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Edited by Dimitrios Triantaphyllou

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Preface

There is no doubt that the terrorist attacks of 11 September against America have drastically changed the international strategic order. It is not yet possible to discern the scale of this revolution, as new developments in the coming weeks may have further profound effects on the international system as a whole. Nevertheless, whatever the new priorities that European democracies have been addressing since the attacks, the traditional crises remain, and in the first place, for the Union, the insistent problem of what to do about Kosovo.

It is the almost taboo question of the final status of Kosovo that is examined in this *Chaillot Paper*, edited by Dimitrios Triantaphyllou, a research fellow at the Institute, with the participation of the best known experts on the Balkans. Although written before the tragic events of 11 September, the contributions to this paper are still highly topical and pertinent. Of course the various authors do not all have the same vision of Kosovo's final status but all agree that, whatever the solution recommended, the issue must now be openly tackled by the international community, in particular EU member countries. On the eve of the elections of 17 November, this *Chaillot Paper* constitutes a highly detailed survey of all the arguments for and against the independence of Kosovo.

Going beyond the immediate future, new questions arising directly from the events of 11 September will of course have a bearing on the future stability of the Balkans and management of the area. The first concerns American policy. Evidently, the priority accorded to the fight against terrorism is de facto going to reduce even further the importance attached by the Bush administration to the Balkans. In the short term an American military withdrawal from all of the region seems probable. If that were indeed the case then the European Union would have the task of continuing the current military operations alone – SFOR, KFOR and Operation *Amber Fox* in Macedonia. The Europeans of course already assure the main part of the stabilisation tasks in the region, but if such a redeployment of American forces took place in the near future, the Union would find itself faced with the double challenge of on the one hand greatly speeding up its efforts in the realm of common defence and, on the other, forming a global political vision of all outstanding issues. More than ever, the question of what to do in the Balkans would become the

absolute priority for the European Union, and for it alone. Refusing to accept that responsibility in deference to the archaic principle of 'in together, out together', or drawing back because of the size of the task, on the pretext that European defence was not prepared, would be catastrophic for the very credibility of the Union.

The second likely consequence of the attacks of 11 September concerns the substance of the European Union's crisis management policy. Nowhere is the combination of weak state structures and prosperous criminal networks so patent as in the Balkans. Whether they like it or not, the Europeans involved in the stabilisation of Bosnia, Kosovo and Macedonia will from now on have to combine a policy of traditional peacekeeping with an attack on the financial base of terrorist activities, or even their training camps. The role of the police that the EU is supposed to be setting up alongside its military forces will de facto have to be modified.

Lastly, on the political level, the consequences of 11 September 2001 are palpable in more than one way. As far as public opinion is concerned, the priority now being given to physical protection against attacks within the Union itself could considerably reduce the political and financial support given up until now to the task of stabilisation of former Yugoslavia. Convincing the public and national parliaments that homeland protection against terrorism begins with the projection abroad of European armed forces will become a new necessity for those responsible for ESDP. And the generally favourable image that the Albanians in the region have enjoyed since 1999 as victims of various exactions and discrimination could be reversed, making the search for a just and lasting solution in Kosovo and Macedonia all the more difficult. More than ever, finding an overall, coherent policy for the Balkans as a whole – making economic and financial aid subordinate to political objectives and reforming the Union's various institutional structures to that end – will have to prevail in military operations carried out in pursuance of the ESDP.

Nicole Gnesotto
Paris, October 2001

Introduction

Dimitrios Triantaphyllou

The Kosovo exception, with all its legal and political ramifications, continues to preoccupy the wider Balkan region[1] and the international community. After having intervened, on an uncertain legal basis, to ensure that a genocide of Kosovo Albanians would be prevented, the international community, particularly the West, finds itself struggling to deal with the Kosovo exception. The 22,000-man strong operation, which was the biggest wartime deployment in Europe since the Second World War, represents the only case in modern history of the reversal of a systematic removal of ethnic groups. The implications and stakes are many. These can be perceived in terms of a number of concentric circles that have causal relationships with each other. The innermost circle is Kosovo proper, the relations between its ethnic groups and its relations with Serbia; the middle circle embraces the region at large, i.e. Kosovo's relationship with its neighbours and the prospects of a 'Greater Albania' or 'Greater Kosovo' as well as the various transnational criminal links; the outer circle encompasses Kosovo's relations with the world, particularly the EU and the United States, and to a lesser degree Russia and China.[2]

The Kosovo conundrum principally reflects the contradictions of policy options and choices made by the international community due to the almost impossible task of applying universal precepts and dealing coherently with the consequences. A very important statehood issue is at play as well. Kosovo's fate hinges on and reflects the continuing disintegration of Yugoslavia. The linkage to Montenegro and Serbia as the triptych holding together the FRY in its present form should not be discounted at a time when the authorities of Montenegro no longer recognise the legitimacy of the federal government. Beyond the fate of the federation and its linkage to the final status of Kosovo, the interethnic situation in Kosovo proper deserves careful study as it also contributes to the merits and demerits of Kosovo's present and future form.

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1 The terms 'Balkans' and 'South-eastern Europe' are used indifferently in this paper.

2 Modified version of argument presented in Dimitrios Triantaphyllou, 'Kosovo Today: Is There No Way Out of the Deadlock?', *European Security*, vol. 5, no. 2, Summer 1996, pp. 292-5.

The handing over of Milosevic to the International Criminal Tribunal for the Former Yugoslavia (ICTY) is also important in this regard as it suggests a willingness willy-nilly by some of the current leaders in Belgrade to move beyond the nationalist policies of the Milosevic regime. The current power play in Belgrade between the Federal President Vojislav Kostunica and the Serbian Prime Minister Zoran Djindjic very much reflects this reality.

The continuing low-intensity tug-of-war between the United States and the European Union over roles, tasks, and objectives in the Balkans reflects real dangers for the future efficacy of the transatlantic partnership and the message sent to the countries of South-Eastern Europe. In an extraordinary op-ed article in June 2001, Richard Holbrooke and Jeane Kikpatrick argued for the need to 'stay the course in Bosnia and Kosovo, and save Macedonia'.[3] They wrote that the job begun by the United States and Europe in the Balkans needed to be completed, otherwise a civil war in FYROM[4] 'would call into question national borders across the Balkans, reward forces of violence across the region, threaten countries such as Bulgaria, and even create tensions within the Alliance. This would endanger the prospects for bringing the Balkans into Europe, and ensure that Europe could not focus on anything but the Balkans.'[5] – a doomsday scenario that some in the United States might hope for, as it would substantially cripple the EU's growing foreign policy and defence role. On the other hand, this doomsday scenario stems principally from the contradictions in outlook and influence between the European Union and the United States. For the United States, the debate over US engagement in the Balkans today is focused primarily on 'the relative burdens the United States and Europe should carry in attempting to improve conditions in the region', and whether the Balkans are a peripheral or a core US interest.[6] For the European Union, there can be no doubt that the Balkans are a core interest. As Javier Solana, the High Representative of

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3 Richard Holbrooke and Jeane Kirkpatrick, 'Stay the Course in Bosnia and Kosovo, and Save Macedonia', *International Herald Tribune*, 13 June 2001.

4 The official name of the country is Former Yugoslav Republic of Macedonia (FYROM). However, where authors of chapters in this Chaillot Paper have used the abbreviated form Macedonia, this has been left unchanged in the interests of authenticity.

5 Op. cit. in note 3.

6 Ivo Daalder, 'The United States, Europe, and the Balkans,' Brookings Institution, March 2000, http://www.brook.edu/views/articles/daalder/useurbalkch.htm

the European Union for the Common Foreign and Security Policy, has written:

> 'The European Union, which was founded with the very objective of avoiding future conflict, remains fully committed to bring about a peaceful and prosperous Western Balkans region. Long-term stability in the Balkans will be beneficial for the European continent as a whole. This is why the European Union has made a long-term commitment to the region. It is not by chance that I have been called upon to spend so much of my time focusing on the Balkans in general and on Kosovo in particular. It is rather a reflection of the importance the European Union attaches to the region.'[7]

While the burden-sharing debate is a false one – if one considers the economic and military contribution of the European Union and the United States over the last decade, it is indisputable that the European Union has carried most of the load – Europe's political influence and credibility, on the other hand, is not commensurate with its investment and interests. This contradiction reflects real and potential divergences between the United States and the European Union over how to address the issue of Kosovo for one. As Dana Allin suggests in his chapter, the United States has, by neither supporting Kosovo independence nor ruling it out in the future, been far more realistic in its approach than the European Union and its member states. How this divergence between US ambiguity or suppleness and strict European conformity to legal texts (UN Resolution 1244 considers Kosovo to be part of the FRY) plays out remains to be seen, given the continued

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[7] Javier Solana, 'Kosovo – The Way Ahead in 2001,' *Koha Ditore – Special New Year Edition*, 22 December 2000, http://ue.eu.int/solana/print.asp?docID=65361&BID=108. Chris Patten, the External Relations Commissioner has a similar discourse : 'The Balkans are a part of Europe. We are – as it were – in the same boat. Our past and our futures are intimately bound together. Our peoples want the same things – peace, stability, high standards and decency in public life, freedom, prosperity and opportunity. We have a shared interest in working together to combat organised crime, to ensure respect for minorities and to help build strong sates in the region which are capable of protecting the interests of all their citizens, and of being dependable and good neighbours . . . [o]ur objective is to *transform* this part of our European continent, to equip it in strong institutions, supported by thriving market economies trading with each other and with the wider Europe.' See Chris Patten, 'EU Strategy in the Balkans,' Speech delivered in Brussels, 10 July 2001. See http://www.europa.eu.int/comm/external_relations/news/patten/sp_balkans.htm.

dependency by the leaders of the region on American rather than European good offices.

The objective of this study was to explore all facets of the Kosovo question as it stands today. Six well-known analysts (five European and one American), presented here in alphabetical order, were asked to give their perspective on the status issue. One of the problems with addressing Kosovo's final status is the fluid and volatile environment in and around Kosovo and the Yugoslav federation in general. What was written a week ago might need to be modified, updated, or revamped due to new fighting somewhere. Nevertheless, though some of the chapters might be slightly outdated in that they do not take into account the latest developments, all facets of the issue of Kosovo's status are discussed.

In his chapter, Dana Allin suggests that a peaceful and lasting solution to the Kosovo issue must entail some form of statehood. The problem is promoting a policy based on the illusion that even a fully democratic Serbia 'will ever again exercise effective sovereignty over Kosovo' by refusing to even consider the option of Kosovo independence. According to the author, the West, due to its lack of a comprehensive policy, has fallen victim to the 'ratchet effect'; i.e., the unintended consequences of managing Kosovo after the war.

For Franz-Lothar Altmann, 'any reflections on the future status of Kosovo have to start from the existing legal framework' as laid down in UNSC Resolution 1244 of 10 June 1999. He focuses in particular on Resolution 1244 and the Constitutional Framework, and describes in detail their objectives. Then, he presents a number of options for the future status of Kosovo, divulging the pros and cons of each. He concludes that the best possible option is a loose union of three internationally recognised states – Kosovo, Serbia, and Montenegro – preserving the FRY; in other words adapting the Montenegrin platform in a new union to include Kosovo as well.

For Marta Dassù, confronting the status issue at this stage raises a number of implications both for the region and the international community. She presents in detail a framework defending the need not to address the final status issue today but rather to focus on the internal developments in Kosovo, such as creating strong institutions with all the attributes of

statehood without Kosovo actually being a state. This time-consuming process might gradually generate new and innovative ideas as to the final status of Kosovo, given that the two other integral parts of FRY (Serbia and Montenegro) are also working at strengthening their institutions and their relations with each other.

Tim Judah focuses almost exclusively on the Constitutional Framework for Provisional Self-Government and its implications for Kosovo's future as well as that of its neighbours. He basically concludes that the Constitutional Framework is 'a proposal born out of the lack of viable alternatives' which gives Serbs, Albanians and the international community breathing space to allow some sort of mutually acceptable arrangement, not excluding separation, to be worked out.

Jacques Rupnik analyses the general developments and changes in the Balkans since the bombing campaign of 1999 and the fall of Milosevic in 2000. He suggests that Yugoslavia's disintegration is not yet ended and presents four options regarding the future status of Kosovo of which the most realistic in his view is the 'conditional independence' of Kosovo.

Finally, Thanos Veremis, considers the war in Kosovo as a 'disjointed' reaction by Western governments that has contributed to the persisting Serb-Albanian antagonism. He suggests that time is needed for the forces of moderation and the rule of law to take hold in Kosovo before any longer-term solutions to Kosovo's final status can be addressed, as the current environment with its admixture of organised crime and irredentism, is too volatile for any significant questions of status do be dealt with.

Though the conclusions as to what road to take in Kosovo differ, each contributor has painstakingly attempted to tackle head-on the Kosovo issue and to eloquently support his or her viewpoint by avoiding the stark divide between official US and European positions on the issue.

Chapter One

UNINTENDED CONSEQUENCES – MANAGING KOSOVO INDEPENDENCE

Dana H. Allin

I.1 The die is cast

Kosovo's irrevocable separation from Serbia was probably determined in the early spring of 1999. Well before then, it had become difficult to imagine a viable political solution in which the province remained part of Yugoslavia. By 1996, seven years of intensified Serb repression, and the inability of Western powers to do much about it, had significantly discredited Ibrahim Rugova's strategy of non-violent resistance. Yet there were still serious Kosovo Albanian leaders who were willing to contemplate some form of compromise, such as a 'Third Republic' solution by which Kosovo would achieve equal status in Yugoslavia with Serbia and Montenegro.[1] The events of the subsequent three years – the emergence in 1997 of the KLA, the Drenica massacre in 1998 that transformed it from a limited guerrilla campaign into a Kosovo-wide insurrection and the scorched-earth campaign by Serb security forces to quell it – unhinged this moderate possibility.

It was when NATO went to war, however reluctantly, that the die was cast. Although all the NATO powers had genuinely supported the objective of keeping rump Yugoslavia together, a military campaign to drive Yugoslav forces out of the province was hardly conducive to that goal. Nor was the operation by the regime of then Yugoslav President Slobodan Milosevic to expel nearly one million of the province's Albanian citizens – unless, of course, Milosevic's cruel and reckless gamble had succeeded. Happily, it did not. But that failed gamble, more than anything else, created the moral and practical political conditions that will probably require the international powers, as well as the states of the region, to accommodate Kosovo's permanent separation from Serbia.

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1 *Unfinished Peace: Report of the International Commission on the Balkans* (Washington, DC: Carnegie, 1996), p. 114.

Morally, the Kosovo Albanians' claim is strong. It is the claim of the victims of a vast, organised and systematic ethnic cleansing, one that repeated the pattern of killings and expulsions that marked the onset of Serb attacks in both Croatia and Bosnia (down to the dispatching of paramilitary thugs such as 'Arkan's Tigers' to sow terror among Albanian civilians). Within days of the start of NATO's bombing campaign, hundreds of thousands of these victims had been deposited at the Albanian and Macedonian borders; within weeks the figure was nearly a million. There is, in fact, an international obligation to take action against genocide, and 'genocide' was a word that US and UK officials applied, consciously and deliberately, early in the war.[2] The actual established level of killings has not, so far, turned out to justify the label (the best estimate in late 1999 was 11,334; it could be higher or lower).[3] By the first week of April, it certainly looked as if it *could be genocide*; it was being conducted by a regime that had been involved in a programme of 'near genocide' in Croatia and Bosnia, and waiting until genocide was a proven, accomplished fact would mean, of course, failing to prevent it. And whatever the real numbers of murdered, terrorised and expelled, the act of driving out an entire ethnic population makes one thing very clear: in Milosevic's Kosovo there was no place for Albanians. If the international community was not willing to accept that proposition, then it had to embrace its opposite: Belgrade through its actions had forfeited its effective sovereignty over the province.

The Kosovo Albanians have their own moral stain, of course. The withdrawal of Serb security forces was followed by Albanian revenge killings and the wholesale flight of Kosovo Serbs. It is reasonable to make the distinction, emphasised by UK Foreign Secretary Robin Cook among others, between a state-directed ethnic cleansing and the lawless convulsion

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2 See statements from US and UK government officials in, *inter alia*, 'Nato, British Leaders Allege Genocide', CNN (29 March 1999); also, statements from Prime Minister Tony Blair (April 1999) in the House of Commons, and *Chicago Tribune* (23 April 1999). See also statements from President Clinton to the UN General Assembly (21 September 1999) and Ambassador-at-large for War Crimes Issues David Scheffer (7 April and 17 December 1999).

3 The Hague Tribunal estimated in November 1999, based on data compiled from Western intelligence sources, eyewitness accounts and evidence taken from surviving family members, that there were 11,334 bodies at 529 sites. See statement by ICTY Chief Prosecutor Carla del Ponte, 10 November 1999, and Michael Ignatieff, 'Counting Bodies in Kosovo', *The New York Times*, 21 November 1999, p. 15.

of postwar Kosovo.[4] On this basis, one might argue that there is some degree of moral difference between the two forced expulsions: the complicity of the top KLA leadership in the killings of Serbs and other minorities is not proven; lines of responsibility are obscured by the loose structure of the KLA, always more 'an association of clans' than a tightly organised command structure;[5] and ethnic and political crimes are tangled up with the profit-seeking gangsterism of a wider Albanian mafia. Yet it would be naive to suggest that the Albanian acts of revenge have been random or merely spontaneous. On the contrary, their logic is the logic of ethnic cleansing.

