement on Implementing the Federation of Bosnia and Herzegovina, Republic of Bosn. & Herz.-Federation of Bosn. & Herz., Nov. 10, 1995 [hereafter Dayton Agreement], reprinted at 35 I.L.M. 170 (1996).

and with the help of outsiders, between the states and entities principally engaged in the Bosnian conflict".⁵ Negotiations faced the nearly intractable problem of mediating between the territorial claims of Bosnian Muslims, Serbs and Croats, while simultaneously "respect[ing] the international personality and territorial integrity of Bosnia-Herzegovina, which was an important condition set by the international community".⁶ To facilitate negotiations, the United Nations and the European Community created the International Conference on the Former Yugoslavia (ICFY) in 1992, and this body drafted the so-called Vance-Owen plan in 1993, which would have provided for the cantonization of the territory of Bosnia-Herzegovina. But the Bosnian-Serbs rejected this plan in May.⁷ Subsequently, the United States, Russia, France, Germany and the United Kingdom formed a "Contact Group" that consulted with the ICFY and with representatives of the *de facto* constituent entities, the Bosnia-Herzegovina Federation and the Republika Srpska (the Bosnian-Serb republic). The initial 51-49 territorial division proposed by the Contact Group also suffered rejection by the Bosnian Serbs. But the United States subsequently succeeded, through "a combination of military and political threats and promises" in securing agreement from the Republika Srpska to delegate its negotiating authority to a joint Republika Srpska/Federal Republic of Yugoslavia delegation, headed by Serbian president Milosevic. Under the auspices of the Contact Group, and with substantial U.S. pressure, the GFA was concluded on December 14, 1995.

The Dayton Agreement divided the Republic of Bosnia-Herzegovina into two *de jure*

⁵Paul C. Szasz, Introductory Note to the GFA, 35 I.L.M. 75, 75 (1996).

⁶*Id.*

entities, the Bosnia-Herzegovina Federation and the Bosnian-Serb Republic. Each constituent entity exercises the vast majority of traditional government functions - including judicial functions, policing, legislation, education and military affairs - and relegates to the Republic only responsibility for foreign affairs, foreign trade and currency.⁸ Moreover, even those powers delegated to the Republic remain subject to extensive checks and balances, rendering the "federal" government of the Republic virtually innocuous. To forestall further ethnic conflict, the GFA provides for an "Inter-Entity Boundary Line", which divides the Federation of Bosnia-Herzegovina and the Republika Srpska and, during a "transitional phase", will be policed by international forces.⁹

Human rights receive protection under the new Constitution, which incorporates the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols by reference and gives them priority over all other law.¹⁰ The Constitution also requires the Republic to accede to fifteen international human rights agreements.¹¹ Finally, a separate "Agreement on Human Rights",¹² creates an Ombudsman, appointed by the OSCE, and a Human Rights Chamber, comprised of two Croats, two Bosnian Muslims, two Serbs and eight foreign

⁷See *id.* at 75-76.

⁸See Fred L. Morrison, *The Constitution of Bosnia-Herzegovina*, 13 CONST. COMMENT. 145, 147-48 (1996).

⁹See Agreement on Inter-Entity Boundary Line and Related Issues, Republic of Bosn. & Herz.-Republika Srpska, GFA, Annex 2.

¹⁰See BOSNIA-HERZEGOVINA CONST., art. II, § 2.

¹¹See Morrison, *supra* note __, at 152. These include the Genocide Convention, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. See *id.*

¹²GFA, Annex 6, reprinted at 35 I.L.M. 130 (1996).

members, who are appointed by the Committee of Ministers of the Council of Europe.¹³ The Chamber is empowered to review complaints filed by individuals or the Ombudsman and to issue binding decisions; under the Dayton Agreement, however, "administration of the human rights machinery . . . revert[s] to the central government" in the year 2000.¹⁴ Several additional agreements regulate, *inter alia*, railroad and communication facilities and the preservation of public monuments. In each case administration rests with a board comprised of delegates of the Federation of Bosnia-Herzegovina and the Republika Srpska, mediated by a "neutral" international presence (in the former case, a delegate from the European Bank for Reconstruction and Development and, in the latter, by the Director-General of UNESCO).¹⁵

Cyprus:

The end of British rule over Cyprus instigated half a decade of fighting between the islands' majority Greek population (78%) and its minority Turkish one (18%). Because Cyprus had neither a modern history of independence nor a cohesive national identity, the fighting seemed unlikely to produce any workable model of order. Thus, in 1959, the prime ministers of Greece and Turkey met in Zurich to negotiate the island's fate. They drafted three initial agreements: a Basic Structure of the Republic of Cyprus; a Treaty of Guarantee between Cyprus, Greece, Turkey and the United Kingdom; and a Treaty of Alliance between Cyprus,

¹³See Morrison, *supra* note __, at 152.

¹⁴*Id.* at 153.

¹⁵See *id.* at 154-55.

Greece and Turkey. Although no Cypriot representatives participated in drafting these agreements, a representative from each of the two Cypriot communities joined leaders from Greece, Turkey and Britain in London to finalize them. All three agreements were adopted with only minor modifications.¹⁶

The Basic Structure created a bicomunal constitutional system designed to maintain an immutable balance between the Greek majority and the Turkish minority.¹⁷ It created strong component communities within a weak central government, with government positions delineated along ethnic lines.¹⁸ The Treaties of Guarantee and Alliance bound the key interested outside states to protect Cyprus' constitutional balance. Under Article IV of the Treaty of Guarantee, Greece, Turkey and the United Kingdom agreed consult with each other in regards to any threat to the island's constitutional balance.¹⁹ Should concerted action prove impossible, each of these three States has the power to act unilaterally in order to reestablish the constitutional balance.²⁰ Provisions of the Treaty of Alliance complemented Article IV by granting Greece and Turkey the right to permanently station troops in Cyprus.²¹ Overall, the three agreements created in Cyprus an internal structure that recognized the inevitability of

¹⁶ Thomas D. Grant, *Internationally Guaranteed Constitutive Order: Cyprus and Bosnia as Predicates for a New Nontraditional Actor in the Society of States*, 8 J. TRANSNAT'L L. & POL'Y 1 (1998).

¹⁷ CYPRUS CONST.

¹⁸ See, e.g., *id.* Art. 46 (providing for three of the ten Ministers on the Council of Ministers to be Turkish and seven to be Greek).

¹⁹ Treaty of Guarantee, Aug. 16, 1960, Cyprus-Greece-Turk.-U.K., 382 U.N.T.S. 3.

²⁰ *Id.* ("In so far as common or concerted action may not prove possible, each of the three guaranteeing Powers reserves the right to take action with the sole aim of re-establishing the state of affairs created by the present Treaty").

ethnic tensions and that sought to remedy these tensions through international guarantees.

Danzig (1920-1939):

Danzig, an ethnically German city bounded by Polish territory, had been part of Poland for approximately 350 years, but in the late-18th century, the partition of Poland placed it within the sovereign jurisdiction of Prussia.²² After the Allied victory in World War I, Danzig became an autonomous province under international supervision, a status that it retained throughout the nearly twenty year-period between its establishment by the Treaty of Versailles²³ and its annexation by Nazi Germany in 1939. While neither Danzig's inhabitants nor the nascent State of Poland desired autonomous status for the City,²⁴ the drafters of the Treaty sought to mediate between Poland's demand for sea access and Danzig's hostility to incorporation by Poland.

Negotiations regarding Danzig's subsequent status took place within the "Conference of Ambassadors" established in Paris to handles "all matters concerning the execution and interpretation of the peace treaties".²⁵ The Conference included representatives of the Allied powers - France, Great Britain, Italy and Japan - and received reports from several "delimitations commissions", which consisted of military officers from these states charged under the various

²¹ Treaty of Alliance, Art. IV, Aug. 16, 1960, Cyprus-Greece-Turk., 397 U.N.T.S. 287.

²²See Note, Susan Turley, *Keeping the Peace: Do the Laws of War Apply?*, 73 TEX. L. REV. 139, 176 n.60, citing MANFRED LACHS, *THE POLISH-GERMAN FRONTIER* 15 (1964).

²³See Treaty of Versailles, June 28, 1919, 11 Martens Nouveau Recueil 3d, 323, Sec. XI, arts. 100-108 [hereafter Treaty of Versailles], reprinted in DOCUMENTS ON AUTONOMY, *supra* note __, at 592-94.

²⁴See Hannum, *Free City of Danzig*, in DOCUMENTS ON AUTONOMY, *supra* note __, at 591, 591.

²⁵ALAN JAMES, *PEACEKEEPING IN INTERNATIONAL POLITICS*, 24-25 (1990).

treaties with redrawing the frontiers of states in dissolution, transition or reconstitution.²⁶ Pending negotiations between Poland and Danzig, the City remained under the provisional authority of the Principal Allied and Associated Powers, on whose behalf a senior British diplomat and two battalions of Allied troops under his command administered Danzig, "maintaining law and order whilst the implementation of the principles set out in the peace treaty [were] being agreed".²⁷

The Treaty of Versailles placed the so-called "Free City of Danzig" under international supervision, whereby Poland enjoyed rights to access, administer and develop Danzig's ports, to conduct foreign relations on its behalf, to control postal and wire communications and "to provide against any discrimination within the Free City of Danzig to the detriment of citizens of Poland and other persons of Polish origin or speech";²⁸ Danzig, in turn, retained domestic self-government rights, subsequently implemented by the Constitution of the Free City of Danzig,²⁹ as well as the right to establish an independent judiciary and police force. The Danzig Constitution devoted several articles to ensuring the citizenry certain "fundamental rights and duties", including equality before the law (art. 73), personal liberty (art. 74), freedom of expression (art. 79) and religion (art. 96), and it provided for free and compulsory education.³⁰ The Constitution expressly revoked the sovereignty of the defeated German Empire, though it affirmed that "laws and decrees which are valid in the territory of the Free City of Danzig at the

²⁶*See id.* at 23-25.

²⁷*Id.* at 25-26.

²⁸Treaty of Versailles, art. 104.

²⁹Constitution of the Free City of Danzig (1922) [hereafter Danzig Constitution], *reprinted in* DOCUMENTS ON AUTONOMY, *supra* note __, at 604-27.

time of the coming into operation of this Constitution shall remain in force in so far as they are not suspended by this Constitution or by legislation".³¹

Under the Treaty of Versailles, although Danzig exercised autonomy and control over most of its affairs, and was often treated in practice as a *de facto* independent state, ultimate sovereignty remained with the League of Nations. Disputes between local authorities of Danzig and Poland were referred to its High Commissioner, subject to an appeal to the Council of the League of Nations,³² which, in turn, would at times request advisory opinions from the Permanent Court of International Justice.³³

Eritrea (1952-62):

After the dissolution of Italy's colonial empire, Britain assumed temporary administration of the region that now comprises the independent state of Eritrea,³⁴ pending a political settlement pursuant to the 1947 Peace Treaty between Italy and the Western victors of World War II (France, the Soviet Union, Great Britain, and the United States).³⁵ At the time, both Ethiopia and

³⁰See *id.*, arts. 101-09.

³¹*Id.*, art. 116.

³²See Hannum, *supra* note __, at 591-92.

³³See, e.g., Polish Postal Service in Danzig, Advisory Opinion, 1925 P.C.I.J., Series B, No. 11; Access to, or Anchorage in, the Port of Danzig, of Polish War Vessels, Advisory Opinion, 1931 P.C.I.J., Series A/B, No. 43, p. 128; Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory, Advisory Opinion, 1932 P.C.I.J., Series A/B, No. 45, p. 68.

³⁴DOCUMENTS ON AUTONOMY & MINORITY RIGHTS 628 (Hurst Hannum ed., 1993) [hereafter DOCUMENTS ON AUTONOMY].

³⁵Treaty of Peace With Italy, Feb. 10, 1947, 49 U.N.T.S. 139.

the Sudan asserted claims to Eritrea. Britain thus attempted to partition the region between the two, but the United Nations and Eritrea's populace rejected this plan.³⁶ Consequently, under the terms of a joint declaration governing disposition of former Italian colonial territory,³⁷ failure to settle Eritrea's status by the four Western victors invested the General Assembly with authority to prescribe Eritrea's status by resolution.

To facilitate its ultimate determination, the General Assembly created the United Nations Commission for Eritrea,³⁸ a five-member board comprised of delegates from Burma, Guatemala, Norway, Pakistan and South Africa.³⁹ Resolution 289 (IV) empowered the Commission to "ascertain more fully the wishes and the best means of promoting the welfare of the inhabitants of Eritrea",⁴⁰ and, subsequently, to make a recommendation to the General Assembly based upon the desires of Eritrea's people, preserving peace and security in the region, and "[t]he rights and claims of Ethiopia based on geographical, historical, ethnic or economic reasons, including in particular Ethiopia's legitimate need for adequate access to the sea".⁴¹

The Commission spent five months in Eritrea in 1950 and solicited the views of, *inter alia*, Eritrea's populace, political representatives, commercial entities with economic interests in

³⁶DOCUMENTS ON AUTONOMY, *supra* note __, at 628.

³⁷Joint Declaration by the Soviet Union, United States and France Concerning Italian Territorial Possession in Africa, Annex XI, 49 U.N.T.S. 214 (1950).

³⁸G.A. Res. 289 (IV), U.N. GAOR, 5th Sess., Supp. No. 1, at 11, U.N. Doc. A/1287 (1949).

³⁹See Minasse Haile, *Legality of Secessions: The Case of Eritrea*, 8 EMORY INT'L L. REV. 479, 484 (1994).

⁴⁰G.A. Res. 289 at 12, *quoted in* Haile, *supra* note __, at 484.

⁴¹*Id.*

the region and religious leaders.⁴² Based upon its inquiries, the Commission recommended a variety of dispositions, including (1) Eritrea's integration into Ethiopia as a "self-governing unit of a federation"; (2) full reunification with Ethiopia, leaving certain western provinces under temporary British authority; and (3) a ten-year "trusteeship" for Eritrea after which Eritrea would become independent.⁴³ Ultimately, the General Assembly adopted the first of these proposals, which it implemented by resolution on December 2, 1950.⁴⁴

Resolution 390A stipulated that Eritrea would become an autonomous region under the sovereignty of Ethiopia. Eritrea would enjoy "legislative, executive and judicial powers in the field of domestic affairs", while Ethiopia would retain power over "defense, foreign affairs, currency and finance, foreign and interstate commerce . . . interstate communications, including ports".⁴⁵ At the same time, the Resolution guaranteed Eritreans "the enjoyment of human rights and fundamental liberties".⁴⁶ Finally, it created the United Nations Commissioner in Eritrea to facilitate the two-year transitional period: Resolution 390A charged the Commissioner to draft the Constitution of Eritrea, or "Act of Federation",⁴⁷ in consultation with the Administering Authority, the Government of Ethiopia and the inhabitants of Eritrea,⁴⁸ and to "prepare as rapidly

⁴²See Haile, *supra* note __, at 485.

⁴³See *id.* at 485, citing Report of the United Nations Commission for Eritrea, U.N. GAOR, 5th Sess., Supp. No. 8, p. 33, U.N. Doc. A/1285 (1950).

⁴⁴G.A. Res. 390A, U.N. GAOR 5th Sess., Supp. No. 20, at 20, U.N. Doc. A/1775 (1950).

⁴⁵*Id.*, paras. 2-3.

⁴⁶*Id.*, para. 7.

⁴⁷ERITREA CONST. (1952), reprinted in DOCUMENTS ON AUTONOMY, *supra* note __, at 633-61.

⁴⁸See *id.*, para. 12.

as possible the organization of an Eritrean administration, induct Eritreans into all levels of the administration and make arrangements for and convoke a representative assembly of Eritreans chosen by the people".⁴⁹ Eritrea's Act of Federation entered into force in 1952, and the newly-created Ethiopian federation with Eritrea continued until 1962, when the Eritrean Assembly unanimously terminated itself and reunited with Ethiopia.

Northern Ireland

The negotiations that led to the Good Friday Agreement of 1998 demonstrated the interested parties' willingness to resolve the conflict in Northern Ireland through the use of law and politics, rather than terrorism and violence.⁵⁰ They also demonstrated the recognition that a successful process depended upon the involvement of all the actors already involved in the conflict, including those that had partaken in paramilitary activities. Thus, the negotiating parties included two sovereign governments (Great Britain and Ireland) and eight disparate political parties from Northern Ireland, all of which were guided by an American (George Mitchell), a Finn (Prime Minister Harri Holkeri), and a Canadian (General John de Chastelain).⁵¹

To accommodate the diverse and often conflicting interests of the parties involved and to ensure consideration of all the relevant policy issues, negotiations proceeded within an intricate procedural structure. First, the negotiations entailed an international dimension which brought to

⁴⁹*Id.*, para. 11.

⁵⁰David Byrne, *An Irish View of the Northern Ireland Peace Agreement: The Interaction of Law and Politics*, 22 FORDHAM INT'L L. J. 1206, 1207 (1999).

⁵¹*Id.* at 1207.

them a sense of balance and fairness. In this regard, the support of and suggestions by the Clinton Administration proved to be invaluable.⁵² So, too, did the involvement of the English and Irish Governments. In the British-Irish Agreement, these Governments agree to both the cease-fire of hostilities and the recognition of self-determination as a ruling principle in the region.⁵³

Second, the negotiations provided for the needs of the local population by adhering to principles of self-determination and consent and by creating a formal treaty to this affect. The Multi-Party Agreement between the Irish and British Governments and the local parties in Northern Ireland considered the breadth of local issues involved in the resolution of the conflict. The Agreement provides for alterations Irish Constitution and the British constitutional legislation regarding the status of Northern Ireland; an increased devotion to human rights; measures to promote economic and political equality, both between and among the different jurisdictions involved; and the creation of a North/South Ministerial Council to serve as a link between the two jurisdictions in Ireland and of a British-Irish Council to ensure the continued peaceful involvement of Great Britain and Ireland.⁵⁴

Despite the bifurcation of the negotiating process, the Agreements create one, cohesive end regime. To ensure this result, the negotiators annexed the Multi-Party Agreement to the

⁵²Bertie Ahern, *The Good Friday Agreement: An Overview*, 22 FORDHAM INT'L L. J. 1196 (1999).

⁵³Bryne, *supra* note ____ at 1208.

⁵⁴*Id.*

British-Irish Agreement, and vice versa.⁵⁵ Finally, they allowed for the realization of the stated principle of self-determination by granting the Irish people the right to vote on reasonableness of these Agreements. On May 22, 1998, the people of Ireland, North and South, overwhelmingly endorsed the referendums.⁵⁶

Vietnam - Geneva:

In 1954, after one hundred years of colonial rule, Vietnamese nationalist forces defeated French troops at Dien Bien Phu and forced the French into peace agreements. The negotiations that ensued reflected the Cold War strains of the international order. Because the Communist superpowers did not want to anger the United States and its Western European allies so soon after the Korean War, they pressured Vietnam to acquiesce to France's terms. Those terms allowed France a face-saving defeat by temporarily partitioning Vietnam so as to create the pretense that only half of the region had succumbed to Communism.⁵⁷

According to the provisions of the Geneva Accords, Vietnam would hold national elections in 1956 in order to reunify the country. This was particularly important to the Vietnamese since the division along the seventeenth parallel had no cultural precedent. The United States, however, thought that these terms granted too much power to Vietnam's Communist Party. It therefore embarked upon a plan to build a nation out of southern

⁵⁵*Id.*

⁵⁶Ahern, *supra* note ___, at 1197.

⁵⁷ See The Wars for Viet Nam: 1945-1975, < <http://students.vassar.edu/~vietnam/overview.html> > (visited Nov. 26, 1999).

Vietnam. The United States provided massive amounts of military, political and economic aid toward these ends. The new, anti-Communist government in South Vietnam thwarted any effort toward reunification.⁵⁸

Vietnam - Paris:

The negotiations that ultimately ended the Vietnam War - the Paris Peace Talks (1968-1973) - included the United States and the Republic of Vietnam (RVN) on one side, and a coalition between the Democratic Republic of Vietnam (DRV) and its South-based military arm (the National Liberation Front or NLF) on the other.⁵⁹ Until the winter of 1971-1972, the negotiations stalemated.⁶⁰ The DRV and the NLF demanded the unilateral withdrawal of American troops and the reunification of Vietnam under a government chosen by the Vietnamese, which almost ensured communist governance throughout the region. The United States found these demands to diametrically oppose its own interests, which were to preserve the RVN as a separate state and to employ a two-track negotiating system. Under the U.S. negotiating system, the United States and the DRV would settle the South's military outcome, while the RVN and the NLF determined its political outcome. This two-track system would allow both the end of U.S. involvement in Vietnam and the appearance of U.S.

⁵⁸ *Id.*

⁵⁹ See JEFFREY KIMBALL, *NIXON'S VIETNAM WAR* (1998).

⁶⁰ See Frank C. Zagare, *A Game-Theoretic Analysis of the Vietnam Negotiations: Preferences and Strategies 1968-1973*, in *THE NEGOTIATION PROCESS: THEORIES AND APPLICATIONS* 111 (I. William Zartman, ed. 1978).

accomplishment.⁶¹ In early 1972, when President Nixon demonstrated his ability to escalate the military conflict and when the Soviets and the Chinese withdrew some of their support for the North, the DRV and NLF came to prefer settlement to a continued conflict.⁶² The coalition proposed a settlement to the United States that conceded many of their initial demands. While this settlement pleased the United States, it was less acceptable to the RVN, which felt excluded from the negotiations. Although the RVN resented the U.S. and the DRV for presenting it with a *fait accompli*, it had little choice but to accept their agreement. The key provisions of the agreement called for a cease-fire, the release of all military POWs, and the creation of the National Council of Reconciliation and Concord, which would enable the Saigon Government and its Communist rivals to determine the political future of South Vietnam.⁶³

⁶¹ See KIMBALL, *supra* note ___, at 105-112; Zagare, *supra* note ___, at 112.

⁶² See Zagare, *supra* note ___, at 123-25.

⁶³ See KIMBALL, *supra* note ___, at 366-68; Zagare, *supra* note ___, at 129-31.

Guaranteeing the Settlement

What is the international community prepared to commit--and then deliver--to support the final settlement of Kosovo's status and maintain peace and stability in the Balkans? What are the realistic constraints on support--in terms of time, troops, personnel, and money--that the international community can provide? What has been the performance till now of the international community in making and fulfilling commitments for Kosovo and the region? Are there ways in which the process of making, sharing the burden of, and delivering on commitments can be made more reliable? What are the consequences for regional peace?

Chris Bennett

14 December 1999

Rome

United Nations Association of the United States/IAI
Policy Conference

Chris Bennett

Guaranteeing the Settlement

1. Introduction

Six months after the end of the Kosovo war, the international community has moved into Kosovo in strength. A plethora of inter-governmental agencies and more than 300 non-governmental organizations are currently on the ground and involved in all aspects of reconstruction, in addition to some 42,000 international peace-keepers in the Kosovo Force (KFOR) and a further 10,000 international soldiers in neighboring Albania and Macedonia in support of the operation. An international administration, the United Nations Interim Administration Mission in Kosovo (UNMIK) has been set up and two major donors' conferences have been organized jointly by the World Bank and the European Commission securing pledges of more than \$3 billion.

Despite the pledges of financial assistance, money has been slow to materialize where it is most needed. The short-comings of the winterization program and the lack of resources even to pay for UNMIK have been widely reported in the Western media. While this winter will inevitably be difficult and many Kosovars may suffer unnecessarily as a result of bureaucratic delays, it is the nature of the international commitment over the decade to come which will be critical to guaranteeing a lasting settlement both in Kosovo and throughout the region. Here, current difficulties offer some pointers to future problems, as do the experience and on-going international efforts at reconstructing a war-torn society in Bosnia. However, Kosovo cannot be examined in isolation. It has to be seen both within a regional context, since events in the rest of rump Yugoslavia and neighboring countries will surely have an impact, and within the context of an evolving European political identity, since institutional reforms in Brussels are also likely to prove significant. Moreover, it is worth bearing in mind that although Kosovo, and the Balkans in general, have in recent years received massive media coverage, relatively large sums of international aid and much diplomatic attention, it is but one conflict region of many in the world.

This paper considers the evolving nature of the international engagement in the Balkans and the current international stake in the Balkans. It examines the constraints on international operations in terms of budgets, military man power and, expertise and assesses international capacity to deliver appropriate solutions.

