

International diplomacy and the crisis in Kosovo

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Events in Kosovo since February 1998 have shown the continued propensity for violent conflict in the former Yugoslavia. Long considered to be one of the Balkans' most dangerous flashpoints, Serbia's Albanian-majority province has for many years defied the odds and managed to avoid the kind of conflagration that has devastated regions to its north. A combination of repressive measures by Belgrade and a campaign of non-violent resistance by the Kosovar Albanian leadership kept a lid on unrest for nearly eight years since the break-up of Yugoslavia. That delicate balance was severely upset, however, when on 28 February the Serbian authorities launched the first in a series of large-scale offensives against the ethnic Albanian population—ostensibly directed at militant separatists—which by mid-July had left some 400 dead and had forced tens of thousands more to flee their homes and villages. Kosovo's Serbs, in turn, have increasingly come under attack by Albanian irregular forces.

International reaction to the upsurge of violence in Kosovo has been prompt but tentative, at least initially, in seeming disregard of the evidence from the Bosnian conflict that when dealing with Belgrade only diplomacy with real teeth succeeds.¹ And yet it is precisely the failure of the major powers to respond more vigorously to the Bosnian crisis which is providing the dominant leitmotiv for international diplomacy now. 'We are not going to stand by and watch the Serbian authorities do in Kosovo what they can no longer get away with doing in Bosnia,' US Secretary of State Madeleine Albright warned on 7 March.² Three months later, the crisis unabated, British Defence Secretary George Robertson announced, 'The world has learned its lessons from Bosnia. The international community now knows it must be united, firm and determined from the earliest possible moment in dealing with the Balkans.'³

¹ For a discussion of coercive diplomacy and the Bosnian conflict see James Gow, 'The use of coercion in the Yugoslav crisis', *The World Today* 48: 11, Nov. 1992, pp. 198–202; and Richard Caplan, 'Bombing and negotiating', in Ben Cohen and George Stamkoski, eds, *With no peace to keep: UN peacekeeping and the war in the former Yugoslavia* (London: Grain Press, 1995), pp. 158–60.

² Reuters, 7 March 1998.

³ *International Herald Tribune*, 12 June 1998.

These bold words mask a fundamental tension in the goals of the international community. The problem is not, however, the same as in respect of Bosnia, where the main external actors found it difficult to agree on a common course of action and settled for a unified but inadequate response: alleviation of the humanitarian crisis. Despite differences among the major powers, they are now, with the exception of Russia, acting in relative concert. The tension this time is bound up with shared assumptions about the requirements for regional stability which have informed international diplomacy from the earliest stages of the crisis in Kosovo. Among these assumptions has been the importance of inhibiting territorial fragmentation and of keeping Belgrade positively engaged in efforts to achieve a negotiated settlement—first for all of Yugoslavia, then for Bosnia, and now for Kosovo.

Sound though these assumptions may be, the policies following from them have had the paradoxical effect of emboldening Belgrade and radicalizing the Albanian population, thus compounding the crisis in Kosovo. The difficulty arises in part from the fact that however much the international community has been at odds with Belgrade over its policies throughout the Yugoslav conflict, in many ways the interests of the parties have converged with respect to Kosovo—the international community therefore having been willing, within bounds, to tolerate and even to facilitate Belgrade's assertion of control there. Meanwhile, the failure of the international community to lend effective support to the Kosovar Albanians in their struggle for self-determination—notwithstanding evident concern for their plight—has led growing numbers of the latter to abandon non-violent resistance in favour of armed struggle.

This article examines key elements of international diplomacy and the Kosovo crisis. From very early on in the crisis, it will be shown, the Kosovar Albanians were accorded different treatment by the international community from that given to the other national groups of the former Yugoslavia. Whether warranted or not, this approach helped ensure that Kosovo would fail to become a major international concern, thus allowing the conflict to smoulder for years. The explosion of pent-up frustration which we are witnessing today in Kosovo is only one consequence of these actions. Another is that the scope for moderate solutions has narrowed considerably. Fewer and fewer Albanians are now willing to settle for anything less than a total Serbian withdrawal from Kosovo. Genuine democratization of Serbia may enlarge the political space required to restore credibility to compromise solutions, but the prospects for such a development in the short term are weak. Continued strife is likely, with the international community being once again confronted with the question of how to intervene in an internal armed conflict and towards what end.

A pattern of neglect

For most of this century the Albanians of Kosovo have lived under Serbian rule, and for most of that time Serbia has ruled them with a heavy hand.⁴ The Albanians' desire to break free from Serbia therefore has deep roots which predate Yugoslavia's collapse in 1991. But because minority rights were until fairly recently regarded as the province of domestic politics, and because of prohibitions against interference in a state's domestic affairs, the international community generally took little interest in Kosovo prior to the break-up of Yugoslavia.⁵ Yugoslavia's disintegration forced the question of the self-determination of *all* Yugoslav nations on to the international agenda. However, several actions by the international community—the European Community (EC) in particular—ensured that the question of Kosovo would be effectively removed from that agenda.

The first action was a far-reaching judgement of the EC regarding the nature of the crisis in Yugoslavia. In September 1991, three months after the war began following Slovenia's and Croatia's declarations of independence, the EC established an arbitration commission, known as the Badinter Commission after its chief jurist, Robert Badinter, president of the French Constitutional Court.⁶ The commission was expected to help resolve differences which might arise in the context of peace negotiations among the Yugoslav parties that were soon to begin in The Hague, but it also issued a number of important opinions concerning the legal status of Yugoslavia and its constituent units. Although these were non-binding opinions, they provided rationalization for subsequent state practice which had—and continues to have—important ramifications for Kosovo.