This reverse ethnic cleansing has not only deprived the Kosovo Albanians of much of the sympathy that they enjoyed in the West; it has also added weight to the concerns of those who see the West violating its own principles if it tolerates Kosovo independence. Those principles include a taboo against changing borders through violence, and especially against state-creation through ethnic cleansing. The latter was the crime that so outraged Western opinion when Serbs committed it in Bosnia, and which invalidates, more than anything else, the claims of Bosnia's Republika Srpska to formal independence.

So reverse ethnic cleansing in Kosovo certainly adds to the political difficulties of the Kosovar claim to independence. Russia, China and – to varying degrees – the European members of NATO seem determined to resist it. The international recognition of former Yugoslavia's dissolution in 1992, carefully articulated in the findings of the EC Arbitration Commission headed by Robert Badinter, had been based on the international status of *Republic* borders, a status acknowledged in Yugoslavia's constitution. *Ethnic* partition, on the other hand, was seen to have no logical conclusion, particularly in the Balkans. Accepting Kosovo's independence seems logically at odds with the interest in maintaining Macedonia's integrity, and the formal unity of Bosnia post-Dayton. Moreover, without questioning the Rugova leadership's impressive moral posture since 1989, there was reason to worry – even before KLA conduct became a concern – about whether a state created on the principle of *ethnic* self-determination would be a particularly democratic one, or particularly liberal in its treatment of

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4 Robin Cook before House of Commons Select Committee on Foreign Affairs, 16 March 2000.

5 International Crisis Group, 'What Happened to the KLA?', *ICG Report*, 3 March 2000, p. 20.

minority Serbs who wished to remain. In any event, Moscow had endorsed UNSC Resolution 1244, which set out the terms for Belgrade's capitulation, only on the basis of language recognising Yugoslavia's territorial integrity. (Russia's own neuralgic sensitivity to the break-up of multinational states was easy to understand.)

And yet, notwithstanding all of these formidable obstacles, the Western alliance will have to accommodate reality. Nothing would be more corrosive to transatlantic relations than trying to implement a doomed policy. Dogged pursuit of the chimera of a reconstituted Federal Republic of Yugoslavia could destabilise the transatlantic Balkans mission and, by extension, the region.

The Kosovo dilemma is perhaps analogous, in these terms, to the problem of Palestine. Morally and politically, the Palestinians have a fair claim to statehood. But they have damaged that claim through anti-Israeli (often anti-Semitic) incitement; through open promotion and tacit tolerance of terrorism; and through a stunning failure to address seriously the huge opportunity presented to them in former Israeli Prime Minister Ehud Barak's Camp David offer of August 2000. And yet, no one can plausibly conceive of a peaceful and lasting solution to the Palestinian problem that does not entail some form of statehood. The same holds true for Kosovo.

I.2 What is to be done?

To begin with, it is worth considering NATO's practical concerns. If there is to be continued ambiguity about Kosovo's final status, it has to be managed in a way that ameliorates, rather than worsens, these problems. NATO's greatest nightmare is that Kosovar Albanians will come to see KFOR as an occupying force, and organise another guerrilla resistance. To forestall that future, the West – even if constrained to avoid offering independence – must also avoid any steps that preclude the option. In this context, it is probably a mistake for Western officials to discuss the democratisation of Serbia as though it provides the answer to future relations between Serbs and Kosovars. After what they have suffered at Serb hands, Albanians will be unwilling to submit even to the perfectly democratic domination of a Serb majority. The use itself of the particular word 'autonomy' is also unhelpful

(albeit difficult to avoid, since it is contained in UNSC Resolution 1244).[6] When they hear the word, Kosovars suspect an attempt to make them settle for the provincial autonomy they enjoyed under Yugoslavia's 1974 constitution. In rejecting the idea they argue, first, that this autonomy was viable only within the federal balance of the larger Yugoslavia; and second, that it would be worthless now, given how easily it was abolished.[7]

Kosovo has been separated, *de facto*, from Serbia. Recognition of its *de jure* separation probably will have to be delayed for several years at a minimum; there is no consensus for it among the NATO allies, and Russia will remain adamantly opposed. Perhaps, after some years have passed, a formula might still be found under which the Kosovars would enjoy full self-government but would also accept membership in a loose Yugoslav confederation. The chances are slim, however, and it would be a mistake to base Western policy on the illusion that even a fully democratised Serbia will ever again exercise effective sovereignty over Kosovo. Even with the best of will, no Serb leader can undo the fact that his state recently drove the majority of Kosovars from their homes.

In truth, the international powers and institutions with a stake in Kosovo's future face a grim set of choices. Jacques Rupnik put it well when he observed that:

> '[none] of the available options for confronting Kosovo's future status [is] appealing. If an obvious and satisfactory solution existed, it would already be known; all one can therefore usefully do is to examine each option's implications and suggest the most viable for the future.'[8]

Drawing on his work with the Independent International Commission on Kosovo, Rupnik argues, persuasively, that the least problematic option is probably to prepare Kosovo for a form of 'conditional' independence, with heavy international supervision of minority rights and guarantees against

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6 UN Security Council Resolution 1244 (1999), adopted on 10 June 1999, states the goal of 'substantial autonomy and meaningful self-administration for Kosovo'.

7 Kosovars have been perfectly consistent in rejecting this solution. As Rugova put it in early 1996, 'Yugoslavia was destroyed, and with it, our ability to remain.' Author/ICOB interview, Pristina, January 1996.

8 Jacques Rupnik, 'Yugoslavia After Milosevic,' *Survival*, vol. 43, no. 2 (Summer 2001), p. 23.

further revisions of borders. This implies a 'twenty-first-century – rather than a nineteenth-century – concept of sovereignty', one that is in certain respects shared and incomplete, not exclusive and strictly territorial in a way that would aggravate the familiar Balkan security dilemmas. It is, Rupnik adds, a 'demanding' concept.[9]

And what makes it all the more demanding is that it probably cannot be arrived at and discussed openly – not yet, at any rate. The Western powers are still too divided and confused among themselves, not to mention the non-Western permanent members of the UN Security Council. In discussing a road-map for the future status of Kosovo, one must also take account of the political limitations of these outside powers. In effect, one must ask: what is the least one can ask of these outside powers, in terms of a constructive, coordinated and coherent policy for managing the transition to that future status?

The simple (but not easy) answer is that these powers should be expected to provide an interim administration and a vision of the future that inspires confidence, for both minority Serbs and majority Albanians, that they will not be dominated by the other group. For the minority Serbs that challenge is most difficult, obviously, but it must entail some form of substantial autonomy – 'functional' if not territorial.[10] For the majority Albanians it should include every possible reassurance that they will not be expected to submit to rule from Belgrade. The form of that reassurance should be progressively to grant them the prerogatives of 'statehood' if not 'sovereignty', in Veton Surroi's useful formulation: a degree of effective independence that gradually approaches that enjoyed by Taiwan. The 'Constitutional Framework for Provisional Self-Government in Kosovo', promulgated in May 2001 by the UNMIK head, Hans Haekkerup, disappointed Albanian leaders in several respects. They have complained about the lack of a guarantee for an eventual referendum, or even a Rambouillet-style three-year deadline for addressing the final-status issue. But they have indicated, albeit grudgingly, that they will participate in November elections for a Kosovo Assembly. UNMIK and the major Western capitals now have an opportunity to persuade the Kosovar politicians to concentrate on, and

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9 Ibid., p. 26.

10 See Alexandros Yannis, 'Kosovo Under International Administration,' *Survival*, vol. 43, no. 2 (Summer 2001), p. 44.

compete over, credible polices for self-government. Until now, as one close observer of the Kosovo scene has put it, 'their preoccupation with the mantra of independence has betrayed their failure to develop a more comprehensive array of policies.'[11]

As for what the outside powers should say about final status, no one has formulated a more realistic or sustainable policy than that which the Clinton administration put forward in its last year in office. That policy consisted of three simple statements:

- first, Washington did not support Kosovo independence;
- second, nor did the Americans rule it out;
- third, Kosovo's final status when it is decided must take account of the views of a majority of the territory's population.

Although aimed at ambiguity, it is clear enough where this policy leads, for the majority of the territory's population is overwhelmingly in favour of independence. Convincing them otherwise seems an impossible task. European governments are aware of this, and some therefore objected to the Clinton line. Rather than quarrelling, however, over a process of Kosovo 'Taiwanisation' that looks unavoidable, the Western allies can concentrate both on building democratic institutions and imposing serious conditions on the Albanians' step-by-step assumption of self-rule. The most urgent of these conditions is the protection of Kosovo's Serbs and other minorities: both the physical security of the few who remain and the legal rights of those who have fled but wish to return. On this matter the allies cannot afford to compromise. Not only would the emergence of a Serb-free Kosovo constitute a moral defeat; in political terms it would be an entity that NATO governments would find difficult, over the long run, to defend with military force. And without NATO's military forces in Kosovo, Serb revanchism and Albanian extremism could produce another war.

It may be difficult to link the recognition of an independent Kosovo to its treatment of Serbs, for a somewhat paradoxical combination of reasons: on the one hand, European governments refuse to concede that independence is even an option; on the other hand, it is hard to impose conditions on an outcome that looks inevitably anyway. Still, the West can emphasise one

[11] *Strategic Comments* 7, no. 4, May 2001, at www.iiss.org/stratcom/sc.asp?74ko.

source of leverage that looks credible indeed, because it reflects facts on the ground. The ethnically compact area of Mitrovica, home to 14,000 Serbs, will be difficult in the best of circumstances to integrate into an Albanian-ruled Kosovo. Thoughtful Albanians know that their leadership has to offer the Serbs some plausible degree of autonomy.[12] Some Western experts have suggested that Mitrovica might attain a status comparable to Republika Srpska in Bosnia. In any event, UNMIK and the NATO governments can insist that there will be a Serb presence in the future Kosovo: in a multi-ethnic state, if the Albanians can organise one; or in a state that is divided, Dayton-style, if they cannot.

I.3 Fear of further disintegration

Opponents of Kosovo independence fear that such a precedent would undermine efforts to hold together multiethnic states in Macedonia and Bosnia. The fear is reasonable. The Western powers and international organisations with a stake in Kosovo should certainly try to formulate policies as part of a coherent strategy for the region as a whole. But they should not let that imperative lead to paralysis.

The acceptance at Dayton of a Bosnian 'Republika Srpska' – an entity forged through ethnic cleansing – was a terrible precedent. But it was arguably the price to be paid for ending the war. Dayton's guarantors have had to straddle the boundary between expedience and principle: yes to a separate entity; but no to independence or union with Serbia; and a steadfast commitment to the 'right' of refugee return which finally seems to be yielding results. Similarly, for Kosovo: trying to reassemble the Federal Republic of Yugoslavia would be futile and counter-productive; at the same time, acquiescing in the expulsion of Serbs from the province would be craven and dangerous. If there is to be an independent Kosovo, it needs to be constrained according to limits set by the parties that now run it as a protectorate.

If the UN and NATO allies come to accept that Kosovo's independence cannot be avoided, they should also think about ways to limit the precedent. Noel Malcolm has suggested that Kosovo's independence could be justified

[12] Author interviews, Pristina, July 2000.

by revisiting the logic of the Badinter Commission, which was charged with setting up a process to determine which individual Yugoslav republics met the criteria for European Community recognition. The Badinter Commission concluded that Yugoslavia was in the process of dissolution into constituent units, which were defined as the Yugoslav Republics. Malcolm has argued that if one reopened the definition of federal 'units', one would find that Kosovo, with its representation in the federal presidency, and its 'right' to promulgate its own constitution, shared many of the attributes of a Federal Republic:

> 'I'm not saying that they had equal status, with a right in the Yugoslav constitution to secede . . . But that constitution no longer exists. Yugoslavia no longer exists. The question is: as the international community tries to pick up the pieces, how do you define the pieces? I'm suggesting a "taxonomy" of federal units.'[13]

Malcolm's logic has been attacked from many quarters as tendentious. However, if the argument of this chapter is correct, then the various international players will find themselves, in a few years' time, having to explain why they are recognising an independent Kosovo. A certain degree of sophistry may be unavoidable. Malcolm's reasoning at least has the virtue of setting limits – theoretically limits anyway – on further Balkan disintegration.[14]

The most urgent and immediate fear of further disintegration is in Macedonia. And the link to Albanian nationalist agitation emanating from Kosovo is undeniable. But the link is complicated, and cannot be reduced to the simple question of Kosovo's future status. Indeed, there is circumstantial evidence that it was precisely fears that the independence option could be foreclosed – because of Milosevic's overthrow in Serbia, and a new, less engaged administration in Washington – that inspired Albanian guerrilla

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13 Remarks by Noel Malcolm, Rose-Roth Seminar, North Atlantic Assembly, Ohrid, Macedonia, July 1999.

14 One objection to Malcolm's 'taxonomy' of federal units is that Kosovo's status would also apply to Vojvodina. This is true, but – as Malcolm has noted – the fact that Vojvodina has an absolute Serb majority makes it unlikely that it would seek independence.

activity in the spring of 2001.[15] For Macedonia, the precedent of an independent Kosovo may be unwelcome. But the aggravated conflict that would accompany any attempt to incorporate the province back into Yugoslavia would be even more destabilising for Kosovo's neighbours – Macedonia included. And even if no one expects that to happen, stoking Kosovars' fears about the future would be unwise.[16]

I.4 The ratchet effect and its consequences

With Milosevic in custody at the Hague war crimes tribunal, there is a certain grim vindication for the NATO coalition that used military force to wrench Kosovo from his control. But there is also a nagging worry that the Western states – and especially the United States – who exerted their diplomatic muscle to put him in the dock have entered new and unknown territory. When they went to war for Kosovo, they were motivated, arguably compelled, by a mixture of moral and realpolitik concerns to address a humanitarian outrage on NATO Europe's doorstep. Those critics of the NATO action who demand consistency ('if Kosovo, why not Chechnya, or Angola, or Afghanistan?') should have the intellectual honesty to admit that consistency would require universal passivity, even in the face of great evil. For the world is rich in humanitarian outrage, and the Western powers cannot, will not wage war against mass cruelty wherever and whenever it strikes. Nor is there any such thing as an 'international community' that is constituted to do so. Yet, what is unnerving about seeing Milosevic in the dock is the realisation that the moral-realpolitik mixture is more problematic in an international court of law that purports, by its very nature, to uphold universal standards.

To be clear: it is, undoubtedly, a very good thing that Milosevic will be tried in an international court of law. But the unsettling aspects of his trial do highlight the sometimes unintended consequence of the transatlantic pursuit of a mixture of interests, ideals and rhetoric. Further reflection suggests that this 'overreach' is but one element of a broader escalatory 'ratchet effect' to which the Western democracies are prone, against which there is very little

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15 See *Strategic Survey 2000/2001* (London: Oxford University Press for The International Institute for Strategic Studies, 2001), pp. 128-9.

16 Alexandros Yannis, 'Kosovo Under International Administration,' op. cit. in note 10, p. 40.

that they can do, and which explains why they probably must participate in the creation of an independent Kosovo even though they would much prefer not to. Perhaps another way of putting it is to say that the promotion of democratic values is inherently destabilising. It is difficult, in practice, to encourage democratic movements in authoritarian societies without at the same time inspiring nationalist movements of 'self-determination.' The ratchet effect can be dangerous: Taiwan is the most obvious case of immature democracy and its ugly cousin – nationalism – upsetting the status quo in a way that might yet lead to major war between two nuclear powers. The ratchet effect is one source of transatlantic tensions between Europeans, who may be more subtle in mixing democratic ideals with concern for sovereignty and order, and Americans, who are perhaps more self-consciously convinced that their national vocation is democracy.

The European sense of measure and restraint is well advised. But Americans can reasonably respond that it is 'unrealistic' to expect a community bound together by democratic 'identity' to stay together except on the basis of promoting democratic values. Throughout the 1990s, this community of democracies encouraged the Kosovo Albanians to resist Serb repression and seek their democratic rights. Non-violent means proved ineffective; when an armed guerrilla movement provoked a brutal military response from Belgrade, NATO found itself at war for much higher stakes than 'democracy.' The ratchet effect put NATO's formidable military power unintentionally at the service of an independent Kosovo.

The West's democratic vocation cannot be abandoned, least of all in Europe. Perhaps the enlargement of democracy inevitably causes instability, even violence; and the democratic states of the West have a duty to stay and sort out the instability that their very existence has helped create. In the south Balkans, this duty includes a long-term commitment to Kosovo state-building, including safeguarding the rights of Serb minorities.

Chapter Two

THE STATUS OF KOSOVO[1]

Franz-Lothar Altmann

II.1 The existing legal framework

UNSC resolution 1244

Any reflections on the future status of Kosovo have to start from the existing legal framework established by United Nations Security Council Resolution (UNSCR) 1244 on 10 June 1999, the day the air strikes against Yugoslavia ended. Of particular importance are those parts of the Resolution which either determine the general framework of the future status of Kosovo or on the contrary leave it open. In fact, Resolution 1244 confirms in very general terms two issues: firstly, all member states of the United Nations reaffirm their commitment 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. Secondly, the call for substantial autonomy and meaningful self-administration for Kosovo declared in previous resolutions is reaffirmed. Among the twenty-one paragraphs of Resolution 1244, number eleven is of particular importance for the question of the status of Kosovo, since it defines the main responsibilities of the international civil presence. Among its eleven subparagraphs the following four are particularly relevant:

- 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 (11 a);
- organising and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections (11 c);

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[1] This contribution is based partly on a longer paper in German that appeared as a Stiftung Wissenschaft und Politik (SWP) paper; 'Optionen für die Zukunft des Kosovo', *SWP-Studie S-21*, August 2001.

- facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords (11 e);
- in a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement (11 f).

In Annex 2, point 8 of the Resolution, the political process is once again addressed. It calls for the establishment of a provisional political framework for the substantial self-administration of Kosovo, taking full account of the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia (and the other countries of the region).

The above quoted formulations of Resolution 1244 repeatedly hint at the compliance with the so-called Rambouillet accords, otherwise known as the 'Interim Agreement for Peace and Self-Government In Kosovo'. On 23 February 1999 the Kosovo Albanian delegation accepted the formulations of the Rambouillet accords; the Serbian side declared that it could accept the political part of the accords, but abstained from signing the agreement because of the foreseen presence of a NATO-led military implementation force in all parts of the territory of the Federal Republic of Yugoslavia (Annex B). It is thus important to keep in mind that both sides were willing, in principle, to accept the political facet of the proposed interim agreement, and that Resolution 1244 repeatedly refers to those parts which concern the future status of Kosovo.

Chapter 1 (Constitution) of the final draft of the Rambouillet agreement states that Kosovo shall be governed democratically, although the FRY will retain authority in the areas of territorial integrity, maintaining a common market within the Federal Republic of Yugoslavia, monetary policy, defence, foreign policy, customs, federal taxation, federal elections and other areas specified in the Agreement. Concerning foreign relations, it states that Kosovo should have the authority to conduct foreign relations within its areas of responsibility equivalent to the power provided to the republics under the FRY Constitution. Chapter One also describes the structure of the self-administration of Kosovo with an assembly of 120 deputies (eighty elected directly, forty by national communities). Laws adopted by the assembly should not be changed or modified by Federal or Republican authorities. The self-administration should have a President elected by the Assembly, a Prime Minister and a Government, a Chief

Prosecutor and a court system including a Constitutional Court. Although in Chapter 1 Kosovo was declared exclusively as part of the Federal Republic of Yugoslavia, the last sentence mentions the establishment of a minimum representation for Kosovo's citizens in the Federal Assembly and in the National Assembly of Serbia!

Chapter 8 of the Rambouillet agreement describes how amendments to the agreement can be made and states that an international meeting shall be convened after three years 'to determine a mechanism for a final settlement for Kosovo, on the basis of the will of the people, opinions of relevant authorities, each Party's efforts regarding the implementation of this agreement, and the Helsinki Final Act'. At this conference the proposals of the different parties for additional measures shall be presented.

UNSC Resolution 1244, as well as those parts of the Rambouillet agreement which concern the future status of Kosovo – of which there is repeated reference in Resolution 1244 – do not set a clearly defined framework within which the final solution of the status for Kosovo must be found. Therefore, in principle, two possible interpretations can be assumed. The first, a Serbian one, relies primarily on the fact that Kosovo belongs to the Federal Republic of Yugoslavia and the inviolability of the territorial unity of the FRY by arguing that this has been repeatedly stressed in the Rambouillet agreement as well as in Resolution 1244. However, neither the Rambouillet agreement nor Resolution 1244 confirms that Kosovo belongs to Serbia!

This second point of view not only emphasises that Kosovo does not belong to the Republic of Serbia but furthermore states that the formulation of Kosovo's association to the Federal Republic of Yugoslavia and the territorial integrity of FRY is temporarily limited to the duration of the interim administration by the international community. The reference to a final solution to the question of status does not imply that Kosovo must forever remain part of the Federal Republic of Yugoslavia. On the contrary, the wording in the Rambouillet agreement 'on the basis of the will of the people' allows for the holding of a referendum on independence.

In fact, one can argue that formulations in Resolution 1244 as well as in the Rambouillet agreement, whose political part has been accepted in principle by both sides, have been kept deliberately vague and open for possible

processes of negotiation. One can furthermore state that the international community is requested to establish far-reaching structures of self-administration in Kosovo that contain many characteristics of independence or even possible state sovereignty.

The UN interim administration

Regulation number 1 of 25 July 1999, the first legislative act of UNMIK, determined that all legislative and executive power in Kosovo, including jurisdiction, is exerted by UNMIK under the chairmanship of the Special Representative of the UN Secretary General (SRSG).[2] De facto Yugoslavia's sovereignty over Kosovo was thus suspended.

From the very beginning the protectorate administration of UNMIK and KFOR has been influenced by the open question of the future final status of Kosovo. Both parties to the conflict, the Kosovo Albanians and the Kosovo Serbs, have tried to interpret every single political decision and every administrative act of the international administration either in favour of or against their respective positions – independence for the Albanians and maintaining Serbian supremacy over Kosovo by the Serbs. In principle, each legislative act, each decree by the UN interim administration, had to be rejected by the Serbs in Kosovo and in Belgrade as well because it was regarded as a derogation of the sovereignty of the Federal Republic of Yugoslavia. The task of the international administration was in addition aggravated by the fact that neither of the two central notions of 'self-administration' and 'substantial autonomy' was accepted positively by either of the two parties in conflict. Both sides maintained their maximalist positions. Thus each decision by the international administration regarding self-administration or substantial autonomy was evaluated by the parties through the prism of their stated positions. Also, in many cases, Russia and China protested against many decisions by UNMIK when these concerned the establishment of a functioning administration acting independently from Belgrade. On the other hand, UNMIK received encouragement from the Western countries, and in particular from the United States, for strengthen-

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[2] See Markus Wagner, 'Das erste Jahr der UNMIK. Die Organisation der Zivilverwaltung im Kosovo, *Vereinte Nationen*, 4/2000, pp. 132-8; Alexandros Yannis, 'Kosovo Under International Administration', *Survival*, vol. 43, no. 2, Summer 2001, pp. 31-48.

ing the respective institutions of self-administration and substantial autonomy in a manner that considers the territorial integrity of Yugoslavia only very marginally.

Of course, the parallel structures of the Albanian as well the Serbian populations that developed in Kosovo also aggravated attempts by the international administration to normalise life in Kosovo. Whereas the initial so-called provisional government of Hashim Thaci could be more or less incorporated into the Joint Interim Administrative Structure (JIAS) established in December 1999, many more difficulties exist over the integration of Kosovo Serbs into joint administrative structures. Supported by the Milosevic regime in Belgrade, Serbs established parallel administrative structures in various regions of Kosovo. In northern Kosovo, the partition of the city of Kosovska Mitrovica prompted the establishment of the Serb National Council of Mitrovica, which pursues a policy of obstructing any cooperation with the international administration. The aim is to consolidate the ethnic divide along the river Ibar in Mitrovica in order to secure the survival of Serbs in northern Kosovo and to prepare a possible partition of Kosovo. More cooperative was and still is the Serb National Council of Kosovo and Metohija, also called SNV-Gracanica, which under the leadership of Bishop Artemije has since October 1999 been representing the interests of those Serbs in Kosovo who have been critical vis-à-vis the Milosevic regime in Belgrade. SNV-Gracanica supported most of the initiatives of UNMIK and KFOR in order to improve the position of the Serbs and to establish a basis of confidence.

Thus it can be stated that the first part of the mission of the international community according to UNSCR 1244 – to establish a civil administration through the build-up of a common joint intermediate administrative structure as a basis for the normalisation of life in Kosovo – has been relatively successfully completed. It is in this context that the local elections of autumn 2000 have to be seen, since they created the preconditions for building up local self-administration at the lowest level. With the exception of the local level, however, no other administrative structures yet have any democratic legitimacy!

II.2 The constitutional framework for provisional self-government

On 14 May 2001, the head of UNMIK, the UN Secretary-General's Special Representative, Hans Haekkerup, signed the Constitutional Framework for the Provisional Self-Government[3] in Kosovo. This corresponds to the mandate of Resolution 1244 to establish institutions in Kosovo to which the responsibilities in all administrative areas can be entrusted after general elections (now scheduled for 17 November 2001). The so-called provisional institutions of self-government, in particular the Parliament, the President of Kosovo, the Government, the courts, etc. are defined in fourteen chapters. The new self-government structures are to work in a provisional form until the final status of Kosovo is determined at a future date. No mention of Kosovo belonging to the Federal Republic of Yugoslavia is made in any part of the document. In the preamble, however, it is declared that for the definition of the future status of Kosovo 'all relevant factors including the will of the people' will be considered.

This Constitutional Framework characterises the transition from a pure protectorate to a self-administered political unit. After the general elections, the political parties will be included in the legislative process. Kosovo will thus become a parliamentarian democracy in which an elected parliament elects a president who entrusts a prime minister with forming a government. After the elections, the UN administration will cede a large part of its competencies to the local institutions. These include its responsibilities in the areas of economics and finance, education, culture and sports, the development of infrastructure, justice and general civil administration. However, the SRSG will retain the function of supervisor in many of these areas. He will have the last word in many case such as the appointment and firing of judges and prosecutors; he will continue to exert supreme control over the Kosovo Protection Corps; and, in particular, he can veto any law adopted by the Parliament which is not in conformity with Resolution 1244. He also has the right to dissolve the assembly and to call for new elections.[4]

It could not be expected that this Constitutional Framework for Provisional Self-Government would meet with the unconditional and unanimous

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[3] It should be noticed that the term 'self-administration', which would indicate a weaker position of the new institutions, is not used. However, this term was still used in UNSCR 1244 (1999).

[4] The full text can be found in *Kosova-Info-Line*, 5 June 2001.

approval of Albanians and Serbs in Kosovo alike. Albanian critics have claimed that the powers of the future government are too limited, and that the Framework does not mention a possible referendum on the independence of Kosovo.[5] Nevertheless, the majority of Albanians are receptive to the Framework because it is perceived as an important step in the direction of Kosovo's independence. On the other hand, All Serbian political representatives, as well as the Serb parliament in Belgrade, argue that once again the international community has given in to pressure from the Albanian extremists. President Kostunica stated that all thirty amendments proposed by the Serbs had been rejected, whereas 98 per cent of the Albanian claims were accepted. The Serb press criticised the fact that the ten Serb deputies in the Parliament will not have a constitutive right of veto, and that in the document the state sovereignty of the Federal Republic of Yugoslavia is not mentioned. It was also suggested that the fact that the final status of Kosovo will have to reflect all relevant factors including 'the will of the people' must be interpreted as opening the door to a referendum. The framework must therefore be seen as a further step towards the factual secession of Kosovo.[6]

Haekkerup himself, in his response to the complaints, made clear that the framework does not have the rank of a constitution because Kosovo 'is not yet mature for a final political solution'. However, although the Constitutional Framework is an important step towards the substantial autonomy requested in Resolution 1244, there can be no doubt that only the basic inner framework for Kosovo is predetermined. In no way can one conclude from this document an eventual subdivision of Kosovo (cantonisation), a future reassignment of Kosovo to the Federal Republic of Yugoslavia or the Republic of Serbia, or its complete independence. Thus the discussion on the future status of Kosovo as a part of Yugoslavia or as an independent state remains open. What are the options?

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5 *Neue Zürcher Zeitung*, 18 June 2001.

6 The Belgrade lawyer Aleksandar Simic, who represented the Serbian side when elaborating the Framework: 'Not one claim of official Belgrade was accepted', *Süddeutsche Zeitung*, 16 June 2001.

II.3 Options for the future status of Kosovo[7]

Kosovo as an autonomous region of Serbia

This option must be seen as the restitution of the limited autonomy of Kosovo with the legal and executive subordination of Kosovo as a province under the power of the Serbian government in Belgrade. It is completely unrealistic for two reasons. Firstly, this was the situation which led to the increased tensions between Kosovo Albanians and the Serb government and finally ended in a state of war. Even if one assumes that the new, democratically elected regime in Belgrade would not repeat the suppression of the Albanian population, the legal subordination is unacceptable for the Albanians in Kosovo. Secondly, all the structures and legal relations developed and established in the meantime contradict substantially such a restitution of former conditions. The new Constitutional Framework has clearly stated that further legislation will be completely under the competencies of the Kosovars after Yugoslav/Serb law has been suspended. There is no mention in the Framework regarding a necessary congruity or harmonisation of further legislation with Yugoslav or Serb law. With the factual desegregation of Yugoslav/Serb and Kosovo law, including their institutional structures, thus determined, a substantial reintegration cannot be imagined. De facto Kosovo has become a legal independent body under UN administration which after the elections of November 2001 will be allowed to establish norms and regulations independently from the rest of the FRY.

Kosovo as an autonomous province in the Federal Republic of Yugoslavia

This would correspond to the status before 1989 under the 1974 Constitution of the Socialist Federal Republic of Yugoslavia. In those days, the autonomous provinces of Vojvodina and Kosovo had de facto equal status with the republics in the federation, but Kosovo legislation and executive power were clearly subordinated to federal supremacy. In particular, autonomous provinces did not have the right of secession that was granted

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[7] See also Andreas Wittkowsky, 'Optionen zur Konsolidierung Kosovos', in *Internationale Politik*, no. 86, August 2000, p. 4. For the difficult legal context in Kosovo see Joseph Marko, 'Das jugoslawische "Verfassungschaos"', Expert Opinion for Task Force Jugoslawien (German Foreign Office) 'Neuordnung von Staat und Nation Jugoslawien' (unpublished manuscript), 2 May 2001.

to the republics. It cannot be imagined that Kosovo Albanians will definitely disclaim any eventual possibility of declaring their territory independent, even if they could for a given period of time continue to be part of the Federal Republic of Yugoslavia. This, however, could also only be accepted by moderate Albanians if a proviso were included into a new constitution of the Federal Republic of Yugoslavia declaring that in the event of a dissolution of the Federation (e.g. secession of Montenegro) the autonomous province Kosovo would not automatically remain in rump Yugoslavia (in this case Serbia) but would be granted the option of declaring itself independent after a referendum. In addition one must also consider the fact that, like the option of Kosovo as an autonomous region of Serbia, the decoupling of Kosovo in legal, executive and, in particular, monetary terms from the Federal Republic of Yugoslavia has occurred just as it has from Serbia.

Whereas, therefore, such a status is categorically rebuffed by the Albanians, it remains for the Serb population in Kosovo a possible, acceptable solution because it provides a security guarantee for its survival in Kosovo.

Kosovo as third (fourth, if Vojvodina follows) republic in the Federal Republic of Yugoslavia

This option is supported mainly by a number of countries in the West. It corresponds to the restitution of 'substantial autonomy' under Resolution 1244 while simultaneously preserving the territorial integrity of the Federal Republic of Yugoslavia. One could argue here that the monetary independence of Kosovo already contradicts such a federal order, but the example of Montenegro, where the Deutschmark also functions as an official means of payment, shows – at least on paper – that a federation can consist of states where different currencies are in operation. Kosovo as a third republic would mean a clear re-evaluation of the province comparable to the 1974 Constitution and would meet the claims of the Albanian population before the autonomy of Kosovo was suspended in 1989. As a republic within the FRY, Kosovo could in most areas enjoy complete autonomous legal and executive power and freedom. It would only be subject to federal regulations in areas like defence, foreign relations, customs and some taxation.

The Serb minority in Kosovo would reject this option even if it were guaranteed far-reaching minority rights. The Serbs fear that a Kosovo

republic would become an Albanian republic because the new Constitutional Framework does not provide veto rights by minorities in the future parliament. For the Serbs this would mean giving up all cultural and historic claims on Kosovo as the cradle of historic Serbia. They do not acknowledge the theoretical protective function of the Federation and the international community. Such a construction is unimaginable without far-reaching guarantees from the international community with regard to minority and individual human rights. In the light of the continuation of violent actions by Albanians towards Serbs in Kosovo and the limited ability of KFOR/UNMIK to put an end to them, the resistance of the Kosovo Serbs to such a solution is understandable.

On the other hand, Kosovo Albanians seem to be divided in their attitude towards a republican solution. The majority of the population, convinced that independence is the only option, reject the republic alternative as insufficient because it means remaining within the hated Yugoslav framework. A smaller, moderate and more politically more realistic part of the Albanian élite seems to be willing to consider the republic option as a transitional solution. After all, most international lawyers agree that if a new constitution of the Federal Republic of Yugoslavia were to grant Kosovo the status of republic, it would obtain the right of eventually leaving the Federation if the majority of its population so wished.

Partition of Kosovo

The idea of dividing Kosovo into two or more parts has been on the table since September 1998, when Dusan Batakovic, then adviser to the Serb Orthodox Church for questions of Kosovo-Metohija and now Yugoslav Ambassador to Athens, put forward a proposal for the cantonisation of Kosovo. He was inspired by the Swiss model, which established the new Jura canton out of the Bern canton, thereby separating two cultural traditions with different languages, religions and cultures. Batakovic also referred to the Vance-Owen Plan for Bosnia-Herzegovina.