II. Evolving International Engagement in the Balkans

In retrospect, the change during the past eight-and-a-half years in international, and in particular European, attitudes and institutions in response to the wars of Yugoslav dissolution has been remarkable. Whereas in 1991, the international community was both

poorly equipped institutionally and reluctant in principle to intervene in the escalating conflict in the Balkans, it was, nevertheless, drawn in, almost involuntarily in the course of half a decade of fighting, to the point where it intervened militarily to help build a settlement. Moreover, whereas international intervention was initially extremely cautious and focused on exit strategies, it has evolved out of necessity to such an extent that today it is geared towards finding durable, long-term solutions with the ultimate settlement generally perceived in some form of integration strategy with the European Union.

The European Community as the European Union was then called, became involved in the wars of Yugoslav dissolution on its very first day, 27 June 1991, when the European Council, the summit of heads of government of member states and European Commission President, dispatched a *Troika* of foreign ministers to broker a cease-fire in Slovenia, the first republic to be engulfed in war following an independence declaration two days earlier. The decision to intervene in Yugoslavia was in part taken in haste as a knee-jerk reaction to the first full-scale fighting in mainland Europe since the Second World War. Given Yugoslavia's geography--it physically separates 14 EU states from Greece, the fifteenth--and a nascent common European security and foreign policy, non-involvement was not a serious option. On 7 July 1991 the *Troika* brokered the Brioni Accord ending the war in Slovenia and dispatching the European Community Monitoring Mission to monitor the peace. By then, however, conflict had already spread into neighboring Croatia, which had also declared independence on 25 June 1991, and successive cease-fire agreements failed to halt the fighting.

On 7 September 1991, the European Community convened a conference on Yugoslavia in The Hague, under the chairmanship of Lord Peter Carrington on the basis of three principles: no unilateral changes of borders, protection of the rights of all minorities, and full respect for all legitimate interests and aspirations. Although Lord Carrington insisted that a lasting cease-fire was a prerequisite for the conference to proceed, he, nevertheless, embarked on negotiations, despite the violence. In the absence of the political resolve in key international capitals to intervene and thus neutralize the use of force, the fighting inevitably escalated.

After the addition of the UN, in the person of Cyrus Vance, to the international negotiating effort, the Sarajevo Accord of 2 January 1992 brought the war in Croatia to a halt. The peace agreement envisaged deployment of 14,000 UN peace-keepers and eventual reintegration of Serb-held regions of the republic into Croatia. EC recognition of Slovenia and Croatia on 15 January 1992 signified a shift in approach. Instead of working towards an overall settlement for the entire country, international envoys were effectively dealing piecemeal with each individual region. Special talks began on Bosnia in January 1992, but, in the absence of the political will for preventive deployment of peace-keepers, they failed to head off another war. Fighting began at the end of March 1992, within a month of a referendum which was supposed to determine Bosnia's fate, but which simply saw Bosnians divide along ethnic lines. Lord Carrington's diplomacy failed to halt the fighting and was superseded in September 1992 by a joint EU-UN International Conference on the Former Yugoslavia (ICFY) meeting in permanent session in Geneva

under Lord David Owen and Cyrus Vance. Despite a series of proposals and the deployment of 36,000 UN peace-keepers, however, the conference failed to secure a settlement. The United States did not support the most realistic peace plan, since it entailed recognizing many of the gains of ethnic cleansing. And no country was willing to risk deploying forces to reverse Bosnian Serb military gains.

The Bosnian war was eventually halted in November 1995 after three years and nine months of fighting following three weeks of talks in Dayton, Ohio brokered principally by the then US Assistant Secretary of State Richard Holbrooke. The DPA succeeded where earlier peace plans had failed because of the determination of the US negotiating team and the backing they received from other countries; because, after years of humiliation, there was a genuine threat that European troops (in particular British and French) who made up the backbone of the UN peace-keeping force in Bosnia would be withdrawn in the event of failure; and because of a fundamental shift in the military balance. In the course of 1995 the tide of battle changed, first in neighboring Croatia and then in Bosnia. Two out of three Serb-held enclaves in Croatia were overrun by the Croatian Army in lightning strikes in May and August 1995 and, with the support of Bosnian Croat forces and the predominantly-Muslim Bosnian Army, the offensive rolled forward into Bosnia reversing many of the early Serb war gains, resulting in a territorial division within the country similar to those envisaged in earlier peace plans. In addition, Britain, France and the Netherlands deployed a war-fighting Rapid Reaction Force within Bosnia and, following the second Sarajevo market place massacre on 28 August 1995, NATO systematically bombed strategic points from the air, destroying Bosnian Serb communications.

While the DPA succeeded in ending the fighting in Bosnia with the help of a 60,000-strong, NATO-led Implementation Force (IFOR), it was another piecemeal solution and failed to address the other conflicts or potential conflicts in the region, such as that in Kosovo. Moreover, the initial interpretation of the mission's mandate was so cautious and so pre-occupied with force protection and an exit strategy that it failed to address the real causes of instability in Bosnia. This changed in the course of 1997 and 1998 when first, in July 1997, British troops from the renamed Stabilization Force (SFOR) arrested and killed individuals indicted for war crimes, and then, in March 1998, President Bill Clinton made it clear that the presence of US troops in Bosnia would be linked to "concrete and achievable benchmarks" and not a pre-determined exit date.

In Kosovo, the powder keg, whose explosion had so often been predicted, ignited at the end of February 1998 and, despite international mediation, showed no signs of coming to a peaceful solution without international intervention. This eventually came in the form of NATO air strikes against Yugoslavia on 24 March of this year in the wake of two rounds of failed peace talks in Paris. The air campaign lasted 78 days and ended in the withdrawal of Yugoslav forces from Kosovo to be replaced by a NATO-led peacekeeping force and the establishment of an interim UN administration in the province.

Whereas in 1991 the international community had been prepared only to dispatch unarmed observers, dressed in white to the former Yugoslavia, in 1999 NATO had intervened militarily against one side in an ethnic conflict to head off what might have proved a greater crisis. Whereas the formation of the International Criminal Tribunal for the former Yugoslavia in The Hague was largely undermined by the Great Powers between 1992 and 1994 and even as late as December 1996 the Tribunal was not invited to participate at the London conference of the Peace Implementation Council, the grouping of countries and international organizations with a stake in the Bosnian peace process, international police from many Western countries were dispatched to Kosovo immediately after the end of the fighting to investigate war crimes, in support of the efforts of what is an increasingly well-funded Tribunal.

III. Current International Stake in the Balkans

Today's political geography of the Balkans is the result of four wars, in Slovenia, Croatia, Bosnia and Kosovo, and a series of partially implemented, internationally brokered agreements. International missions are now based in every country between Croatia in the north and Albania in the south, each with its own often confusing acronym. In addition to the massive missions in Bosnia and Kosovo, there are many lower-profile operations, including, for example, that of the United Nations in Prevlaka, the Croatian peninsular bordering Montenegro where 32 military observers are stationed. The financial cost of these missions is extremely high. Moreover, because of the scale of the international engagement, failure, that is the resumption of hostilities, will inevitably reflect badly on the international statespersons and organizations involved.

Costing international spending in the Balkans, in particular the military component, is difficult and depends largely on the methodology employed. If the entire cost of all troops and personnel involved in SFOR in Bosnia--and not simply the additional expense of their deployment in theater--is calculated for this year, it would likely amount to close to \$7 billion. The combined 1999 budget--excluding secondments--of the Office of the High Representative (OHR), UN, UNHCR and OSCE comes to about \$350 million and a little over \$1 billion is disbursed in aid every year. This means total expenditure of around \$8.5 billion in Bosnia alone. Spending in Kosovo is likely to be higher, since the number of troops deployed is greater, and that expenditure again is still considerably cheaper than the kind of campaign NATO waged between March and June. The UN's annual running costs alone are expected to be around \$465 million.

Although the international community was unable to muster the resolve, money and man power to support the various peace plans put forward by the ICFY in Geneva between 1992 and 1995, it has found the means to bolster the Bosnian settlement and become almost resigned to the current level of expenditure. Moreover, since the indictment by The Hague Tribunal of Slobodan Milosevic and his inner circle for war crimes, the international community has effectively been obliged to adopt a long-term and uncompromising stance towards the Belgrade regime.

IV. Constraints

Given the scale and cost of the international involvement in the Balkans, operations are inevitably constrained in terms of budgets, military man power and, perhaps most critically, expertise. Difficulties in these areas sometimes manifest themselves in disagreements between the United States and the European Union over burden sharing with Americans feeling that the Europeans are not pulling their weight to resolve what is, after all, a European problem. The root cause of many of these difficulties lies in structural deficiencies in Europe's institutional architecture and bureaucracy, some of which are being addressed at present.

1. Financial Considerations

Despite the scale of the reconstruction effort required in Kosovo and early funding short-falls, the greatest long-term problem may not prove to be money. For as in Bosnia, where international donors have pledged--and committed--more than the \$5.1 billion originally envisaged for reconstruction, there appears to be an abundance of funds. This is in contrast to post-war reconstruction in other parts of the world where, despite pledges at donors' conferences, countries have frequently failed to live up to their promises and thus undermined peace processes. No doubt, the fact that both Bosnia and Kosovo are in Europe has contributed to donor generosity. That said, given conflicts throughout the world, many in the aid community resent the disproportionate level of international resources committed to the Balkans. Since US planes carried out around 80 per cent of strike missions during NATO's air campaign against Yugoslavia, the United States bore the bulk of the war's expenses and now, understandably, expects the European Union to pick up most of the cost of reconstruction. As a result, the United States plans to limit its contribution to no more than 15 per cent of the total.

A total of \$2.168 billion was pledged at the first Kosovo donors' conference, organized jointly by the World Bank and European Commission, in July to meet immediate humanitarian and budget needs, including money which had already been disbursed in the first seven months of 1999 to meet the refugee crisis. And a further \$1.035 billion of new money was pledged at a second Kosovo donors' conference for the province's long-term development in November, \$970 million of which is earmarked for reconstruction, \$47 million for peace implementation and \$18 million for humanitarian aid, of which about half will come from the European Union and its member states. Given Kosovo's poverty, the province is not in a position to absorb more aid. Despite the pledges, however, UNMIK head Bernard Kouchner was forced to appeal to the Security Council for funding at the beginning of November, saying that he required an additional \$25 million before the end of the year to pay salaries for Kosovars working in public administration.

Ironically, the funding short-fall, which was largely met by an injection of Dutch cash, may to a certain extent be attributed to bureaucratic bottlenecks rather than a lack of money. EU aid is unfortunately notoriously slow to materialize as a result of internal administrative failings which the new Commission President Romano Prodi recognized and promised to address together with External Affairs Commissioner Chris Patten in his speech to last month's OSCE summit in Istanbul. Here the European Commission's experience in Bosnia—where in some instances money pledged in 1996 has only been disbursed this year—has been both sobering and potentially sufficiently embarrassing to help change procedures.

A critical audit of EC operations in Bosnia revealing many of the bureaucratic shortcomings was leaked and published in the German press in 1998. Whereas, for example, the US Agency for International Development (USAID) empowers its officials on the ground to make funding decisions themselves and is thus able to disburse money rapidly, European Commission employees have been obliged to wait for authorization from Brussels and this has delayed projects, in some instances by years. In order to rectify this problem in Kosovo, a specialist EC Reconstruction Agency with decision-making authority should be operational early next year. The European Commission is also preparing a 5 billion Euro aid package for the whole of south eastern Europe for the period 2000-2006.

2. Security Matters

In total, more than 80,000 international peace-keepers are currently deployed in the Balkans, in addition to some 2,000 international police in Bosnia and another 1,750 international police in Kosovo. Although the number of peace-keepers stationed in Bosnia is scheduled to fall by a third from 30,000 to 20,000 in the spring, the scale of the deployment remains at an unprecedented level and may leave some countries exposed elsewhere in the world. In the case of the UK, for example, working on the principle that one regiment has just returned, another is in theater and a third is preparing to be deployed, close to half of the army is involved in the Balkans. Moreover, the United States, in particular, appears reluctant to place troops in harm's way and is naturally keen to see its European allies take on a greater proportion of the burden in their own back yard.

To a certain extent, the issue is one of attitudes. The United States currently deploys 6,000 troops in Kosovo, 5,600 in Bosnia and 1,300 in Macedonia. This is already considerably fewer than the 20,000 initially dispatched to Bosnia in IFOR and a fraction of the 80,000 military personnel currently stationed in Germany, a decade after the end of the Cold War. Given the relative importance of a military presence in Germany and in the Balkans today, one option must be simply to move existing bases southwards. Moreover, it certainly appears from the scale on which the US Army's Kosovo base Camp Bondsteel is being built, that US troops are preparing for the long haul.

A more logical medium-term solution for Balkan stability, nevertheless, remains the development of an independent European defense capability. The appointment of Javier Solana as the European Union's first head of a Common Foreign and Security Policy has certainly brought this day forward, though he has only just moved into his new post. Meanwhile, it seems likely that the Franco-German Eurocorps will seek to take control of the headquarters of NATO's peace-keeping force in Kosovo next year and that EU member states will commit themselves to building a 50,000-strong crisis management force, deployable for two years at 60 days' notice. That said, the new force will probably not be ready until 2003 and, as the new NATO Secretary-General George Robertson has pointed out, European countries will have to increase their defense spending to meet such goals.

Ultimately, responsibility for security within Kosovo and throughout the Balkans will have to be devolved to local institutions, and in particular to a local law-enforcement agency. Attempts to build a internationally supervised Kosovo Protection Corps (KPC), employing former members of the Kosovo Liberation Army (KLA), are, however, currently being hampered by a lack of funding. The problem here, however, is not that the necessary money cannot be found, rather that many countries are skeptical about the KPC. A genuine fear among potential donors is that the KPC will simply become the army of an independent Kosovo and undermine international efforts to foster accommodation elsewhere in the region and even possibly threaten the peace-keeping mission itself.

3. Expertise

The task ahead is extremely complex, since it involves restructuring an entire society following 45 years of communism, a decade of apartheid-like rule and 18 months of war. No matter how much money is pledged for Kosovo, no matter how many troops are deployed or how long the international commitment, it will not be possible to reconstruct a functioning society without deep expertise both in Kosovo itself and more generally in the problems faced by transitional societies. This requires, above all, suitably qualified personnel and a system to retain them so as to ensure continuity. It is also arguably where international organizations have performed least well as a result of poor recruitment policies and rapid turn-over in personnel.

One of the great success stories of Bosnian reconstruction has been the European Union's Customs and Financial Assistance Office (CAFAO) which has attempted systematically to understand and then restructure the way in which local authorities raise revenue to make it transparent and avoid fraud. Despite many successes, however, CAFAO has found it extremely difficult to recruit and then retain individuals with the necessary background and qualifications, as has the Office of the High Representative's Anti-Fraud Squad. Here and in so many specialized areas, the system of diplomatic secondment which operates is not appropriate. A long-term international commitment must be accompanied by long-term postings, qualified secondments and language training. But

this is especially difficult in Kosovo because few foreigners will be prepared to put up with the living conditions.

V. International Capacity to Deliver Appropriate Solutions

International attitudes to the Balkans have, especially in Europe, come a long way since NATO's bombing campaign. Instead of seeking to isolate conflict within the former Yugoslavia and prevent it spilling into neighboring countries, policy-makers are aware that they have to deal with the region as a whole and to find long-term solutions for the root causes of conflict, if they will ever be able to get out. Moreover, as op-ed writers have urged for many years, long-term solutions lie in developing mechanisms by which the Balkans can be integrated into the European mainstream and not by their isolation. The Center for European Policy Studies (CEPS), a Brussels-based think tank, for example, has proposed new EU membership categories for the countries of South-Eastern Europe, a Stability Pact has been formally launched for the region and the European Commission has already begun negotiations on a Stabilization and Association Agreement with Albania. That said, the current international political architecture is not necessarily best suited to this new approach, regional thinking is generally at an early stage and the specter of Slobodan Milosevic in power in Belgrade haunts even the best-designed plans.

1. International Political Architecture and the Stability Pact

In the course of the past year, international organizations have to a large extent attempted to shift their focus from one which is Bosnia-centric to one encompassing the entire region. Nevertheless, the plethora of agencies, the strict separation between military and civilian authority, and institutional rivalries make the coordination of international efforts especially difficult. Whereas during the Bosnian war the International Conference on the Former Yugoslavia (ICFY) was the sole international body working to resolve conflict in the Balkans, (even though its efforts were often undermined by a lack of support in key capitals) no such body exists today. The Stability Pact, an initiative of the European Union's German Presidency during NATO's bombing campaign against Yugoslavia offering the prospect of a better future to South-Eastern Europe, probably comes closest, but it does not possess the capacity to task other institutions and, at present, commands little respect on the ground.

Here, it is important to view the Stability Pact in context. For it is by no means the first international initiative seeking to resolve the region's many problems, nor is its concept new, since it was first discussed at the time of the Stoltenberg-Owen peace plan in 1994. Indeed, every major historical turning-point has encouraged the creation of new regional organizations. In addition to the Stability Pact, there is the Central European Initiative (CEI), founded in 1989 in Budapest, the Black Sea Cooperation Organization (BCCO), set up in 1992 in Istanbul, the Royaumont Process launched in Paris in 1995, and the

South-East European Initiative (SECI), set up in Vienna in 1996. Yet with the possible exception of SECI, it is difficult to point to any achievements beyond meetings. Moreover, no formal evaluation of the efforts of any of these organizations has taken place.

Perhaps inevitably it is easy to criticize the Stability Pact in terms of its personnel, concept, and structure. The absence of an experienced Balkan hand at the top no doubt limits the imaginative potential of the initiative. The Stability Pact's founding document is extremely bland, little more than a list of existing organizations stating that each has an important role to play, with the division of operations into three sub-tables on democracy and human rights, security and reconstruction and economic development, but a mirror of the three baskets of the OSCE. Moreover, since the various heads of the sub-tables are each based in a different city, coordination within the Stability Pact may prove excessively difficult. That said, many of the Stability Pact's Brussels-based staff are energetic, young diplomats with several years experience in, and a strong commitment to, South-Eastern Europe who view their work as a unique opportunity to analyze issues on a regional level and facilitate innovative initiatives.

2. Innovative Solutions

The challenge in the Balkans is quite unlike that which diplomats are accustomed to. The task is to rebuild a war-torn society, while, at the same time, easing the transformation from one-party rule and the command economy to multiparty democracy and the free market, with, in places, the added complication of an unresolved ethnic question. As a result, innovation will likely be critical to conflict management in the Balkans and future stability, an innovation based on the experience of peace-building during the past four years and on expertise in other post-war and ethnically mixed societies. The path to stability may be via democratization, but this entails more than just elections. To date processes which have served to promote democracy elsewhere have largely proved destabilizing in the region. Existing domestic power structures have, in some instances, to be dismantled and mechanisms tailored to local conditions should be explored, including redesigned electoral systems, regional security and disarmament treaties, the creation of a regional broadcasting network and regional and/or reciprocal commitments to "special measures" to protect the employment, property, educational and other rights of minorities.

3. Serbia

Since Kosovo ostensibly remains part of Serbia and Serbia is both geographically in the middle of the Balkans and the most populous successor state of the former Yugoslavia, there cannot realistically be a lasting settlement either in Kosovo or in the wider region as long as Slobodan Milosevic remains in power. Predictions of his imminent demise during the past decade have, however, repeatedly proved premature. The Yugoslav President

appears determined to stay in office and maintains the capacity to generate conflict within Yugoslavia's borders, in Montenegro, the Sandzak, Vojvodina and Serbia proper, likely to spill over into neighboring countries. Worse still, the instruments available to the international community in its dealings with Milosevic are extremely blunt, consisting almost exclusively of sanctions—which harm the general population more than the elite—and subsidies to opposition parties, independent media and non-governmental organizations—which expose the recipients to accusations of treason. Irrespective of how the international community is structured, it may not be able to do anything in Serbia unless or until the existing regime collapses.

VI. Conclusion and Suggestions

The international response to the wars of Yugoslav dissolution has been a case study in the way the world is ordered. It has illustrated, above all, the lack of cohesion in the international community, and even at times within NATO, the failings of short-term approaches aimed at dealing with the crisis of the moment, and the consequences of inactivity at critical junctures. Moreover, instead of extricating itself from the region, the international community has found itself sucked in ever more deeply, with little prospect of withdrawal in the next several years, if ever. Hence a belated realization, especially in Europe, that there are no quick-fix solutions and that regional stability will require a long-term international presence and sustained, well thought-out policies backed by the credible threat of force.

Given the prominence of South Eastern Europe in international relations for most of the past decade, institutions have evolved in many ways to respond to the wars of Yugoslav dissolution. Indeed, a common European security and foreign policy is, as a result, beginning to take shape in a way which was essentially unthinkable in 1991 when war first broke out in the former Yugoslavia. That said, the European Union will not be in a position to meet the security needs in the Balkans alone for at least another three years.

Ironically, given the large sums involved, money has not proved a great obstacle to international reconstruction efforts in the Balkans, in contrast to peace-building operations elsewhere in the world. That said, bureaucratic procedures have frequently delayed the disbursement of EU funds and thus hampered operations. These procedures are being overhauled and the European Commission is attempting to think in terms of integrating the Balkans into the European mainstream, but such structural reforms and attitudinal changes do not happen rapidly.

Since the challenge in both Kosovo and South Eastern Europe is new and complex, innovative solutions are required. At present, however, neither the existing international set-up in the region, which has grown in response to crisis, nor the international structures outside the region, essentially the Stability Pact, appear equipped to produce the necessary analysis. Moreover, until there is fundamental political change in Serbia hopes

of a wider settlement encompassing the entire region appear unrealistic, irrespective of what policies the international community pursues.

Lessons of the international community's experience in the Balkans to date have to be learned in order to take the peace process forward. But to learn lessons properly requires critical self-analysis of a sort which has often been lacking. Moreover, since the international community is trying to instill the qualities of transparency and accountability into local institutions, its own operations have to be run to the same standards and should be reviewed periodically in an attempt to improve efficiency.

Although the Stability Pact has only just been launched, it may not be the right vehicle to direct international policy towards the Balkans and other options should be examined. A more effective way forward might be the creation of a permanent international conference on the Balkans, along similar lines to the ICFY in Geneva, but based within the Balkans, in, say, Skopje seeking to give direction to international policy throughout the region. To have an impact, such a conference would have to be carefully constructed. It would probably have to be headed by a respected Western politician with existing expertise in the Balkans, and staffed by many of the energetic youngsters who have acquired considerable experience in and deep knowledge of the region in recent years as well as recognized experts, and to focus on analyzing issues and coming up with innovative and practical solutions. Another way forward, which may be pursued at the same time, is to set up a dedicated in the European Commission, focusing on South-Eastern Europe. Given the scale of EU spending in the region, it can surely be justified. Indeed, it may even be able to play a role akin to that of the Organization for European Economic Cooperation under the Marshall Plan.



Security Council

Distr.
GENERAL

S/RES/1244 (1999)
10 June 1999

RESOLUTION 1244 (1999)

Adopted by the Security Council at its 4011th meeting,
on 10 June 1999

The Security Council,

Bearing in mind the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security,

Recalling its resolutions 1160 (1998) of 31 March 1998, 1199 (1998) of 23 September 1998, 1203 (1998) of 24 October 1998 and 1239 (1999) of 14 May 1999,

Regretting that there has not been full compliance with the requirements of these resolutions,

Determined to resolve the grave humanitarian situation in Kosovo, Federal Republic of Yugoslavia, and to provide for the safe and free return of all refugees and displaced persons to their homes,

Condemning all acts of violence against the Kosovo population as well as all terrorist acts by any party,

Recalling the statement made by the Secretary-General on 9 April 1999, expressing concern at the humanitarian tragedy taking place in Kosovo,

Reaffirming the right of all refugees and displaced persons to return to their homes in safety,

Recalling the jurisdiction and the mandate of the International Tribunal for the Former Yugoslavia,

Welcoming the general principles on a political solution to the Kosovo crisis adopted on 6 May 1999 (S/1999/516, annex 1 to this resolution) and welcoming also the acceptance by the Federal Republic of Yugoslavia of the principles set forth in points 1 to 9 of the paper presented in Belgrade on



2 June 1999 (S/1999/649, annex 2 to this resolution), and the Federal Republic of Yugoslavia's agreement to that paper,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2,

Reaffirming the call in previous resolutions for substantial autonomy and meaningful self-administration for Kosovo,

Determining that the situation in the region continues to constitute a threat to international peace and security,

Determined to ensure the safety and security of international personnel and the implementation by all concerned of their responsibilities under the present resolution, and acting for these purposes under Chapter VII of the Charter of the United Nations,

1. Decides that a political solution to the Kosovo crisis shall be based on the general principles in annex 1 and as further elaborated in the principles and other required elements in annex 2;

2. Welcomes the acceptance by the Federal Republic of Yugoslavia of the principles and other required elements referred to in paragraph 1 above, and demands the full cooperation of the Federal Republic of Yugoslavia in their rapid implementation;

3. Demands in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo will be synchronized;

4. Confirms that after the withdrawal an agreed number of Yugoslav and Serb military and police personnel will be permitted to return to Kosovo to perform the functions in accordance with annex 2;

5. Decides on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcomes the agreement of the Federal Republic of Yugoslavia to such presences;

6. Requests the Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence, and further requests the Secretary-General to instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner;

7. Authorizes Member States and relevant international organizations to establish the international security presence in Kosovo as set out in point 4 of annex 2 with all necessary means to fulfil its responsibilities under paragraph 9 below;

/...