One finding was particularly decisive. In November 1991 the commission concluded that Yugoslavia was 'in the process of dissolution' and that the republics seeking independence were therefore not rebel entities but, as the commission would clarify in a later opinion, '[n]ew states ... created on the territory of the former SFRY [Socialist Federal Republic of Yugoslavia]'.⁷ The finding was an important one because the dissolution of Yugoslavia meant that international support for the former republics would not be tantamount to support for secession—an act arguably in contravention of the United Nations Charter.⁸ Moreover, as new states the former republics would have sovereign

⁴ See Noel Malcolm, *Kosovo: a short history* (London: Macmillan, 1998), chs 13–17.

⁵ On the re-emergence of minority rights as an international concern, see Jennifer Jackson Preece, 'Minority rights in Europe: from Westphalia to Helsinki', *Review of International Studies* 23: 1, Jan. 1997, pp. 75–92.

⁶ Joint Statement, 3 Sept. 1991, *Bulletin of the European Communities* 24: 9 (1991), p. 65.

⁷ Opinions no. 1 (29 Nov. 1991) and no. 9 (4 July 1992) in *International Legal Materials* 31 (1992), pp. 1497, 1524.

⁸ The UN's Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States, adopted by the General Assembly on 24 October 1970, stipulates that 'States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State'. The declaration is generally viewed as an authoritative interpretation of the UN Charter.

rights and be entitled to a greater degree of international protection, including collective military action taken in defence of those rights, although of course there could be no assurance that such action would be forthcoming, as Bosnia was soon to discover. Kosovo, however, was not a republic. Until 1989 it had been one of two autonomous provinces of Serbia (the other being Vojvodina) which enjoyed virtually all the prerogatives of a republic, including its own constitution, government, courts and national bank, and an equal voice within the collective federal presidency.⁹ Then in March 1989 Serbia essentially abolished Kosovo's autonomy, precipitating a crisis which hastened the collapse of Yugoslavia.

Were it not for an arcane constitutional principle Kosovo might very well have been a republic. The architects of the Yugoslav federal system, however, had reasoned in 1943 that the status of republic should be reserved for nations (*narodi*) as opposed to nationalities (*narodnosti*)—the former having their principal homeland inside Yugoslavia and the latter outside Yugoslavia.¹⁰ The Kosovar Albanians were thus a nationality because they presumably had their homeland in Albania. Although a communist-era distinction, it was one which suited the EC and ultimately the international community well. For it allowed a line to be drawn between entities whose independence would be legitimately recognized and those whose independence would not, at a time when it was thought that some regulation of state fragmentation was necessary lest the 'virus of tribalism', as *The Economist* put it, be allowed to undermine world order.¹¹ But it is not obvious that the republic/province distinction is the most relevant one for the purpose of making such an important determination, particularly since a country's administrative boundaries may be subject to almost arbitrary change.¹² Moreover, the EC was clearly innovating; there was no precedent for determining statehood on this basis.¹³ Yet as a consequence of this decision, the EC refused to consider the request for recognition as an independent state which Kosovo submitted in December 1991 along with the Yugoslav republics (excepting Serbia and Montenegro, which would later claim to be the successor state to Yugoslavia). To this day the international community refuses to entertain the possibility of an independent state of Kosovo.

⁹ The Constitution of the Socialist Federal Republic of Yugoslavia (Belgrade: The Secretariat of the Federal Assembly Information Service, 1974); see also Veton Surroi, 'Kosova and the constitutional solutions', in Thanos Veremis and Evangelos Kofos, eds, *Kosovo: avoiding another Balkan war* (Athens: Hellenic Foundation for European and Foreign Policy, 1998), pp. 145–72.

¹⁰ Frits W. Hondius, *The Yugoslav community of nations* (The Hague: Mouton, 1968), ch. 1. The term 'nationality' was preferred to 'minority' which was considered officially to be a pejorative denomination. See Zoran Pajić, 'The former Yugoslavia', in Hugh Miall, ed., *Minority rights in Europe* (London: Pinter/RIIA, 1994), p. 63.

¹¹ *The Economist*, 29 June 1991.

¹² Consider Karelia, which was a constituent republic of the Soviet Union from 1940 to 1956 when its status was downgraded to that of an autonomous republic in the Russian Federation. Had this not occurred, Rein Müllerson observes, the Karelians would have had a claim to independent statehood equal to that of the Ukrainians or the Byelorussians at the moment of the Soviet Union's dissolution in 1991. See Rein Müllerson, *International law, rights and politics* (London: LSE/Routledge, 1994), p. 79.

¹³ James Crawford, *The creation of states in international law* (Oxford: Oxford University Press, 1979), chs 2 and 3.

A further sidelining of Kosovo occurred with the actual mechanics of EC recognition. Although recognition is widely criticized for having exacerbated the conflict in Yugoslavia, the irony is that the architects of that policy in fact gave serious thought to how recognition might be used to mitigate the conflict and to prevent its further expansion.¹⁴ In exchange for coveted recognition, it was decided, Brussels should seek the compliance of the new state authorities with various 'Helsinki norms'. Among the EC's requirements would be the adoption of extensive provisions for safeguarding the rights of ethnic minorities within the boundaries of the new states.¹⁵ The prospect of recognition, the EC reasoned, would induce the new state authorities to implement measures that would reassure minority groups adversely affected by the break-up of Yugoslavia and thus undercut the principal source of violent conflict in the region. It was a novel approach to conflict management but in the end it was made to yield to parochial political concerns, those of Germany in particular. Motivated by various domestic pressures and its own recent exercise of the right to self-determination, Germany forced the pace of recognition before the EC's conditions had been met.