With regard to a possible division of Kosovo, two models are normally discussed. One is the aforementioned cantonisation, i.e. the partition of Kosovo into an as yet undefined number of cantons, with their boundaries established according to ethnically homogenous agglomerations and with

far-reaching competencies for their self-administration. It seems, however, difficult to sort out clearly defined ethnically homogenous subregions of comparable size without some dislocation of people. It would, on the other hand, have the advantage that, for example, Serb cantons need not be located adjacent to each other. Instead of formal cantonisation one could also imagine providing larger communes with far-reaching self-administration competencies, which might help avoid the delimitation of ethnic minorities. Such a structural arrangement of Kosovo could lead to some appeasement because minority ethnicities like Serbs, Turks or Roma would see their interests better represented in the area where they live. However, it would not help to solve the overall question of the status of Kosovo.

The second way of dividing Kosovo, namely its partition into two parts, would in this respect be more concrete. Like cantonisation, this option is also favoured by the Serbs, but completely rejected by the Albanians. It would see the river Ibar, which already divides Kosovska-Mitrovica, as the frontier carving out north-west Kosovo for the Serb population. This would allow the possible attachment of this part of Kosovo to the Republic of Serbia. This formal partition would serve the interests of those Serbs who already live North of the new frontier, but it would confront the Serbs living south of the Ibar with the choice either to continue living under Kosovo Albanian rule or to emigrate into northern Kosovo or Serbia proper. Such a partition would also prompt a southward migration of Kosovo Albanians who still live in the northern Mitrovica region. The result would be two almost ethnically homogenous territories of which the northern part would very probably join Serbia whereas the bigger southern Albanian part of Kosovo would still await a final status. What complicates the whole proposal is that most sites of Serb cultural heritage, in particular the most important monasteries, are located in southern Kosovo. The strongest argument against such a formal partition is that the international community, which did not accept a similar solution for Bosnia, would be reticent to do so in Kosovo because it would violate the normative obligation of the international community to avoid forced migration and to preserve multi-ethnic communities in the Balkans.[8]

[8] The Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000).

Understandably, while the Serb side is split over the proposal to divide Kosovo into two parts, the Kosovo Albanians reject it out of hand. They are afraid to retain a rump Kosovo and argue that the northern part in particular has many more economic resources – in particular the Trepca mines, an asset which is one of the most important sources of employment and income in Kosovo.

Kosovo as an independent sovereign state

The scenario for this option is relatively clear: the newly elected parliament of Kosovo is to announce a referendum at which the population will be asked whether it is for or against full sovereignty of Kosovo as a new state. Of course, Kosovo Serbs would not participate in the referendum, just as Kosovo Albanians abstained from participating in previous Serb and Yugoslav elections. With an expected overwhelming majority, parliament would declare independence, and negotiations could start with the international community regarding the timetable for the transfer of sovereignty. In this scenario the parliament elected on 17 November 2001 could take over the function of a constitutional assembly and complement the existing Constitutional Framework by issuing respective laws and creating further institutions in a new constitution for Kosovo. Due to the fact that the 20 non-Albanian deputies of the new parliament do not have the right of veto, the whole procedure could be handled without any negotiations with the minorities in the form of a one-sided declaration of will by the Albanians. The role of the international community would be to secure the new state for a time until it had built up its own security structure (army). It is clear that this option corresponds to the Kosovo Albanians' ideal scenario. The UN protectorate and the increasingly fictional sovereignty of the Federal Republic of Yugoslavia over Kosovo would become history.

Quite a number of deliberations and obstacles stand in the way of realising this scenario. First of all, it must be assumed that both Russia and the People's Republic of China, as permanent members of the UN Security Council, would veto any request to recognise the independence of Kosovo. In their view, the recognition of the independence of Kosovo would signify the *ex post facto* sanctioning of violent secessionist movements. Both states are also afraid of a possible precedent which could jeopardise the stability

and integrity of their own large multinational and multiethnic states (Chechnya, Tibet).

But many countries in the West are also reticent and fearful of the effects of Kosovo independence on regional stability. Not only would the recognition of an independent Kosovo not be in conformity with the principles of the Helsinki Final Act should its new frontiers be established without the consent of the Federal Republic of Yugoslavia. It is also feared that a sovereign Kosovo could prompt further secessionist movements among the Albanian minorities in neighbouring Macedonia, in the Presevo valley and even in Montenegro. Macedonia, in particular, seems to be extremely endangered; a disintegration of this young state could implicate neighbouring countries like Albania, Kosovo, Serbia, Bulgaria and Greece. Another argument against the independence of Kosovo is that a future unification of Albania and Kosovo, maybe in the form of a federation, is extremely probable. The existence of a greater Albanian state would alter the regional political balance, with greater attention given to the Albanians in the neighbouring countries. The existing mafia structures of Albanian provenance which have been developed on a transnational, Europe-wide scale further cloud the picture as to the effects of an independent Kosovo on the Balkans.

The recognition of an independent Kosovo after a successful referendum could not only serve as a precedent for the Albanian population in Macedonia and Montenegro, and maybe even also in northern Greece, but even more for the Bosnian Serbs in Republika Srpska. They could be tempted to follow the example of Kosovo and launch a referendum on unification with Serbia proper, in contravention of the Dayton accords. Similarly, the Croats of Herzegovina could then insist on a referendum for the unification with Croatia, leaving behind a rump Bosnia deprived of two-thirds of its present territory. The fact that Montenegro is anyhow expected to hold a referendum on independence soon gives credence to the larger Balkan scenario of disintegration.

The current level of violence by Albanians in Kosovo towards the Serbs and other minorities clearly suggests that the independence of Kosovo can only come about under the protection of the international community. Otherwise, constant discrimination and physical threats would continue. A deliberate or even forced exodus of these minorities is thus foreseeable.

As a consequence, the Constitutional Framework provides the SRSG with a power of veto over all laws adopted by the future Kosovo parliament, including a law for a referendum on independence. He is even authorised to dissolve parliament if it is perceived to be acting in a manner which is not in conformity with Resolution 1244.

Substantial autonomy of Kosovo in the framework of an international protectorate

This option will come into effect after the elections of 17 November 2001. Taking into consideration all the problems and difficulties explained in the previous sections, this Constitutional Framework for a Provisional Self-Government of Kosovo seems to be the only realistic solution for the foreseeable future. As long as interethnic tensions are increasing rather than calming down, the definition of a final status for Kosovo will not be possible without moderation and compromise by both the Serbs and the Albanians. Furthermore, the future of all of the Federal Republic of Yugoslavia is at present totally uncertain, with Montenegro's announcement that a referendum on independence will be held in the near future. An independent Montenegro would dilute the formal legal framework of the Federal Republic of Yugoslavia. Consequently, a reintegration of Kosovo into it would become unfeasible. As a last resort the idea of a new federation consisting of three republics – Serbia, Kosovo and Vojvodina – might be reanimated, but this would mean a loss of territory by Serbia that would prompt new political tensions there.

II.4 A new approach: the Montenegrin platform for a new union and the final status of Kosovo

Though the secessionist drive of Montenegro would bring into question the future viability of the Federal Republic of Yugoslavia and would negatively impact on the prospects for the reintegration of Kosovo into Serbia, or rather into the FRY, it also raises the possibility of finding a modus vivendi for all parties concerned.

On 28 December 2000, the government of Montenegro presented a platform for talks with the government of Serbia on a new relationship between the

two states.[9] This platform describes the historic sovereignty of Montenegro and underlines that Montenegro is already sovereign in most important areas like monetary policy, foreign trade, foreign relations, customs and international security issues. Only the Yugoslav Army still binds Montenegro and Serbia together. In the Kosovo-FRY relationship all these characteristics of sovereignty mentioned in the Montenegrin platform apply but the Yugoslav Army has no role in Kosovo.

Because it claims already to possess far-reaching sovereignty, the government of Montenegro is proposing a new union of internationally recognised states (Montenegro and Serbia) that are to emerge from the ashes of the FRY. Many of the formulations in this platform are relatively short and rather general. The most relevant principles in this proposal are that Montenegro and Serbia should first become independent and internationally recognised states confirmed by separate referendums and then form a new union after an additional referendum. In this new union the participating states should have equal rights, and the functions of the union should be interpreted in an extremely restrictive manner. In fact, most functions of the union should be performed by the institutions of the member states and only in rare instances by specific union institutions. The areas of union responsibility are to include the defence and external security of the union, its foreign policy, a common market and a convertible currency. While the member states should retain their own armies, a supreme defence council shall permit cooperation. Foreign policies should be conducted mainly by the member states. The function of a so-called minister of coordination for external affairs of the union shall rotate between the respective ministers of the member states. The loose character of the proposed union is also reflected in the proposal for a common convertible currency. The platform underlines the right of the member states to retain their own monetary system if monetary union turns out to be too complicated. In fact one can hardly imagine that Montenegro will give up its recently acquired Deutschmark (soon to be the euro) standard to return to the Yugoslav Dinar. On the other hand, Serbia might have some problems in changing its Dinar into Deutschmarks, although that currency already operates as a second standard in Serbia.

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[9] The full text of the platform can be found in *Europa South-East Monitor,* Issue 19, January 2001. A response of President Kostunica was published in *Tanjug*, 10 January 2001.

This very generally formulated platform proposing a very loose union not only offers Montenegro and Serbia the possibility to formulate a new constitutional framework without losing face and minimal domestic political tensions, but could also offer Kosovo a place in the future. Only recently Belgrade signalled that Serbia would no longer use military force in order to prevent a Montenegrin secession should negotiations fail. Furthermore, the extradition of former President Milosevic has resulted in a break-up of the federal coalition government, with the Montenegrin coalition partners resigning their office thereby endangering the further functioning of the federation. These developments should allow for a constructive discussion of the Montenegrin proposal between Belgrade and Podgorica. Djukanovic would then be able to formulate the referendum in such a way that both independence and future union with Serbia were assured. Should Yugoslavia/Serbia be ready to agree to such a construct then the international community could propose that Kosovo become the third independent state of the union. Of course, the new union constitution would also have to include a proviso securing the rights of Serbs living in Montenegro in a sufficiently detailed manner which could be applied to the Serbs living in Kosovo. The argument vis-à-vis the Kosovo Albanians could then be that if both Montenegro and Serbia agree to such a confederation or union, which is supported by Albanians living in Montenegro, then such a construct could also be demanded from Kosovo. Kosovo would receive its sovereignty, but at the same time this solution would also correspond pro forma to the conditions of Resolution 1244 by preserving the integrity of the Federal Republic of Yugoslavia or its successor state, the union. Such an arrangement would also be in conformity with the provisions of the Helsinki Final Act that existing borders shall not be changed by force.

Of course, many of the concerns of the Serbian minority in Kosovo would persist. Without very clear and strong commitments by the member states of the union with regard to according and applying the highest standards of minority rights and participation of the minorities in all relevant areas of public life, such a construct cannot become viable. Ways and means to involve the international community more than passively in providing guarantees and automatically sanctioning violators are a must.

Chapter Three

STATEHOOD AND SOVEREIGNTY – REGIONAL AND INTERNAL DYNAMICS IN KOSOVO'S FUTURE

Marta Dassù[1]

The problem of the final status of Kosovo might be considered, almost by definition, a 'hostage issue'. This is the case for three basic reasons: first, the internal situation is not ripe for a decision on the matter (the advocates of independence, as a political decision to be made a priori, ought to accept that statehood needs to be built, before thinking of how to have it recognised); second, the regional situation is not sufficiently stable, especially on two fronts – relations between Serbia and Montenegro, and the crisis in Macedonia – which will have the greatest impact on the fate of Kosovo; third, the international context is such that an end to the current 'constructive ambiguity' regarding final status would break the degree of consensus that has finally been reached among the main actors who have a role on the ground.

If these three assumptions are correct (as I believe they are), the final status should be considered in the mid-term time horizon of the next few years – not months. This means that the international presence will also continue to be indispensable in the mid-term, and that a certain degree of ambiguity will still be inevitable. As will be seen, my conclusion is in fact that 'fixing' the status problem would prove more risky and costly for everybody than managing a measure of ambiguity.

Buying time, on the other hand, does not mean wasting time. What needs to be done, as a high priority, is speed up the process of building self-rule in Kosovo, for several reasons: first, because it would meet the Kosovars' key legitimate aspiration; second, because it is good for the regional setting (meaning both intra-FRY and in connection with the Albanian national question), in that it would further marginalise the more extreme positions; third, because it is a precondition for any kind of peaceful negotiation,

[1] The author thanks Roberto Menotti, Alessandro Rotta and Pietro Veronese for their useful contributions to this chapter.

which requires an accountable, recognisable and locally rooted Kosovar counterpart. In addition to all this, building democratic self-rule – in particular through free and fair elections but also with consistent international support and monitoring – is of course mandated by UN Security Council Resolution 1244: it is not only politically expedient but also coherent from a 'legal' point of view.

As I will try to show, self-rule is, in turn, the basis for what I would call 'statehood without internationally recognised sovereignty', at least as long as sovereignty poses serious risks of undermining a sustainable statehood (which is certainly true today). In addition, Kosovar statehood needs to be qualified by the crucial adjective 'democratic', which above all implies substantial guarantees of minority rights to be supervised by international bodies. In all this the EU will play a growing and influential role – provided that its current leverages are linked to a clear reassessment of the regional setting.

III.1 A hostage issue by definition

The status of Kosovo is not only a regional conundrum, but truly a 'hostage issue', in the sense that its relevance – and its political complexity – derive from its symbolic value and its interrelation with other regional and even broader international issues. It has been and continues to be discussed as part and parcel of the democratic transition of Serbia and of an evolving regional framework, as a possible source of disagreement between members of the Security Council, as a case for or against US engagement/disengagement. Kosovo has become a political crossroads for matters of principle as well as for practical security arrangements.

The degree of ambiguity that continues to characterise its fate is precisely a consequence of the fact that Kosovo cannot be viewed as an isolated issue. Indeed, ambiguity is an integral part of the only existing framework that has been set up, which is enshrined in UNSCR 1244 but is more broadly predicated upon a very significant, intrusive and persistent international presence both in Kosovo and in the whole region surrounding this tiny area.

As was recently pointed out by the Independent International Commission on Kosovo, 'there is a tension between the unlimited nature of the authority

vested in the UN administration and its purpose, which is to devolve power to the people of the province'.[2] More specifically, with a view to a future status, there is a tension between the continued, though 'suspended', sovereignty of the Federal Republic of Yugoslavia over Kosovo, and the requirement to respect the will of the people of Kosovo: at the present stage, these appear to be two mutually exclusive provisions. Openly confronting the status issue – or even just raising it – means disposing of our imperfect but useful framework, whatever the final outcome of the process we would thus initiate.

The situation is further complicated by the circumstance that, should a consensus be reached among the external actors on the need to confront the status issue, the UNSC remains rather divided, for the time being, over long-term policy. The existing UN framework is thus a potential basis for peaceful evolution, but does not rest on very solid ground.

In addition to the objective complexity of the political situation itself, the entire regional framework is far from static: as everybody recognises, having overcome the 'Milosevic factor' means that there is no longer a sort of 'black hole' in the middle of the Balkans, and that Serbia has come back as the principal interlocutor in FRY. Together with this development, the United States has become less supportive of Albanian claims. Washington's support for Albanian goals seems to have been, at least in hindsight, conditional: it was in large part a by-product of Serbia's policies under Milosevic. In practice, both the EU and the United States have recently been pursuing a de facto 'Serbia first' policy, by rewarding the great progress that a democratic and reforming Serbia represents. This reaction is perfectly understandable; and it merely confirms that the 'Kosovo issue' cannot be viewed as an isolated problem: in other words, it simply cannot be analysed or solved on its own merits. Even broadly accepted international norms and principles – such as self-determination – require an understanding of context. After all, it is clear that both international law and international practice are uneven and often contradictory, most notably with regard to the twin principles of self-determination and state sovereignty. In any case, both should be viewed in the context of regional stability and security.

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2 The Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000).

Another crucial factor of change and dynamism – beside the local ones – has been the growing role of the EU as the provider of a macro-regional political framework for the whole of South-Eastern Europe. One does not need to be a staunch defender of the virtues of the Stability Pact to agree that an 'integrationist' logic anchoring the countries of the region to the EU provides the long-term prospect of a better future for Albanians as well as Serbs, Croats, etc. This evolving macro-regional environment is not conducive to a Greater Albania project, which instead could potentially flourish in the chaotic context of recurring violence and chronic instability of the period 1991-2000. The same is true – as shown by the European reaction to the Macedonian crisis in spring and summer 2001 – for a Greater Kosovo perspective. Indeed, the stance adopted by Albania towards the Macedonian issue (an explicit condemnation of ethnic Albanian extremism) shows how the logic of EU anchoring (in the case of Albania, through the Stabilisation and Association Agreements) can provide the EU with powerful leverage and produce results. Of course, as the recurring nature of violence in Macedonia demonstrates, success on the road to stability is inevitably fragile and it continues to require NATO's involvement.[3]

The further redrawing of borders is clearly not a preferred option for the EU – in any case, it will not get support from the EU, which has drawn a very different lesson from the dissolution of Yugoslavia. There will not be support for any further break-up by design: when a drive for independence was considered a likely result of the Montenegrin elections in late April 2001, the international community was unanimous in calling on the Montenegrin leadership to restrain from unilateral acts directed at further segmenting the FRY's institutional landscape**.**

But even a redrawing of borders by default or by accident from the ruins of former Yugoslavia (basically, as an unintended consequence of short-term, incoherent or stopgap policies on the part of the international community, combined with domestic pressures or new conflicts) has become a very unlikely outcome – which was probably not the case a year ago.