8. Affirms the need for the rapid early deployment of effective international civil and security presences to Kosovo, and demands that the parties cooperate fully in their deployment;

9. Decides that the responsibilities of the international security presence to be deployed and acting in Kosovo will include:

(a) Deterring renewed hostilities, maintaining and where necessary enforcing a ceasefire, and ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces, except as provided in point 6 of annex 2;

(b) Demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups as required in paragraph 15 below;

(c) Establishing a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered;

(d) Ensuring public safety and order until the international civil presence can take responsibility for this task;

(e) Supervising demining until the international civil presence can, as appropriate, take over responsibility for this task;

(f) Supporting, as appropriate, and coordinating closely with the work of the international civil presence;

(g) Conducting border monitoring duties as required;

(h) Ensuring the protection and freedom of movement of itself, the international civil presence, and other international organizations;

10. Authorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo;

11. Decides that the main responsibilities of the international civil presence will include:

(a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648);

(b) Performing basic civilian administrative functions where and as long as required;

promoted
and
relayed
by
democratic

(c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;

(d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities;

(e) Facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords (S/1999/648);

(f) In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement;

(g) Supporting the reconstruction of key infrastructure and other economic reconstruction;

(h) Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid;

(i) Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;

(j) Protecting and promoting human rights;

(k) Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo;

12. Emphasizes the need for coordinated humanitarian relief operations, and for the Federal Republic of Yugoslavia to allow unimpeded access to Kosovo by humanitarian aid organizations and to cooperate with such organizations so as to ensure the fast and effective delivery of international aid;

13. Encourages all Member States and international organizations to contribute to economic and social reconstruction as well as to the safe return of refugees and displaced persons, and emphasizes in this context the importance of convening an international donors' conference, particularly for the purposes set out in paragraph 11 (g) above, at the earliest possible date;

14. Demands full cooperation by all concerned, including the international security presence, with the International Tribunal for the Former Yugoslavia;

15. Demands that the KLA and other armed Kosovo Albanian groups end immediately all offensive actions and comply with the requirements for demilitarization as laid down by the head of the international security presence in consultation with the Special Representative of the Secretary-General;

16. Decides that the prohibitions imposed by paragraph 8 of resolution 1160 (1998) shall not apply to arms and related matériel for the use of the international civil and security presences;

17. Welcomes the work in hand in the European Union and other international organizations to develop a comprehensive approach to the economic development and stabilization of the region affected by the Kosovo crisis, including the implementation of a Stability Pact for South Eastern Europe with broad international participation in order to further the promotion of democracy, economic prosperity, stability and regional cooperation;

18. Demands that all States in the region cooperate fully in the implementation of all aspects of this resolution;

19. Decides that the international civil and security presences are established for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise;

20. Requests the Secretary-General to report to the Council at regular intervals on the implementation of this resolution, including reports from the leaderships of the international civil and security presences, the first reports to be submitted within 30 days of the adoption of this resolution;

21. Decides to remain actively seized of the matter.

Annex 1

Statement by the Chairman on the conclusion of the meeting
of the G-8 Foreign Ministers held at the Petersberg Centre
on 6 May 1999

The G-8 Foreign Ministers adopted the following general principles on the political solution to the Kosovo crisis:

- Immediate and verifiable end of violence and repression in Kosovo;
- Withdrawal from Kosovo of military, police and paramilitary forces;
- Deployment in Kosovo of effective international civil and security presences, endorsed and adopted by the United Nations, capable of guaranteeing the achievement of the common objectives;
- Establishment of an interim administration for Kosovo to be decided by the Security Council of the United Nations to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo;
- The safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian aid organizations;
- A political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of the KLA;

La Jolla
Dec. June.

U.S. administration - Not NATO
NATO keep case in for Macedonia + Albania
Not to be working over the Hague.

- Comprehensive approach to the economic development and stabilization of the crisis region.

Annex 2

Agreement should be reached on the following principles to move towards a resolution of the Kosovo crisis:

1. An immediate and verifiable end of violence and repression in Kosovo.
2. Verifiable withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable.
3. Deployment in Kosovo under United Nations auspices of effective international civil and security presences, acting as may be decided under Chapter VII of the Charter, capable of guaranteeing the achievement of common objectives.
4. The international security presence with substantial North Atlantic Treaty Organization participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.
5. Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.
6. After withdrawal, an agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the following functions:
 - Liaison with the international civil mission and the international security presence;
 - Marking/clearing minefields;
 - Maintaining a presence at Serb patrimonial sites;
 - Maintaining a presence at key border crossings.
7. Safe and free return of all refugees and displaced persons under the supervision of the Office of the United Nations High Commissioner for Refugees and unimpeded access to Kosovo by humanitarian aid organizations.
8. A political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other

/...

countries of the region, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions.

9. A comprehensive approach to the economic development and stabilization of the crisis region. This will include the implementation of a stability pact for South-Eastern Europe with broad international participation in order to further promotion of democracy, economic prosperity, stability and regional cooperation.

10. Suspension of military activity will require acceptance of the principles set forth above in addition to agreement to other, previously identified, required elements, which are specified in the footnote below.¹ A military-technical agreement will then be rapidly concluded that would, among other things, specify additional modalities, including the roles and functions of Yugoslav/Serb personnel in Kosovo:

Withdrawal

- Procedures for withdrawals, including the phased, detailed schedule and delineation of a buffer area in Serbia beyond which forces will be withdrawn;

Returning personnel

- Equipment associated with returning personnel;
- Terms of reference for their functional responsibilities;
- Timetable for their return;
- Delineation of their geographical areas of operation;
- Rules governing their relationship to the international security presence and the international civil mission.

Notes

¹ Other required elements:

- A rapid and precise timetable for withdrawals, meaning, e.g., seven days to complete withdrawal and air defence weapons withdrawn outside a 25 kilometre mutual safety zone within 48 hours;
- Return of personnel for the four functions specified above will be under the supervision of the international security presence and will be limited to a small agreed number (hundreds, not thousands);

/...

- Suspension of military activity will occur after the beginning of verifiable withdrawals;
- The discussion and achievement of a military-technical agreement shall not extend the previously determined time for completion of withdrawals.

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Kosovo after the Holbrooke-Milosevic Agreement. What now?

James Gow

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Several weeks after NATO went to the brink of using air power over Kosovo, the security situation in the province located in southern Serbia and within the Federal Republic of Yugoslavia remains fragile. Both the military and the political dimensions of the arrangement agreed by the authorities in Belgrade, the Serbian and Yugoslav capital, to avert NATO air strikes in October have been less expeditiously implemented than was foreseen.

The relatively slow pace of deploying unarmed international verifiers by the OSCE and an armed reaction force to protect them by NATO means that the sense of inevitability which cemented the Dayton peace accords for Bosnia and Herzegovina in 1995 are not clearly present. Without this sense of inevitability, the situation in Kosovo continues to be strategically dynamic, with Serbs and, especially, Albanian extremists believing that the use of violence can still produce benefits for them. This means that if the pace of international verification of the ceasefire and force agreement cannot be increased, the political progress needed in negotiations between the Serbs and Albanians, conducted indirectly through American offices, will not be achievable. Yet, political progress is essential to avert breakdown of the delicate ceasefire which has largely stayed in place, but is insecure and challenged.

Under the terms of the agreement signed between Yugoslav President Slobodan Milosevic and US Envoy Richard Holbrooke in Belgrade on 14 October and the eleven points statement then made by the Serbian authorities, elections should be held in Kosovo within nine months. Agreement on procedures for the elections was due to be announced on 9 November, but was not, already putting implementation behind schedule. The announcement on elections was part of a tightly worked out timetable imposed by the US envoy, with elements entered into in an ostensibly voluntary way by Belgrade. This US approach reflected the substantial preparatory work that had been carried out over a number of months with the Kosovo Albanian leadership by the US Ambassador to Skopje, Christopher Hill.

KOSOVO AFTER THE HOLBROOKE-MILOSEVIC AGREEMENT. WHAT NOW?

However, other dates in that timetable had already been allowed to slide backwards, notably the date for agreement on procedures to reach a political solution - 2 November. There were two principal reasons for this slippage in the pre-planned timetable. The first was difficulties presented by both the Belgrade authorities and the Kosovo Albanian leaders. The second was the longer time than planned required to put international verification and protection forces in place.

On the first of these problems, while the discussions between Hill and the Kosovo Albanian leadership prior to the agreement had settled on the notion of an interim agreement for a period of three years, political divisions translated into reluctance to accept this interim period without commitment to steps towards independence to be taken later. The three-year interim arrangement is intended to persuade the Kosovo Albanian leadership that any agreement need not necessarily be forever, while ensuring that it would recognise the perspective shared by Belgrade and the international community that Kosovo could not become independent without Belgrade's consent. Under pressure from figures such as Adem Demaci, political spokesman for the Kosova Liberation Army (UCK), either not to agree to anything at all, or to agree only to an arrangement which carries the promise of a referendum on the status of the province in southern Serbia, the negotiating team found it difficult to follow the line expected of it by US diplomats.

For its part, the Belgrade leadership has been extremely reluctant to endorse a framework document which ensures the territorial integrity of the FRY, but barely mentions either it or Serbia by name and which, among other things, includes provision for inclusion of Kosovo Albanian representation on the Supreme Defence Council of the FRY, the highest decision-making body on military affairs. To mark Serbian government and Yugoslav military reluctance to accept the document, on 20 November, Yugoslav President Milosevic and Serbian President Milan Milutinovic arranged for their ruling Serbian Socialist Party to issue a joint declaration with some other parties in Serbia of principles for agreement which emphasised Serbian terminology and challenged the US proposals. While this presents a challenge to the legitimacy of any agreement based on the Hill proposals, it seems highly unlikely to do more than delay an agreement based on them. This statement does, however, show the way in which delay creates the opportunity for distraction.

In an effort to narrow the positions between the Belgrade authorities and the Kosovo Albanian leadership, the US State Department supplied the Kosovar Albanian side with a lawyer to assist them in negotiating an agreement of which they could be confident and a US commitment to ensuring that it would be upheld. In this context, US officials let it be known that they were not unduly worried by the delay, as Hill's role in mediation and negotiation between the parties was continuing in a positive way, even if it was behind schedule. This position might have appeared weak, given that only weeks earlier the US and others in the international community had been reinforcing their position that the threat of NATO air strikes would remain in place if the terms of the agreement, as well as the eleven points to be incorporated in any political arrangements for Kosovo, were not maintained.

However, given the political difficulties on the Kosovo Albanian side, there has been no reason to rush to use NATO air power against the Serbian and Yugoslav side; nevertheless, the Activation Order for use of air strikes regarding Kosovo was indefinitely maintained by the North Atlantic Council (NAC) on 27 October.

Although all aspects of the agreement, most notably the military ones, ultimately require the political structures agreed upon to be in place, the international community has been relaxed about the pace of implementation as it has not been able to deliver its part of the bargain – a verification force to oversee implementation. While the existing Kosovo Diplomatic Observer Mission (KDOM) continues to operate and experienced a "surge" in numbers, including the recruitment of "local staff" (including some regarded by observers as "private soldiers") to take on the roles assigned to the OSCE Kosovo Verification Mission (KVM), the KVM itself is not likely to begin operating until late November or early December. Advance parties had been in Kosovo preparing a 300 strong Headquarters for the operation which should total around 2,000 personnel – primarily unarmed soldiers in civilian dress. But progress on the ground, as well as in composing the full force has taken longer than initially hoped.

In addition to the delay in gathering and deploying the KVM, there is also a further dimension to the delay. This concerns the armed protection and extraction force, to be supplied under NATO auspices, for deployment to the former Yugoslav Republic of Macedonia. This force would be a significant safeguard for the operation of the KVM, once both are in place. This can be expected to stabilise the situation sufficiently to facilitate implementation of any political agreement and elections following it.

Almost as significantly, this resolves the critical problem faced by NATO countries over a period of several months regarding appropriate legal authority for the possible use of armed force. When the NAC finally decided to issue its Activation Order to the military commanders in October, the issue of legal authority for use of force had been fudged. While the US and the UK argued that a compound of legal bases, including UN Security Council Resolution 1199, provided appropriate authority, a number of their allies, including The Netherlands, Italy and Germany, strongly believed that an explicit UN Security Council Resolution was required. With the deployment of the KVM, complemented by a new UN Security Council Resolution (1203), using full authority of enforcement powers under Chapter VII of the UN Charter, a previously vague situation has been transformed and two clear legal bases for the possible use of force established.

The first of these is the right to self-defence, meaning the right to protect nationals involved in the KVM. The other is the recognition in Resolution 1203 that the OSCE mission would need to "consider arrangements to be implemented in co-operation with other organisations" to provide for action to ensure their "safety and freedom of movement". The problem has ceased to be the legal authority to use force. But this is not the end of all problems, as the composition of the force itself has to be decided. This immediately presented NATO with an old transatlantic dilemma: the US contribution to such a force would not be ground troops, despite the presence of US ground personnel in Macedonia already with the UN preventive deployment

(UNPREDEP), leaving Europeans to carry what they might interpret as the burden of a US-inspired policy. While planning for various options has been accelerated on the assumption that US ground personnel would not be directly involved, the exact nature of the likely force in the absence of Americans remains open.

The difficulties in establishing the international mechanisms to support implementation of the various agreements made in mid-October, including that between the Supreme Allied Commander Europe, General Wesley Clarke, and the Chief of Staff of the Yugoslav Army (VJ), General Momcilo Perisic, has meant that international actors have not forced the pace to achieve agreements that they are not yet ready fully to oversee. This is despite the deadlines established earlier. The absence of these mechanisms has permitted the pace of political negotiations to falter. In turn, the pressures on the fragile security situation have grown. The October ceasefire and withdrawal of Serbian and Yugoslav forces from Kosovo and from the field has come under pressure at times.

Challenges to the ceasefire

There have been two main challenges to the ceasefire. The first of these is that, in the absence of political agreements according to schedule and effective mechanisms offered by the KVM and its back-up, there is no belief in the likely success of the political negotiations. (By contrast, in Bosnia and Herzegovina at the end of 1995, the existence of a political agreement and an international commitment, including a role for US troops to see it implemented, created a mood of inevitability which greatly facilitated the embedding of the ceasefire.) Unless the political timetable can be recovered soon after implementation provisions are finally in place, it is likely that any belief in the agreements succeeding will be eroded. This will foster a mood among some Kosovo Albanians and Serbs that armed hostilities will return early in 1999. Only international commitment and momentum can prevent this.

The other big challenge, again encouraged by the fact that the prospect of a political agreement has fallen behind timetable and that the verification presence has not arrived, is that backsliding by the Serbs on the military provisions of the October agreements is being implicitly condoned by the international community, while, in the absence of a stronger international presence, elements of the heavily crushed and divided UCK have begun to exert an influence on the ground, both against Serbs and against ethnic Albanians. The UCK, which has been reduced from around 7,000 (some reports suggested 10,000) strong to no more than 2,000 is now deeply divided over immediate political perspectives. However, its various elements could relatively easily take over where Serbian forces have withdrawn.

The October agreements insisted that Belgrade should remove the additional forces it had deployed to Kosovo for its crackdown begun at the end of February. Belgrade had two types of force deployed. The larger and better armed, was the VJ. Over 20,000 additional troops were deployed to the province in the year preceding the crackdown, meaning that over a third of the VJ's total strength was de-

ployed there. The other element comprised interior ministry (MUP) units. These were of three kinds - regular police (albeit relatively heavily armed), special anti-terrorist units and special combat forces. The first of these constituted the 6,500 Ministry of the Interior personnel considered normally to be based in Kosovo, while the last two, especially the third, constituted the additional units deployed to Kosovo in numbers estimated to have peaked at around 13,000. It was the MUP Special Forces which carried the main thrust of the attacks against the UCK and, above all, against villages and towns, in the course of the seven-month campaign.

By the 27 October deadline set by the NATO air strike ultimatum for withdrawal of Belgrade forces from Kosovo and from the field, the VJ had been reduced to the level that General Clark's team judged to be its standing force in Kosovo - 1,000 personnel on the borders with Albania and Macedonia, as well as 10,600 personnel in barracks at Kosovska Mitrovica, Pec, Djakovica, Prizen, Urosevac, Gnjilane and, the provincial capital, Pristina. The last of these was also headquarters to the 52nd Corps and the joint command for all VJ and MUP operations in Kosovo. The same October withdrawal agreement allowed for 6,500 MUP personnel to remain in Kosovo in 28 locations, meaning that all others had to be withdrawn by the NATO deadline if air strikes were to be averted. In the end, around three companies - 360 personnel - failed to meet the deadline. However, there was no question of using air strikes because of this, given that in the last 12 hours before the midnight deadline, Belgrade withdrew around 4,126 MUP personnel from Kosovo, thereby signalling effective compliance.

The withdrawal of forces did not constitute a complete return to the pre-crackdown position, as some key units, such as the VJ 215th Armoured Brigade, did not return to barracks (in this case, at Nis), suggesting that it continues to be deployed in southern Serbia, ready to return to Kosovo should the order be given. In addition, other units within Kosovo continue to be deployed in the field. However, the Belgrade authorities complied with a 29 October deadline to supply to KDOM full information on all MUP and VJ forces deployed in Kosovo and their locations.

Challenges from the UCK

In Kosovo itself, the ceasefire agreement has met challenges, including a number of killings. Nonetheless, overall, for over a month now, it can be judged generally to have held and to have been successful. However, an increasing number of incidents indicate that the security situation is not completely stable. The main element in this appears to be the activity of units of the UCK, although the UCK has cited Serbian provocation for its actions. While the UCK was badly beaten by quantitatively and qualitatively superior Serbian and Yugoslav forces, the ceasefire has enabled parts of it to re-emerge and take up positions where Belgrade forces have been withdrawn. This has resulted in international indulgence for the continuing presence in the field of limited VJ and MUP units from within the standing force for Kosovo. VJ and MUP presence in the field has never ceased on the east side of the road from Djakovica to Klina and along the road from Suva Reka to

Stimlje, while MUP units have established new positions in the Malisevo area. In all cases these deployments are judged to be defensive positions.

On 9 November, UCK units attacked the MUP headquarters at Malisevo, while MUP special forces attacked Kosovar Albanian targets at Stimlje. In each of these areas there was tension and incidents occurred. Where MUP units were withdrawn, the UCK moved in to operate, for example in Drenica, Podujevo and the parts of Malisevo not defensively held by the MUP. In some places, there was UCK action against Serb positions. However, there was also growing evidence of UCK action against ethnic Albanians, for example, at Bukos, where a 25 year old was shot in the back of the head. This was an apparent act of intimidation, or disciplining, by the UCK and was not isolated, as UCK elements also fired on and interfered with the freedom of movement of KDOM and KVM preparatory personnel in their clearly marked orange vehicles; VJ forces also later opened fire over the roofs of OSCE vehicles, giving rise to official protests and to a warning by NATO Secretary General Javier Solana in Rome on 17 November that "serious consequences" would follow continued attempts to intimidate international observers, or to impede their freedom of movement. UCK activity, as well as killing ethnic Albanians, also includes renewed attempts to recruit.

In these circumstances, the international community has not rushed to condemn the Serbian and Yugoslav presence, although protests have been lodged. Rather it has temporarily (at least) quietly acquiesced in what has probably involved a small increase in the MUP and VJ presence in the field, in order to provide greater security than would otherwise be the case - NATO air strikes, for example, could not seriously have been employed against UCK forces, which are too small and too disparate to be susceptible of this kind of treatment. The Serbian presence has only served, however, to increase tension with the UCK.

Conclusion

Faster progress on deployment of the KVM and its back-up NATO reaction force in Kosovo is needed to ensure that the delicate security situation in Kosovo will not break down completely. Crucial to ensuring this, is the need for political agreement on the interim arrangements for governing Kosovo which could pave the way for elections.

Political agreement requires the underpinning to be provided by the KVM, *inter alia*. Both are essential if the momentum for peace is to be maintained in what is not yet a strategically static situation, as both sides, but especially, the UCK, believe that more can be gained through further use of violence. Momentum has partly been lost with slippage in the original timetable regarding agreement on interim political arrangements by 2 November and for agreement on holding elections under those arrangements by 9 November. This slippage is not yet critical - challenges to the ceasefire can be maintained for the time being at current levels. However, gradual erosion will mean eventual collapse. To avoid this, significant political progress from the talks under the aegis of Ambassador Hill is required - perhaps even before the international community's KVM is ready to go into full operation.

US Policy and the Kosovo Crisis

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Few international crises have been more consistently predicted than the one which erupted in Serbia's Kosovo province in the winter of 1997-98. The process that led to the collapse of the Yugoslav federation was initiated by Slobodan Milosevic's abolition of Kosovo's autonomy in 1989, and the observation that "the Yugoslav crisis began in Kosovo and will eventually end there" has been a commonplace ever since. The Dayton peace accord, which brought an end to the fighting in Bosnia-Herzegovina in 1995, did nothing to address the situation in Kosovo, where harsh Serbian military occupation provided a recipe for growing unrest. Under the circumstances, and given a tradition of local uprisings stretching back over several hundred years, the eruption of armed resistance was not only likely, it was inevitable.

Kosovo's symbolic significance in Serbian national mythology, its overwhelmingly Albanian ethnic character, and its abject poverty have made it a trouble spot since its incorporation into the Serbian dynastic state in 1913. Albanians fought against Serbs in the region during both twentieth century world wars, and Kosovo was only reincorporated into the new Yugoslavia of Josip Broz Tito at the end of the Second World War at the price of the armed suppression of local resistance. For two decades after the war the province was subject to severe police controls under the authority of the Serbian communist Aleksandr Rankovic. Tito reacted to protest demonstrations in 1968 with a policy of liberalization, permitting the display of the Albanian national flag as a Kosovar emblem, restructuring the University of Pristina as a predominantly Albanian institution, channeling investment into the area in an attempt to close the developmental gap, and in the 1974 constitution granting Kosovo virtually full self-administration as an autonomous province within the Serbian federated republic. These were hopeful initiatives, but they

¹ The views expressed are those of the author and do not necessarily reflect the policy or position of the Department of the Army, the Department of Defense or the US government.

were too short-lived to overcome long-standing problems. In 1981, within a year of Tito's death, a preview of the kind of tensions that would eventually tear the Yugoslav federation apart was provided when spontaneous student protests in Pristina spiraled into a virtual insurrection before being violently suppressed. Friction between Serbs and Kosovar Albanians provided a constant backdrop to the long agony of Yugoslav federalism during the 1980s, and Milosevic's elimination of Kosovar autonomy in 1989 touched off the country's implosion by convincing other republics that there was no alternative within the federation to the politics of Serbian hegemony. Thereafter Kosovo has been a cauldron of overt injustices and cumulating anger, a particularly vivid example of the dilemmas of frustrated nationalism in a context of intercultural diversity and severe underdevelopment.²

The Kosovo Liberation Army

The current Kosovo crisis is the product of a campaign of armed resistance to Serbian domination conducted by the shadowy Kosovo Liberation Army (*Ushtria Çlirimtare e Kosoves* or UÇK). This organization, created in Macedonia during 1992 and strengthened by recruits from among the thousands of Kosovar Albanians who fought together with Croat and Muslim formations in the Bosnian conflict, began its campaign of armed struggle in 1995 with a series of attacks against Serbian police and police stations, as well as Kosovar Albanians accused of collaboration with the oppressor. In 1996, the UÇK began publicly to claim responsibility for armed attacks, and was promptly labeled a terrorist organization by Serbian authorities. By October 1997, more than 30 Serbs and Albanians had fallen victim to UÇK assaults, and *The New York Times* was speaking of an organization "ready to wage a secessionist war that could plunge this country [the Federal Republic of Yugoslavia] into a crisis rivaling the conflict in Bosnia."³

The UÇK's strength at the beginning of 1998 was estimated at around 500 active members, organized in small, mobile cells and often acting in groups of three to five men. The occasional violence perpetrated by these militants was not a major threat, but events were precipitated by the launching of a campaign of repression by Yugoslav authorities on 28 February 1998, with a large-scale police action

2 Despite its relative isolation and backwardness, Kosovo's status as a focus for Serbian nationalism and point of international tension has generated a large and high-quality literature describing the region's history. The "Kosovo Problem" is evoked from a Serbian perspective in D. Bogdanovic, *Knjiga o Kosovu* (Belgrade: Serbian Academy of Arts and Sciences, 1986). A fine study of the region's experience under Tito's Yugoslavia which puts a special emphasis upon the failure of Yugoslav developmental strategies is M. Roux, *Les Albanais en Yougoslavie: Minorité nationale, territoire et développement* (Paris: Fondation de la Maison des sciences de l'homme, 1992). Recent studies inspired by the breakup of Yugoslavia include M. Dogo, *Il Kosovo: Albanesi e Serbi—Le radici del conflitto* (Lungro di Cosenza: Marco Editore, 1992), N. Malcolm, *Kosovo: A Short History* (New York: New York University Press, 1998), and M. Vickers, *Between Serb and Albanian: A History of Kosovo* (New York: Columbia University Press, 1998).