The link between security and minority rights had already been established earlier in the framework of the Conference on Yugoslavia, the EC's peace negotiations led by Lord Carrington in the autumn of 1991 at The Hague. The various draft conventions which were elaborated by the conference provided for the establishment of a 'special status'—a kind of enhanced autonomy—for the members of national or ethnic minorities forming a majority in the area where they lived. These minority populations were to enjoy the right to a second nationality alongside the nationality of their republic; their own educational system; and, most important, their own legislative body, administrative structure (including a regional police force) and judiciary.¹⁶ The model which the EC had in mind for its special status was provided by the autonomy arrangements negotiated for the German-speaking Alto Adige region of northern Italy (formerly Austria).¹⁷ It was the Yugoslav republics' acceptance of these special status provisions which the EC established, nominally at least, as a condition for their recognition in December 1991.

The Kosovar Albanians were clearly one of the target populations whose status the EC was seeking to enhance. Indeed, the version of the Carrington draft convention dated 23 October 1991 contained the further requirement that the 'republics shall apply fully and in good faith the provisions existing prior to 1990 for autonomous provinces'—an obvious reference to the autonomy of Kosovo and Vojvodina which Serbia had revoked.¹⁸ Yet, in an effort to gain Serbian President Slobodan Milošević's acceptance of the convention (Serbia

¹⁴ Interviews with senior officials of EU member states, 1996–8.

¹⁵ These requirements are specified in EPC 'Declaration on Yugoslavia' (Brussels), EPC Press Release P.129/91, 16 December 1991.

¹⁶ Treaty Provisions for the Convention (23 Oct. 1991), Article 2c.

¹⁷ Henry Wynaendts, *L'engrenage: chroniques yougoslaves juillet 1991–août 1992* (Paris: Denoël, 1993), p. 124.

¹⁸ Article 2.6.

and then Montenegro were the only republics to reject it), Carrington's team made an extraordinary concession and eliminated this requirement from the subsequent version of the convention.¹⁹ And when in April 1996 the EC, now the European Union (EU), decided finally to extend recognition to the Federal Republic of Yugoslavia (FRY), consisting of Serbia and Montenegro, it dispensed with the weaker requirement of a special status for the Kosovar Albanians altogether. The EU merely observed at the time that it 'considers' that improved relations between the FRY and the international community will depend, *inter alia*, on a 'constructive approach' by the FRY to the granting of autonomy for Kosovo.²⁰

These concessions were a profound disappointment to the Kosovar Albanians. But the gravest disappointment came with the Dayton negotiations in November 1995 which formally settled the Bosnian conflict. It had been evident to many analysts throughout the war that a lasting peace for the region would require a comprehensive approach to the issue of national minorities—one which took account of the problems of minorities across all of the former Yugoslavia. Both the Hague conference and its successor, the London conference, reflected this imperative with their working groups on ethnic and national minorities. Although the peace plans conceived in the interim (Vance–Owen, Owen–Stoltenberg, Contact Group) failed to address wider concerns, it had been expected that some attempt would be made to do so at Dayton. And, indeed, agreements were reached at Dayton concerning regional arms control, regional confidence-building measures and the status of Eastern Slavonia—the remaining Serb-controlled enclave of Croatia.²¹ But for two reasons Kosovo never made it on to the Dayton agenda to any significant degree (the Kosovo problem is mentioned only once in the final treaty, in connection with preconditions for lifting the remaining sanctions against the FRY). First, it was felt that there was simply too much to negotiate already; for that matter, other critical issues—notably the continued influence of indicted war criminals—were hardly addressed at all.²² Second, no one wanted to alienate Milošević, the 'peacemaker' who had forced the Bosnian Serbs to accept the compromises necessary for the Dayton agreement and whose continued cooperation was thought necessary to ensure successful implementation of the accord.²³

¹⁹ Treaty Provisions for the Convention (4 Nov. 1991), ch. II. For a discussion of this point, see Hans-Heinrich Wrede, "'Friendly concern"—Europe's decision-making on the recognition of Croatia and Slovenia', *Oxford International Review* 4: 3, Summer 1993, p. 32.

²⁰ Presidency statement of 9 April 1996, *Bulletin of the European Union*, 4–1996, p. 58.

²¹ Anthony Borden and Drago Hedl, 'How the Bosnians were broken: 21 days at Dayton', *War Report* no. 39, Feb.–Mar. 1996, pp. 32–3.

²² Pauline Neville-Jones, 'Dayton, IFOR and alliance relations in Bosnia', *Survival* 38: 4, Winter 1996–7, pp. 58–9. Neville-Jones was leader of the UK delegation at Dayton.

²³ For a view of Milošević as the linchpin of the diplomatic process, see the reminiscences of Richard Holbrooke, the US envoy and chief architect of Dayton: 'The road to Sarajevo', *New Yorker*, 21 & 28 Oct. 1996, pp. 88–104. Holbrooke maintains that some effort, however, was made at Dayton to persuade Milošević of the need to restore the rights of the Kosovar Albanians. See Holbrooke's *To end a war* (New York: Random House, 1998), p. 357.

The price of 'peace'

There was perhaps a third reason why Kosovo failed to gain attention at Dayton: in the absence of war in Kosovo it was thought that there was no urgent need to deal with the question. In this respect Ibrahim Rugova, the Kosovar Albanian leader, has arguably become a victim of his own success.