The problem we now face is that the EU – in spite of its undeniable political, economic and cultural magnetism – is still not capable of fully guaranteeing a viable security framework in this delicate transitional phase, which

[3] This chapter does not deal specifically with the crisis in Macedonia.

is necessary to ferry the region from here to there, i.e. from post-conflict settlements to self-sustaining stability.

In order for the mechanism of 'EU anchoring' to become fully operational and effective, the transition from the current (necessary) ambiguity to a broadly acceptable and legitimate status needs to be carefully managed, with the help of other organisations (NATO, the OSCE, the UN, the financial agencies) and in the context of all available forums (such as the Stability Pact and the Contact Group).

III.2 The need for a reassessment

Also in the light of recent developments, particularly the flare-up of guerrilla activity in Macedonian territory in early 2001 and the April elections in Montenegro, the time has come for a balanced reassessment of the prospects for regional security. Certain implicit assumptions regarding Kosovo have been challenged, and we need to take stock of this development.

The first fundamental assumption that has been proven incorrect is that keeping the situation in Kosovo frozen would help stabilise Macedonia, and probably would ease Serbia's own transition to a fully accountable and functioning democracy. As for Macedonia, the events of the first eight months of 2001 have sounded a loud alarm bell, indicating that the unresolved status of Kosovo can actually be a hindrance, not a pragmatic solution. This is true with regard to Serbia as well, because dealing with a fluid situation in and around Kosovo poses continuing political dilemmas for the current leadership in Belgrade and increases its internal divisions.

Furthermore, the 'ambiguity and delay' strategy – which, as Susan Woodward aptly notes, was chosen 'to maintain the international coalition created by the NATO campaign and . . . to restore relations with Russia and China'[4] – has left many questions unanswered on the internal evolution of Kosovo. An inherent danger in this waiting game is that the debate between extensive

[4] S. Woodward, 'Kosovo and the Region: Consequences of the Waiting Game', *The International Spectator*, vol. XXXV, no. 1, January-March 2000, p. 37.

autonomy and independence risks being transformed into a 'debate over timing',[5] taking it for granted that ultimate sovereignty is the only option.

On the other hand, it may be seriously questioned whether a 'final status now' approach, which might have been fuelled by events in Macedonia, would spare the region sore consequences, avoiding an eruption of violence across the current Kosovo 'borders'. In addition, any hasty settlement of Kosovo's status would still imply bearing the burden of all the daily problems of management and enforcement on the ground that the international community is now facing in honouring its commitment in Kosovo. In other words, most of the current difficulties on the ground would not go away the day after a settlement was reached, even if this were to be formally accepted by all the parties concerned.

A central argument of this contribution is that the debate should not be necessarily polarised between keeping the 'final status' issue permanently open and settling the question immediately, between a continuation of the status quo and a sudden and dramatic change. Instead, there is a need to think creatively about how to avoid both of these stark alternatives. In this, we should make virtue out of necessity and accommodate the evolving attitude of a majority of the international community toward sovereignty and self-determination.

The second assumption that has been somewhat shaken, although not shattered, is that ethnic Albanians are willing to see themselves as a permanently divided nationality and simply accept the consequences as a fact of life. In a politically more open environment, there is increasing room for voicing concerns and grievances, hopefully in a peaceful manner through 'constitutional' channels, but also in more assertive and even aggressive ways. Open societies and open (or porous) borders are inherently vulnerable to all sorts of flows – of people, ideas, goods and services, weapons, guerrilla groups and terrorist cells. Since we are actively encouraging openness, we can only deal with the less desirable consequences with regard to the Albanians of South-Eastern Europe. To be more explicit: the Albanian national question will not go away because of democratisation, liberalisation, or EU conditionality. It may transform itself into a more manageable problem, but it will not disappear.

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5 Ibid., p. 36.

In the light of this, we should begin by distinguishing between moderates and extremists: this is a crucial requirement, because the means adopted to pursue any goal regarding the status of Kosovo are important. In other words, it makes a huge difference whether negotiations are conducted by peaceful means on the part of a legitimate, democratically elected leadership or not.

Right now, the prevailing orientation of the Kosovo Albanians seems to be hanging in the balance, between a temptation to adopt a kind of 'all or nothing' approach, and a (implicit) realisation that a gradual process may be much more beneficial and effective in the medium term.

This is the reason why elections in Kosovo are central to any peaceful scenario. Only an accountable local leadership, enjoying popular support and answerable to both its constituents and the international community, can claim the right to sit at a negotiating table to discuss the future of Kosovo.

III.3 The regional setting: from the Serbian to the Albanian factor

The major change in the regional scenario has been the removal from power of Slobodan Milosevic, from his defeat in the presidential elections of October 2000 to his arrest in Belgrade in early April 2001. The political disappearance of the man who represented probably the main security threat in the region since 1990 has not been universally welcomed: Milosevic was the 'Hostile Other, used to fortify cohesion'[6] inside neighbouring countries, and provided one of the most convincing arguments against a return of Kosovo under full (exercised) Yugoslav sovereignty. Accordingly, Albanian Kosovar leaders, fearing a diminished degree of support for their independence claims, openly criticised the all too ready, and in their view unconditional, favour with which the new Belgrade leadership has been regarded in European capitals.

It is of crucial importance that the new Yugoslav and Serbian authorities have proved so far to be committed to normalising relations with their neighbours, and to solving peacefully and politically the problems arising

6 Dejan Jovic, 'The Hostile Other', *Transitions Online*, 11 April 2001, www.tol.cz/look/TOLnew/article.

from the still volatile regional framework. In terms of domestic (FRY) issues, the 'constitutional' approach advocated by President Kostunica has so far prevailed. This is the case with the redefinition of relations with Montenegro, but, most notably, of the policy adopted toward the crisis in southern Serbia. Here, confronted with the guerrilla activity of the so-called Liberation Army of Presevo, Medvedja and Bujanovac (UCPMB), which claims to fight for the unity of these three Albanian majority districts with Kosovo and is exploiting the demilitarisation of the 5 km-wide Ground Security Zone, the FRY and Serb governments presented a plan envisaging the integration of the Albanian population in local government and police structures and the international support for the development of the region (the so-called 'Covic Plan'). The European Union played an active role, deploying monitors and allocating special economic aid to the area, while NATO brokered a cease-fire between Yugoslav armed forces and the UCPMB.

The approval by NATO and the wider international community of the phased return of the Yugoslav Army to the Ground Security Zone, at the moment when the new self-styled UCK's armed activities in Macedonia met with universal condemnation, acquired a highly symbolic value, signalling a major reversal of NATO's security agenda in the region, with Albanian extremisms identified as the major threat to stability and the Yugoslav army as a functional, 'conditional' and, at least, temporary ally.

The authorities in Skopje consistently claimed that the 'aggressors came from Kosovo',[7] and blamed KFOR for failing to keep a close watch on the border between the UN-administered province and Macedonia. On the other hand, representatives of the UCK insisted that the roots of the movement were to be found inside Macedonia and in the grievances of the Albanian population there; they further declared that they were not interested in redrawing international borders but that they aimed at some enhanced constitutional recognition of the Albanian people in Macedonia. At the same time, the EU – while politically supporting the Macedonian government against the guerrillas – also urged Skopje, through the direct involvement of Javier Solana in negotiations, to give wider political representation to the rights of the Albanian minority in the country.

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[7] FYROM Prime Minister Ljubco Georgievski, quoted by AFP, 26 February 2001.

In any case, the Macedonian crisis is obviously linked to the current situation in Kosovo and the role of the international community there, as porous borders have allowed for weapons and fighters to move freely between Kosovo and Macedonia, highlighting a fundamental failure of the international security presence. As one observer has put it, 'rather than risking the lives of American soldiers for peace in the Balkans, it seems that peace in the Balkans has been put at risk for not putting the US forces in the potentially dangerous situation of actually patrolling the border.'[8] Even more interestingly for the question of the status of Kosovo, the crisis followed an agreement between the FRY and Macedonian authorities regarding the demarcation of the border between the two states. Kosovar leaders protested that the FRY did not have any right to negotiate the frontiers of Kosovo, but beside the legal interpretation of UNSCR 1244, the agreement has probably disturbed those who profit from instability and loose control of the territory, in and outside Kosovo, and who seem to have a role in fostering violence.[9]

A notable factor in the changing South-East European scenario is the increasing involvement of Tirana in support of regional stability. The present Albanian government, whose mandate was renewed in last June's elections, has firmly condemned extremists both in southern Serbia and in Macedonia, and it has re-established diplomatic relations with Belgrade while repeatedly stating its commitment to the preservation of present borders. Some have accordingly proposed that Albania could be formally associated in a future settlement of Kosovo's status, possibly helping to reinforce a Tirana-Belgrade 'special relationship' as a factor of stability. However, Tirana's influence and leverage on Albanians living in neighbouring countries, and particularly on Kosovars, should not be overestimated. Designs for a 'Greater Albania' are made unrealistic more by the vested interests of Kosovar Albanians in having their own independent political structures than by Tirana's attitude to the issue. Thus, in the case of negotiations for the final status of Kosovo, direct involvement of Tirana could perhaps help marginalise extremist elements rather than offer practical incentives to the Kosovars for playing a responsible role.

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8 N. Whyte, 'Two cheers for European diplomacy: Containing conflict in the Balkans', *Europa South-East Monitor*, Issue 21, March 2001.

9 A. Bellamy, 'Grievance and Greed', *The World Today*, April 2001.

In sum, this very dangerous combination of events, and the fact that they have been contained, seem to suggest a shared interest in managing and promptly extinguishing any further eruption of violence. This is precisely the context in which the status of Kosovo should now be appraised. Capitalising on the good signs amid persistent dangers is especially important with respect to the major unresolved issue of statehood that we have inherited from the Milosevic era – the fate of what is left of the Federal Republic of Yugoslavia.

Given the current 'constructive ambiguity' of the Western approach to self-determination, the redefinition of relations between Serbia and Montenegro may turn out to be the decisive factor. As a further consequence of the removal of the 'Hostile Other', after having praised Montenegrin President Djukanovic for his courage in standing up to Milosevic, the international community has clearly expressed a preference for an option in which Montenegro and Serbia remain in as loose a common framework as possible. This, of course, is due to the fear that, if Montenegro were to pursue independence uncompromisingly, secessionist claims by Bosnian Croats would be legitimised, the crisis in Macedonia might degenerate even further and, finally, the debate on the status of Kosovo would lean decisively towards full independence of the province.

However, fears of a domino effect are considered exaggerated by some observers, such as the International Crisis Group (ICG) and the Berlin-based European Stability Initiative (ESI). It is important to consider these arguments. The ICG suggests that the international community 'should discontinue its approach of pressurising Montenegro into abandoning the aspiration for independence [and] on the issue of the status of Montenegro and the future relationship with Serbia, should adopt a neutral stance, and should be prepared to accept whatever arrangement Serbia and Montenegro decide upon',[10] while the ESI more mildly recommends that the 'EU insist that the Montenegrin government adopt a more constructive approach towards the *process* of independence' instead of simply opposing Djukanovic's stance of independence, but warns that 'the EU should not insist that the FRY continue to exist merely because of the implications for the final

[10] International Crisis Group, 'Montenegro: Settling for Independence', *ICG Report*, 28 March 2001.

status of Kosovo, as this would be creating an artificial linkage between two distinct sets of issues'.[11]

Of course, Montenegrin independence – ushering in the logical dissolution of FRY as a federal state – would necessarily affect Kosovo by further loosening, especially in the eyes of those who already favour independence of the province, ties between Belgrade and Pristina. This runs counter to an increasingly common view that fragmentation per se is no solution to the problem of identity, and even less so to economic grievances and the longer-term requirements of social progress. Instead, since the focus should be on a specific type of functional 'capacity-building' inside each of the 'entities' that emerged from the ashes of Tito's Yugoslavia, a new regional setting will have to be developed from the bottom up, rather than from the top down. In other words, the *content and internal structure* of each political entity are at least as crucial as its form, size and territorial configuration.

In this perspective, the ministerial meeting of the Contact Group, held on 11 April in anticipation of the Montenegrin elections of 22 April, was of great importance as a sign that a basic consensus exists among the principal external powers directly involved on the ground. The Contact Group declaration, after encouraging Belgrade and Podgorica to resume dialogue, stated very clearly that 'We support a democratic Montenegro within a democratic Yugoslavia', thus specifying what a (relatively) best-case scenario would look like. The EU has sent an even more unmistakable signal by strongly expressing its preference for the preservation of a common negotiated framework and its opposition to any unilateral act (combining the political statement with the leverage of economic assistance).

There is a further motivation behind the EU countries' – some of them in particular – negative perception of continuing division in the Balkans followed by the establishment of a mini-state of doubtful economic viability: the conviction that this would be a recipe for fostering collusion between illegality and local political power. Such a perception is especially acute on the part of Italy, which has launched a series of initiatives designed to combat crime (among them a joint plan with the United Kingdom) and

[11] European Stability Initiative, 'Sovereignty, Europe and the Future of Serbia and Montenegro: A Proposal for International Mediation', *ESI Report*, 12 February 2001.

aims at strengthening the role of the EU in this area (part of the so-called 'third pillar') of security.

Because one of the arguments used in support of independence claims – for instance by the Montenegrin leadership – is economic advantage, or the 'economic profitability' of independence to gain better access to international institutions, it is clear that such an argument needs to be countered through a policy of economic incentives.

The election results in Montenegro, giving only a narrow majority to pro-independence forces, have definitely made the option of a referendum on independence less likely in the short term. The results appear to have confirmed that on this issue the Montenegrins are basically divided into two equal camps, depriving President Djukanovic of his strongest argument vis-à-vis the international community.

III.4 The situation in Kosovo: local dynamics and international influence

The regional dimension of the issue of the final status of Kosovo implies that political events and trends in the region have reflections on local developments, but also that the way the final status is addressed will have region-wide repercussions. Our point of departure should be the steps the international presence has taken, as mandated in UNSCR 1244, towards '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'.[12] As mentioned above, and as will be seen in more detail, whatever the final settlement, the process of involving local actors by handing over substantial responsibilities currently held by the international administration is probably more important than a decision on the final status per se. It should be stressed that this factor of gradual change is inherent in the current UNMIK role, and does not require any 'strain' except a strong determination to implement it. The 'legal framework' for the planned elections recently defined by UNMIK can certainly be considered a step in this direction, but in this respect much will depend on its actual implementation, and on how the related issue of return will be resolved.

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[12] UN Security Council Resolution 1244 (1999), para. 10.

If the basic principles we have fought over in South-Eastern Europe are to be upheld, then one can only agree with the Independent International Commission on Kosovo that 'the key factor in determining the timing and extent of eventual Kosovo self-government is whether minorities are secure'.[13] In this regard, the record of the international civil and security presence has so far been disappointing, becoming the object of the strongest and most convincing charges that the FRY and Russia have directed at UNMIK and KFOR. The insecurity of minorities, which has induced a massive outflow of Serbs, Roma and Montenegrins from Kosovo and has deprived those remaining of basic freedoms such as freedom of movement,[14] is only the most striking aspect of a more general 'climate of lawlessness and disrespect for the institutions and public order [that] is perceived by most Kosovars as the greatest institutional and public policy failure of the international mission'.[15] A recent report of the UN Secretary-General on the UN Interim Administration Mission in Kosovo similarly admits that 'persistent instances of ethnically and politically motivated violence . . . continue to pose a tangible threat to the fulfilment of the mission mandate'.[16] It is a fact that KFOR's initial role, which consisted of 'deterring renewed hostilities [and] preventing the return into Kosovo of federal and republic military, police and paramilitary forces'[17] has been overtaken by political developments. The NATO-led military force has thus found itself consistently dealing with policing functions that it was largely unprepared – and is unenthusiastic – to perform and have only partially been assumed by the UN and the recently formed local police forces.

The inextricable links between security, the condition of minorities and self-government have been evidenced by the drafting and issuing of the 'Constitutional Framework for Provisional Self-Government in Kosovo', signed by the UN Secretary-General's Special Representative on 15 May.

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13 Op. cit. in note 2.

14 The UNHCR has defined the situation of non-Albanians in Kosovo as 'unacceptable': more than 200,000 members of minority communities have left Kosovo since the UN takeover in June 1999; 'Plights of Serbs in Kosovo is unacceptable', *Agence France-Presse*, 20 April 2001.

15 International Crisis Group, 'Kosovo Report Card', *ICG Report*, 28 August 2000, p. 4.

16 United Nations Security Council, *Report of the Secretary-General on the United Nations Interim Administration in Kosovo (S/2001/218)*, 13 March 2001, Part B, para. 6.