3 C. Hedges, "Albanians Inside Serbia Set to Fight For Autonomy", *New York Times*, 19 October 1997, p. 15.

in the central Kosovo region of Drenica that resulted in at least 80 deaths. In the face of massive state-sponsored violence and numerous civilian casualties the UÇK mushroomed, according to some (possibly exaggerated) estimates coming to control as many as 20,000 armed guerrillas and large swaths of territory. In the narrow confines of Kosovo, however, its lightly armed fighters were no match for the disciplined military forces of a modern state. The Serbian offensive, proceeding in waves as the summer progressed and gathering momentum as it rolled onward, soon took on the appearance of a *raz de maree*.

Western unpreparedness

Despite every possible warning, the major western powers were unprepared for the flare-up when it actually occurred. There are several reasons that help to explain why this was so. Although the US and its allies often evoke the need for a serious approach to conflict prevention, no convincing agenda for applying the concept in the real world has been developed. The basic mode for managing conflict remains reactive - without concrete violations to focus attention the temptation to cultivate the status quo is usually too great to overcome. The one serious attempt to address the situation in Kosovo preemptively, under the auspices of the Rome-based Catholic religious order Sant'Egidio, made some progress in developing an agenda for educational reform, but was never able to move beyond the polarization of opinion among the parties to the conflict themselves.⁴ Despite such polarization, against the background of the violence in Bosnia-Herzegovina, Kosovo offered the appearance of a deceptive stability. From 1989 the politics of resistance to Serbian domination were dominated by Ibrahim Rugova and his Democratic League of Kosovo (LDK), inspired by a philosophy of non-violence which asserted the goal of full independence but sought to pursue it by building alternative governing institutions under LDK hegemony and keeping pressure on Belgrade in the international arena. Rugova was quite successful in controlling the situation within Kosovo, a fact which may have encouraged the illusion that the status quo was in some way sustainable. He was entirely unsuccessful, however, in obtaining the slightest meaningful concession from Milosevic, who for his part received little or no encouragement from the West to be more forthcoming. In the run up to the conflict, Western military and political efforts were focused upon the Dayton process in Bosnia-Herzegovina, where a working relationship with the Yugoslav leader was judged essential to making the peace accord stick.

During the course of 1997, as the UÇK began to surface, the primary concern of US policy makers was the perceived need to cultivate Milosevic's support for the ouster of the hard-line Bosnia Serb leadership aligned with Radovan Karadzic in the Republika Srpska. Milosevic was rewarded for his tacit cooperation by diplomatic concessions including approval for direct charter flights to the US by the

4 H.-G. Ehrhart and M. Z. Karadi, "Wann brennt der Balkan? Plädoyer für eine komplexe Präventionspolitik im Kosovo-Konflikt", *Frankfurter Rundschau*, 25 March 1998.

Yugoslav national airline, the reopening of a Yugoslav consulate in the US, and an increase in the number of Yugoslavs allowed to participate in UN activities in New York. When US special representative for the implementation of the Dayton Agreement Robert S. Gelbard came to Belgrade on 23 February 1998 to announce these blessings, he added the significant remark that the UÇK, was "without any questions a terrorist group".⁵ Terrorist organizations have a specific status as pariahs in US law, and declaratory policy toward terrorism is unequivocal: no tolerance, no compromise, no mercy. Washington seemed to be doing its best to convey the impression that the events in Kosovo could be managed at the discretion of the Yugoslav authorities, within the limits of prudence and restraint.

The Serbian blitz against the UÇK was launched within a week of Gelbard's remarks, and the rapid escalation of violence from February 1998 onward presented US policy makers with a different kind of dilemma. The severity of Serbia's reaction, which including the wanton destruction of villages, summary execution of prisoners, and a systematic terrorization of local populations with the intent to provoke mass flight, was clearly disproportionate.⁶ In the immediate aftermath of the Serbian offensive influential voices in the US media were raised calling for "a decisive international response" and, as the extent of violations became clear, sympathy for the Kosovar Albanian position became stronger.⁷ Washington quickly shifted direction to take account of these reactions. On 4 March, Gelbard ascribed "overwhelming responsibility" for events to the government of Yugoslavia and described Serbian aggression as something "that will not be tolerated by the United States".⁸ During a visit to London on 7 March, Secretary of State Madeleine Albright urged "immediate action against the regime in Belgrade to ensure that it pays a price for the damage it has already done", and on 13 March National Security Advisor Sandy Berger specified that Milosevic would be receiving the "escalating message ... that the international community will not tolerate violent suppression of the Kosovans".⁹

Unfortunately, the UÇK, as instigator of the armed struggle and primary tar-

- 5 See "Progress in Bosnia", *The Washington Post*, 22 January 1998, p. 20, J. Brown, "As Balkans Tense, a US Twist", *The Christian Science Monitor*, 3 March 1998, and the text of Gelbard's remarks in Special Representative Robert S. Gelbard, Press Conference, Belgrade, Serbia and Montenegro, 23 February 1998, cited from http://www.state.gov/www/policy_remarks/1998/980223_gelbard_bel11/6/98ml. Gelbard went out of his way to reiterate the point, asserting that "having worked for years on counterterrorist activity, I know very well that to look at a terrorist group, to define it, you rip away the rhetoric and just look at actions. And the actions of this group speak for themselves."
- 6 See the eyewitness accounts in "Kosovo: l'horreur en Europe", *Le Monde*, 28 October 1998, pp. 1-3.
- 7 Cited from "A Warning to Heed", *The Christian Science Monitor*, 4 March 1998.
- 8 Cited in R. J. Smith, "US Assails Government Crackdown in Kosovo", *The Washington Post*, 5 March 1998, p. 23.
- 9 Cited from S. Erlanger, "Albright Tours Europe to Whip Up Resolve to Punish Yugoslavians", *New York Times*, 9 March 1998 and B. Slavin, "Berger: US Goal is to Keep Kosovo from Spilling Over", *USA Today*, 13 March 1998, p. 8.

get of the Serb response, was a problem in its own right. The UÇK was not a unitary movement subordinated by clear lines of authority to a coherent political direction. It was a faceless organization, most of whose leaders had chosen to remain anonymous, and whose international allegiances and long-term political aspirations were uncertain. As the political expression of a chronically divided society, the UÇK was fragmented along clan lines, between regions and sub-regions, and between émigré and internal lines of responsibility. During the fighting in Kosovo it was openly supported by former Albanian prime minister and now demagogic opposition leader Sali Berisha, once the darling of the West for his outspoken anti-communism, but *persona non grata* since the anarchic collapse of his corrupt personalist regime in the spring of 1997.

Despite its chaotic organization, the UÇK's links to the substantial Albanian diaspora in Western Europe provided it with sources of external support and funding and allowed for a certain degree of autonomy. Most of all, its political agenda had the potential to be highly destabilizing; independence for Kosovo grown from the barrel of a gun as a first step toward the creation of a greater Albania to include all or parts of Albania proper, Serbia, Montenegro, the Republic of Macedonia, and Greece. For Washington, whose regional policy had been constructed around the rubric to "restore stability", this was the agenda from hell - an all-out assault on the fragile equilibria of the US-sponsored post-Dayton order in the southern Balkans.

There was, of course, an Albanian question to be considered, and the goal of a greater Albania was not necessarily unacceptable in its own terms.¹⁰ What was unpalatable were the means to which the UÇK had resorted in pursuing that goal, and the organization's unwillingness or incapacity to moderate its agenda under Western pressure. To embrace the cause of the UÇK in the midst of an ongoing armed struggle would set an unfortunate precedent for other frustrated separatist or irredentist movements tempted by the resort to arms. The logic of ethnic division which the UÇK program expressed contrasted sharply with the goal of reintegration inspiring efforts to forward the Dayton process in Bosnia-Herzegovina. Any progress toward independence risked to undermine political stability in the neighboring Republic of Macedonia, with an Albanian minority constituting up to 30 percent of the population, concentrated in western Macedonia in districts physically contiguous with Kosovo, and with close links to the Kosovar Albanians reaching back to the days of shared citizenship inside federal Yugoslavia. Not least, support for the insurrection risked to set the stage for what might well become a major armed confrontation with Milosevic's Serbia.

The imperative of intervention

As Yugoslav reprisals continued, however, a hands off attitude became unsustain-

10 Credible cases for support for an independent Kosovo are offered by N. X. Rizopoulos, "An Independent Kosovo: Waiting for Another Navarino?" *World Policy Journal*, vol. XV, no. 3 (Fall 1998), pp. 13-16 and P. Garde, "Il faut donner au Kosovo la maîtrise de son destin", *Le Monde*, 24 October 1998.

able. The severity of Serbian repression was destabilizing in its own right. Massive assaults produced an army of helpless refugees and threatened to provoke a humanitarian disaster should fighting be prolonged into the next winter. The Western powers had justified their original intervention in Bosnia-Herzegovina on the premise that forceful ethnic cleansing was unacceptable in modern Europe and could not be tolerated. Inaction in the face of the terror in Kosovo seemed to invalidate the entire *raison d'être* of their considerable Balkan engagement.

In addition, the UÇK was a reality that could not be ignored. Under siege, large segments of the Kosovar Albanian population flocked to its banner, calling into question Rugova's ability to represent his nation in any substantial way, and raising the specter (perhaps encouraged by faulty intelligence estimates) of a massive national insurrection sweeping out of control. In the end, between Kosovar Albanian extremism and Serbian brutality there was really very little to choose. In confronting the UÇK and its Serbian tormentor, Washington found itself firmly lodged between a rock and a hard place.

American policy

During the first weeks of the Serbian crackdown the premises of Washington's approach to the problem were efficiently recast. The castigation of the UÇK as "terrorist" was quietly cast aside without, however, any corresponding expression of sympathy for its maximalist agenda. Avoiding actions that would decisively assist the UÇK military effort was early on established as a high priority. Simultaneously, the anti-Serbian edge of Western policy was reasserted. Serbian repression was now interpreted not merely as an exaggerated reaction to a domestic insurgency, but as a campaign launched with genocidal intentions at the Kosovar Albanian population as a whole. During the first phase of the conflict, Washington sought to *distance* itself from both major belligerents, to *encourage dialogue* between the Yugoslav government and Rugova's LDK as a means of brokering a negotiated settlement, and to *contain* the fighting within the territory of the Federal Republic of Yugoslavia. These were complementary goals, and they were eventually combined in the framework of a coherent policy.

According to that policy, the UÇK's agenda for national independence was unacceptable, Serbian repression disproportionate, the plea that what was at issue was a purely domestic dispute untenable in light of massive human rights abuses, as well as the implications for stability in the region as a whole, and the pursuit of military victory by both belligerents bound to fail. The preferred alternative was therefore defined as a diplomatic solution, including legal adjudication of human rights abuses, to be mediated if necessary through the good offices of the West. Rugova's LDK was the only viable representative of the Kosovar Albanians, and Washington placed considerable pressure on the organization, with only limited success, to build a more broadly based advisory board and to distance itself from the extremist methods of the UÇK.¹¹

On the Serbian side there was no one to turn to other than the familiar devil Milosevic, who once again assumed center stage as his country's primary interlocutor with the West. Though the terms of a solution were in principle to be left for the involved parties themselves to determine, the US made no secret of its preference for what Gelbard described on 26 March 1998 as "some form of enhanced status for Kosovo, within the borders of the Federal Republic of Yugoslavia".¹² This approach to the Kosovo dilemma was articulated during the early stages of the spring fighting, and it has been maintained with a great deal of consistency through the twists and turns that have followed.

Containment in neighbouring countries

Macedonia

Concern for spillover effects from the Kosovo conflict was greatest in the neighboring territories of the Republic of Albania and in Macedonia, and it was here that the effort to contain the conflict was concentrated. Since 1992, a United Nations Preventive Deployment Force in Macedonia (UNPREDEP) consisting of US and Scandinavian units, had been kept in place in Macedonia with the original intent of blocking any expansion of the Bosnian conflict southward. When the normal extension of the UNPREDEP mandate was discussed in the UN Security Council in November 1997, however, the US bowed to pressure from the Russian Federation and agreed to terminate the deployments after a final extension of nine months. Moscow's opposition was based upon the practical argument that progress toward stabilization in Bosnia-Herzegovina had made preventive deployments less necessary, but also upon calculated concern for an open-ended US military presence in an area of traditional concern for Russian foreign policy, and for the generally anti-Serbian tenor of Western policy.

Faced with the need to find alternatives, Washington introduced a post-UNPREDEP package that included enhanced efforts to improve the combat readiness of Macedonian forces through expanded security assistance (the US unilaterally increased its own security assistance allotment for Macedonia from \$2 million to \$8 million annually), and an expanded Partnership for Peace (PfP) individual partnership program, including an intensified agenda for joint exercises, stronger military to military contacts, and the possibility of expanding Macedonia's Krivolak firing range into a permanent PfP center for peacekeeping training. This

11 The LDK has remained in principle supportive of cooperation with the UÇK in building representative national institutions. Its platform calls for full national independence with all guarantees for the local Serbian community, with the establishment of an international protectorate over the province as an interim solution during a phase of transition. See "President Rugova's Press conference", *Kosovo Daily Report* #1605, 6 November 1998, pp. 1-2.

12 In a press conference with Jeremy Greenstock, Political Director, United Kingdom Foreign Commonwealth Office, Pristina, Serbia and Montenegro, 26 March 1998. Cited from http://www.state.gov/www/policy_remarks/1998/980326_gelbard_pri6/11/98nl.

program was being discussed at the moment when large-scale violence erupted in Kosovo in February 1998, an occurrence that quickly made the continued relevance of UN preventive deployments obvious to all. At the end of August 1998 the UNPREDEP mandate was renewed by consensus, and subsequently Washington has favored an expansion of the mission to provide as much reassurance as possible.

The UÇK's greater Albania agenda is particularly threatening for Macedonia, and cannot help but encourage polarization between its Slavic and Albanian communities. This tendency was made manifest in the national elections of October 1998, which concluded with the defeat of the moderate Macedonian Socialist party of president Kiro Gligorov and brought the Macedonian nationalist Internal Macedonian Revolution Organization to power at the head of a coalition government. Macedonia, however, is not necessarily fated to follow the path of disintegration marked out by Kosovo. Its post-independence governments have striven with some success to create a context for tolerance and reconciliation with its various national minorities. The Albanian minority has been politically represented at the national level and has focused on an agenda for expanded autonomy within the Republic of Macedonia rather than aspirations to separatism. Needless to say, the chaos and violence in neighboring Kosovo and Albania do not make attachment to an ill-defined greater Albania a particularly attractive short-term goal. Perhaps most decisively, Macedonia's integrity is defined by the US as an essential ingredient for stability in the southern Balkans, and support for Skopje in the economic, diplomatic, and military sectors has been correspondingly high.

Albania

In May 1998, a NATO survey team undertook a preliminary study to estimate the feasibility of a preventive deployment in Albania paralleling that already in place in Macedonia. The virtual collapse of the Albanian state after the catastrophic failure of a series of pyramid investment schemes in the spring of 1997 was one of the precipitating causes of the Kosovo crisis; during the breakdown of order military casernes were looted and over 600,000 light arms distributed to the population at large. Bearing arms has deep cultural and social roots among the Geg mountain clans of northern Albanian and Kosovo, where the ancient traditions of the blood feud and vendetta are still alive and well, and many of the weapons in question found their way into the hands of UÇK fighters, smuggled across the difficult terrain dividing Kosovo from Albania, or via western Macedonia. By April 1998, Belgrade and Tirana were exchanging accusations in this regard, with Albanian Prime Minister Fatos Nano speaking of Serbian responsibility for "pathological and traditional violence", and Yugoslav UN ambassador Vladislav Jovanovic accusing Tirana of giving support to Kosovar Albanian guerrillas.¹³ Blocking weapons

13 P. Smucker, "Albanian Guerrillas are Ready to Do or Die", *The Washington Times*, 27 April 1998, p. 1.

trafficking across the border and preventing the UÇK from using Albania as a source of sanctuary and support seemed a goal well worth pursuing, but the NATO study concluded that upwards of 20,000 soldiers would be required to control the border, together with a major effort to build access corridors and ensure resupply in an isolated and underdeveloped area almost completely cut-off from the outside world.¹⁴ The weight of the estimate was sufficiently sobering to rule out any significant preventive deployment within Albania as a practical option.

Even without these deployments, US containment policy has been quite successful. Its components, as detailed in the 28 May 1998 Declaration on Kosovo issued by the NATO ministerial session in Luxembourg, have included: (1) expanded PfP assistance to help both Macedonia and Albania secure their frontiers with indigenous national forces; (2) the successful coordination of an expanded NATO-PfP joint exercise in Macedonia during September; (3) the establishment of a PfP partnership cell in Tirana and the conduct of a small PfP-led exercise during August; (4) the establishment, beginning in July, of a permanent NATO naval force at the Albanian port of Durrs; and (5) a commitment to assist UN and OSCE surveillance in the region.¹⁵ This basket of measures has been sufficient to convey the message that NATO is committed to preventing the spread of the conflict beyond the borders of the Serbian republic. The effort has also been aided by the military policy of the Yugoslav armed forces, which have their own vested interests in assuring that Kosovo's borders remain closed, and by the military misfortunes of the UÇK, quickly driven onto the defensive by its Serbian opponent and of necessity more concerned with survival than expansion and escalation.

Efforts at finding a diplomatic solution

Efforts to impose a diplomatic solution were pursued through a combination of multilateral and bilateral channels. At the first signs of trouble in Kosovo, the international "Contact Group," an *ad hoc* diplomatic forum with six members (US, UK, France, Germany, Italy, and Russia), which had played a quiet role behind the scenes since the signing of the Dayton Accord, was brought back to center stage as a vehicle for coordinating Balkan policy. In a statement of 9 March 1998, the Contact Group condemned "the use of excessive force by Serbian police against civilians" as well as "terrorist actions by the Kosovo Liberation Army" and outlined a series of measures intended to encourage diplomatic dialogue.¹⁶ Similar language appeared in UN Security Council Resolution 1160, promulgated on 31 March 1998, which imposed an arms embargo upon the region and concluded with the vague threat of "additional measures" in the absence of constructive progress

14 R. J. Smith, "NATO Albania Deployment Less Likely", *The Washington Post*, 28 May 1998, p. 30.

15 "Erklärung zum Kosovo: Herausgegeben auf der Ministertagung des Nordatlantikrates am 28. Mai 1998 in Luxemburg," *NATO Brief*, vol. 46, no. 3 (Autumn 1998) p. D5.

16 "Statement on Kosovo", London Contact Group Meeting, 9 March 1998, cited from http://secretary.state.gov/www/travels/980309_kosovo.html.

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toward a peaceful settlement, and in UN Security Council Resolution 1199 of 23 September 1998, which demanded a Serb pullback in more urgent terms.¹⁷ At the end of May, the North Atlantic Council ministerial in Luxembourg issued a strong statement defining the situation in Kosovo as "unacceptable", and in June the foreign ministers of the fifteen European Union countries agreed, together with the United States, to impose a ban on new investments in Serbia and to freeze Serbia's foreign assets.¹⁸ In July, a Kosovo Diplomatic Observer Mission under the auspices of the Contact Group, the European Union, and the Organization on Security and Cooperation in Europe (OSCE) was charged with monitoring the human rights situation in the war-torn province. The International Criminal Tribunal for Former Yugoslavia was accorded full authority to investigate and prosecute violations in Kosovo, and during July its head prosecutor Louise Arbour announced that the situation corresponded fully to the tribunal's definition of "armed conflict". The US weighed in diplomatically through the auspices of its ambassador to Macedonia Christopher Hill, who took the lead in coordinating diplomatic communication inside of Kosovo with representatives of the UÇK and LDK, and of special envoy Richard Holbrooke, who initiated a series of discussions with Belgrade in June. These varied initiatives brought a considerable amount of pressure to bear upon the Yugoslav authorities. Beginning with a 15 May meeting between Milosevic and Rugova, Belgrade formally committed itself to open-ended discussions with representatives of the Kosovar Albanian community to discuss the province's future. The negotiations led nowhere, however, and the momentum of Serbia's ongoing offensive on the ground was not discernibly slowed.

The missing ingredient was coercion. In its efforts to build a united front of opposition to the Serbian crackdown, Washington was broadly successful in creating a façade of unity among key Western allies around the lowest common denominators of concern for humanitarian violations and respect for international law. Early on in the diplomatic campaign the possibility of military action to compel Serb compliance was evoked as well, and on 15 June NATO conducted an admonitory exercise in the skies over Macedonia, Albania, and the Adriatic Sea, but it quickly became clear that in the case of Kosovo a military option would be highly disputatious and potentially divisive. The legal basis for military intervention was questionable at best. Whatever the violations for which it was responsible, Yugoslavia was a sovereign state engaged in putting down an armed insurgency on what was universally acknowledged as its own national territory. The precedent of external intervention on behalf of an armed secessionist movement represented a disturbing precedent with potentially important implications. Any kind of military strikes against Serbia would inevitably contribute to the military effort of the UÇK, an outcome that Washington and its allies were anxious to avoid.

17 UN Security Council Resolution 1160, Adopted by the Security Council at its 3868th meeting, 31 March 1998, cited from http://www.state.gov/www/regions/eur/un_res_1160.html.

18 "Erklärung zum Kosovo," NATO Brief, no. 3 (Autumn 1998), p. D5.

And there were significant sources of dissension. Russia, clinging to its historical role as protector of the Serbs in an almost desperate effort to salvage some leverage in world affairs, rejected the military option point blank, refused to sanction air strikes against Yugoslavia in UN or OSCE forums, and warned of "serious international consequences" should NATO proceed to act without an international mandate.¹⁹ NATO asserted a right to intervene regardless, but the issue of the mandate remains a contentious one. In the end, Washington was able to win support within NATO councils for the launching of air strikes against Serbian command and communication facilities in the event that Milosevic refused to accept the terms of UN Resolution 1199, but behind the scenes several allies, including Denmark, Germany, Greece, Italy, and Spain, expressed reluctance to act without approval from some kind of larger mandating authority. The debate in NATO circles was intense, it was waged right up to the issuance of a NATO activation order on 12 October, and it will continue as NATO undertakes the preparation of a new strategic concept to guide it into the twenty-first century.