For more than six years since he first assumed the leadership of Kosovo with overwhelming support in unofficial elections, Rugova has steered the province of nearly 2 million Albanians peacefully through some of its hardest times. The situation in Kosovo—the poorest region of the former Yugoslavia—had always been difficult, but under Milošević conditions became dire. New laws passed in 1989 made it a crime for Albanians to buy or sell property without special permission of the authorities—just one in a series of measures designed to shore up the position of the tiny Serb minority there (numbering fewer than 200,000). Then tens of thousands of Albanians were dismissed from their jobs in state-owned firms. Students were barred from entering university buildings and a new curriculum—using Serbian language and Serbian versions of history—was introduced. Meanwhile arbitrary arrest and police violence directed towards Albanians became routine practices, earning Kosovo distinction as the region with some of the worst human rights violations in all of Europe.²⁴ Rugova countered this policy of concerted repression with one of Gandhian non-violent resistance, encouraging the development of a vast parallel society of Albanian-run political, cultural, educational, health and media structures. By eschewing violence Rugova calculated that he would avoid provoking the Serb authorities into open conflict and that he would gradually gain the support of the international community for Kosovo's independence.

Rugova's strategy has indeed been an effective one for keeping the peace. Milošević, who could easily have had Rugova imprisoned at any time for the commission of crimes against the state, has tolerated his non-violent resistance precisely because it has kept the Albanians quiet.²⁵ The strategy has also won Rugova plaudits from the international community. But plaudits and support for one's objectives are two very different things. And the international community has always made it very clear that it would not support an independent Kosovo because it would not support secession and a redrawing of international borders which might awaken latent or historical claims elsewhere in the region. 'Rugova should know by now that independence is not an option,' Robert Gelbard, Clinton's special envoy, stated emphatically in March 1998—a view that has been echoed again and again by European officials.²⁶

To countless Kosovar Albanians, Dayton had already demonstrated the limits of international support—and, by extension, of Rugova's own effectiveness.

²⁴ Helsinki Watch, *Human rights abuses in Kosovo, 1990–1992* (New York: Human Rights Watch, 1992).

²⁵ In 1997 at least 36 Kosovar Albanians were charged with the commission of crimes against the state—either 'terrorism' or 'enemy activities'—and jailed for up to 20 years. *Financial Times*, 27 Jan. 1998.

²⁶ Reuters, 11 March 1998.

Rugova's non-violent approach seemed to be producing no tangible results; it did not even earn him a seat at the table. (The only real achievement would come in 1996, when Rugova would secure a pledge from Milošević to allow the return of Albanian students to the schools and universities from which they had been ousted—a pledge which Milošević would not begin to honour until faced with international sanctions nearly two years later.) Meanwhile in neighbouring Bosnia the international community had shown a willingness to ratify the redrawing of boundaries achieved by force. It did not matter that the analogy was an imperfect one: Republika Srpska, after all, had not been allowed actually to secede from Bosnia. And the international community was committed, in principle at least, to the reintegration of Bosnia. Nevertheless, the conclusion many Albanians drew from the Dayton proceedings, in the words of Veton Surroi, editor-in-chief of the Pristina daily *Koha Ditore*, was that 'ethnic territories have legitimacy' and that 'international attention can only be obtained through war'.²⁷ In a manner reminiscent of the commencement of the *intifada* in 1987, when the Palestinians in the Occupied Territories perceived that they, too, were slipping from the agenda of regional and international concerns, Kosovo's Albanians increasingly lost faith in the patient ways of their leadership and gravitated towards armed struggle.

It is this reservoir of disillusionment and sense of betrayal that explains the growing support among Albanians for the militant separatist Kosovo Liberation Army or UÇK (Ushtria Çlirimtare e Kosovës)—not only in the province but in neighbouring Albania and Macedonia as well. Whereas Rugova's strategy appears to be yielding no political dividends, the UÇK succeeded in mounting a series of attacks on Serbian police stations and Yugoslav army sites which by July 1998 had left the clandestine organization in 'soft control' of roughly 30 per cent of Kosovo's territory. Serb counterattacks—in many cases resulting in the destruction of entire villages and producing large numbers of civilian casualties—have only generated more support for the UÇK.²⁸ Adem Demaçi, popularly known as Kosovo's Nelson Mandela and head of the second largest political party in the province, spoke for many of his compatriots when in mid-March he announced, 'I will not condemn the tactics of the Kosovo Liberation Army because the path of nonviolence has gotten us nowhere ... The Kosovo Liberation Army is fighting for our freedom.'²⁹

If one consequence of international diplomacy over the past decade has been to radicalize the Kosovar Albanians, another has been to embolden Milošević or, at the very least, not to discourage him. It is true that since November 1995 the international community has maintained an 'outer wall' of sanctions against Belgrade, in part to induce Milošević to assume a more conciliatory stance

²⁷ Veton Surroi, 'The Albanian national question: the post-Dayton pay-off', *War Report* no. 41, May 1996, p. 25.

²⁸ Belgrade has been seeking not only to rout the separatists but also to create a *cordon sanitaire* along the border with Albania in an effort to stem the flow of weapons into the province.