17 UNSCR 1244, para. 9 (a).

The establishment of a provisional legal framework was of course of primary importance, being a necessary passage to define the powers and features of Kosovar institutions of self-government, before these were actually formed through general elections and then activated. Without a clear framework, the long-announced Kosovo-wide elections, now officially scheduled for 17 November, might have easily turned into a straightforward referendum on independence. The objective of the provisional constitutional agreement is the creation of a politically responsible counterpart, committed to respecting previously agreed rules in terms of minority rights and negotiation of the final status. The process of drafting the provisional legal framework initially proved to be a good forum for constructive discussions, as it was officially endorsed by president Kostunica and saw the participation of a Serb expert. However, this positive potential (also symbolised by Belgrade's release of Albanian prisoners) was first overshadowed by a terrorist attack that killed a Yugoslav official in Pristina, followed by strong criticism by the FRY authorities of UNMIK and KFOR, and then appeared largely to have dissipated by the time the document was issued. The final version of the document provides for a 120-seat Assembly, with 10 seats reserved for the Serb minority and 10 for the members of other communities, a President, elected by the Assembly, and a Government nominated by the President. Once these institutions are in place, UN administrators would step back, retaining responsibility on justice, law and order, and on the Kosovo Protection Corps. The UN Secretary-General's Special Representative, presently Hans Haekkerup, would, however, maintain ultimate political control through his power to dissolve the Assembly. Regarding the issue of the final status, the constitutional framework has been described by Haekkerup as 'a very important stepping stone for reaching final agreement at some stage'.[18]

The Kosovo Albanian side has certainly been appeased by the definition of the document as 'constitutional', by the inclusion of the figure of a President and by the legislative power ascribed to the Assembly. Yet, former UCK leader Hashim Thaci and his Democratic Party of Kosovo have complained of the lack of a provision for a referendum on independence, and have

[18] Quoted in 'SRSG Signs Constitutional Framework', UNMIK Press Release, 15 May 2001.

asserted that 'this document will hold hostage the aim of the people of Kosovo, which is political independence'.[19]

The Constitutional Framework has attracted sharp criticism in Belgrade: the Serbian government has prepared a document asking for a revision of the framework, and the Serbian parliament has issued a similar declaration, in which the UNMIK framework is accused of prejudging the issue of the final status, and UNMIK and KFOR are blamed for failing to ensure minimal security conditions for voters to take part in the November elections.[20]

Paradoxically, dissatisfaction with the Constitutional Framework expressed by both sides might be a sign of its equitable nature: 'I am aware that no community in Kosovo is fully satisfied with the constitutional framework, but the text is a very fair compromise', as Javier Solana, EU High Representative for Foreign and Security Policy, has acknowledged.[21] Haekkerup has defended the framework's conformity with UNSCR 1244, saying that the document does not pre-empt any decision regarding the future of the province, nor does it erode Yugoslavia's sovereignty over Kosovo.[22]

However, the Belgrade authorities have not ruled out participation by Kosovo Serbs in the November elections, and FRY President Kostunica has encouraged the Serb population in Kosovo to take part in the voters' registration process. At the same time, Kostunica has set some conditions linked to 'the international community's efforts to guarantee the return of the displaced people, to investigate the fate of the people who disappeared or were kidnapped and ensure the safety of the residents in Kosovo'.[23]

It can be argued that the lack of a time limit to provisional institutions in the Constitutional Framework amounts to a vote of no confidence in Albanian leaders.[24] The political leadership that has emerged from the KLA still

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19 Hashim Thaci, quoted in 'SRSG Signs Constitutional Framework', UNMIK Press Release, 15 May 2001.

20 'Serbia's Parliament rejects Kosovo's Constitutional Framework', *Agence France-Presse*, 31 May 2001.

21 'Solana: Promulgation of Constitutional Framework for Self-Government in Kosovo', Press Release, Brussels, 16 May 2001.

22 Quoted by Radio B92 News, 28 May 2001.

23 FRY government statement, quoted in 'UNMIK Has No Intention to Change Constitutional Framework for Kosovo', *Agence France-Presse*, 25 May 2001.

24 Tim Judah, 'A Sensible Plan for Kosovo', *The New York Times*, 23 May 2001.

appears very far from embracing democracy, and the Kosovo Protection Corps (KPC, TMK in Albanian) – composed of former KLA members, whose role as a civilian emergency organisation has been reasserted by the Constitutional Framework – still perceives itself as a 'Kosovo army-in-waiting'.[25]

The Constitutional Framework has not significantly altered the Kosovo Serbs' perception of their own security situation as highly unsatisfactory, and the document has on the contrary been regarded as a step towards the independence of Kosovo. A greater effort is thus needed to enhance security for Serbs and other minorities in Kosovo, and to ensure their full participation in the elections and the provisional institutions – if the Constitutional Framework is to be credible and sustainable. UNMIK should effectively implement the plan adopted by the Joint Committee of Return in January 2001 for the return of those Kosovo Serbs who had left the province. As the presence and the current conditions of Serbs in the province constitute a compelling argument against an immediate move towards the independence of Kosovo, especially in an early phase, safe and peaceful (if not enthusiastic) coexistence between the Serb and Albanian communities is a necessary condition for holding general elections and devolving responsibilities to local actors without endorsing the 'full sovereignty' option.

In any case, and as the security situation in Kosovo since 1999 has made abundantly clear, Kosovo still lacks the key elements of statehood: the ability to guarantee internal order, domestic safety and interethnic (or intergroup) peace. For these functions normally exercised by states, Kosovo will remain dependent, for years to come, on some form of international security presence, both police and military. This is the fundamental reason why the stance of the major outside actors carries significant weight: as the Contact Group's 11 April declaration explicitly recognises, 'The prospect of Kosovo-wide elections this year, for which UNMIK and OSCE should work together, is a key factor for the democratic process in Kosovo and the stability of the region. To this end, secure conditions for the elections should be ensured. The participation of all communities in the elections, the return of refugees and the participation of refugees and displaced persons must be encouraged.' Beyond the obvious constraints and requirements of diplo-

[25] Tim Ripley, 'Kosovo's new political landscape', *Jane's Intelligence Review*, September 2000.

matic documents, the analysis underlying this statement is absolutely correct.

III.5 The challenges of the status – and possible solutions

Major uncertainties remain, of course, in the regional framework surrounding Kosovo. Even so, the positive signs are significant and need to be consolidated. As a more permissive environment is gradually emerging, the internal weaknesses of institutions and societies must become our main focus. This is perfectly consistent with a growing perception among the more moderate voices in Kosovo itself: Veton Surroi, for instance, noted in January 2001 that 'At present, UN Security Council Resolution 1244 denies Kosova sovereign status, until negotiated agreements say otherwise. But, importantly, the Resolution does not impede its development as a functioning state.'[26] While what I have called a 'permissive environment' is clearly indispensable to progress, it is really at the internal level that the conditions for a more stable and viable status must be developed. In a sense, the modalities of border definition and formal status will become less and less relevant (thus less symbolic and intractable) the more an internal virtuous circle can be set in motion: once again, Surroi hints at the possible dynamic when depicting a scenario in which 'all three states [Kosovo, Montenegro, Serbia], going through a process of internal consolidation, will necessarily focus more on the function of the state than on its international recognition'.[27] The fact that he has labelled this combination a 'Taiwan scenario' may please some observers and annoy others, but it certainly is less important than the logic of internal transformation he suggests, with its positive external spin-offs. The key aspect that has to be emphasised is that we have to be 'creative' when striving to develop a concept – and a label – for a sustainable status of Kosovo.

In the light of this, the external and internal dimensions of statehood might conceivably be separated: indeed, there is no necessary correspondence between external sovereignty in the standard international legal definition on the one hand, and the internal attributes of statehood, on the other. That

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[26] Veton Surroi, 'Kosova Priorities', in *Balkan Crisis Report*, no. 209, 15 January 2001, www.iwpr.net.

[27] Ibid.

this correspondence has been historically very strong (especially in the formation of modern European states) does not imply it has to remain so forever, as institutions and societies are products of the ever-changing flow of history. As mentioned earlier, what matters most in terms of viability is the actual content and functional capacity of a any state-like entity.

The notion of 'final status' may seem to imply that full sovereignty is the logical outcome, as if statehood were a matter of all or nothing. In today's Europe there may be alternatives, as all EU member countries have learned to recognise. Therefore, a more sophisticated – and updated – concept of statehood and a more nuanced concept of Kosovo's 'final status' can be developed.

The former concept does not have to be understood as an either/or proposition – either full sovereignty or no statehood. The final status can be developed only as result of a crucial element of internal consolidation: enfranchising the local population (not only in Kosovo, of course) and giving it a stake in peaceful governance. This process does not imply granting full sovereignty, so the link between the final status and the proposed solution to the current conflict, if properly managed, does not need to be provocative or destabilising for any of the parties involved.

In this context, general elections in Kosovo are in fact a precondition for exploring forms of statehood. Once such a precondition has been met, the more specific contours of the settlement can be discussed, under a heading that we might call 'conditional independence'. No independent country is actually free from external constraints, self-restraints or norms of behaviour: in practice, no country in the world enjoys 'unconditional' independence – except in the political-legal fiction or simplified presumption we call 'sovereignty'.

III.6 Conclusion: the best is the enemy of the good

The two faces of conditionality in the case of Kosovo are, on the one hand, an external security guarantee, international oversight and economic help, and, on the other, the request that Kosovo accepts 'European values' as the basic premise of a 'road map to Europe'. European External Affairs Commissioner Chris Patten has recently described conditionality as a real

'contract' between the two parties, underlining what the EU has already done in terms of financial assistance (in fact, the EU is covering two-thirds of Kosovo's budget and has allocated some €700 million to the entity's long term reconstruction) and what it expects from Kosovo in return.

At an intermediate level – between internal democratic development and relations with the EU – there must also be a growing openness to regional cooperation, which the EU is explicitly considering as a requisite for closer cooperation with each of the single actors in the region.

As complementary measures to facilitate a peaceful and regulated process of adjustment along these lines, Europe should also, *inter alia*:

- continue to insist that a process of agreed redefinition of mutual relationship between Montenegro and Serbia is by far the preferred outcome;
- recognise that there is no room for returning to the *status quo ante* in the relationship between Serbia and Kosovo, thus foreclosing any temptation that may arise in Belgrade;
- constructively engage Tirana in a stabilising role, thus strengthening an emerging subregional consensus.

The proposed procedure, or rather political path, may well seem to be inherently untidy and to rest on uneasy compromises. It is indeed a narrow path, for the reason that a recent analysis by the US United Nations Association has succinctly expressed: 'The collision of at least short term irresolvability of key problems with our hubris that problems can be solved means that second best solutions . . . often develop themselves.'[28] For the issue under consideration here, there is hardly a better alternative than a working 'second best solution'.

Pragmatic compromises will be needed to extricate Kosovo from its recent past, but the question of its status should not simply be held hostage to the past, or to what happens elsewhere – be it in Western capitals, in Podgorica or Belgrade, in Skopje or Tirana; in fact, the people of Kosovo have more responsibility for their own fate than many seem ready to accept.

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[28] Michael Reisman et al, 'Procedures for Resolving the Kosovo Problem', March 2001, www.unausa.org.

Chapter Four

KOSOVO AND ITS STATUS

Tim Judah

Until now it has been easy to speculate, pontificate and prescribe solutions for Kosovo because, apart from UN Security Council Resolution 1244, there has been no road map for the future. On 14 May 2001 that changed. Hans Haekkerup, the head of the UN Interim Administration Mission in Kosovo (UNMIK) announced that elections were to be held on 17 November and he described what shape the protectorate's future government would take. The next day, in the face of a barrage of complaints from both Kosovo's Albanians and Serbs, he signed into law the Constitutional Framework for Provisional Self-Government. Although details remained unclear, what was clear was that we were now heading into a completely new phase for both Kosovo and the wider region.

Serbian and Yugoslav forces pulled out of Kosovo following 78 days of bombing by NATO forces and the passing, on 10 June 1999, of Resolution 1244. This was not a document designed to outline the long-term future of Kosovo but was rather a diplomatic deal struck to end the bombing campaign. Still, it did foresee a number of steps which the 'international civil presence', i.e. UNMIK, was to take. As we consider the future it is worth looking at what these were:

- promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo;
- performing basic civilian administrative functions where and as long as required;
- organising and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;
- 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;

- facilitating a political process designed to determine Kosovo's future, taking into account the Rambouillet accords;
- in a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement.

Earlier the resolution had reaffirmed the sovereignty and territorial integrity of the Federal Republic of Yugoslavia (FRY). So, in the long run, nothing was ruled out. That is to say, that the sovereignty of Yugoslavia was upheld 'pending a final settlement' which held out the possibility that some form of deal, which precluded the option of independence for Kosovo, might be struck. Likewise Kosovo Albanians, who almost universally want independence for the province, were able to put their faith in the fact that the institutions to be created by UNMIK, were to be provisional, again, 'pending a final settlement'. Thus, independence was not ruled out either.

At its most basic, both Serbs and Kosovo Albanians see Kosovo not as a political problem but as a territorial one. That is to say as a zero-sum game in which winner takes all.[1] The most extreme manifestation of this was the flight and attempt to expel as many Kosovo Albanians as possible during NATO's bombing campaign and, since then, the flight and expulsion of most of Kosovo's Serbs.

Although Resolution 1244 left open the question of final status, where there is a will there is always a way to find some compromise. Two years after the end of the war, though, it is clear that the visceral hatred between the two nations that led to the conflict has not abated. Thus, there is no possibility, for the foreseeable future, of bringing the two sides together to discuss final status in any meaningful fashion. Likewise, as there is no will in the international community to countenance independence for Kosovo, and clearly no way for it to be restored to Serbian rule, then a modus vivendi for Serbs, Albanians and the international community has to be found. This, then, is the importance of the Constitutional Framework.

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[1] For an extremely valuable political and legal analysis of Kosovo politics and the international community see Alexandros Yannis, *Kosovo Under International Administration: An Unfinished Conflict* (Athens: ELIAMEP and PSIS, 2001).

Until now all administrative power has lain with UNMIK, albeit with embryonic ministries with Kosovar 'co-heads' beginning to take over much of the daily running of the province, although hampered by, among other things, a lack of funds. On 28 October 2000 local polls saw the election of local governments throughout Kosovo. If we refer back then to the provisions of Resolution 1244, as outlined above, we can see how, following the November elections, Kosovo will have been moved on significantly in terms of 'substantial autonomy and self-government'.

The Constitutional Framework foresees a 120-seat parliament for the territory, with 10 seats reserved for Kosovo Serbs and 10 for other minorities such as Turks and Roma. The assembly will have a seven-member presidency. The assembly will elect a president who will in turn nominate a prime minister. One member of the presidency must be a Kosovo Serb and one from another minority. Likewise, in government, one minister must be a Kosovo Serb and one from another minority.

But what does all of this mean? Indeed all of this is quite meaningless unless we know exactly where power will lie and who will do what. On announcing the election date Hans Haekkerup told the people of Kosovo in his broadcast on 14 May that the result of the election would be that, 'you, the people, now – for the first time in history will be able to decide upon the day-to-day affairs in Kosovo'.[2] Or as the English expression has it, 'Up to point . . .' For Mr Haekkerup chose his words carefully as, clearly, 'day-to-day affairs' rules out the big questions, or really the only big question, which is independence.

'Now . . .', said Mr Haekkerup, in his broadcast, 'what will be the role of the international community in the future? UNMIK will still be here. In most fields we will be taking a backseat. I will continue to ensure that the acts of the provisional Self-Government will be in accordance with UN Security Council Resolution 1244.' In other words Mr Haekkerup and his successors will reserve the right to veto anything that they do not like or approve of. So, for example, if the newly elected parliament immediately declared the independence of Kosovo or set a date for a referendum on independence, this would have no legal validity, as Mr Haekkerup would

2 Hans Haekkerup, broadcast, RTK, 14 May 2001.

declare that it was not in accordance with Resolution 1244 as it prejudged the province's final status.

'UNMIK will still be responsible for justice and law enforcement as well as the Kosovo Protection Corps. KFOR will continue to ensure a secure environment.' So, security, defence and indeed all tools relating to law and order are to remain outside the control of parliament and with the UN and the NATO-led peacekeeping force. The Kosovo Protection Corps (KPC) is the supposed civil emergency force that absorbed much of the top command structure of the old Kosovo Liberation Army (KLA) and several thousand former fighters. Since then, several of its senior commanders have played an important role in helping set up and indeed fighting alongside the Albanian guerrilla insurgencies in southern Serbia and Macedonia, and a number of its commanders have been arrested on suspicion of carrying out at least one prominent political murder. So, it is hardly surprising that UNMIK has no intention of giving the KPC, which most Kosovo Albanians regard as the nucleus of their future army, any more freedom of action.

The Constitutional Framework was the result of seven weeks of intensive negotiation. Both Albanians and Serbs tried to inject demands into it that they hoped would secure their preferred final outcome. Both failed. Hans Haekkerup's predecessor was Bernard Kouchner, the emotional and expansive French politician and humanitarian activist. One cannot imagine him expressing his displeasure, disgust even, at the failure of the two sides to come to a compromise in the cold and clinical terms used by Mr Haekkerup, a former Danish defence minister: 'Despite intensive efforts to bridge the remaining gap, the courage to compromise was missing.'

As far as the Albanians were concerned, their main demand was that, at a certain point in the future, a referendum should be held on the future status of Kosovo. Bearing in mind that the Albanians make up at least 90 per cent of the population, this would obviously guarantee a vote for independence. 'The Kosovo Albanians insisted to deal with matters that lie outside Security Council Resolution 1244 and tried to go into questions that are part of a final political settlement, including the idea of holding a referendum,' said Mr Haekkerup. 'The international community rejected this.' However, he added, 'there is a reference in the document that "the will of the people" will be taken into account among all other relevant factors in the process,

which, in accordance with Security Council Resolution 1244, will determine Kosovo's final status at an appropriate stage.'