Western unity was made possible by the presumption that the threat of a resort to force, though orchestrated to appear as credible as possible, would in the end not have to be acted upon. Milosevic's eleventh hour acceptance of Western conditions made the point moot, but if NATO's bluff had been called on the air strike option, the implications could have been considerable. The speaker of the Russian parliament Gennadi Seleznev stated bluntly that he would initiate legislation to withdraw from the Permanent Joint Council, defining a special relationship between Russia and NATO, in the event of an alliance attack upon Yugoslavia. The new German government of chancellor Gerhard Schröder and Foreign Minister Joschka Fischer confronted the difficult issue of NATO intervention almost as its first significant foreign policy decision, and though agreeing to honor the commitments of its predecessor, asserted the right to repose the question in the future. The kinds of strains inherent in the use of NATO as an intrusive peace enforcer in dealings with other European states was made clear by the eruption, in the days immediately following the negotiation of a NATO-Belgrade accord, of a serious spy scandal, with NATO staff officer and French Major Pierre-Henri Bunel accused of passing targeting data for eventual NATO air strikes on to Belgrade. Bunel's actions have been interpreted as the product of "a dominant climate within French military circles of sympathy for the Serbian cause", born of deeply-rooted empathy for a traditional ally.²⁰

In the end, these various political complications were not manifested because no air strikes were launched. An orchestrated campaign of US-sponsored coercive diplomacy arrived at its culmination in the autumn, with the 23 September UN Se-

19 C. Bohlen, "Russia Vows to Block the U.N. From Backing Attack on Serbs", *New York Times*, 7 October 1998.

20 R. Ourdon, "Six années de liaisons dangereuses franco-serbes", and J. Isnard, "Un officier français de l'OTAN est accusé d'espionnage au profit des militaires serbes", *Le Monde*, 4 November 1998, p. 4.

curity Council resolution demanding "immediate action" to bring peace to Kosovo, the publication on 5 October of a long-awaited report from UN Secretary General Kofi Annan sharply critical of the "wanton killing and destruction", Holbrooke's presentation to Milosevic of an ultimatum demanding a Serb pull-back, and the release of the NATO activation order clearing the way for air strikes on 12 October.²¹ In an address to the Cleveland Council on World Affairs on 9 October, Deputy Secretary of State Strobe Talbott provided a rationale for the use of force by defining the situation in Kosovo as "a clear and present danger to our vital national interests".²² The threat of reprisals was ratcheted nearly to the point of no return when on 13 October Holbrooke announced the conclusion of an arrangement with Milosevic in conformity with UN Security Council and Contact Group demands. It was not until 27 October, however, after another round of brinkmanship over the pace of implementation, that Serbian compliance became sufficiently manifest to permit the suspension of a threat of air strikes that the Western alliance was clearly unenthusiastic about carrying out.

The Holbrooke-Milosevic accord arrived a full eight months after the Serbian offensive had been launched and in the wake of a vicious campaign of military repression that left large swaths of Kosovo in ruins, some 750 dead, and a mass of over 250,000 homeless and embittered refugees. Under the circumstances, and given the effort that the West had expended in preparing an apparatus of coercion to force the issue, the agreement was remarkably favorable to Belgrade. Yugoslav authorities agreed to pull their special military units out of the rebellious province, but the withdrawal came with the UÇK infrastructure already reduced to tatters and at the onset of the winter season where serious campaigning was at any rate impossible. The Serbs are permitted to maintain police and military levels equivalent to those in place in the province under what had been a virtual martial law regime prior to February 1998. Compliance is to be monitored by 2000 unarmed members of an OSCE Kosovo Verification Mission, assisted by an "eyes in the sky" Kosovo Air Verification Mission coordinated by NATO, and protected, in the event that they should come under threat, by a 1500 man extraction force, probably to be based in Macedonia and off-shore in the Adriatic, with French forces in the lead.²³ The accord also included pledges to engage in good faith negotiations with Kosovar Albanian representatives aimed at re-establishing local self-

21 "Les alliés s'apprentent à donner l'ordre d'action aux militaires", *Le Monde*, 13 October 1998 and B. Crosette, "Serbs Continue Kosovo Terror, Annan Asserts", *New York Times*, 6 October 1998, p. 1.

22 Deputy Secretary Strobe Talbott, Kenyon C. Bolton Memorial Lecture to the Cleveland Council on World Affairs, Cleveland, Ohio, 9 October 1998. Cited from http://www.state.gov/www/policy_remarks/981009_talbot_forpol.htm 11/6/98.

23 J. Isnard, "750 soldats français pour protéger l'OSCE au Kosovo", *Le Monde*, 5 November 1998. Madeleine Albright defined this arrangement on 27 October as keeping NATO "overhead and next door". Secretary of State Madeleine K. Albright, Remarks on Kosovo, 27 October 1998, Office of the Spokesman, US Department of State. Cited from <http://secretary.state.gov/www/statements/1998/981027.html>.

government with a three year time-frame for restoration of Kosovo's autonomy, a general amnesty for resistance fighters, cooperation with the work of a UN war crimes tribunal to identify responsibility for violations of the laws of war, the convening of democratic elections by the autumn of 1999, and a program to facilitate the systematic return of refugees.

These unique arrangements have sufficed in the short-term to bring an end to large-scale bloodshed and to head off a potential humanitarian catastrophe, but they leave many questions unanswered. Politically, the accord rests upon the dubious assumption of good will on the part of the Milosevic regime, and the capacity of Rugova's LDK, still the West's preferred partner despite efforts to establish a broader dialogue with the UÇK, to reconstruct itself as a legitimate voice for Kosovar Albanian national aspirations. Talks on the future of the province, launched on the initiative of US Ambassador to Macedonia Christopher Hill, confront a difficult series of challenges to say the least. Militarily, the UÇK is down but not out. It has accumulated a certain amount of respect for its tenacity, continues to denounce the peace plan through its self-styled "General Political Representative" Adem Demaçi, and has no obvious motives for encouraging the success of a project intentionally designed to marginalize it.²⁴ Eventually and inevitably the UÇK will resurface and attempt to pick up its campaign of armed resistance where it has left off. When this occurs, many of the problems temporarily pushed aside in the autumn of 1998 will reappear. Milosevic continues to rally his political base around the defense of the "sacred soil" of Kosovo and his ability to stand up to an American imperial power judged irretrievably hostile to Serbian interests. His domestic position has once again been strengthened by a defiant exercise in brinkmanship, in which he cast himself in the starring role. During the test of will over Kosovo, the authoritarian character of his regime was reinforced by draconian measures against the last few remaining bastions of an independent Serbian media, and against the autonomy of Serbian universities, all justified in the name of the sacrosanct cause of national unity faced with an external threat. Though NATO has reconfirmed its determination to see the accords through to a successful conclusion, the viability of the unusual monitoring agreements, the willingness of Serbian authorities to play by the rules, and the capacity of Western authorities to discipline and control the UÇK remain to be tested.²⁵ The balance sheet, in sum, is not positive. Great expenditures of energy have culminated in precious little gain, US engagement in Balkan crisis management has been considerably intensified without being attached to clearly defined or realistically achievable goals, and a lasting resolution to the Kosovo dilemma seems as far away as ever.

24 "Presidency of Kosova Parliament Meets with Adem Demaçi", *Kosova Daily Report* # 1599, 31 October 1998, pp. 1-2.

25 See the interview with NATO General Secretary Javier Solana, "Binnen 48 Stunden startbereit", *Der Spiegel*, no. 45 (2 November 1998) p. 194-6.

Conclusions

US policy in the Kosovo crisis is only the latest example of a long-standing and ambitious involvement in the entire southeastern European region. Washington remains the keystone of post-conflict peace-building in Bosnia-Herzegovina. It has cultivated relationships with a number of emerging regional actors (Croatia, Slovenia, Macedonia, Albania) that include significant elements of sponsorship and dependency. It is committed to managing the contentious Greek-Turkish rivalry, and has intervened diplomatically on a regular basis to keep strategic tensions in the Aegean under control. The US-Turkish relationship has become a crucial element of US policy in the Balkans, the Islamic Middle East, and the Black Sea and Transcaucasus areas. Nowhere is a declaratory US policy of engagement and the country's objective status as the "sole remaining superpower" more clearly demonstrated.²⁶

Despite the intensity of its regional commitments, US policy suffers from chronic deficiencies that have been exposed to the full during the Kosovo crisis. The problems posed by the UÇK insurgency have led to a resolution "of sorts" that hopes to contain the worst manifestations of violence and offer a valid diplomatic forum of which both sides can take advantage, if they so choose.²⁷ It does little or nothing, however, to resolve the underlying sources of goal incompatibility that have created the problem in the first place.

What kind of deficiencies are in question? To begin, there is the problem of principle. The Wilsonian rhetoric of human rights and self-determination has been prominent in Western approaches to the Balkan conflict, but it has not been matched by a consistent approach to core issues. At the origins of the conflict, independence was granted to Slovenia and Croatia on the basis of the principle of self-determination. Simultaneously, a similar right was denied to the Serbian population of Croatia and Bosnia-Herzegovina. The Republic of Macedonia was graciously granted a right of national self-determination, but not the right to determine its own name. In the cases of the Kninska Krajina or Herzeg-Bosna, the inviolability of internal frontiers was offered as a justification for the lack of concessions, but the destruction of the Yugoslav federation meant that its external frontiers were torn apart with impunity.²⁸ In the summer of 1995, Croatia resolved the problem of its insurgent Serbian minority by launching a full-scale military blitz

26 The current US National Security Strategy defines the "imperative of engagement" and "global leadership" as primary national goals. *A National Security Strategy for a New Century* (Washington DC, October 1998), pp. 1-2.

27 For a reasonable scenario defining how a diplomatic settlement might be achieved (over nothing less than a 25 year time frame) see E. Kofos and T. Veremis, "Kosovo: Efforts to Solve the Impasse," *The International Spectator*, vol. XXXIII, no. 2 (April-June) 1998, pp. 132-41.

28 In the words of one disillusioned critic, "The country's external borders were made of cotton, its internal and regional frontiers of cement." Slobodan Despot in his postface to V. Radovic, *Spectres de la Guerre: Choses vues par un Yougoslave privé de son pays* (Lausanne: L'Age d'Homme, 1992) p. 216.

which drove the entire concerned population of over 150,000 into exile - the worst single instance of ethnic cleansing in all of the post-Yugoslav wars.²⁹ This was, of course, precisely the "genocidal" scenario that the Western powers have decried with justifiable outrage in the case of Kosovo. Minority issues and conflicting claims to sovereignty have always been features of the Balkan political landscape, but they have been greatly aggravated by the crisis of regional order that has followed the collapse of Yugoslav federalism.

All of these dilemmas have resurfaced once again in Kosovo, and once again the absence of reliable guidelines for resolving them has been flagrant. At some point the Western powers which have assumed such heavy responsibility for recasting regional order will have to develop more consistent and compelling formulas for dealing with the dilemmas of nationalism and irredentism in the context of Balkan inter-culturalism, including arrangements for expanded local autonomy and the creation of multi-state federated regions. They would also be well advised to attempt to fix more convincing principles for reacting to armed challenges to domestic order, be they in Kosovo, Krajina, or Kurdistan.

Second, there is the issue of equitable standards. If there has been any consistent and reliable point of orientation in US Balkan policy, it has been opposition to Belgrade, posed as a geostrategic as well as an ethical and legal construct. The anti-Serbian direction of US policy rests in part upon a realistic assessment of the Milosevic regime's responsibility for affecting the destruction of the Yugoslav federation, perpetrating a war of aggression in Bosnia-Herzegovina, and repressing its own citizens' best democratic and European aspirations. But it also expresses atavisms that are deeply rooted in the policy establishment and widely shared by the population at large, and therefore potential sources of a much-desired national consensus - fashionable Orientalist judgements about the barbaric East, a facile comparison between Milosevic's authoritarianism and an ever green communist threat, and the tendency to simplify complex issues by personalizing the presumed source of distress. The currently fashionable argument that the silver bullet capable of "eliminating" Milosevic will serve as some sort of magical amulet capable of generating regional stability is a good example of such thinking.³⁰ In the case of Kosovo, as in Bosnia-Herzegovina, the evocation of Serbian atrocities quickly proved to be an irresistible *plaidoyer* for action. However, as is often noted almost apologetically, Serbia does not bear sole responsibility for the current Balkan malaise, and a blinkered concentration upon its sins alone can lead to badly distorted policy choices. The primary barrier to the progress of the Dayton process at present, for example, is less the hard liners of the Republika Srpska than the uncompromising ultra-nationalists of Croatian Herzegovina, and Belgrade's savage reactions in Kosovo were not altogether unprovoked. Moreover, projects to recast regional order that envision some sort of black hole shielded by an "outer wall" in

29 G. Scotti, *Operazione tempesta: La cacciata dei Serbi dalla Krajina nell'estate 1995* (Rome: Gamberetti Editore, 1997).

30 J. Perlez, "Unstacking Milosevic's Deck", *New York Times*, 25 October 1998.

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the place of ten million Serbs, strategically placed in the heart of the Balkans, are doomed to fail. As the Kosovo imbroglio should make clear, there is also a Serbian question on the Balkan agenda, and it too cries out for principled resolution.

Third, there is a problem of commitment. The United States has assumed great responsibility as the driving force behind international conflict management efforts in the Balkans, and repeatedly evokes the need for American leadership. This was made clear once again during the Kosovo crisis, where Washington immediately seized the lead in organizing an international response and expended considerable political capital in rallying the international community behind a program of coercive diplomacy. Its commitment to follow up on initiatives and see the job through to a successful conclusion is nonetheless suspect.

Engagement in southeastern Europe rests upon a weak domestic political foundation, including a great deal of public apathy and ignorance, considerable congressional skepticism, and substantial military opposition to open-ended peacekeeping responsibilities. Increasingly, policy discourse regarding the region is dominated by an essentially negative concern with the potential for disengagement, rather than a positive commitment to what needs to be achieved. During discussions of military options in Kosovo, to cite one significant recent example, the Pentagon strongly opposed a NATO plan calling for the deployment in Kosovo of a 26,000 member peacekeeping force, to include an enhanced brigade-sized US component of about 5000 troops.³¹ Such hesitancy, already familiar from the years of frustration experienced by international peacekeeping efforts in Bosnia-Herzegovina, reflects legitimate concern for the long-term impact of extended peacekeeping deployments upon military readiness, as well as a fair case for more equitable burden-sharing in European crisis management, but it would be more defensible if Washington's status as the dominant regional power did not make it so central to the course of events. The situation in the southern Balkans has been allowed to deteriorate to the point where almost any viable solution will require the long-term presence of international peacekeepers. A willingness to deploy ground forces is a decisive gesture of commitment to achieve long-term solutions, and if Washington is unwilling or unable to make that commitment the effectiveness of its diplomatic efforts will inevitably be reduced.

The problem of commitment is related to the question of long-term strategic goals. Discussions of US Balkan strategy often begin with the assertion that Washington has no "vital" interests at stake in the region, but the extent of its commitment seems to belie this assertion. *What* is at stake and *why* it is important are fundamental questions for which there is no national consensus. In part this is a consequence of chronic division between isolationist and internationalist visions of the US global role. To some extent it is the result of domestic preoccupations

31 J. Fitchett, "A Role on the Ground? Alliance Studies Need for Monitoring Force", *The International Herald Tribune*, 7 October 1998.

and the lack of strong presidential leadership - President Clinton's failure to engage the nation in a frank and compelling discussion of America's Balkan engagement has been a striking aspect of US regional policy over the past six years. It is also, however, the consequence of a simple failure to address Balkan issues with the seriousness that they merit. When this is done it should become clear that the protracted and deepening US presence in the region has the great merit of keeping Washington at the vanguard of European security affairs, that quite a number of important interests are at stake - the premises of the post-Cold War world order, the new strategic responsibilities of the North Atlantic Alliance, the US role in Europe, the future of peace operations, the stability and well-being of a major European region which is also the land bridge between Europe, Africa, and the extended Middle East, and so on - and that more consistent long-term strategic planning in pursuit of these interests is long overdue.³²

There is a short list of potential long-term outcomes to the Kosovo problem - full independence, partition, expanded autonomy within a reconfigured Yugoslav federation, or something like the status quo where Serbian intransigence and Kosovar Albanian desperation seem well on the way to transforming the province into the Ulster of the twenty-first century. The Holbrooke-Milosevic arrangement has succeeded in creating an apparatus for international oversight and control, but it does little to forward positive alternatives. Forcing the issue will mean making strategic choices about the future of the Balkan regional order, and the US stake in shaping that order, that Washington has been reluctant to make. At some point, however, these choices will have to be made.³³ The current geopolitical configuration of the Balkan area - an accumulation of petty-minded post-communist authoritarian states, *de facto* military protectorates, and struggling transition regimes - is neither stable nor desirable from the perspective of Western interests. America's considerable strategic weight and well-intentioned diplomatic efforts provide it with tremendous assets to call upon in forging alternatives, but they will have to be used in conjunction with a more compelling strategic vision than has been manifested in efforts to resolve the Kosovo dilemma to date.

32 See the argument in J. Hoaglund, "Into the Balkans", *The Washington Post*, 25 October 1998, p. C7.

33 See the argument by T. di Francesco, "Pour une paix à l'irlandaise au Kosovo", *Le Monde diplomatique*, November 1998, p. 20.

Macedonia and the Kosovo Conflict

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The violent conflict in Kosovo has once again put the spotlight on the former Yugoslav Republic of Macedonia, a country of two million inhabitants with a complex multi-ethnic demographic structure. Sixty-six percent of Macedonia's population are Slav Macedonians, close to 23 percent are ethnic Albanians, the largest minority group, and there are also smaller numbers of Turks, Roma, Serbs, and Vlachs. Residing along the borders with Albania and Kosovo, ethnic Albanians are the most politically mobilized of all ethnic groups, not only because of their substantial size but also because of their distinct grievances. With a long history of discrimination in the former Yugoslavia, especially throughout the 1980s, ethnic Albanians have demanded nation status, language and educational rights, and an end to discriminatory practices in the legal professions, the military and police, and government.¹ While some progress has been made towards reducing discrimination and guaranteeing minority rights, ethnic tensions remain, as does the polarization of Macedonian society. There are still demands for more proportional representation, for an Albanian-language university in Tetovo, and perhaps even a federal state,² however, there have not been the kinds of hostilities seen in other Balkan states.

Although the Republic of Macedonia, which became independent in September 1991 against the background of the Yugoslav war, succeeded in preventing the much-feared spillover of war from Bosnia, the country's stability continues to be threatened by the violent conflict in adjacent Kosovo, the political disorientation in Albania, internal ethnic tensions, inherent institutional weaknesses associated

- 1 A. Ackermann, "The Former Yugoslav Republic of Macedonia: A Relatively Successful Case of Conflict Prevention in Europe", *Security Dialogue*, vol. 27, no. 4, 1996, pp. 409-24.
- 2 P. Moore, "Macedonia to Elect New Parliament", *RFE/RL Newsline*, vol. 2, no. 201, Part II, 16 October 1998.

with the democratization process, and economic hardship. This article analyzes the regional and domestic environment of contemporary Macedonia, and explores how the linkage between external and internal conflicts, especially the violence emanating from Kosovo and the ethnic conditions within Macedonia, still poses severe challenges to this small state which once formed the southernmost part of Yugoslavia. It goes on to discuss how some of the preventive measures, most of which initiated in the early years of Macedonia's independence, remain crucial for preserving peace in the country and for averting a spillover of the violent conflict in Kosovo. Concluding, it is suggested that Macedonia should proceed toward greater integration to prevent further marginalisation of its ethnic groups, and continue along its course toward regional cooperation as part of its preventive approach to foreign policy.

The political violence in neighboring Kosovo

The conflict in Kosovo has deep-rooted antecedents, although the underlying causes of the present violence date to 1990 when the Serbian government stripped Kosovo of its autonomous status, suspended its Provincial Assembly, and imposed direct control over this province of more than two million inhabitants, of which 90 percent are ethnic Albanians and only 7 percent Serbs. Kosovo's Albanian leadership first reacted to Serbia's arbitrary policy by organizing strikes and demonstrations. Ethnic Albanians also held a referendum in September 1991 in which they declared Kosovo a sovereign and independent state. An appeal to the European Union for recognition in late December 1991 was rejected. Five months later, Albanian Kosovars elected their own president and Parliament, bringing Ibrahim Rugova, the leader of the Democratic League of Kosovo (LDK) to the presidency to represent the ethnic Albanian cause.³

It was under Rugova that Kosovar Albanians shifted to a strategy of non-violence and non-cooperation, even as violent repression increased, and fear was widespread that Serbia would move militarily against Kosovo after the termination of war in Bosnia. This non-violent, non-cooperative policy involved establishing parallel institutions such as schools, hospitals, a tax collection agency, cultural and sports organizations.

For several years, Albanians in Kosovo remained committed to non-violence despite repressive Serbian tactics. Arrest and detention became widespread, as did the seizure of property, documents, and medical and humanitarian supplies. Belgrade also initiated its own campaign of "Serbianization", substituting street names in Albanian with Serbian ones, implementing a Serbian educational curriculum, laying off

3 E. Kofos and T. Veremis, "Kosovo: Efforts to Solve the Impasse", *The International Spectator*, vol. 33, no. 2, 1998, pp. 132-47. S. Troebst, *Conflict in Kosovo: Failure of Prevention?: An Analytical Documentation, 1992-1998*, ECMI Working Paper No. 1, (Flensburg, Germany: European Centre for Minority Issues, 1998). W. Oschlies, *Kosovo '98 (I): Ursachen und Kulmination eines alt-neuen Balkan-Konflikts* (Cologne, Germany: Bundesinstitut für ostwissenschaftliche und internationale Studien, 1998).

large numbers of ethnic Albanians, and resettling Serbian refugees in Kosovo.⁴

By the end of 1997, however, patience and the commitment to non-violence were beginning to wear thin. Frustration was building up over excessive Serbian repression, high unemployment, and the deterioration of quality of life. The emergence of a group of militant Kosovo Albanians, the so-called Kosovo Liberation Army (UCK), which sought secession by means of violence, and the violent acts perpetrated by the UCK not only unraveled Rugova's non-violent campaign, but led to brutal reprisals on the part of Serbian police and military forces against ethnic Albanian civilians. An escalation of violence occurred in early spring of 1998. Since February, when Serbian forces began their military operations, hundreds of people have been killed. The largest number of ethnic Albanians died in March, when Serbian soldiers, using helicopter gunships and armored personnel carriers, killed close to eighty Kosovar Albanians, including many women and children in retaliation for the killings of several Serbian policemen by UCK militants. Also, Serbia's retaliatory policy in Kosovo resulted in the destruction of nearly 500 Albanian villages, and triggered another refugee crisis, not unlike the one witnessed with horror during the Bosnian war. It is estimated that at least 300,000 ethnic Albanians have been internally displaced or have sought refuge in neighboring Albania.⁵

While the execution-style killings of at least 15 women, children and elderly inhabitants in the small village of Gornji Obrinje at the end of September 1998⁶ finally convinced the United States and Europe to draw the line with Slobodan Milosevic, president of the rump-state of Yugoslavia, it is unclear at present how the conflict will be settled. In early October, the United Nations, the US, and NATO demanded that Serbia comply with Security Council Resolution 1199 – an immediate cease-fire and withdrawal of Serbian forces from Kosovo, the creation of stable conditions for the return of refugees, and serious negotiations for a political solution which would include some form of autonomy for Kosovo. In the case of non-compliance, Milosevic would risk NATO air strikes. But the Kosovo conflict is far from a settlement, especially since most Kosovar Albanians have now opted for secession rather than territorial autonomy within a Milosevic-ruled Serbia.

Kosovo's Impact on Macedonia

The violence in Kosovo continues to pose a serious threat to the entire southern Balkans. While a much feared spillover of the armed confrontations from Kosovo into Alba-

4 For an analysis of Kosovo's non-violent strategy, see for example, M. Salla, "Kosovo, Non-violence and the Break-up of Yugoslavia", *Security Dialogue*, vol. 26, no. 4, 1995, pp. 427-38. Also, H. Clark, "Kosovo's Non-violent Struggle", *Peace Magazine*, January/February 1998, pp. 10-11, 26.

5 P. Shenon, "US Eyes Curbs on Belgrade as Albanian Deaths Mount", *New York Times*, 25 April 1998, p. A4; "Yugoslav Army Warns of War", *New York Times*, 25 April 1998, p. A4; J. S. Landay, "After Kosovo Killings, What?" *The Christian Science Monitor*, 1 October 1998, pp. 1, 10; R. Cohen, "NATO Shatters Old Limits in the Name of Preventing Evil", *New York Times*, 18 October 1998, Sec. 4, p. 3.

6 J. Perlez, "Massacres by Serbian Forces in 3 Kosovo Villages", *New York Times*, 30 September 1998, pp. A1, A6.

nia and Macedonia has fortunately not materialized, the countries' security is and remains affected as long as the Kosovo conflict is not resolved and Serbia is led by Milosevic.