²⁹ *International Herald Tribune*, 14–15 March 1998.

towards Kosovo.³⁰ As a result Yugoslavia has been barred from membership in major international organizations, including the International Monetary Fund (IMF) and the World Bank. But Milošević has thus far managed to offset many of the effects of these measures. The sale of 49 per cent of Telecom Serbia to Telecom Italia and OTE Greece in 1997, for instance, brought enormous relief to Belgrade's strained treasury.³¹ Indeed, so eager have individual European governments been to gain influence and market share in the FRY that they have inadvertently been taking the sting out of their own punishment. Thus while the European Commission decided not to renew trade preferences for Yugoslavia in December 1997, Britain and Italy were engaged in efforts to finance the setting up of a stock exchange in Belgrade; the British embassy was using the services of an adviser from HSBC Investment Bank to help promote business; Italy opened a trade office in Belgrade; and German, French and Greek companies were busy negotiating business deals.³²

It is also true that the international community has periodically issued stern warnings to Milošević, most notably in December 1992 when US President George Bush threatened to take military action if Serbia engaged in aggression against Kosovo. 'In the event of conflict in Kosovo caused by Serbian action, the United States will be prepared to employ military force against the Serbs in Kosovo and Serbia proper,' Bush wrote in a letter to Milošević.³³ But leaving aside how seriously such a threat may have been taken by Belgrade—in view, especially, of the West's protracted reluctance to use force against the less formidable Bosnian Serbs—the equivocal conduct of the international community on the eve of the current crisis hardly conveyed the impression of unyielding determination. On 23 February 1998, for instance, US envoy Gelbard praised Milošević for his constructive attitude towards the Dayton process and signalled America's readiness to lift several of its sanctions against the FRY—sanctions whose aim, again, had been in part to pressure Belgrade to adopt a more positive approach towards Kosovo.³⁴ That same day Gelbard visited Pristina and declared that the UÇK 'is, without any questions, a terrorist group' and that the United States 'condemns very strongly terrorist activities in Kosovo'.³⁵ It was shortly thereafter that Milošević launched the first in a series of large-scale attacks against the local population, killing some two dozen Albanians—among them numerous unarmed civilians—in what he described as a campaign against terrorism. It would be an exaggeration to say that the United States gave Milošević

³⁰ UN Security Council Resolution 1022 (22 Nov. 1995) suspended most sanctions against the FRY in recognition of Belgrade's 'efforts ... to reach a lasting peace settlement in Bosnia and Herzegovina'.

³¹ *Financial Times*, 23 March 1997.

³² *Financial Times*, 27 Jan. 1998.

³³ *Guardian*, 29 Dec. 1992. The Clinton administration reiterated the threat in February 1993.

³⁴ US law stipulates that US sanctions shall remain in place until 'substantial progress' has been made towards the realization of self-rule for the people of Kosovo and until there has been a 'substantial improvement' in the human rights situation in Kosovo, among other requirements. The President, however, is permitted to waive sanctions to help achieve a negotiated settlement of the conflict in Bosnia. Section 540A, Public Law 104-107 (12 Feb. 1996).

³⁵ *New York Times*, 13 March 1998.

a 'green light' to launch the attacks; but by using the term 'terrorist' to describe the UÇK, it provided the Serbian authorities with a legitimate pretext for brutally unlawful measures. 'Serbia will fight terrorism the same way the rest of the world does,' Gorica Gajević, secretary-general of the ruling Socialist Party, declared in defence of Belgrade's actions.³⁶

With the upsurge of violence in Kosovo since February, the international community has sought to demonstrate greater resolve. Its initial efforts, however, have shown signs of continued equivocation. Thus the six-nation Contact Group, meeting on 9 March, threatened new sanctions against Serbia unless Belgrade withdrew its special forces from Kosovo and began an unconditional dialogue with the Albanian leadership by 25 March.³⁷ Neither condition had been met by the time the Contact Group reconvened two weeks later to evaluate Milošević's actions—on the contrary, Milošević launched fresh attacks just one day earlier—but the group chose nonetheless to postpone the threatened freeze on Yugoslavia's assets abroad for another month, arguing that Milošević was making progress in meeting their demands.³⁸ This pattern would repeat itself over the next three months, with Milošević maintaining his campaign of violence while offering half-measures that would win him a partial suspension of sanctions and a further extension of deadlines. Serbian officials would admit to Polish foreign minister Bronislaw Geremek, the chairman-in-office of the Organization for Security and Cooperation in Europe (OSCE), that they had been surprised by the West's reaction, having expected a stronger response.³⁹

Several factors account for this initial hesitancy on the part of the international community. First, there are divisions among the major powers, the Russians refusing to support many of the sanctions and some states wishing to temper punitive measures with positive incentives. These differences, however, and their effects, should not be overstated. A greater unity of purpose exists among the interested parties now than was the case with respect of Bosnia, if only because these states do not have vulnerable peacekeepers on the ground as they did then. Thus Britain and France, which were opposed to air strikes in Bosnia, have signalled their willingness to support armed intervention in Kosovo should the fighting there continue. Moreover, the United States and NATO, key actors absent from the early stages of the conflict in Bosnia, have been playing leading roles in the current crisis. Nevertheless, what divisions there have been have sometimes prevented the Contact Group from acting with greater determination.

The second factor inhibiting the major powers is Serbian sovereignty. Serbia's behaviour in Kosovo is not, as Belgrade claims, strictly an internal affair. Grave breaches of international humanitarian law are a legitimate concern of the international community, as established by various international covenants (to

³⁶ *Le Monde*, 5 March 1998.

³⁷ The Contact Group consists of Britain, France, Germany, Italy, Russia, and the United States.

³⁸ *Guardian*, 25 March 1998; *International Herald Tribune*, 26 March 1998.

³⁹ Radio B92 Daily News Service (Belgrade), 30 March 1998 <<http://www.sicom.com/odrazb>>.

which Yugoslavia is a signatory) and, more specifically, by the statute of the UN's International Criminal Tribunal for the former Yugoslavia.⁴⁰ Thus Louise Arbour, the chief prosecutor for the Tribunal, had legal authority to announce, as she did in March, that she was gathering evidence for the possible prosecution of suspects involved in the recent violence against Kosovar Albanians—suspects who in principle could even include Milošević.⁴¹ However, not all interventions in defence of humanitarian principles may be either lawful or desirable, especially those involving the use of force. And the major powers contemplating such actions have been concerned about the possible ramifications, not only for the Balkan region but for world order more generally, of violating Serbian sovereignty. As one French military planner put it, '[We don't want to provide] cover for interventions such as Russia sending troops into an ex-Soviet state.'⁴² These concerns led Germany in June to reject any use of force by NATO without the authorization of the UN Security Council.