As far as Kosovo's Albanian politicians are concerned the fact that there is no reference to a referendum was a heavy blow but it cannot have come as any surprise. By contrast, the formulation of the 'will of the people' is the same wording used in the ill-fated document worked out at the Rambouillet peace conference and signed by the Albanian delegation in Paris on 15 March 1999. If we look at the stipulations of Resolution 1244 we can see that Rambouillet is supposed to be 'taken into account'. Clearly that has been done, but taking things 'into account' does not mean any more than that. So, what is interesting here is that, in at least one significant way, the Kosovo Albanians are worse off than they would have been under any Rambouillet arrangement. This is because that text specified a three-year time limit after which the whole question of Kosovo's final status would once again come up for review at 'an international meeting' which was 'to determine a mechanism for a final settlement for Kosovo, on the basis of the will of the people, opinions of relevant authorities, each Party's efforts regarding the implementation of this Agreement, and the Helsinki Final Act.'[3] The fact that the Constitutional Framework is to stand, as Mr Haekkerup says, until 'an appropriate stage' says much about the dismal performance of the Kosovo Albanian leadership over the last two years and the lack of esteem in which they are now held by the diplomats responsible for dealing with Kosovo.

As for the Serb side, Mr Haekkerup noted that they 'wanted to be able to veto decisions that they feared would infringe their vital interests. Such a veto could lead to the complete stalemate in the work of the Assembly.' He continued, 'Anyway this approach is not necessary. To safeguard the rights of the Serb and other communities and to meet their concerns, a special mechanism in the Assembly has been created to reconcile differences and to resolve disputes. Furthermore, as an extra safeguard the Special Representative of the Secretary General [i.e., himself] has the power and responsibility to ensure, that the rights and vital interests of all communities are fully respected.'

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[3] See Interim Agreement for Peace and Self-Government in Kosovo, 23 February 1999, in Marc Weller, *The Crisis in Kosovo 1989-1999: From the Dissolution of Yugoslavia to Rambouillet and the Outbreak of Hostilities* (Cambridge: Cambridge University Press, 1999), vol. 1, p. 469.

As he wound up his broadcast, Mr Haekkerup made some comments which can really be interpreted as threats. In one clearly aimed at Serbian leaders he said, 'If communities do not participate, they will marginalise themselves outside the process and have no say in their future.' In those aimed at the Albanians he pointed out, in a veiled but obvious way, that the continued failure of their leaders to condemn violence directed at Serbs and other minorities, in any credible fashion, would simply continue to postpone the day when their demands for independence could be considered in any future talks on the final status. 'The Constitutional Framework and the institutions it establishes are necessary stepping-stones on the way ahead, but Kosovo will only find its natural place in Europe when violence stops and genuine reconciliation is achieved.' In a comment aimed at both communities he said, 'There is no place for parallel structures in Kosovo. Only by integrating and participating in the political institutions we now create can the future for all communities be achieved.'

At this stage it is, of course, difficult to gauge how successful the Provisional Self-Government will be. With Mr Haekkerup's unveiling of the Constitutional Framework the three main Kosovo Albanian leaders all complained that it contained no clause about a referendum, but they all committed themselves to taking part in the November polls. Hashim Thaci, the former political head of the KLA, now the leader of the Democratic Party of Kosovo (PDK) said, 'This document holds hostage the issue of independence.'[4] This observation was quite accurate since, as we have noted in Mr Haekkerup's veiled threats, the Kosovo Albanians will get nothing unless they make a commitment to stamp out violence. In this sense the Albanians might be forgiven for believing that the Constitutional Framework owed something to the report of the Independent International Commission on Kosovo, which proposed a formula it called Conditional Independence. Although the Commission foresaw an early referendum on independence, it noted that, realistically, Kosovo could only 'aspire to a conditional form of independence' since its 'external security and internal human rights regimes will have to be supervised by the international community and by a considerable military presence'.[5] In other words,

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4 'Three main ethnic Albanian parties say will participate in the upcoming elections', AP, 15 May 2001

5 The Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000), p. 272.

although explicitly on the road to independence, their transitional phase was a sort of probationary period. Under the Constitutional Framework Kosovo is not explicitly on the road to independence, but, since it is not, and cannot be ruled out, no one has said it is not. Therefore, in a way Kosovo will in fact be on probation.

Although the Kosovo Albanians complained about the Constitutional Framework, the initial Serbian reactions were to reject it out of hand. Momcilo Trajkovic was amongst the first to do so. Mr Trajkovic is a veteran Kosovo Serb politician who in the early 1990s was an ardent supporter of the then Serbian leader Slobodan Milosevic, then his opponent and now the chairman of the Yugoslav Government's Committee for Kosovo. Mr Trajkovic has been campaigning for the cantonisation of Kosovo, which would in effect mean the devolution of powers to the local authorities in the enclaves and the other areas where Serbs now live. Mr Trajkovic, and indeed all Kosovo Serbs, also want to block anything which they believe will take Kosovo one step closer to independence, which, in this case, by proposing to build government institutions, the Constitutional Framework arguably does. He said, 'Our minimum request is that Kosovo cannot be independent, remaining Serbs be guaranteed their safety and security, that Serb refugees return to the province and that a political solution envisages Kosovo's reintegration into Serbia.'[6] He went on to say that, in the present circumstances, the Serbs would not participate in the November elections. Marko Jaksic, a Kosovo Serb leader from the divided city of Mitrovica in northern Kosovo and a deputy in the Serbian parliament, agreed that Serbs should not participate in the elections, saying that if they did they would only be 'props', and that Kosovo Serb participation in the poll 'would legalise the committed ethnic cleansing and new exodus and the creation of a future monster-state in Kosovo'.[7] A similar sentiment was voiced by Yugoslav President Vojislav Kostunica and Predrag Simic, his foreign policy adviser, who called the Framework 'a concession to Albanian separatists'.[8] Nevertheless, Kosovo Serbs are coming round to the idea of participation in the forthcoming elections.

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6 Op. cit. in note 4.
7 *VIP Daily News Report* (Belgrade), 16 May 2001.
8 *Vecernje Novosti* (Belgrade), 16 May 2001.

A chasm clearly separates both sides of the political and ethnic divide over Kosovo. On the Albanian side only one thing is clear: independence. Apart from that, however, its leaders have little to say on anything and indeed, over the last two years have shown a singular lack of leadership. In the municipal elections in October 2000 the Democratic League of Kosovo (LDK) led by Ibrahim Rugova did remarkably well, winning a crushing 58 per cent of the votes cast. However, Mr Rugova and his party did virtually nothing to win the poll, in major part because they appeared to have no ideas apart from independence. Indeed the poll was won and lost not on any concrete discussion of the future but on the past, and who did what, when. Many voters turned to the LDK not because of what it planned to do in the future, but because many of them were frustrated with what they perceived to be the arrogance of a new élite emerging from the ranks of the old KLA, which felt itself entitled to seize property and businesses and even kill anyone who stood in their way. Thus far there is little indication that things have changed, and so, in this sense, the prognosis for the future is not rosy. Of course, this may depend on whether one is an optimist or a pessimist.

The pessimistic argument runs as follows. Following the November poll, Kosovo Albanians will begin to be in charge of their own destinies. But, with no experience of running anything in government and in a society which has long operated with parallel structures, it will be hard for any sort of modern and efficient government to emerge which can administer the province's economy, crush crime, and build credible state structures. In this case criminal gangs, in some cases associated with the political parties, will continue to flourish. These will overlap with ethnic Albanian guerrillas in southern Serbia and Macedonia, and so the region will continue to be unstable. This will thus convince foreign governments, even more than they are already, that Kosovo cannot be independent and this may lead in turn to attacks on KFOR troops. This will lead to a souring of relations and, either an attempt to clamp down on the province or even an eventual pull-out, plunging it ever further into chaos and conflict. In other words, potentially, Kosovo could be NATO's West Bank.

By contrast, the optimistic scenario holds that, even though the Kosovo Albanians have little or no experience in administration, the coming years will give them precisely that, preparing them then for a credible, independent, viable and tolerant state. As Veton Surroi, the influential publisher who has played an important role as a kind of de facto Kosovo Albanian foreign

minister has argued, while at present Resolution 1244 'denies Kosova sovereign status, until negotiated agreements say otherwise', that 'does not impede its development as a functioning state.'[9] He goes on to argue for what he calls the 'Taiwan scenario', in which Kosovo, Serbia and Montenegro, which for the moment are all 'going through a process of internal consolidation, will necessarily focus more on the function of the state than on its international recognition.' He says, 'The fact that the FRY was accepted into the UN does not strengthen Belgrade's relations with Podgorica and Pristina. The Federal Republic cannot emerge as a sovereign entity for the simple reason that not all of its constituent states are willing to countenance the idea.' He cautions, however, that in the long run 'any attempt to resolve the issue is destined to fail if it underestimates the Kosovars' right to decide their own future.'

Of course Kosovo is not an island and the future course of politics there is intimately bound up with developments in the rest of the region. For example, we do not yet know if Macedonia will indeed collapse or whether the Framework Agreement of August 2001 will hold. Likewise, although it seems as though the days of the Liberation Army of Presevo, Medvedja and Bujanovac in southern Serbia are numbered, there can be no guarantee of this.

Just as important as developments in these two areas is what will happen in Montenegro. Kosovo Albanians had been hoping that forces in favour of independence would win the elections of 22 April. They argue that, because Resolution 1244 does not mention Serbia but only the FRY, once Montenegro had formally left the moribund federation it would then cease to exist, so Resolution 1244 would become redundant and Kosovo could become independent. Unfortunately for those who hold this view this is, legally speaking, unlikely to be the case. International lawyers, even ones sympathetic to the cause of Kosovo's independence, believe that if the FRY no longer existed then, in relation to Kosovo, Serbia would be the legal successor state. By contrast, there are still many Western diplomats who believe that Serbia, Montenegro and Kosovo can be forced to stay together inside one loose federation or confederation. Even they, however, recognise that with Montenegro gone the chances of retaining a link between Kosovo

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9 Veton Surroi, 'Kosova Priorities', *Balkan Crisis Report*, no. 209, 15 January 2001, www.iwpr.net.

and Serbia are virtually nil. In fact, even if Montenegro *did* remain in a renewed federation they would be nil, so that argument has little validity, but still many do persist in clinging to it.

In any event the elections of April 22 proved a disappointment for both sides. Although the pro-independence parties did win, they did so by such a small margin that the poll ended up by doing nothing to clarify the situation. The pro-independence parties still talk of a referendum but this may be postponed, especially if they believe that the steam has gone out of their campaign.

Let us turn now to the Serbian side of the coin. There is no denying that fundamental changes have taken place in Serbia since the fall of Slobodan Milosevic on 5 October 2000. Ever since the Democratic Opposition of Serbia (DOS) coalition of 18 parties has been struggling with huge problems. These include the Albanian insurgency in southern Serbia, the economy, Montenegro, wrestling with the issue of war crimes, the Hague Tribunal, what to do with Mr Milosevic, a sex scandal and the unclear separation of powers between the Yugoslav and Serbian governments. Kosovo, then, is not a priority, and since no one in Serbia has any serious ideas about what to do about Kosovo, the authorities would rather leave the issue on the back burner.

At the beginning of May, Serbian newspapers were full of the grotesque story of the discovery and cover-up of some 50 corpses, including women, children and old people, obviously from Kosovo, in a refrigerated truck, at the bottom of the Danube, on 6 April 1999.[10] Clearly these were victims of a massacre and the authorities, by trucking the bodies more than 200 kilometres away from Kosovo, were taking care to dispose of them in a place where they could never be found. The result of this story was that it began to make Serbs realise that terrible crimes had taken place in Kosovo, and that these were not all the invention of NATO propagandists. In the long run, of course, this can only be a good thing, but whether such stories will help kick-start a much-needed public debate about what to do about Kosovo remains to be seen. To date any remorse that might have been felt has been obscured by the flight and ethnic cleansing of Serbs from postwar Kosovo,

[10] See, for example, 'Kosovo Atrocity Cover-Up', *Balkan Crisis Report*, no. 246, 11 May 2001, www.iwpr.net.

the unresolved and festering issue of missing (presumed dead) Serbs and the continued murder of remaining Serbs.

In principle it might be possible to put off any debate about Kosovo for some years, but eventually Serbs will have to ask what is to be gained from their continued claim on the province. Indeed, even many Serbian nationalists now recognise that there can be no going back to the situation as it was before the war, although they may still, erroneously, believe that some form of autonomy – as a final status – can be worked out. By contrast, an interesting development since 5 October is that there are a number of influential people now in government circles who believe that Kosovo is a millstone around Serbia's neck, that it will never be possible for Serbs and Albanians to live together again, and thus Serbia should get rid of Kosovo. A sub-text to this argument is the belief that, in the past, Kosovo was an area that always swallowed vast amounts of money from the rest of the old Yugoslavia, and that impoverished Serbia simply cannot do this in the future, especially for people who hate it. Besides, if Kosovo were to remain linked to Serbia or Yugoslavia then it would have to elect deputies to its parliaments, another unwelcome prospect. The problem, then, for the small numbers who believe that Serbia's best interests will ultimately be served by jettisoning Kosovo is that, for the moment, they have no incentive to 'come out'. At present there is no political advantage to be gained from making these sorts of arguments and indeed there is a political risk, which is that it could provide ammunition to Serbian nationalists, who, although down, may well not be out. Indeed, in the long run, if the current reformist authorities fail, there is every reason to fear some form of nationalist return, perhaps in league with elements of the old regime, in much the same way as we have seen in neighbouring Romania and Russia.

Many foreign analysts and diplomats concerned with the Balkans would agree with those Serbs who believe that it is in the best interests of Serbia to be rid of Kosovo, but there is another angle which has to be taken into account here. That is that when, eventually, Serbs and Albanians do begin to discuss the final status of Kosovo, and, for the sake of argument those Serbs who would like to get rid of it are in charge, then they may well demand something in return. That is to say that, just because they believe that Serbia should be rid of Kosovo and its Albanians, that does not mean to say they do not believe in partition. In other words they may well be willing to sacrifice those relatively few Serbs who still live south of the river Ibar, but

keep the current Serbian dominated area in the north. Many Albanians would object to this, depending on where the border was drawn, but some are open, in principle, to the idea of an exchange of territories, that is to say, exchanging ethnically Serbian dominated areas of the north for the Albanian inhabited areas of the Presevo valley in southern Serbia. This is, of course, exactly what the foreign diplomats concerned with region fear, believing, probably correctly, that even to discuss this question would have negative repercussions in Macedonia and Bosnia.

Kosovo, then, is in an – almost – impossible situation. Serbia and the Serbs have no answers as to what to do about it, and Kosovo Albanian politicians repeat the word independence like some form of magic formula. At present, however, there are no credible structures which could run an independent Kosovo, but, with care, these may well be built thanks to the Constitutional Framework. The continuing murders of Serbs and other minorities, plus the close links between important elements of the Kosovo Albanian political élite and insurgents in the Presevo Valley and Macedonia, have done tremendous damage to the Kosovo Albanian cause. This is not to say, however, that the province will never be independent. As Blerim Shala, the editor of the daily *Zeri*, who was part of the team that worked on the Constitutional Framework put it, probably correctly, 'Kosovo will be independent if it is governed in a democratic way.' But he cautioned, 'To be frank, the way things are going now, independence is very, very far away.'

In this context there is another point which we must consider. That is that there is stream of opinion, expounded for example by Daniel Serwer, the Director of the Balkans Initiative of the United States Institute of Peace, which holds that, because Kosovo is an international protectorate, established by the UN Security Council, 'only a new Security Council resolution can decide final status'.[11] This is not going to happen, he argues, because the Russians and the Chinese 'have their own reasons for not wanting Kosovo to gain independence – namely the potential repercussions in Tibet and Chechnya.' Therefore, says Serwer, the only way forward is by 'reaching a mutual accommodation between Serbs and Albanians'. He goes on to warn Albanians, 'If Kosovo is going to want a good relationship with Serbia, Albanians don't want to chase the few remaining Serbs out . . . If you want

[11] Daniel Serwer, 'Albanians in the Balkans', *Kosova and Balkan Observer*, Year I, no. 1, March 2001.

the Serbs to tell China and Russia that it is okay to allow Kosovo to be independent, you don't want to raise questions about the border between Kosovo and Serbia by supporting an armed Albanian insurgency. If you want to convince the West that Kosovo independence will be stabilizing for the Balkans, you don't want to export that insurgency into Macedonia, the country the West has worried about longest and the most.'

Whether Daniel Serwer is right about independence requiring a new Security Council resolution is, from a legal point of view, open to debate, but politically he is absolutely right. That is to say that, today, there is no will in the international community to support independence, therefore, for the foreseeable future, it will not happen. If we take this into consideration, the fact that the Serbs have no ideas of how to deal with Kosovo and, from the Albanian perspective, the fact that the province still has no real institutions, then we can see that the Constitutional Framework is not an imaginative document taking Resolution 1244 forward but rather a proposal born of the lack of viable alternatives. That said, it provides Kosovo, Serbia and the international community with valuable breathing space, an opportunity to build something constructive in Kosovo, and time for views amongst Albanians and Serbs to mellow, so that compromise or a mutually agreed separation can come about. It will, of course, only be an opportunity if Serbian and Albanian politicians see it as such. If they do not then they are doomed to conflict without end.