There are two principal ways in which the crisis in Kosovo has affected Macedonia's security and internal stability. The first is related to the fear that Macedonian Albanians may be providing support to Kosovar Albanians – either financial or through arms supplies – and that Kosovo may serve as a model for collective mobilization to ethnic Albanians in Macedonia. A second way in which the Kosovo conflict has affected Macedonia's security comes as the result of sharing rather fluid borders with Albania, Serbia, and its province Kosovo. This has led to a series of border encroachments, especially on the part of Serbia but also by the UCK or groups involved in arms smuggling on their behalf. There is also growing concern over the outcome of the Kosovo conflict and whether the province will be granted independence which Macedonian politicians view as destabilizing for the region.

Support for ethnic kin and Kosovo as a potential model for collective mobilization

Ethnic Albanians in Macedonia have been largely sympathetic to the Kosovo Liberation Army.⁷ However, there is uncertainty as to their support – funds or arms – to it. Given the proximity to Kosovo, the close ties between the ethnic Albanian leaders from Macedonia and Kosovo, and the tightly-knit group structure that ethnic Albanians from both regions share, it is likely that at least some financial assistance has gone to the UCK. In an interview for a German television channel, Mendu Thaci, vice president of the Democratic Party of the Albanians (PDSh), which takes a rather radical approach toward ethnic Albanian grievances, claimed that Macedonian Albanians were supporting the UCK "materially in various forms". Macedonian media have also spoken of the possibility of Albanians from Macedonia having fought alongside the UCK in Kosovo.⁸ However, none of these sources can be confirmed.

What is more unnerving for the Macedonians are statements that have come from the leader of the PDSh, Arbën Xhaferi, known to alternate between a radical and a more conciliatory approach. When using bold rhetoric, Xhaferi will emphasize that "violence will come to Macedonia just like it came to Kosovo" if the Macedonian authorities do not heed the demands of ethnic Albanians for more autonomy and access to the political system.⁹ However, in a more conciliatory gesture, Xhaferi will

7 J. Brown, "Macedonia: Regional Buffer or Source of Sparks?" *Christian Science Monitor*, 29 May 1998, p. 7.

8 Foreign Broadcast Information Service (FBIS), "FYROM: Daily Warnings of 'Radical Passions' of FYROM Albanians", *FBIS Daily Report*, FBIS-EEU-98-201, 20 July 1998, pp. 1-2. FBIS, "FYROM: Albanian Parties Said Trying to Involve FYROM in Kosovo", *FBIS Daily Report*, FBIS-EEU-98-183, 2 July 1998, pp. 1-2. FBIS, "FYROM: Ethnic Albanians Providing Volunteers for UCK", *FBIS Daily Report*, FBIS-EEU-98-204, 23 July 1998, pp. 1-2.

9 Quoted in Brown, "Macedonia: Regional Buffer or Source of Sparks?", p. 7.

also explain that more autonomy means internal self-determination.¹⁰ While there is some anxiety among Macedonians that the armed struggle in Kosovo may serve as a model to ethnic Albanians in Macedonia for collective action, in a September 1998 interview President Gligorov struck a more optimistic note, emphasizing that he believes "Albanians in Macedonia or a large part of them do not want a war".¹¹

While some of these remarks on the part of ethnic Albanians may be "idle talk", these statements do much to feed the spiral of fear that Macedonia runs the risk of fragmentation. Even though moderate Albanians in Macedonia believe that their demands can be met by working within the political structure, there is a profound anxiety within Macedonian society that ethnic Albanians are seeking secession. These psychological pressures keep the two ethnic groups divided and polarize political and social life in Macedonia.

Border encroachments

A major threat to Macedonia's security relates to the fact that the country shares borders with Albania, Serbia, and Kosovo. In the early weeks of the escalation of violence in Kosovo, there was a growing concern that Macedonia would become destabilized by large refugee flows from Kosovo. Such dire predictions did not come true. According to government, UN and OSCE sources, no refugees have officially registered in Macedonia,¹² but it is likely that more Kosovar Albanians have crossed the border to "visit" with relatives and friends.¹³

Disturbing during the height of the offensive in Kosovo were border encroachments on the part of groups alleged to be smuggling weapons to the Kosovo Liberation Army. In July 1998, the Macedonian authorities announced that they would be reinforcing their border with Albania so as to reduce the transfer of arms. A Defense Ministry announcement in the summer spoke of thirty incidents in which Albanians were intercepted while smuggling weapons into Macedonia from Albania.¹⁴

More troublesome have been Serbian border encroachment, especially because the frontier between Serbia and the Republic of Macedonia is still unmarked. In August 1998, Serbia extended its border five kilometers into Macedonian and Albanian territory to combat UCK forces and to prevent Albanians from infiltrating Kosovo through Macedonia. This aroused fears that the border areas of Macedonia might be drawn into a military zone or belt. Because of the

10 Interviews with the author, May 1996, Tetovo, Republic of Macedonia.

11 FBIS, "FYROM: Gligorov on History, Regional Relations", *FBIS Daily Report*, FBIS-EUU-98-244, 1 September 1998, p. 5.

12 FBIS, "FYROM: Kitanovski Warns Against Supporting Kosovo Independence", *FBIS Daily Report*, FBIS-EUU-98-187, 6 July 1998, p. 1.

13 FBIS, "FYROM: Aid Groups, FYROM Government on Kosovo Refugees", *FBIS Daily News*, FBIS-EUU-98-202, 21 July 1998, pp. 1-3.

14 FBIS, "FYROM: Minister: FYROM Army Plans to Reinforce Albanian Border", *FBIS Daily Report*, FBIS-EUU-98-202, 21 July 1998, pp. 1-2. FBIS, "FYROM: Commentary Sees Increased Pressure on FYROM Borders", *FBIS Daily Report*, FBIS-EUU-98-209, 25 July 1998, pp. 1-2.

MACEDONIA AND THE KOSOVO CONFLICT

deployment of Yugoslav Army troops in the area, there was also speculation that Serbia might be preparing for a possible military confrontation with Albania.¹⁵

These border incidents and Serbia's delaying tactics on the demarcation of the common frontier have heightened Macedonia's sensitivity towards being pulled into the conflict by both sides. According to Defense Minister Lazar Kitanovski, each of the parties in conflict has attempted to involve Macedonia in its armed struggle. In the summer of 1998, he accused Serbia of deliberately flying over Macedonian territory and spreading misinformation that Macedonia was allowing armed groups to enter Kosovo through Macedonia. But Kitanovski also claimed "that the Albanian side in Kosovo is trying to involve Macedonia in the conflict by releasing incorrect reports", giving the example of the spread of false information regarding Serbian soldiers involved in thefts in Macedonian border villages populated by ethnic Albanians.¹⁶

The outcome of the Kosovo conflict

There is great uncertainty as to the outcome of the Kosovo conflict. Although the Serbian leadership is committed to withdraw its forces from Kosovo and negotiate a settlement with the Kosovar Albanians, it is not yet clear whether this will happen. The termination of violence is crucial to the stability of Macedonia, although there is skepticism among its leaders as to the terms of a negotiated settlement. Indeed, Kosovo reveals Macedonia's dilemma: on the one hand, a continuation of fighting is likely to affect the fragile multi-ethnic structure of Macedonian society sooner or later; on the other, a political solution which entails independence for Kosovo is equally perceived as a threat to Macedonia's internal stability because of a possible "domino effect". In other words, if Kosovar Albanians are allowed to secede and create their own state, there is the risk that Macedonian Albanians may want to proceed in a similar direction. When Defense Minister Kitanovski compared Kosovo to a volcano, he was thinking not only that the violence could engulf his country, Albania, and other states in the region, but also that segments of Macedonia could become part of a greater "Albania". "The first stage," he noted, "would be the annexation of Kosovo with Albania, and the second stage would be the inclusion of parts of Macedonia and Montenegro."¹⁷

International preventive responses

Conflict prevention has a "long" and "relatively" successful history in Macedonia, dating from the time of its independence in 1991. Of all the preventive actors en-

15 FBIS, "FYROM: Sources View Prospects of FRY-Albania 'Military Clash', *FBIS Daily Report*, FBIS-EEU-98-218, 6 August 1998, p. 1. FBIS, "FYROM: MIC Views Violations of FYROM Airspace by FRY Planes", *FBIS Daily Report*, FBIS-EEU-98-181, 30 June 1998, pp. 1-2.

16 FBIS, "FYROM: Defense Minister Views FYROM's Security", *FBIS Daily Report*, FBIS-EEU-98-207, 26 July 1998, pp. 1-6.

17 FBIS, "FYROM: Defense Minister Views FYROM's Security", p. 2.

gaged in Macedonia, two international organizations stand out because of their mandates and their long-standing presence – the UN and the Vienna-based Organisation for Security and Cooperation in Europe (OSCE). Along with the OSCE Spillover Mission to Skopje, which monitors internal conditions in Macedonia, the UN Preventive Deployment Mission (UNPREDEP) has also performed important monitoring functions along the Macedonian border. Both organizations assumed preventive responsibilities in the early 1990s when Macedonia was threatened by a possible spillover of the Bosnian war and growing unrest in Kosovo.

The most visible of the two preventive actors has been the UN preventive force which was deployed in early January 1993, pursuant to Security Council Resolution 795. UNPREDEP's mandate was to monitor Macedonia's borders with Albania and Serbia, a stretch of approximately 500 kms of mountainous terrain. At the height of this preventive peacekeeping effort in the mid-1990s, a little over 1,000 peacekeepers, including US soldiers, were dispatched to Macedonia, where they were stationed in permanent and temporary observation posts along the Macedonia-Albanian and the Macedonian-Serbian borders.

By mid-1997, Security Council 1110 called for the gradual withdrawal of preventive forces and a termination of UNPREDEP's mandate. However, by late 1997, the Security Council revoked its earlier decision and extended the UN mandate until the end of August 1998. It was proposed that a NATO-OSCE follow-on mission should assume the place of UNPREDEP. However, as the violence escalated in Kosovo, the Security Council decided once more to extend UNPREDEP's mandate to the end of February 1999, and bring troop strength, which had already been reduced to 750, back up to 1,000 peacekeepers.¹⁸ At this critical juncture, UNPREDEP is vital to the preventive efforts of other organizations such as the OSCE, and its preventive mandate provides some assurances to Macedonia and its people.

Concluding thoughts

It is important to note that over the past seven years, Macedonia has played a crucial role in preventing some of the scenarios of a wider Balkan war from becoming reality. It has done so not only by requesting international monitors and a UN preventive force, but also through the preventive actions of its political leaders and the restraint exercised by the leaders of its ethnic groups. While this policy of political dialogue and accommodation has neither averted ethnic tensions or a polarization of ethnic relations nor led to full-fledged integration, one must remember that there have not been any large-scale hostilities as witnessed elsewhere in the Balkans. Also, it is important to keep in mind that some of these ethnic tensions are inherent to newly democratizing and multi-ethnic societies where political, economic, and so-

¹⁸ See, "Security Council Extends Preventive Force in Former Yugoslav Republic of Macedonia until 31 August 1998", *UN Press Release SC/6451*, 4 December 1997, pp. 1-8; "Security Council Extends Mandate of UNPREDEP until 28 February 1999 and Increases Troop Strength", *Press Release SC/6554*, 21 July 1998, pp. 1-7.

cial institutions are still weak and civil society is not yet fully developed.

A number of concerted policies could redress existing ethnic tensions, such as the legalization of the Albanian-language university in Tetovo, already attended by hundreds of ethnic Albanians. Another integrative measure would be to increase local governance in areas dominated by ethnic Albanians. Lastly, a more integrative society can be achieved through domestic and economic reforms directed at benefiting all ethnic groups equally. Foremost here are policies aimed at reducing the high unemployment rate and the under-representation of ethnic groups in certain professions. Many of these reforms will become the responsibility of the new Macedonian government under Ljubco Georgievski and Vasil Tupurkovski. Their coalition, consisting of the Internal Macedonian Revolutionary Organization (VMRO-DPMNE) and the Democratic Alternative (DA) won 58 out of the 120 seats in the 1998 October and November elections.¹⁹

It is hoped that over time the rights of all ethnic groups will be expanded to assure equal access to the political and economic process. Further social marginalization of ethnic groups, in particular, of ethnic Albanians, can only be prevented if the Macedonian government consciously moves toward more societal integration while recognizing some of the specific needs of each group in its multi-ethnic state.

What remains most critical is the situation in Kosovo. Much of Macedonia's security – regional and internal – will depend on a viable compromise solution for Kosovo. At present, the United States is engaged in negotiating a political settlement which would bring an end to the struggle for secession. It has appointed U.S. Ambassador to Macedonia, Christopher Hill, as special envoy, who shuttles between Pristina and Belgrade for talks with the Kosovar leadership and the Serbian government.

It is important for Macedonia that the US and its European allies help to bring the Kosovo conflict to an end. It is equally important to achieve a settlement that is acceptable to the Kosovar Albanians. Meanwhile the UN preventive mission should remain in Macedonia as long as is necessary. Also, deliberations should begin on a possible follow-on mission to Macedonia, possibly composed of a large presence of OSCE monitors rather than NATO troops since the alliance has little experience in preventive action, and is associated more with coercive diplomacy than with conflict prevention.

A positive development, particularly as it relates to preventing a wider Balkan conflict, is that in late September Macedonia, along with Romania, Bulgaria, Albania, Italy, Turkey, and Greece signed an agreement at the regional defense ministers meeting for the creation of a Multinational Peace Force Southeastern Europe, in which the US will also participate as an observer. While the specific mandate of this Multinational Peace Force is still unclear, the agreement encompassing former adversaries is a historic step away from the bloody rivalries and antagonism which has plagued the Balkan region for much of its history.

19 P. Moore, "Macedonians Choose Change," RFE/RL Newsline, vol 2, no. 215, 6 November 1998.

In or Out of the Black Hole? Fin de Siècle Federal Republic of Yugoslavia

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The Federal Republic of Yugoslavia (Serbia and Montenegro) is today, along with Albania, the country with the weakest, most volatile and precarious political and economic situation in Europe. Contrary to Albania, it still has a very significant economic and social potential with a population of 10.5 million and a central geographic position neighbouring on Croatia, Hungary, Romania, Bulgaria, Macedonia, Albania and Bosnia-Herzegovina.

The F.R. Yugoslavia has become a "black hole" in the southeast of Europe in which politics is the defining and determining sphere of state and society. Although formally governed by democratic rules and procedures and democratic elections, substantively it has many of the features of an authoritarian regime. It is a sort of "democratic despotism", an "illiberal democracy", in many ways a "sultanistic" regime. From its central and advantageous position (within the former Yugoslavia) during the Cold War, as the country that seemed to be closest to joining the European institutions, as a country already well integrated into the economic and commercial flows of the Western world, it has sunk to the lowest of positions in the hierarchy of middle developed countries.

The causes are multiple and deep-seated and yet the human resources still present in the country could yield a relatively rapid upswing if the political and economic conditions for the full use of existing entrepreneurial and creative energies were created. This would bring the country back into the community of nations and allow it to pursue a drastically delayed process of democratization and economic reform.

Politics

Serbia (and until recently Montenegro) have been under the exclusive tutorship □

of President Slobodan Milosevic who rose to power in Serbia in 1987. He has led the two republics from one strategic defeat to another and has managed with remarkable tactical political skill to remain in power and even reinforce his personal grip on power while everything around him has been crumbling. During his term in office, the country has become more or less completely isolated, with no real allies, its links to the world have been destroyed and its economic and social infrastructure depleted. It has suffered defeat in the Yugoslav wars (1991-95) in which "Serbia did not participate". His policies have closed the society instead of opening it. Meaningful rational politics have not had a chance to take root, parliamentary life has been instrumentalized and the state media have been used as weapons in a brutal trench war against perceived domestic and foreign rivals. Milosevic himself started out as a communist *apparatchik* imbued with the idea of Yugoslavism, then espoused and instrumentalized the ideas of Serbian nationalists as a way of remaining in power. It became clear very early on that he was neither a convinced communist nor a nationalist but a power monger whose only goal was to remain at the helm alone and uncontested.

Milosevic has had to accept the democratic framework and the skeleton of democratic rules and procedures, but has done everything in his power to subvert these at every opportunity. When Felipe Gonzalez, the former Spanish Prime Minister, came to F.R. Yugoslavia in December 1996 invited by Milosevic himself to help "resolve" the electoral crisis created by his own electoral fraud in the November 1996 local elections in which the democratic opposition (united in the coalition *Zajedno* - Together) won in Belgrade and 15 other major cities in Serbia, he (F. Gonzalez) published a devastating report on behalf of the Organization for Security and Cooperation in Europe (OSCE). Gonzalez confirmed that the democratic opposition had won the elections (thus that the regime and Milosevic had blatantly stolen the citizens' votes), but, more generally, it stated that substantive democratic conditions were absent and that fair electoral rules had to be established and supervised, that the state media had to open up to non-regime views and opinions and that a dialogue had to be taken up with the opposition concerning all of the issues mentioned.

To this day the guidelines of Gonzalez' OSCE report have not been followed or addressed. With his cunning political tactics Milosevic has, in fact, since then managed to destroy the oppositional coalition *Zajedno* by luring Vuk Draskovic's Serbian Renewal Movement (SPO) into the fold of the ruling majority (in July 1997). He managed this with promises of power-sharing which, despite Draskovic's expectations, have not been fulfilled since Milosevic decided at the last moment to create a coalition government in Serbia with Vojislav Seselj (leader of the ultra-nationalist, rightwing, populist Serbian Radical Party (SRS) and paramilitary leader in the 1991-95 wars), of whom many say that he was both created and sustained by Milosevic.

With Draskovic's passage to Milosevic's camp (for reasons of power and money) the situation of the democratic opposition has cleared. Although very much weakened, the remnants of the *Zajedno* coalition have been pursuing a

systematic uphill and unrewarding struggle to make the government accountable and to foster change along democratic lines. The Democratic Party, the Democratic Party of Serbia and the Civic Alliance of Serbia, with varying followings (generally all weak), are trying to work for the long term without illusions of quick success.

Paradoxically, Milosevic's electoral and public opinion support has been systematically dwindling since 1990. A very large number of voters abstain or vote against him or his party. This abstention has to be qualified in a complex manner. Many of those abstaining do so not out of political passivity or apathy, but in an active fashion, repelled by the continuing instrumentalization and manipulation of politics for the sole purpose of personal benefit. There is not the slightest hint of policies aimed at the public good or some widely understood general interest. The only effect of these policies for the people has been suffering and more suffering along with generalized impoverishment, and once again – with the Kosovo crisis and new sanctions applied by the international community in March, April and May of this year – the absence of any hope for the near future.

The opposition had a unique opportunity to transform the winter of discontent (1996-97) into a political victory – all it had to do was remain unified. Unfortunately, the opposition suffered from many of the ailments of post-communist politics; the vanity of leaders unable to realize the need to overcome short-term interests for the sake of long-term gains and, thus, constant petty quarrels led to the alienation of an engaged public, left to itself. In fact, a significant part of the electorate opposed to Milosevic is being attracted by populist, rightwing, authoritarian leaders who are promising quick solutions and salvation based on xenophobia, intolerance and a policy of ethnic homogeneity.

It was thus somewhat unexpected to see Milosevic create a coalition government (after a six-month delay from September 1997 - March 1998) with the populist, rightwing nationalist Seselj. This "red-brown" coalition, as many have come to call it, has been the subject of much speculation. Is the intention to neutralize Seselj by drawing him on board the government or is this a ploy on the part of Milosevic by which his political "instrument" (Seselj) will help him navigate the rough waters that lie ahead and secure for him the support of a broader (nationalist, rightwing) public opinion for some difficult decisions that are to be made?

The personal rule of Slobodan Milosevic is based on an unusually numerous police force (estimated at 80,000-100,000), and less so on the Yugoslav Army (JA). Weakened by war and systematic and constant purges of its higher echelons, the JA prefers to remain in the shadows (although it has, on several occasions, stated through the voice of high-ranking officers its clear reluctance to be drawn into civil-political battles).

It is important to note that on 15 July 1997, Milosevic decided to have himself elected President of Yugoslavia via an accelerated procedure in the federal parliament, after conceding that he would abide by the Constitution of

Serbia and not run for a third unconstitutional term in office as President of Serbia. While ready to use all possible means to attain his political goals, with his party frequently engaged in a variety of practices of electoral fraud and abuses, he has not openly gone against the stipulations of the Constitution mentioned above. His desire to appear to "respect" the law goes hand in hand with his often-reluctant acceptance to negotiate with the international community, although he has been forced to do so by the sheer necessity of prolonging his stay in power.

Much of this regime's power is based on an economy and politics that have been criminalized, initially through sanctions-busting in 1991-95, and through other activities after the end of the war in Bosnia-Herzegovina.

Economy

As in other post-communist countries of Southeastern Europe, "transition" in F.R. Yugoslavia has been rapacious. In fact, there has been – again paradoxically – both a complete absence of "transition" in the Central European sense, and a dramatic, "wild" transition in a chaotic sense.

No sustained effort has been made to implement market reforms, privatization, accompanying legal and fiscal reforms. Laws have in various spheres depended on the whims of politics and its rulers. The legal nihilism of the communist period has continued in the form of legal uncertainties and abuses that have presented high costs for political and economic actors. Thus, the rule of law is still a distant goal. Many economic-criminal actors are still among the strongest anti-rule-of-law constituencies, as they thrive on the vagueness of the law and profit immensely from the weakness of the courts and the law-enforcement agencies, which are often drawn into the economy's criminalized operations.

On the other hand, there has been a dramatic and often chaotic "transition", in the sense that even the existing rules of the communist period, for whatever they were worth (and in the case of the former Yugoslavia, with its ties to Western economies, there was a respectable level of management know-how and efficiency) have been obliterated, and former Communist Party *nomenklatura* members have rapidly seized the day to devour state/social property in a wholly non-transparent take-over dynamic.

Government sponsored businessmen have become wealthy overnight by securing preferential loans and credits from state-run banks. They have acquired preferential import-export licenses and have, in particular, made fortunes by sanctions-busting with oil, gas and cigarettes. The political bureaucracy and the economic gray-zone operations reaching into mafia-type activities have created a vicious circle from which it is difficult to exit without sustained state effort and political leadership.

Corruption is clearly a closely related problem, which envelopes nearly all spheres of society, the judiciary included. Salaries of civil servants are so low that it is no surprise that many administrators and law enforcement agents can be bought. In this "small pond with many crocodiles", tensions and conflicts arise.

In the past year alone, there have been a number of "high profile" murders (interestingly of people who were among the closest friends of the Milosevic family), symptomatic of relations in the political/economic élite and the fierce struggle over money and power that such relations generate.

More generally, the economy has suffered from a rapid decline in production, lack of investment, lack of upkeep of infrastructure, demotivation in the labor force, and a brain drain of massive proportions. There has been a virtual collapse of the banking system (there are no savings in banks worth mentioning). The expatriation of profits gained through these various activities translates into a lack of investments and badly needed money to kickstart the economy. Furthermore the persistent "outer-wall" of sanctions that keeps the F.R.Yugoslavia out of practically all multilateral organizations such as the OSCE, Council of Europe, but more importantly for the economy, out of the International Monetary Fund, World Bank and World Trade Organization and at arms' length from the Paris and London Clubs (bank consortiums), is devastating for the economy.

Perhaps even more alarming is the "inner-wall" of "sanctions", which the regime of Slobodan Milosevic is itself imposing on the domestic economy by not allowing for long-delayed market reforms, macroeconomic restructuring and privatization to take place. These reforms, if embarked upon, would ultimately lead to a rule-governed economy, which is clearly not in the interest of the powers that be. So much so that even the members of Milosevic's party who are reform oriented have given up. The most notable example is the very recent resignation of Federal Deputy Prime Minister Danko Djunic who, among others, organized a Yugoslavia wide conference with United States AID participation on the state of the Yugoslav economy in Belgrade in January 1998.