A third and related factor is that the international community and Milošević share, almost paradoxically, some of the same fundamental aims. Like Milošević, the international community is adamantly opposed to independence for Kosovo, although for very different reasons. The United States and the west European states—the chief architects of the Dayton agreement—are concerned that the establishment of an independent Kosovo will make it easier for the forces of separation to triumph over those of integration in Bosnia and that the fragile peace they have constructed there will be shattered. More serious still, as many states see it, is the danger that an independent Kosovo will destabilize neighbouring Macedonia where the Albanian minority, constituting at least a quarter of the population, is also unhappy with its status and might be drawn to joining a Kosovar state. Or, it is feared, an independent Kosovo will seek to unite with Albania. Finally there is the concern, more generally, that an independent Kosovo will serve as a positive example for the numerous self-determination movements bent on separation elsewhere in Europe. Milošević and the international community have a common interest, therefore, in defeating the forces of militant separatism in Kosovo, although they disagree about the means to be employed and the framework of a possible solution. Yet as a result of these shared interests, the major powers have been reluctant to pursue measures that would weaken Belgrade's hold on Kosovo altogether. Telling in this regard was that by mid-June, amid evidence of the growing strength of the UÇK, the Contact Group was no longer insisting on the withdrawal of Belgrade's special forces from the province but was instead demanding, more modestly, a halt to Belgrade's attacks against the civilian population there.⁴³

⁴⁰ UN Security Council Resolution 827 (25 May 1993) approved the statute of the Tribunal.

⁴¹ *Wall Street Journal Europe*, 16 March 1998. The two crimes being investigated are genocide and crimes against humanity, Articles 4 and 5 respectively of the Tribunal's statute. See the interview with deputy prosecutor Graham Blewitt in *Tribunal* no. 11, June–July 1998, p. 1.

⁴² *International Herald Tribune*, 12 June 1998.

⁴³ *Libération*, 13–14 June 1998.

Prospects for a settlement

The radicalization of the Kosovar Albanians has narrowed the scope for any compromise solution. And it is precisely a compromise that the international community is determined to achieve. The irony is that the outcome which the major powers are so insistently demanding now—the restoration of some form of autonomy for Kosovo within Yugoslavia—is the very same goal which they so faintly endorsed in the build-up to the current crisis.

Of course, it is quite possible that the Kosovar Albanians, who voted overwhelmingly for independence in a referendum in 1991, would never have been willing to settle for autonomy at any time in the past seven years, however strenuously the international community might have pursued that goal. Today the Albanians would appear to have even less reason to wish to remain a part of Yugoslavia—and, indeed, they are categorically opposed to the restoration of autonomy as a solution. For one thing, they maintain, how can they trust the Serbian leadership—especially Slobodan Milošević, now the President of Yugoslavia—to guarantee their autonomy when it was this same leadership which abolished that autonomy in the first place? Moreover, the revocation of Kosovo's autonomy was accomplished in a manner which, all things being equal, is not difficult to imagine occurring again: the Serbian parliament approved the requisite amendments to the Serbian constitution which were then railroaded through Kosovo's provincial assembly.⁴⁴ Today the Serbian parliament is controlled by Milošević's Socialist Party in alliance with Vojislav Šešelj's ultranationalist Radical Party. Both parties are fundamentally opposed to strengthening the position of ethnic Albanians in Kosovo. It is only under enormous pressure from the international community that the Socialists have been willing even to consider the possibility of autonomy for Kosovo.⁴⁵

One requirement for a stable peace, then, would seem to be the emergence of a new and truly democratic leadership in Yugoslavia—one which is respectful of the rights of all its constituent peoples. At present, however, the opposition in Serbia proper is in disarray, as it has been ever since Milošević came to power on the back of the Kosovo question in the late 1980s; and its democratic credentials are in any case questionable. Opposition leaders have generally been silent in response to the brutal attacks against the Kosovar Albanians this year; the more prominent among them have even defended Milošević and his policies. Nor is there evidence that the Serbian public is particularly unhappy about the country's democratic deficit or opposed to Milošević's Kosovo policy—not yet, at least. Although there have been some organized protests by parents whose sons are serving in Kosovo, these are isolated complaints. For the most part the public, though weary, is complacent.

⁴⁴ Reneo Lukic and Allen Lynch, *Europe from the Balkans to the Urals: the disintegration of Yugoslavia and the Soviet Union* (Oxford: Oxford University Press/SIPRI, 1996), pp. 152–3.

⁴⁵ Radio B92 Daily News Service, 10 July 1998.