Real unemployment is extremely high (40-50 percent), although official figures do not reveal it because many workers are still formally employed but on so-called "paid leave". The gray and black economies are thriving. The various social and pension funds have been emptied and the government is constantly struggling to make ends meet. Confronted with this problem, it decided to go ahead in the summer of 1997 with the sale of the Telephone Company of Serbia (Telekom) to the Italian telephone company STET and the Greek telephone company OTE. With the estimated 800 million dollars from this sale the Milosevic government bought time to avoid having to confront the harsh reality of the urgent need to implement radical reforms and open up to the world. It is now ready to sell off, piece by piece, the utilities infrastructure and the larger companies (there have been persistent rumors that the car producing factory Zastava, originally built with the help of FIAT, will be sold to an important Japanese, South Korean or European company – Peugeot has been mentioned most recently). In principle, this could be a long process, and yet the destruction of the economy and its isolation from the globalised trade winds is worsening the overall situation, not only of the economy, but also of society.

It must be stressed that commercial openings to China and Russia (especially for import of gas and oil) have been unsuccessful because of the low quality □

of the products offered in exchange for the natural resources. On the other hand, there has been a resumption of trade between the new states created on the territory of former Yugoslavia and, as soon as the conditions are propitious, this trade will flourish once again.

Montenegro

One of the most positive political developments in the past several months has been the election of Milo Djukanovic to the presidency of Montenegro. This has meant the creation of an alternative, pluralist pole of government within the Yugoslav federation of Serbia and Montenegro. Because there is parity of representation in the second chamber of the federal parliament between the two federal units, Montenegro can forestall any attempt by Federal President Milosevic to usurp his otherwise constitutionally relatively weak position – even though power is where Milosevic is, regardless of constitution and law.

Although far from being a model democrat, Djukanovic has persistently and firmly advocated and struggled for democratic reform and market regulation in the Yugoslav political and economic arena. In the Montenegrin presidential election of October 1997, he won a hard-fought political battle against his arch rival, former friend and former Montenegrin president Momir Bulatovic, who was, and still is, being backed in the strongest manner by President Milosevic and his political team. Indeed, on 18 May, President Milosevic decided to oust incumbent Federal Prime Minister Radoje Kontic and replace him with Bulatovic. He was nominated on 19 May and voted in by the Federal Parliament on 20 May. The reason for this change on the part of Milosevic (the Federal President) was to put someone closer to himself at the head of the federal government, but also to try and boost Bulatovic's chances in the important Montenegrin parliamentary elections on 31 May 1998.

Milo Djukanovic and Momir Bulatovic had been close allies of Milosevic from 1989 onwards, but Djukanovic broke off this relationship after the November 1996 local elections in Serbia, which brought the opposition to power in Belgrade and fourteen other cities throughout Serbia. He backed the three months' long protests and began to criticize Milosevic's policies in the harshest of terms, advocating democratic and market reforms.

So strong is Milosevic's animosity towards Djukanovic, that Serbia's heavy TV media artillery was brought out to try and destroy him in the Yugoslav public arena before the crucial Montenegrin parliamentary elections. But Milosevic failed dismally in this intent because the coalition "To live better" assembled by incumbent President Djukanovic won a landslide victory, acquiring the absolute majority of 42 seats in the 78 seat Montenegrin parliament with 49.5 percent of the votes. The turnout was very high (75.9 percent), which testifies to the fact that the Montenegrin electorate recognized the political importance of this election. The CEDEM (Center for Democracy and Human Rights), the CESID (Center for freedom of elections and democracy) and the OSCE monitoring mission (led by Javier Ruperez), all declared that they were the most regular elections in

Montenegro to date. Whereas Bulatovic had not acknowledged his defeat in the October 1997 presidential elections, this time he and his party did and also recognized the validity of the elections.

These extraordinary elections held only 18 months after the last ones are important because Montenegro gives 20 seats (an equal number to Serbia) to the upper chamber and a number of seats to the lower house of the federal parliament and can thus veto any attempt to change relations in the Federation. The recent ousting of Radoje Kontic and the ongoing tension between Milosevic and Djukanovic have heightened the dispute between the two republics. The victory of Djukanovic's coalition reinforces the democratic potential not only in Montenegro but also in the rest of Yugoslavia. But as Djukanovic himself pointed out on the night of the victory: "This is not our final victory. Our final victory will be when democracy wins throughout Yugoslavia".¹ The results of the 31 May elections installed the 36-year old Djukanovic as the head of a pro-democracy and pro-market faction in Yugoslavia – a leader who will have to be reckoned with in the future.

There is speculation that President Milosevic will try to reinforce his position at the head of the country using the federal parliament and the federal government he has handcrafted. But to date, President Milosevic has tacitly acknowledged Djukanovic's victory and has met him on a couple of official and unofficial occasions, which testifies to the working of the federal institutions for the time being. Potential for divisions still exists. President Djukanovic has adamantly put forward the demand for the urgent replacement of Momir Bulatovic as federal prime minister by a person from a Montenegrin majority party. This has not yet occurred. Djukanovic has also continued to voice his strong criticism of Milosevic's policies and is asking for a political settlement in Kosovo. The ongoing Kosovo crisis and low-intensity war with daily victims is a constant threat to peace in the region.

Djukanovic has repeatedly stated that he has no intention of changing the status of Montenegro in the Federation, but rather of changing the (authoritarian, anti-modern, anti-rational) policies within it. With this in mind he has launched a political initiative with the aim of assembling the democratically oriented parties and groups of FR Yugoslavia (and possibly Republika Srpska in Bosnia-Herzegovina) in a joint endeavour for democratic and market reforms.

Montenegro has elaborated a comprehensive market-oriented reform package that comprises coupon privatization, the selling of six major enterprises, including major utilities (among which the tobacco industry, an aluminium plant, tourist capacities). It has made a crucial step toward opening up the public sphere to more independent media. And, it has challenged Milosevic's power monopoly. It is with these evaluations of developments in Montenegro that Western governments have committed substantial amounts of financial aid to Mon-

¹ *Nasa Borba*, 1 June 1998.

tenegro. Commercial delegations of a variety of governments and aid organizations have come and confirmed the country's determination and willingness to move ahead and rejoin the world of "normalcy" by attracting foreign investment. Montenegro could become the door to the Serbian economy and market.

Kosovo and the Albanian population in Yugoslavia

Albanians in Yugoslavia live in Serbia's province of Kosovo, in Serbia proper and in Montenegro. In Montenegro they have their political parties that participate in the political process. These parties have wholeheartedly supported Milo Djukanovic and his reform programme. They represent about 7 percent of Montenegro's population and are loyal citizens of the Republic of Montenegro. Albanians also live in the southern part of Serbia proper (mostly in the municipalities of Medvedja, Bujanovac, Presevo). They have their political parties and participate likewise in the political life of Serbia and have two members elected to the Serbian parliament. The Albanian population living in Kosovo, though, boycotts the political life of Serbia and F.R. Yugoslavia wholesale.

At present Kosovo is the most burning political issue not only of the F.R. of Yugoslavia, but of the whole Balkan region and of Europe. It threatens to lead to a further breakdown of the country itself and also a general conflagration in the region. The present conflict, which has led to the deaths of several hundred people since the beginning of March 1998 is, in fact, already a "low-intensity" war. And it could easily flare out of control into a full-scale war, which could at any time involve the Republic of Macedonia, Albania, Bulgaria, Greece and Turkey.

The hard-bargaining American diplomat, Wall Street banker and now newly appointed UN Ambassador to the UN, Richard Holbrooke, together with Clinton's special envoy Ambassador Robert Gelbard, brokered the first meeting between Milosevic and Ibrahim Rugova, which took place in Belgrade on 13 May 1998. This meeting, a most notable development, was to initiate the negotiation process on the future status of Kosovo in the F.R. of Yugoslavia.

Kosovo, with its 90 percent (about 1.8 million) Albanian population, has been an outstanding issue during the whole of the post-1945 period. The 1974 Constitution of the SFR of Yugoslavia gave Kosovo the highest possible degree of political and territorial autonomy within the then Socialist Republic of Serbia. Kosovo, ruled by Albanians, had its own president, parliament, ministries and a seat in the eight-member collective presidency of Yugoslavia (Fadilj Hodza, an Albanian from Kosovo, was for one year president of the Former Yugoslavia), as well as seats in the parliament of Serbia. At the same time, Serbia had no say in the affairs of its own autonomous province.

The fact that Albanians were the only non-Slavic population of the former Yugoslavia, the fact that Kosovo was the least developed part of the country, and the fact that there was no employment outlet for the many Prishtina University graduates created a "ghettoized", parallel society even in socialist Yugoslavia, in which social and political unrest was always latent. This situation was only

exacerbated by the way in which Slobodan Milosevic approached the issue upon his arrival in power in Serbia in 1987 as head of the League of Communists [Communist Party] of Serbia.

Kosovo's dismal economic situation just adds to the enormity of the problem. People in Kosovo live mostly from the remittances of family and friends abroad, and any production is very limited. In 1997, a Greek investor took a stake in the mines of Trepca in Kosovo, but this seems to be a one-off foreign investment attempt.

With Milosevic's lack of initiative and statesmanship concerning Kosovo, maintaining the *status quo* simply reinforced the already notable separation between the province's Albanian and Serbian populations. The appearance, since autumn 1997, of the Kosovo Liberation Army (KLA, UCK in Albanian) has been the dual result of Milosevic's policy of *status quo* and of the radicalization of a part of the Kosovo Albanian opposition, impatient with the non-violent policies of Ibrahim Rugova's Democratic League of Kosovo (LDK).

The KLA has by certain estimates grown to a 12,000 strong separatist army composed of former Yugoslav People's Army officers of Albanian origin and young radicalized Albanians from home and the diaspora, financed by the large Kosovo diaspora in the US, Switzerland, Germany and other West European countries. Weapons are brought in through the rugged and unguarded high mountain passes between Albania and Yugoslavia/Kosovo. Last year's chaotic developments in neighboring Albania created a supply of weapons looted from Albanian army depots, which are finding their way not only into Kosovo but also into Macedonia.

During the summer, there has been a widespread offensive of Serbian police forces with the backing of the Army against the expanding KLA. This offensive has severely weakened the KLA, but has not eliminated it from the fighting nor from the political scene. Adem Demaci has become the leader of the political wing of the KLA and has taken a critical stance toward Ibrahim Rugova. The new mediator for the Contact Group, Christopher Hill, US Ambassador to the Republic of Macedonia, has been engaged in intensive shuttle diplomacy and is working for an interim agreement which could last for three or four years.

The conflict continues and has produced a number estimated between 200,000 and 300,000 internally displaced people, thus creating a potential humanitarian crisis with the approaching winter. Humanitarian agencies are in the field and are organizing relief operations.

The ramifications of the Kosovo crisis are multiple. Firstly, they concern definition of the status of the province within the F.R. Yugoslavia. Many ideas and options have been put forward, from giving back to Kosovo the status of autonomous province that it had under the 1974 Constitution (full political and territorial autonomy within Serbia), to giving Kosovo the status of a republic equal to that of Serbia and Montenegro and thus creating a third republic in the Federation, through projects of "special status" (put forward by the Foreign Ministers of France and Germany Hubert Vedrine and Klaus Kinkel). The Albanian public

and political opinion are more or less unanimously for complete independence and secession.

However, the international community rejects independence and secession because of the second important ramification of the Kosovo issue, namely the "negative" example that secession/separation/divorce would set for the Albanians in Macedonia (a new nation-state with 2 million inhabitants of whom 25 percent are Albanian and eager to get their own autonomy – and perhaps, in the minds of the radicals, to secede). This international dimension of the future status of Kosovo, as well as the disastrous experience with the breakup of former Yugoslavia and the ensuing wars, have led to a flurry of diplomatic activity attempting to foster preventive diplomacy – very simply the prevention of a possible all out *fin de siècle* Balkan war and the chaotic reconfiguration of borders in a precarious region of Europe.

Balkan Dimensions

In November 1997, a meeting of Balkan leaders took place on the island of Crete. The then new Albanian Prime Minister Fatos Nano and Slobodan Milosevic met for the first time; this was in fact the first meeting of leaders of these two countries since the late 1940s. Milosevic in a speech in Crete promised, in the spirit of cooperation, to endeavour to help bring about a stable peace in the region. His domestic policies have not been proof of his rhetoric.

What is clear is that in order for a solution to be found and for war to be avoided, maximalist goals will have to be abandoned and compromise sought. Now, after the meeting between Milosevic and Rugova, the first modest steps can be taken. The question is: is it not too late, has the genie come out of the bottle, have the non-violent tactics of the Rugova party not already been superseded by the violent struggle of the UCK? More precisely, is the LDK capable of controlling the UCK and bringing it to reason if a compromise solution is realistically possible? Is Milosevic ready to move faster than a snail to avert the worst-case scenario or is he again simply trying to buy time for himself without wishing to change anything? All these questions will find their answer in the near future.

It is abundantly clear that widespread concern in the broader international community and – perhaps as importantly – in the countries of the Balkan peninsula is putting serious pressure on all parties to think twice about any unreasonable options.

Finally, the destinies of these neighbouring countries are very much interdependent, especially those of FR Yugoslavia, Croatia and Bosnia-Herzegovina. Apart from sharing the same language (in spite of all the nationalist rhetoric about the differences between Serbian, Croatian and Bosnian), they share the same type of political regime with strong authoritarian traits, based on personal rule and a small inner circle of confidants. When reform processes, democratization and market reform begin in earnest in one of these countries, there will be spillover effects in the others. By the same token, this will accelerate the positive

trends, just as it has the negative ones until now. Thus, even though these countries are viewed separately for analytical purposes, it is important to realize that, while remaining independent, they nonetheless have many a common feature and are still communicating vessels.

Civil Society

One of the most difficult legacies of communism is the destruction of civil society. Society has been disabled, atomized and fragmented. People had been brought up in a spirit of (enforced) collectivism in which individualism was a hunted animal. The absence of democracy and freedom of speech and association have left the deepest of scars on the texture of social life.

The former Yugoslav wars of 1991-95, the policies of the regime and the sanctions imposed on the FR Yugoslavia from 1992 to 1996 have devastated the urban middle classes, bitterly impoverished them and led to a severe brain drain. The social capital in society has been drained. And yet, despite all of this, the forceful three months' long protests in fifteen major cities of Serbia between November 1996 and February 1997 attested to the resilience and the birth of a social civil movement throughout urban Serbia. This movement has been of the greatest importance in that it has shown not only to the outside world, but – in a mirror image to society itself – the existence of a strong latent civic energy that is waiting to engage itself in democratic and market reforms.

Many good people have left the country, but many good people have remained. Many are willing to continue in the most adverse conditions to work for a democratic and meaningful future that will link the country up to the runaway European train, in the hope that they too can help their country become a decent member of the international community of nations.

There are serious fractures and negative traits in all three key levels of state, political society and civil society. The state is still strongly in the hands of a monopolistic power apparatus. It has not undergone any substantial transformation; an efficient, neutral, civil administration is a distant dream. The separation of powers between the executive, legislative and judiciary is largely mendacious, illusory, although there have been notable attempts in particular by some representatives of the judiciary to confront these issues and work on them.

The institutions of political society, the meso-level between state and civil society, exist only in a fragmentary state. Political parties, intermediary associations are in their initial stages and are not yet sufficiently structured and organized to bear the brunt of seriously engaging in a reform movement. They have produced many serious reform programmes in the greatest of detail; that is not what is lacking. What is, is a professional, oppositional political class; but it is in the making and its contours are already visible.

The independent media have in many cases played an immensely important role. Daily newspapers, weeklies and, most of all, radio stations have been the voice of independent, investigative journalism and have, by proxy, given the opposition a voice, since the opposition was and still is barred from the state- □

The Electoral Process in Kosovo

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Presented to the United Nations Association of the USA
Tuesday, 30 November, 1999
New York, New York

Background

Following the end of the Kosovo war, the departure of Serbian military and some paramilitary forces and the arrival of NATO's Kosovo Force (KFOR) troops, civilian components of the international community-the United Nations Mission in Kosovo (UNMIK) and the OSCE-began to focus on the electoral process as a means for establishing democratization in Kosovo. A lively debate ensued between those who favored early elections, perhaps to be held in the spring of 2000, and others who advocated a later date when more progress had been made on reconstructing Kosovar society and updating the voter registration lists. UNMIK chief Bernard Kouchner speculated that municipal elections could be held in April 2000.

This constructive initial debate has largely been superseded by the effort to establish the UNMIK-led administration of Kosovo, including the provision of basic police security to Kosovo Serbs and other minorities under threat in postwar Kosovo; control of gangs from Albania proper preying upon Kosovo's population; transformation of the Kosovo Liberation Army (KLA) from a military to a semi-civilian force; and in-fighting between the leaders of the UNMIK and OSCE missions for authority in civilian administration, including elections. Harried international officials appear to have little energy or vision left to plan a rational electoral process to jump-start Kosovo democracy. Inertia is playing an ever-greater role in setting the election agenda as talk of spring municipal elections fades and the autumn loom more prominent in official calculations.

The ethnic Albanians, who make up the overwhelming majority of Kosovo's population (over 90 percent of its nearly two million citizens) have also been divided about the timing of elections. Initially interested in early elections, they quickly evinced a more cautious approach that reflected their anxiety over an outcome that might enshrine the less democratic elements of the KLA in positions of power through the ballot. Actions undertaken by the self-proclaimed provisional government-in actuality a front for elements of the KLA-seemed to reflect the view that governing authority should devolve to the KLA by right of its military role in the conflict. Perceptions of KLA arrogance seem to account for the reportedly large swing of popular support toward the main political party in Kosovo, the Democratic League of Kosovo (LDK) led by Ibrahim Rugova, and away from KLA political leaders.

The debate about the electoral process thus seems to be dominated by confusion and distractions more than clarity and consensus. Virtually everyone acknowledges that conditions are not conducive to the holding of general elections in the immediate future. Security is a problem, especially for Kosovar minorities; voter registration lists have been destroyed in many parts of Kosovo; and independent broadcast media that would be expected to play a constructive role in political campaigns have yet to be established (some influential newspapers and magazines have resumed publication).

It is easy to forget, however, that Kosovo Albanians have considerable experience in managing a semi-democratic process under adverse conditions. After Slobodan Milosevic replaced Kosovo's autonomous status with a Serbian-run police state in 1989, the ethnic Albanians organized two rounds of elections that ensconced Rugova as their president and chose members of parliament. While these elections were not recognized as valid by the international community, they nonetheless reflected the commitment of the Kosovo Albanians to the goal of democratic-albeit understandably imperfect-procedures and outcomes. The installation of a provisional KLA-led government under wartime conditions aside the Rugova government was accomplished as the result of an agreement among delegates attending the peace talks in France that immediately preceded the NATO bombing, and did not transpire by democratic means.

The foundation for democratization thus already exists in Kosovo. The Albanians' experience with Belgrade-imposed rule has exposed them to the dangers inherent in turning governing responsibility over to undemocratic and extreme nationalist leaders. The collapse of state authority in neighboring Albania has also shown them the type of forces that emerge when a power vacuum develops within Albanian society. They hope that a partnership with the international community will establish democratic safeguards and produce capable leaders to facilitate reconstruction tasks, build civil society, and resuscitate Kosovo's economy.

There is little evidence that either UNMIK or OSCE is prepared to grasp the opportunity for progress afforded by elections. This will likely generate rising frustration within Kosovo toward the perceived failure of the international community to deliver on democratization. In the aftermath of democratization problems in Bosnia, this will further undermine the reputation of the United Nations and OSCE in dealing with tough democracy-related issues in the former Yugoslavia. Frustration of the democratization process in Kosovo could radicalize portions of the population and lead to more violence. It would also play into the hands of Milosevic, who seems determined to exploit Kosovo to enhance his domestic political standing.

Electoral Conditions

It is important to make progress toward establishing key OSCE electoral conditions for free and fair elections before balloting takes place.

These conditions include but are not limited to the following goals:

- Freedom of movement for all citizens;
- An open and free political environment;

- An environment conducive to the return of displaced persons;
- A safe and secure environment that ensures freedom of assembly, association, and expression;
- An electoral legal framework of rules and regulations complying with OSCE commitments;
- Free media, effectively accessible to registered political parties and candidates, and available to voters throughout Kosovo.

The following Kosovo-specific conditions should be addressed in addition to OSCE criteria:

- Sufficient mobility of the population, dependent on repair of bridges and roadways into remote areas;
- Sufficient telecommunications infrastructure to ensure that political parties and their supporters can communicate, share information, and develop networks across Kosovo;
- Basic security in each population center, to ensure that voters of all ethnic background can travel to voter registration and polling stations without fear of reprisal;
- Technical readiness, such as voter lists and standardized identity and citizenship documentation procedures must be developed and in-place.

To prevent manipulation of voter lists, it is essential that voters be allowed to register only in the towns where they resided prior to the outbreak of the war. The OSCE should not allow voters automatically to register where they presently reside or intend to reside. This would particularly frustrate efforts by Belgrade to concentrate the Serbs around Mitrovica in northern Kosovo as the prelude to cantonization and partition.

Timing and Sequencing Elections

Once progress has been made toward meeting the conditions outlined above, local-level elections should be held as early as is practical, before province-wide elections, to resolve the problem of the illegitimacy of both the UNMIK administration and of the Thaqi-led provisional government in the eyes of local communities.

It is becoming increasingly difficult, however, to refocus the electoral debate on the timing of elections and whether to hold municipal and parliamentary elections together or sequence one after the other with several months or longer in between. It is accepted by many observers in Kosovo and abroad that it would be sensible to hold municipal elections first, followed by parliamentary elections at a later date.

Many of the key reconstruction activities and decisions, for example, are taken at local levels. Authority at the municipal level at present is shared by a hodgepodge of UNMIK-appointed administrators, many of who have failed to inspire confidence from local Kosovar citizens; local KLA leaders appointed by the provisional government, many of who have alienated local citizens through their arrogant assumption of power; criminal gangs from Albania making worrisome inroads in Kosovo; and paramilitary gangs infiltrated from Serbia into the few remaining cohesive ethnic Serb communities. Even imperfect municipal elections hold the promise of giving popular backing and legitimacy to leaders who can deliver goods and services to their constituents and serve as effective representatives of the community in

dealing with international bodies. It will also provide more accountability to citizens and UNMIK.

The unanticipated delay in setting dates for "early" municipal elections in April or May is making it less likely that they can be organized in time to be held in the spring. Elections seem to be an afterthought to administrators overwhelmed by the multiple problems of restoring heat, electricity, housing and security to a population suffering from the onset of winter. The result is that the prevailing late summer consensus within the Clinton administration on the necessity of at least announcing the date(s) for elections quickly has dissipated and the option of holding some elections in the spring of next year may no longer exist. Officials in Kosovo increasingly speak of autumn 2000 as the earliest feasible election date.

"Rolling" municipal elections provide an option that could still begin the democratization process without placing undue burdens on international administrators. This would involve holding elections in a small number of towns-perhaps initially one or two in each of the five KFOR sectors-where destruction has been minimal and voting lists could quickly be prepared. Rolling elections would allow UNMIK and OSCE to learn valuable lessons about the ability of political parties to cope with postwar elections, the impact of independent media, and the dangers of KLA-sponsored intimidation without the risks of rolling the dice on a province-wide basis. This could be followed by another round of similar elections in different localities that applied lessons derived from the first round. Such elections could be held over several rounds perhaps on a monthly basis.

Perhaps the greatest risk of this option is that losers in early rounds might be tempted to boycott the democratic process in later rounds rather than risk humiliation at the polls. If this occurs, it is most likely to be the reaction of KLA-supported political parties. But that is also a risk that could affect elections held at one time throughout Kosovo, in which a faction that senses impending defeat opts out of the electoral process.

Rolling elections would also avert the problem of deciding on the timing of elections for technical reasons alone, particularly for reasons of preparing voter registration lists for all of Kosovo before holding any elections at all. While something as fundamental as voter registration obviously cannot be ignored in the scheduling of elections, it would be a mistake to let an overly technical approach drive the electoral process.

Winners and Losers

Virtually everyone from the international community taking part in the electoral debate seeks to use the process to improve the chances for Kosovo Albanian "moderates" to prevail. It is assumed, and not without reason, that some members of the former KLA will use intimidation tactics to succeed at the polls. Constraining the former KLA from using "bully boy" methods is primarily a job for KFOR in view of the slow progress in deploying international police and trained/vetted Kosovar police. This is another reason for the caution the internationals have displayed in setting target dates for elections.

The longer that elections are delayed, the less effective is likely to be the partnership between international administrators and ethnic Albanians and the more leverage the provisional

government will enjoy. This will be particularly true if grievances against UNMIK and OSCE become the centerpiece of the election platforms of the key Albanian political parties.