A possible catalyst for democratic reform is neighbouring Montenegro, the other republic of federal Yugoslavia. Under the dynamic leadership of Milo Đukanović, who defeated Milošević's protégé in elections for the republican presidency last year and whose coalition went on to win the parliamentary contest in May, Montenegro has embarked on a course of economic and political liberalization. This project is prompted by Đukanović's conviction that Yugoslavia needs to reject the ruinous policies of the past decade and establish itself on a new basis—one which will allow the country to participate actively in international society. Towards that end Đukanović has been distancing himself from Milošević's policies on Kosovo, requesting that all Montenegrin conscripts be withdrawn from Kosovo and calling for Belgrade to abide by the Contact Group's demands. In a more direct challenge to Milošević's power, the Montenegrin parliament in June scrapped proportional representation for the federal parliament, allowing Đukanović's governing coalition to select all of Montenegro's delegates to the upper chamber. Milošević, who has been expected to seek amendments to the federal constitution that would permit him to arrogate formal power to his largely ceremonial position, now lacks the votes necessary to make these amendments.⁴⁶

Đukanović has been trying to build support for his programme in Serbia, but time is too short to predicate a solution to Kosovo on democratic reform in Yugoslavia. In view of the Đukanović phenomenon, however, a second proposed compromise solution for Kosovo would seem attractive: to grant Kosovo the status of a third republic within Yugoslavia alongside Serbia and Montenegro. Republic status was the demand which the Kosovar Albanians were making in 1981. And it has been suggested more recently by three prominent Kosovar Albanians: Gazmend Pula, the head of the Kosovo Helsinki Committee; Mahmut Bakalli, a member of Rugova's negotiating team; and Adem Demaçi, the leader of the Parliamentary Party of Kosovo. (Demaçi's proposal envisages the establishment of a new Balkan confederation, Balkania, comprised of the three sovereign states of Kosovo, Montenegro and Serbia.)⁴⁷ Under this arrangement Kosovo would have its own constitution and administer its own affairs with the right of veto over issues of vital importance at the federal level, while the federal government would have responsibility for defence, monetary policy and foreign relations. As a constituent republic of Yugoslavia, rather than of Serbia, Kosovo would arguably enjoy greater guarantees, particularly in a confederation with a reformed Montenegro. (Đukanović's own treatment of ethnic minorities made most members of Montenegro's Albanian community feel secure enough to vote for his coalition.) The obvious attraction of this idea from the standpoint of the international community is that it would not necessitate a change in Yugoslavia's international boundaries, although by the logic of the Badinter Commission a Kosovar republic could be a candidate for recognition as a new state.

⁴⁶ Balkan Institute, *Military Watch* 3: 12, 18 June 1998 <<http://www.balkaninstitute.org>>.

⁴⁷ International Crisis Group, 'Kosovo Spring', 20 March 1998, pp. 49–50.

The Serbs are generally opposed to the idea of a third republic, however, in part because they fear that it would dilute their strength in the federation, particularly now that they can no longer count on Montenegro's backing. Montenegro's new leadership rejects the idea for similar reasons. With its population of 650,000, as against Kosovo's 2 million and Serbia's 8 million, Montenegro would suffer a diminution of influence in a three-unit federation. Thus Predrag Popović, the vice-president of the Montenegrin parliament, announced in July that Montenegro had originally chosen to live with Serbia in a two-member federation and would not accept the establishment of a third republic.⁴⁸ It is not clear that the majority of Kosovar Albanians would accept a confederal arrangement either, especially after the punishing assaults they have suffered at the hands of the Serbian forces this year. The growing strength of the UÇK throughout the spring may not only be symptomatic of a shift in thinking in this regard but is now also an aspect of the problem itself. Without the UÇK's support, no settlement is likely to be brokered, and if one were to be brokered without their support it might not be viable. Apparently mindful of these constraints, the United States reversed its position in June and initiated dialogue with the UÇK—the same group it had four months earlier branded as terrorists—hoping to be able to exert a moderating influence on the rebels.⁴⁹

There have been other proposals for constitutional and administrative reforms but so deep are the divisions between the two camps, and within them as well, that no single moderate solution may enjoy the support of all parties. The immediate challenge to the international community, therefore, is to halt the violence of Serbs against Albanians and, increasingly, of Albanians against Serbs. The danger, however, is that the major powers will make the same mistake they did in Bosnia, which is to rely on the goodwill of the warring parties to respect ceasefire arrangements while a political settlement is negotiated. But unless the UÇK can be induced to suspend its operations in exchange for a role in the negotiating process—a role which it might not accept anyway as long as independence remains non-negotiable—the Albanian militants will have no interest in maintaining a ceasefire. And a forced retreat of the UÇK, which by August seemed probable, will not end the militants' struggle but simply drive it underground. Belgrade, too, can be expected to continue its efforts to root out the UÇK and to eliminate its bases of support. Only now it is likely that Belgrade will try to operate just beneath the threshold of violence that could trigger a major international response. A lasting ceasefire, then, may require military enforcement on the part of the major powers. However, air strikes alone are not likely to be effective against the UÇK, whose guerrilla-like tactics allow it to evade easy control by air. Nor will the Serbian forces necessarily be vulnerable to air strikes, since they are not heavily concentrated and do not

⁴⁸ Radio B92 Daily News Service, 10 July 1998.

⁴⁹ Radio B92 Daily News Service, 27 June 1998. The US State Department spokesman, James Rubin, took pains to explain that an organization which had some members who committed acts of terrorism was not necessarily a terrorist organization.

occupy fixed positions the way they did in Bosnia (for instance in their three-and-a-half year siege of Sarajevo). Even if the Serbs could be deterred—by targeting central Serbia, for instance—the major powers would be loath to inhibit them to the advantage of the UÇK. An effective ceasefire therefore may require an extensive and extended military presence on the part of the major powers. NATO military planners estimate that 50,000 troops would be needed for that purpose, and that figure assumes a complete cessation of hostilities.⁵⁰ For that matter, any solution keeping Kosovo within Yugoslavia would require a massive international presence to ensure that Belgrade did not obstruct its implementation. (The storming of the Kosovo assembly by the Serbian police on 16 July is sufficient cause for concern in this regard.) There is little evidence, however, to suggest that the international community is inclined to establish yet another protectorate in the Balkans along the lines of the Dayton-mandated administration of Bosnia.