It might be useful for the international community to accord more weight to the demonstrated common sense of the Kosovo Albanians in considering whether it is possible to fine tune the electoral process to produce moderate results. The pronounced shift of public opinion toward the democratic political parties, and Ibrahim Rugova himself as the symbol of Kosovo democracy, augurs well for the future and would seem to diminish the risks of early elections.

It is helpful to recall in this context that the Albanians supported non-violent resistance against Serbia from 1989 until the Serbian crackdown that began in early 1998. The Albanians also showed good sense in providing overwhelming support after the breakdown of the Rambouillet peace talks in February of this year for the KLA-led negotiating team to return to France to sign the proposal offered by the Contact Group. There is a considerable degree of cohesion among Kosovars, and they appear to be ahead of the international community in seeking to ensure that democratically inclined moderates are installed in power through the ballot box.

UNMIK and OSCE should be prepared to move quickly to lock in this trend through elections, even if all of the conditions outlined previously are not fully met. They should be mindful of the utility of elections in restoring a greater sense of tolerance among the Albanians toward Kosovar minorities.

Less thought seems to have been given to Kosovo Serbs, perhaps due to the presumed leverage that Milosevic can bring to bear to generate more radical outcomes within the Serb community. The influence of Serb moderates led by members of the Orthodox Church in Kosovo appears to have been eclipsed by the power of Serbian Interior Ministry and paramilitary forces infiltrated into Kosovo. Removing the presence and eliminating the power of these Belgrade-directed Serb forces is the responsibility of KFOR. There are no guarantees that KFOR will take up or succeed in this mission.

To the extent that elections can produce victories for Serbian moderates-which must be viewed as a dubious possibility-it might be useful to hold elections within the Serbian community after elections held among the Albanians. If moderates do prevail in the Albanian community, it would be easier for leaders to create an atmosphere in which a more moderate outcome in Serbian community elections could at least be contemplated.

Conclusion

Regardless of the outcome of Kosovo's final status as a political entity, UNMIK and OSCE must help build the new institutions of Kosovo with early transfer of authority to qualified leaders of the citizens of Kosovo, who in accordance with the principles set forth in the Rambouillet accords, "shall have the right to democratic self-government through legislative, executive, judicial, and other institutions." In fulfilling their mandates, UNMIK and OSCE should help create local institutions, not create their own institutions. Elections should be the crucial step in this institution-building and legitimization process.

The failure of elections to produce moderate leadership throughout Bosnia, however, has made the international community overly cautious in its approach to the Kosovo electoral process. This is counterproductive, because it is leading toward the estrangement of the majority Albanian community from their international partners.

Any election-related decision involves risks, but the eagerness of the Albanians to move toward establishing a democracy reinforced by the institutions and values of civil society offers opportunities that it would be unwise for the international community to ignore. The unwillingness of the international community to work with the Albanians in scheduling elections on a reasonable timetable can only undercut the prospects of democratization in Kosovo.

The Kosovo Serb community is in turmoil as a result of the failure of KFOR to provide them with security, the consequent flight of large numbers of Kosovo Serbs to Serbia proper, and the supplanting of moderate Serbian community leaders by Belgrade-directed extremists. Elections might compel the international community and KFOR to address their security concerns more actively. Trapped between Belgrade leaders seeking to exploit their plight to advance an ultranationalist agenda, and Kosovo Albanians who display at best great reluctance to live alongside Serbs again, however, ethnic Serbs may find that any elections will only produce results that reinforce their deep-seated sense of victimization.

VISION AND CRAFT *Elections in Kosovo*

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Presented to the United Nations Association of the USA
Tuesday, 30 November, 1999
New York, NY

INTRODUCTION

Elections in Kosovo, as in any relationship between governed and government, must be part of a deliberate and holistic structure of public and civic administration. But more than that, elections in Kosovo, as in any post-conflict region, must take into account numerous skeins of social and political trauma, and *contribute* to the stabilization process, reconstruction and democratization.

In and of themselves, and in contradiction to popular preconceptions, elections are not a solution to complex problems of inter-ethnic conflict. Nor are election systems based upon North American or European models simply transferable to post-conflict or developing countries or territories with the same expectation of creating a balance and transfer of power. Further, models of elections which are not based upon the precepts of representation, power-sharing and cooperative (as opposed to coercive) governance are inadequate and politically destructive. Finally, elections in developing and post-conflict are not an 'exit-strategy' for the international community, and early elections (within a year after the cessation of large-scale hostilities) will often hinder civic development.

To the point, elections are not sufficient to guarantee either a functional or a democratic government. There must be a broader plan which places elections in a framework of public and civil administration which is designed, endorsed and implemented together with Kosovars.

DELIBERATE DEVELOPMENT

Preparations for elections – as with any other element of public or civic administration begin by focusing a decade or more into the future.

Creating an electoral system, or any other system of public administration for that matter, requires its drafters to enter into dialogue about the society which that system will serve, problems which must be solved or avoided, and what goals it should meet over time. That dialogue must shape a concept of structures, and define their interrelationship in such a way that engenders broad public awareness, participation and endorsement.

Perhaps more importantly in a post-conflict region, it is the dialogue itself which leads to a slow transformation of the forces which perpetuated hostility and drove groups into large-scale violence.

'Future planning' is not only critical to the construction of 'present systems', but also provides a desperately needed sense of progress and of hope within an agonized and traumatized society.

Remember Your Client

Perhaps the most pointed aspect of the internationally sanctioned governance and administration of Kosovo is the striking absence of the Kosovars themselves.

Most international organizations have some domestic 'consultative' body painstakingly constructed to contain the requisite number of each notable political force and ethnic group. However, these groups are often radicalized, with each individual's daily participation highly dependent upon the fortunes of the constituency he (as opposed to 'she') represents at that moment. Absent a tangible role in the public process, one's influence can too often only be expressed by the most basic of voices and silences – boycott of the group itself.

The vast majority of Kosovars are excluded from the official process of 'visioning' their own society, eschewed in favor of international personnel and short-term experts with only limited understanding of the society to which they are supposed to contribute.

Where are the violinists, the children, the taxi drivers? Where are the people who made the parallel government possible for ten years? Where are the shop keepers, the literary figures, the farmers? Where are the people who have built Kosovo?

Where are the domestic-international working groups on the future of health care in Kosovo? Where are the conferences on the nature and form of governance in the Province? What open, regular discussion is taking place in a joint forum between the United Nations and civic society on the priorities for education of Kosovo's children and young adults? When will there be an outlet for popular participation in the building of a public administration specific to Kosovo? Who has asked Kosovar representatives for the most effective way to prepare the Province for the winter? What efforts are made to utilize Kosovar skills and advice to combat crime?

Significant resources are being focused on the creation of institutions and resources which already existed in the first 'parallel' government. Moreover, the exclusion of local, professional registrars, city planners, utility engineers, legal specialists, election administrators, educators, journalists and managers robs the reconstruction process of invaluable social capital and public legitimacy.

It is also false that before Kosovars can be vested with authority or responsibility, an internationally-administered and supervised election must take place. Too often, the simple and effective mechanism of civic discourse and decision-making are ignored for

fears that the “wrong” people may gain some measure of influence, but risks stifling the opportunity to discover the “right” people through their deliberations. What this nervousness ignores is the process of public dialogue and open deliberation itself, which – in a constructive environment that the international community *can* engender – places procedural checks and balances upon the community and its deliberations by its very nature. It is also through this process that community and Provincial leaders will develop and emerge, a process which must take place if alternative voices are to be protected in the democratic and electoral process.

In ways that the UNMIK can no longer afford to ignore, Kosovars have not waited on the international community. In June, they did not wait for UNHCR busses before returning from refugee camps in Macedonia and Albania. In July, they did not wait for the OSCE elections before assuming positions of municipal and Provincial authority. In August, they did not wait for the UN civil registration before issuing their own identity cards, birth certificates and property documents. And in September, they did not wait for the EU before beginning to reconstruct their businesses, homes and villages. But it is not enough, and it is the international community which risks failure.

Domestic involvement in the design of, preparations for and eventual conduct of elections in Kosovo will be central to their successful conduct and popular legitimacy.

Recommendations – Inclusion, if not primacy, of local actors and priorities is the only way to ensure sustainable development, as well as lend critical public legitimacy.

- Endorse and convene Kosovar Working Groups (with international observers) on health care, education, governance, public administration, reconstruction, media and other key issues to recommend models of institutions and services;
- Sponsor a literary forum which focuses on ‘visioning’ Kosovar society ten years in the future, publishing papers from authors of all ages;
- Incorporate Kosovar technical specialists as full staff in the day-to-day operations of the international community’s mandated reconstruction;
- Create a broadly-accessible database of Kosovar professionals in major occupational categories for integration into public and technical sectors;

In All Things, Moderation

International administration of post-war Bosnia focused on ‘multi-ethnicity’ to a dangerous exclusivity, as if the mere presence of largely balanced numbers of individuals representing the internal ethnic groups of Bosnia would create a modern, liberal democracy.

Public offices were created in triplicate, public administration was drawn and quartered between three mandates and two “Entities” which were supposed to function seamlessly with one another. The electoral system itself was also ethnically-based and perpetuated the divisions of the society in conflict. With these institutionalized and internationally mandated divisions, is it any wonder that there is a lack of public moderation and political centrism in Bosnia?

Before constructive elections can take place in Kosovo, a number of key developmental processes must begin:

- Public and governmental institutions must be designed and developed holistically, realizing that the critical construction and balance of political and administrative powers within a society create their own process of moderation within those elected and appointed to fill them;
- A plurality of political parties must be encouraged to develop, parties which are moderate in nature, without the assumption that simple multi-ethnicity will engender both genuine democratic platforms and membership reflective of a civil society;
- Civil society, including non-governmental organizations and a robust educational system must be fostered immediately and given assistance and support which will allow it to provide the momentum and resources for effective political parties and civil administrators. Effective democratic structures spring from civil society. Civil society is created by open process. Open process is the chief protector of moderation.

The key to democratic development and representative elections is not merely multi-ethnicity. It is the creation of parties and candidates which will appeal to and genuinely represent groups and interests across ethnic boundaries which will drive constructive development forward.

It is true that electoral and public administrative systems must be built to guarantee the access of all citizens to the political process, which may include a combination of individual and collective rights, with broad guarantees of minority autonomy in the cultural, linguistic and social issues. But without public legitimacy and genuine participation, they are but a collection of numbers and forms.

Recommendations – Political moderation and representation is key to democratic development within a divided society, not merely multi-ethnicity.

- Focus technical assistance to new political parties, and development of moderate platforms which cross traditional societal boundaries;
- Support the creation of alternative party structures or caucuses from youth, women and elderly citizens;
- Focus international support on the civil society, non-governmental organization and mechanisms of public association, and give them regular and public access to international decision-makers;
- Reconstruct and make the University of Kosovo a primary venue for public discussion and deliberation on key social, political and reconstruction issues, as well as the chief coordinator of aid to secondary and primary schools;

All Politics Are Local

Since the re-entry of the international community into Kosovo in June of 1999, certain priorities have been clear: de-mining, exhumation of mass graves, release of prisoners-of-war, reconstruction of homes, provision of medical aid and services, repair of utilities, restart of primary and secondary education, and constitution of minimal public services (pensions, communications and so on).

It is also critical in a post-conflict society to achieve a rapid and pervasive field presence throughout the territory. Field offices must be set up (often with significant help and protection from peacekeeping forces), communications established and information flow managed, relationships built and aid distributed. The international community must be seen to be equitable to all parties, honest in brokerage and responsive to needs identified as priorities by local counterparts. But above all, the international community must be *seen*.

In addition to focusing on the real priorities in people's lives and meeting desperately needed humanitarian requirements, social reconstruction creates an incredibly powerful, politically moderating force in the larger community. To the point, rebuilding roofs will garner moderate votes. Unfortunately, the converse is also true, with the lack of substantive and visible progress in social (as opposed to political) reconstruction by the international community, candidates will be much harder pressed to identify themselves with international standards of liberal democracy, standards which can be perceived to have failed to provide the most basic of necessities prior to elections.

In the end, irrespective of the level of elections to be held, the outcome will first be determined by the basic, daily needs of the rural populace vis-à-vis candidates' perceived ability to meet them.

Recommendations – Restoration or development of social services and security contribute directly and dynamically to centrist politics and governance.

- Complete the establishment of all regional and municipal-level UNMIK and OSCE field offices, and convene local 'town hall meetings' on a regular basis to highlight local needs and concerns. Act on them;
- Focus financial and political resources on the restoration of basic utilities in the province (gas, electricity and water);
- Negotiate an agreement with the Macedonian authorities on the rapid passage of humanitarian goods through the border checkpoints;
- Intervene with the Belgrade authorities to determine the status of political prisoners and secure their release as soon as possible;

Pistons and Cylinders

Among the highest priorities in Kosovo should be the building, re-construction or empowerment of public institutions.

Social services are desperately needed throughout Kosovo, and the domestic organizations which had provided them have been shattered by the tensions of the previous ten years and the recent conflict. Furthermore, international assistance has proven unable to meet needs with the speed or comprehensiveness necessary across the Province.

More than simply practical, the creation of institutions adds to the deliberative dialogue so critical in post-conflict societies. Because social, political and public institutions are often the most prominent, if not the sole channel of communication between communities in dispute, their role in creating stabilizing dialogue cannot be underestimated. Their plurality, their representation, their diversity are all mechanisms to bring parties into discussions. Institutions serve to bring communities to the 'table', and provide an alternative in dispute resolution to armed conflict.

Finally, functional and varied institutions are the tools which elected officials utilize to carry out their mandate. By relegating the creation of these public resources to a lower priority than elections themselves, the international community places municipal and Provincial officials in the position of *de facto* powerlessness, and forces them to fall back upon nationalism or fear-mongering (as opposed to public service) to justify the retention of their positions and place themselves favorably for re-election.

Recommendations – The development of public institutions provides both an opportunity for civic dialogue and a tool for the discharge of public service by elected officials.

- Conduct a survey of those 'parallel' institutions which existed over the previous decade and determine to what extent they can be reconstituted or empowered;
- Convene an Academy of Sciences, promote the establishment of a wide variety of professional associations and create a Provincial register of non-governmental organizations to facilitate networking and cooperation;
- Design and create a systematic, sustainable civil registry of the population of Kosovo, utilizing domestic technical resources and ensuring its utility to multiple sectors of public administration;
- Set up local internet connections as quickly as possible throughout Kosovo and solicit input, questions and 'visions' from the widest possible audience,

DELIBERATE DEMOCRACY

In balance, it is unrealistic to expect that local and international political forces will wait until all social and physical reconstruction is finished before preparing for, or even holding elections in Kosovo. However, elections must be seen as part of the broader social and democratic development, and not their end goal or result.

The most difficult political aspect of post-conflict elections is the encouragement of moderation in candidates and systems. Furthermore, the election system which is

instituted immediately following the cessation of hostilities may not be the most appropriate for the long-term democratic development strategy. Above all else, though, the election system must be designed to respond to goals 'harmonic' with democratic development and the 'vision' of Kosovo.

Professional Qualifications

Two primary goals in designing the electoral system and processes focus upon candidates. The first is to encourage people from diverse backgrounds to campaign for office, drawing from different ages, genders, social status, location (urban and rural) and political affiliation – not merely from the ranks of the established ethnic or military leadership of Kosovo. The second is to encourage candidates with the specific background compatible with the skills needed in the reconstruction and administration of the Province to compete for office.

Again, elections reinforce the critical partnership with domestic civic leaders which is necessary for any transition to a functional, democratic and stable society. In many ways, advances prior to elections can be shattered by the results of polls which are held without reinforcing standards which must be guaranteed in their results.

Public positions, particularly at the municipal level, consist of representational elements as well as administrative duties. The discharge of those duties is at least as important, if not more, than the representation of one's constituency, and much easier to quantify and judge. By highlighting those requirements, with the stark necessity for effective public administration at the local level, objective standards are created for the comparison of candidates by the electorate for functional office. Training and certification add another tool to differentiate the quality of candidates for posts, under the OSCE's mandate to create an academy for civil and public service.

More than at the Provincial level, moderation of ethno-nationalistic platforms is possible if representation of is shown to be insufficient for the full duties of public office at the local level. Serious development of candidate qualifications will also create a much needed focus on the necessities of local communities and encourage 'issue-based' campaigning'.

Recommendations – Candidates and elected officials should be qualified to carry out their mandates of public service based upon quantifiable skills and background.

- Design and publish job descriptions for municipal and local offices, encouraging candidates to promote their professional qualifications in addition to political positions;
- Encourage certification of candidates through the OSCE Civil Administration Academy as an additional (though not required) level of qualification for public office;
- Reinforce standards of moderation through technical and financial assistance to centrist elements and independent media outlets;

Representation and Accountability

European and Anglo-American election systems highlight the clash of ideas over the issues of representation and accountability of public officials. Proportional systems create highly-accurate models of political representation between votes cast and the composition of institutional mandates distributed. Majoritarian systems closely tie elected officials to their constituency on an individual basis, strengthening the accountability between voter and elected.

With the *de facto* if not *de jure* base of power vested in municipal governments, it is important to design a creative balance between the two priorities of representation and accountability, as well as encouraging the greatest possible participation in the electoral process.

Proportional systems bring security to minority parties and groups by guaranteeing political access to the decision-making system, as well as financial and social resources. At the same time, proportional systems (particularly those which only allow the party itself to determine the order of candidates on their lists) can foster resistance to democratic consolidation by preventing moderation of vested extremist interests within party leadership.

Majoritarian systems (or 'First-past-the-post') have the advantage of mandating candidates who are responsible to a defined territory and its constituency. This is particularly advantageous in situations where the electoral system aims to focus elected officials on tangible issues of representation and specific problems to be solved. Majoritarian systems, however tend to create contests which are 'winner-takes-all' and frustrate minority elements which cannot garner a majority of votes in a region.

With the lack of established (or legitimized) administrative positions in municipalities, opportunity exists to open the electoral process up wider than otherwise normal in order to encourage both civic participation, minority representation and direct ties between local offices and the electorate. A combination of systems, implemented at different levels, may prove the most effective.

Recommendations – While representation of minorities is important, reducing the 'distance' between elected officials and their constituencies will create accountability.

- Utilize public dialogue or local NGOs to draft a charter and priorities for municipal councils prior to elections;
- Open the widest possible number of local administrative positions (law enforcement, town council, financial and social administrators, judiciary) to public contest as opposed to municipal appointment;
- Elect local (village and town) administrators by direct, non-partisan ballot where each candidate is required to run as an independent (no official political party affiliation);

Due Process

The international community has been mandated to create public and civil administrative systems in Kosovo which enshrine those values deemed most important to the short and long-term development of the Province. While that process should include Kosovar resources to the greatest extent possible, it should also guarantee that the systems created be provisional to the extent that they can only be changed by the authority vested in an eventual Provincial representative body through deliberative and democratic process.

Among others, issues of monetary policy, public order, international and regional representation and electoral systems need to be set clearly outside the jurisdiction of 'transitional councils' and other bodies which are neither democratically constituted or structured.

Eventual changes to key legislation should only be made in a public parliamentary forum, to allow for more representative discussion and distance the law itself from the exclusive and divisive wrangling of party chieftains.

Recommendations – Fundamental issues should be dictated by the international community and subject to change only by eventual parliamentary process.

- Create a Provisional Election Law (as opposed to Rules and Regulations) which can only be changed through deliberation of an eventual Provincial representative body;
- Initiate public deliberation on key issues of Provincial importance in order to create alternative models and provide wide-scale public education;

Reflective Practice

In addition to translating votes into seats and providing a mechanism to hold elected officials responsible to their constituencies, an election system is created to structure the means and channels of political deliberation into acceptable channels. In post-conflict societies which are the subject of deliberate democratic development, the election system should balance accommodation and inclusion of rival ethnic groups with the creation of a broad range of political parties between which a functional dependence is created.

System

Kosovo is not, unlike Bosnia, a divided society on the basis of ethnic nationalism. This is not to understate the clear and necessary role of the Serb and other minorities, but rather to point out that election systems must take into account the majoritarian nature of Kosovar Albanian population distribution throughout the province.

Hence, 'First-Past-the-Post' systems of mandate allocation would likely estrange minority candidates entirely and exacerbate tensions in the Province, whereas proportional representation has the advantage of guaranteeing minority voice, as well as party plurality. With the extreme heterogeneity of minority populations though, simple proportional systems may not be sufficient to guarantee sufficient access in early elections (over the next two to three years), which may be encouraged by opening local, town- and village-level offices up to direct vote.

Threshold

Post-conflict societies often exhibit a shift in leadership from military to civilian leadership, with constituencies during both periods exhibiting extreme (and in some cases) enforced insularity.

From an electoral perspective after cessation of hostilities, this evidences itself in the parallelism of political parties and prior combatants or intra-ethnic factions. Similar to the conflictual environment, dissention is not tolerated, and smaller alternative parties are often actively discouraged.

Lowering the threshold for seat and office eligibility to two or three percent of total votes cast can encourage smaller (yet still statistically significant) parties to campaign, as well as create a wider variety of options for coalition-building and voting alliances (depending upon other elements of the system), both enfranchising new elements in the electoral environment, and encouraging options and cooperation between larger parties to build voting majorities.

This also is effective when combined with animated public discourse and dialogue between groups of evolving interests and platforms, as it creates an opportunity for movement from polity to politic. As the political environment develops and parties mature or fade out, the threshold may be raised to further encourage consolidation and reduce potential fragmentation.

Districts

Districts, whether they are designed to coincide with municipal boundaries, or be drawn to include a collection of towns or villages within a municipality, are another tool to encourage representation and accountability, as well as flexibility in political structure that flows with the population of the constituency.

Municipal districts should be multi-member, that is to say that each municipality has representation based on its population (ranging, hypothetically from six to twenty-three in Kosovo). Lower numbers on municipal councils though tend to promote 'cross-party or interest' voting. Local offices can utilize a majoritarian single-member district for specific administrative posts and offices, further balancing the power within municipalities and the larger, proportionally-elected council.

Quotas, Set-Aside Seats and Ethnic Guarantees

Guaranteed representation for minority candidates has theoretical advantages, but practical and systemic failings. Often, the issue of quotas and minority vetoes becomes a disproportionately large source of bartering between political forces arguing the benefits and drawbacks to over-representation as a perceived guarantee of minority voice and influence.

Implementation of set-aside seats, particularly through absentee or out-of-area voting becomes much more problematic when not combined with serious programs of refugee return, community temperance and functional reconciliation.

Efforts in this realm are more suited to improving the organization and public access of minorities and small parties, as opposed to constraining accurate polity representation and reinforcing ethnic or other divisions.

Recommendations – Utilize technical aspects of electoral system design and management to open political competition and dialogue, and foster accountability.

- Elect municipal councils based upon proportional representation which are responsible for crafting policy guidance and goals for the commune;
- Elect local (village and town) administrators by direct, majoritarian ballot;
- Create over-represented multi-member districts which coincide with municipal boundaries, reducing council members over the next five years;
- Reduce thresholds initially to two or three percent, with the intention of gradually raising them over the next five years;
- Avoid minority quotas or duplicative 'joint' mandates in favor of broader community return and reconciliation efforts;

CONCLUSION

The most important priority for elections in Kosovo is not necessarily *elections* in Kosovo. Rather it is the environment within which an election is conducted, and the tools and institutions which will allow elected officials to carry out their mandates.

Technical questions remain: who will be elected, what will they be elected to, how will mandates be distributed, when will elections be held? But these are questions which can be answered once the larger determination has been made – Why are elections being held in Kosovo? What are they supposed to accomplish and will they contribute to or detract from the greater stability being built?

There is no argument that they must take place, and that they will be held sooner rather than later; however, the international community would do well to accept the engagement of the widest possible range of Kosovar partners to address the vision of Kosovo which elections are to play a role in shaping.

In the meantime, the provision of basic necessities of shelter, utilities and public services, the creation of institutions ranging from banks to professional associations to diverse political parties, and the 'visioning' of the society and the province will all contribute to democratic goals. The issues of single- versus multi-member districts, mechanisms of mandate allocation, thresholds and ballot design are truly secondary to the public and civic process within which an election rests.

It is counterproductive in the extreme to rely upon demands instead of reality, focus on claims instead of achievements, and ignore the logical connection between causes and effects. Vision will not create a civil administration, resources are necessary. Aspirations will not fund the police force, budgets must be met. Technical specialists must join with Kosovar experts to develop a sustainable civil registration system, wishful optimism cannot supplant harsh complexity and conditions.