While the scope for compromise solutions may have narrowed, there appears to be growing support among Serbs for one radical solution: partition. Many Serbs are aware that time is on the side of the Kosovar Albanians, demographically speaking. In view of differential birth rates, it is now predicted that the Serbs will be a minority in Serbia by the middle of the next century. Unless the Albanians are either disenfranchised or forcibly relocated (both propositions appeal to elements of the Serbian political elite), the republic will lose its ethnic Serbian character. This concern prompted Aleksandar Despić, president of the Serbian Academy of Arts and Sciences, to suggest in June 1996 the partition of Kosovo between Serbs and Albanians.⁵¹ Dobrica Ćosić, the former President of Yugoslavia, has also proposed a division of Kosovo along ethnic lines. Invoking the Dayton settlement for Bosnia as a model, Ćosić envisions the establishment of two autonomous entities, each enjoying a special relationship with its 'mother state'.⁵² These proposals—which are essentially different formulas for Kosovar independence—were roundly criticized by the Serbian political establishment at the time, but having been put forward by such eminent figures they cannot be dismissed altogether. Many analysts have even suggested that Milošević might ultimately be willing to sacrifice Kosovo, just as he has abandoned the Krajina and Bosnia, particularly if Serbia is unable to find a way around tightened sanctions which could begin to erode the foundations of Milošević's support.⁵³ As it is, there is little evidence to suggest that most Serbs are prepared to sacrifice either blood or treasure for Kosovo.⁵⁴ That does not mean that Milošević is in a position to negotiate Kosovo away freely. He may need the threatened or actual use of international force so that he can pin the blame on the West and claim that Kosovo was not 'lost' by him but 'taken' from Serbia.

⁵⁰ *International Herald Tribune*, 8 July 1998.

⁵¹ International Crisis Group, 'Kosovo Spring', p. 48.

⁵² *Ibid.*

⁵³ See e.g. Tim Judah, 'How Milosevic hangs on', *New York Review of Books* 45: 12, 16 July 1998, pp. 46–7; and Tihomir Loza, 'Kosovo Albanians: closing the ranks', *Transitions* 5: 5, May 1998, p. 17.

⁵⁴ Jane Perlez, 'Few Serbs really support Milosevic on Kosovo', *New York Times*, 12 March 1998.

Of course, even if there were to be agreement in principle on some sort of partition, the details would not be easy to negotiate. Where would the boundaries between the two entities be drawn? Would Kosovo's important mineral wealth and energy resources be shared? How would access to Serbia's religious and national monuments be guaranteed, as well as the rights of the Serbian minority population? Kosovo's relative ethnic homogeneity at least means that partition would not be likely to be accompanied by the mass killings and the forced migrations which preceded and have since followed the division of Bosnia. Similarly, partition would not entail a loss for tolerance and multiculturalism, as it has in Bosnia, because Kosovo's Serbs and Albanians have long lived apart. Moreover, the international community, though it would almost certainly play a role in the implementation of any partition plan, would be spared the need to administer a second Bosnia. Independence for all of Kosovo would offer these same advantages, in addition to which it would endow the new state with a sounder economic foundation.

Would partition or complete independence, however, send the wrong message to other aspiring secessionists in the region? That depends on what the message is. The international community can and should reject unilateral secessionist demands in those cases where democratic mechanisms are available to a national minority to improve its status commensurate with prevailing international norms—mechanisms such as independent and effective judiciaries, ombudsmen and representative government.⁵⁵ Such mechanisms do exist, however imperfectly, in Macedonia and Bosnia, notwithstanding the grievances which some of the minority communities have voiced in these states. But where a minority is subject to brutal discrimination by the central authorities and has no recourse to democratic means of redress, the international community's unyielding opposition to secession may only reinforce an unjust status quo. In that case, to signal support for secession, or at least to indicate a willingness to consider the option, is not to offer succour to secessionists everywhere but to put repressive regimes on notice that the cost of violently suppressing the right to self-determination may be very high. Such an approach is obviously at variance with the historic presumption in favour of the inviolability of international boundaries, but at a time when, for a variety of reasons, the territorial stability of state jurisdictions can no longer be taken for granted, perhaps a reconsideration of the dominant paradigm is in order.

Conclusion

If it is becoming possible to think the unthinkable in Serbia, the same does not seem to be true within the international community, where opposition to adjustment of Yugoslavia's frontiers remains strong. There are some notable

⁵⁵ For a discussion of self-determination in democracies, see Müllerson, *International law, rights and politics*, pp. 67–71.

exceptions, among them Willem Van Eekelen, the former Dutch foreign minister and secretary-general of the Western European Union (WEU) from 1989 to 1994, who in June 1998 came out in support of independence for Kosovo. 'Of course, the proliferation of small, perhaps unviable states is not an attractive prospect,' Van Eekelen wrote at the time. 'But why make a difference in principle between, say, Slovenia and Kosovo when fundamental human rights are being crushed?'⁵⁶

In the end, partition or independence for all of Kosovo may not be the best solution to the conflict, particularly if neither option can be achieved without provoking significant violence or without undermining regional stability. And perhaps a way can be found to make autonomy palatable to the vast majority of Kosovar Albanians and also to guarantee its proper functioning. But if the Albanians' determination for independence cannot be sublimated or if Belgrade's granting of autonomy is used as a cover for Milošević to pursue his campaign of violence, then the international community's persistent opposition to any adjustments to Yugoslavia's boundaries could prove to be a prescription for further tragedy.

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⁵⁶ 'Recognize Kosovo', *International Herald Tribune*, 19 June 1998.