Chapter Five

THE POSTWAR BALKANS AND THE KOSOVO QUESTION

Jacques Rupnik

The post-Milosevic Balkan landscape is one of contrasts. On the one hand, with the disappearance from the political scene of one of those chiefly responsible for a decade of war, one can look forward to peace and democratic changes that will promote stability and cooperation in the region. However, at the very moment that Milosevic was put in prison in Belgrade at the beginning of April 2001, an armed uprising in Macedonia on the border with Kosovo and Serbia gave rise to fears that such hopes may be premature. Hence also the differences of interpretation of the situation in the Balkans, which is variously seen as one where there are opportunities to be seized or risks that are to be avoided, one in which the legacy of the Milosevic decade is mixed up with the aftermath of NATO's intervention in Yugoslavia in spring 1999.

Indeed, the different evaluations of the situation in the region often coincide with (re)interpretations of the international action that put an end to the war of Yugoslav dissolution. Some see the military intervention, despite its failings and limitations, as something that nevertheless made it possible to free Kosovo of an apartheid regime imposed by Belgrade, and then to rid Serbia of Milosevic.[1] Others think that the great powers' intervention set a worrying precedent that has potentially destabilising consequences for the region.[2] We shall look first at the landscape after the battle and the new features of the region before going on to analyse the reasons why the international community cannot afford to allow the question of the future status of Kosovo to remain unanswered. The fact of having removed Milosevic, one of the main causes of the war, does not exempt us from facing up to its lasting consequences.

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1 See, for example, Noel Malcolm, 'Did no good really come of intervention in Kosovo?', *The Daily Telegraph*, 24 March 2000; Pierre Hassner, 'Kosovo, Balkans, Europe: brève rencontre ou mariage durable?' *Esprit*, Mai 2001, p. 65.

2 That is the view of, for example, Mark Mazower of the University of London, 'Beware the threat of Albanian nationalism', *Financial Times*, 16 March 2001; or Steven Erlanger, 'The Balkan Disease Isn't Cured Yet', *The New York Times*, 15 April 2001.

V.1 After the battle: the change of regime and retreat of radical nationalism

The almost simultaneous demise, during 2000, of the Milosevic regime in Belgrade and that of Tudjman in Zagreb, unquestionably signalled a retreat of the radical ethnic nationalism that had been dominant in former Yugoslavia for a decade, in favour of moderate nationalism. This trend seems to be confirmed both by the breakthrough (at least in the Bosnian part) of opponents of nationalist parties in Bosnia-Herzegovina and the defeat of the heirs to the UCK (and the uncontested victory of Ibrahim Rugova's moderates) in the municipal elections in Kosovo in October 2000. If, in addition to that, one considers the prudence displayed by the Albanian government (returned to power following the June 2001 elections) since the crisis in Kosovo, and that of the Bulgarian government throughout the decade in the face of the situation in Macedonia, one can justifiably talk not only of a new political situation, but of an emerging new regional order. The ending of the war in former Yugoslavia, the détente between Greece and Turkey and the launch, during summer 1999, of the Stability Pact for South-Eastern Europe, really did seem to create a favourable environment for regional cooperation. As long as its disruptive power was there, nothing could be done with Serbia, yet, in terms of regional cooperation, little could be done without Serbia. With the failure of Milosevic's strategy of destabilising his neighbours (of which the massive expulsion of the civilian population from Kosovo to Macedonia and Albania in spring 1999 was the final example), Serbia was able to regain its place as regional pivot between the northern flank (in its relations with Croatia and Bosnia) and the southern flank (Kosovo and Macedonia). Yet while the risks of conflict may have become more remote on the northern flank of the Balkans, a shift of the centre of gravity of conflicts linked to the dissolution of Yugoslavia towards the southern flank can be seen. In the Balkans, the last decade of the twentieth century was dominated by the 'Serbian question'; the present decade is likely to be dominated by the 'Albanian question'.

Dictatorships are not what they used to be. Slobodan Milosevic, who perpetuated the power he inherited from the former Communist regime by plunging Yugoslavia into a decade of war, abandoned it without putting up any resistance following his defeat in a presidential election that nothing obliged him to hold. It was rather as if the nationalist legitimation to which he had resorted since the end of the 1980s no longer sufficed, or had

exhausted his resources after four lost wars (in Slovenia, Croatia, Bosnia and then Kosovo) and a country in ruins. In Zagreb, the condition permitting a change of regime (made easier by the deaths of Franjo Tudjman and his Defence Minister Gojko Susak) was rather that nationalism had achieved its aims since the military operation in Krajina in 1995. Yet in both cases the change in regime was made possible by a unifying movement among the opposition forces supported by the mobilisation of civil society, particularly the younger generation, whose votes made all the difference. However, as both those conditions were temporary, one must be careful not to conclude that the defeat of radical nationalism is irreversible (both the results obtained by the Croatian Democratic Union (HDZ) in the municipal elections in Croatia in May 2001 and certain reactions in Belgrade to the extradition of Milosevic suggest that one should be prudent). In both cases the 'period of grace' will depend on the cohesion of the coalitions formed from the parties in opposition to Milosevic and Tudjman, who are deeply divided along ideological and partisan lines, but particularly their ability to achieve, in the short term, tangible economic results for populations that will no longer agree to make the sacrifices once demanded in the name of the 'sacred union' to defend a homeland (and a government) facing danger. Serbia's situation is from this point of view more dramatic (per capita GDP at the time of Milosevic's downfall was around 10 per cent of what it had been ten years previously), requiring both a bolder policy of reforms and greater dependence on international financial aid.

Since the election of Stipe Mesic as President in February 2000, Croatia has not only distanced itself from certain institutional practices that were scarcely democratic, but also, which is important for its relations with its neighbours, shown in three ways that it has broken with the Tudjman era. First, it has made a clean break with the ultra-nationalists of the HDZ in Herzegovina, whose violent demonstrations in Mostar in April 2001[3] were as much directed at the international administration as they were a fit of pique at their loss of influence in Zagreb. Next, Zagreb has agreed to cooperate with the International Criminal Tribunal for the Former Yugoslavia (ICTY), even though this could lead to nervousness in military and

[3] The incidents in Mostar in front of the Herzegovacka Banka on 6 April revealed the close links between ultranationalist circles and organised crime. Their confrontation with the international administration was no doubt a failure for the latter from a military point of view, but not politically. See Jeffrey Smith, 'Failed NATO raid humiliates the West', *International Herald Tribune*, 28 June 2001.

nationalist circles (as the arrest of General Mirko Norac showed). Lastly, Croatia has agreed to allow the return of Serbs driven out of Krajina in 1995. All of this opens up new possibilities for its relations with Bosnia and Serbia.

Belgrade's new policy is more ambiguous, reflecting as it does the divisions between the Yugoslav President Vojislav Kostunica and the Serb government of Zoran Djindjic. The former sees himself as defender of the Constitution and a certain concept of sovereignty. With the support he commands in the institutions (the Army, Orthodox Church and Academy of Sciences) he is a defender of tradition. He is doubtless capable of picking up the votes of the former supporters of Vuk Draskovic and Milosevic and winning them over to a policy of greater openness. Djindjic has the support of what remains of the educated middle classes, the NGOs, the new entrepreneurs (often lately converted) and . . . the police. Whereas Kostunica stands for defence of the paternalist state and national sovereignty, Djindjic considers that a policy of modernity and Westward-looking liberalism is the best way quickly to emerge from a lost decade.

These different positions among the country's leadership, and equally in the Democratic Opposition of Serbia (DOS) coalition, are also to be seen in Belgrade's hesitant policy towards Republika Sprska (RS) and the International Criminal Tribunal in The Hague. Although the new government in Belgrade has accepted the Dayton conditions, Kostunica's first visit to Bosnia following his election was to RS for a ceremony in commemoration of a nationalist poet, and he only made the detour to Sarajevo when pressed by the High Representative. The main Serb nationalist party in RS, the Serb Democratic Party (SDS) thinks that it is again in phase with the government in Belgrade, and seems to cherish the hope, or the illusion, that, in the hard bargaining to come, out of the ruins of Yugoslavia the RS will be able to attach itself to a Serbia that has rid itself of Milosevic, whose name is synonymous with desertion and Dayton. Similarly, on the issue of cooperation with the ICTY and the extradition of Milosevic to The Hague, differences have been clearly expressed. Both Kostunica's preference for a Truth and Reconciliation Commission to investigate the history of the period 1980-99 and Djindjic's haste to hand over Milosevic before the opening of a donor conference that was to promise Yugoslavia €1.5 billion, each in its own way illustrates these differences and ambivalent attitudes of the new Serb political élites to Milosevic's legacy. The way that legacy is handled

will be decisive for the process of normalisation and, in the longer term, reconciliation with Serbia's neighbours.[4]

The changeover of political power in both Belgrade and Zagreb is thus helping the slow process of convalescence in Bosnia, under international protection, with its modest but undeniable progress in the fields of security, the free circulation of goods and people (with common vehicle number plates and currency, for instance) and even the return of refugees (almost 100,000 of the minority populations have returned). There remains the question of how things will develop in the longer term: is the geographical separation of the communities a necessary step prior to their subsequent integration, or does it in fact also hide ulterior motives and allow strategies of partition to be perpetuated?[5]

As radical nationalism retreats, the risks of conflict on the northern flank lessen, as do the vague desires to divide Bosnia that used to dominate the approach taken by Milosevic and Tudjman. It is, however, only a question of a withdrawal (and not an irreversible defeat) that could be called into question on the southern flank of the Balkans, where Yugoslavia's uncertain future and Macedonia's internal weakness are revealing new risks of conflict.

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4 The Truth and Reconciliation Commission in Belgrade was appointed by President Kostunica and not Parliament. Three of its fifteen members, in fact the most highly respected figures (the jurist and defender of human rights Veselin Djuretic, the philosopher Latinka Perovic and the economist Tibor Varady), have already resigned. The Commission has a mandate to investigate the period 1980-99 and is to show *inter alia* that 'the Serbs were also victims', but is not to cover Kosovo, since 'the conflict in Kosovo is not finished', according to Commission's spokesperson Radmila Nakarada (interview with the author, Belgrade, 14 June 2001).

5 The institutional debates in Bosnia-Herzegovina illustrate in their own way these two options, which the political leaders of each community still keep in mind. The Croats propose a cantonisation into three parts. The Bosnian Muslims (Izetbegovic) would accept that provided the two existing entities were done away with. But that is totally unacceptable to the Serbs, for whom the RS remains an essential conquest and who have paradoxically become the most fervent defenders of the framework laid down at Dayton in 1995.

V.2 The unfinished break-up of rump Yugoslavia

The central problem in the Balkans, even after the collapse of the Milosevic regime, is still the triad fragmentation – recomposition – integration. That is also how it is seen in the region itself. The Serb Prime Minister Zoran Djindjic sees it as a long-term issue: 'During the last hundred years we have ceaselessly gone through phases of dictatorship and periods of disintegration. It is not democracy that follows dictatorship but disintegration, which throws up a new dictator who persuades the people that dictatorship is preferable as a formula for peace. Tito's Communism was a response to the civil war fought during the Second World War.'[6] The present challenge of transition has to be seen in the light of that historical experience: 'we are trying to halt disintegration without returning to dictatorship'. Yet it has to be recognised that fragmentation is continuing in rump Yugoslavia (this can be seen in the problems of Montenegro and Kosovo) and within Serbia (in southern Serbia and Vojvodina) precisely because the actors involved are convinced that 'in the Balkans, without dictatorship break-up results'. The opposite reasoning attempts to reconcile integration and democracy for the sake of the broader European project. Djindjic refers to Europe as a magnet that can help cohesion in the region.

The risk of disintegration mentioned by the Serb prime minister is also present in the popular perception. According to a public opinion poll conducted by the Belgrade institute SMMRI in December 2000, nearly two-thirds of the Serb population think that Serbia is 'extremely' or 'very' threatened.[7] Three quarters consider that, well ahead of political and economic independence or security and national pride, it is their *territory* that is the most threatened. The Kosovo crisis is seen as the main vector of that threat, which confirms that as far as Serb opinion is concerned, Kosovo continues to be a part of *their* territory. That has to be seen in conjunction with their perception of their neighbours: much more so than the Croatians or Bosnians, the Albanians are seen as 'very threatening'.[8]

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6 Zoran Djindjic, 'Da mi nismo bili takvi ne bi bilo ni Milosevica' (If we were not like this there would have been no Milosevic), interview with Adam Michnik, *Danas* (Belgrade), 16-17 June 2001.

7 SMMRI poll for EWI, 'Threat perception Serbia, Montenegro, Macedonia', Belgrade, December 2000, p. 16. By way of comparison, in Montenegro a third of Serbs and only 16 per cent of Montenegrins reportedly consider that Montenegro is 'very threatened'.

8 Ibid., p. 7.

This first major survey of threat perceptions in Serbia after the fall of Milosevic reveals a contrast: while Montenegrin or Kosovar rejection of even a revised and corrected form of Yugoslav federalism is based on fear of Serb domination, public opinion in Serbia continues to perceive relations with both 'internal' and 'external' neighbours very much in terms of threats to the integrity of state territory.

This uncertainty on the contours and nature of the state also raises the problem of the fragile character of the current transition and a possible relapse into radical nationalism if the reforms under way were to fail to produce a rapid improvement in the standard of living, or a conflict (like that in the Presevo valley) were to mobilise populist, nationalist feelings once again.[9] The breakthrough made by the ultra-nationalist Vadim Tudor in the Romanian presidential elections in September 2000 has shown just what the political cost of economic failure can be. More generally, and returning to the question mentioned by Zoran Djindjic, a successful transition to democracy requires consensus on the territorial framework of that democracy. As long as such consensus has not been reached, there remains a strong possibility that the transition could be derailed by nationalists, paving the way for an authoritarian regime. The only way to avoid that risk (and an uncertain choice between Kosovo and Europe) would be if the European 'current' were to build up as a result of tangible economic progress.

The new government in Belgrade faces two tasks: rebuilding the political regime after the Milosevic era and redefining the state after a decade of war of Yugoslav dissolution. The fall of Milosevic has considerably reduced the risks of any escalation of violence but has not checked the process of disintegration of rump Yugoslavia. President Milo Djukanovic's plan for the secession of Montenegro was made during his opposition to the Milosevic regime. Until NATO's intervention in spring 1999, Montenegro was seen (even by the opposition in Belgrade) as a lever to help bring about democracy in Serbia. Today, its possible independence is described by the same people as an additional obstacle in the path of the successful attainment of

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9 The question of Kosovo and southern Serbia are of far less concern to the Serb population than unemployment or the standard of living, but of greater concern than membership of the European Union. This socio-political context is crucial for the late introduction of economic structural reform; see the analysis by Vladimir Gligorov, 'Populizam ugrozava reforme' (populism is threatening reform), *Ekonomist* (Belgrade), 18 June 2001.

the main objective: the consolidation of democracy in Serbia. Following the fall of Milosevic, the proposed independence of Montenegro is seen by the international community as having lost its legitimacy, but not by the intellectual and political élites close to the government in Podgorica and (judging by the results of the general election of April 2001) a good half of the Montenegrin electorate. While a violent solution now seems to have been avoided, two options remain. The first of these, which is preferred by the Belgrade government, would be a minimalist confederate compromise (with shared finance and defence), yet would not call into question the de facto independence acquired in 1997. The second, preferred by Podgorica, would lead to a 'velvet divorce' and would deeply divide the population of Montenegro (which numbers 650,000, a quarter of whom are Albanians and Bosnian Muslims in favour of independence). The independence of Montenegro poses no threat – except to the very existence of rump Yugoslavia. The point is an important one in any debate on the future status of Kosovo (discussed later). Indeed, according to UN Security Council Resolution 1244, Kosovo is a part of Yugoslavia (and not of Serbia). If, therefore, there is no more Yugoslavia, the question of Kosovo's status comes to the top of the agenda.

The second source of grievances that has direct ramifications for Kosovo is the conflict in the Presevo valley in the south of Serbia, where there is an Albanian-speaking population of around 90,000 concentrated in Presevo, Bujanovac and Medvedja. Since February 2000 an Albanian guerrilla force (the Liberation Army of Presevo, Medvedja and Bujanovac – UCPMB) an offshoot of the former Kosovo UCK, has openly advocated armed struggle in the 'security zone' for the unification of this territory with Kosovo. The conflict died down a year later, but not speculation on the fate of this Albanian-speaking enclave in southern Serbia.

Three important lessons

The 'security zone' that the 1999 Kumanovo agreement established as an area separating NATO forces and those of the Yugoslav Army has become a zone of insecurity. KFOR's laxness in its control of the border with Serbia no doubt had its logic, in that it was a way of putting pressure on the Milosevic regime. It became counterproductive, however, in management of

the new relationship with Belgrade and in efforts to bring to heel the self-proclaimed successors to the UCK.[10]

The way out of the crisis negotiated by Deputy Prime Minister Nebojsa Covic may be considered exemplary in several respects. Supported by the West, this was a process, unprecedented in the region, of direct negotiation between the Yugoslav authorities and the 'terrorists'. The disarmament of the latter, together with important guarantees concerning self-administration of the districts concerned, and the inclusion of Albanian-speakers in the administration and police, in fact represents a model that could (should) be followed by the Macedonian government, which is faced with a similar problem. The National Liberation Army operating in Macedonia is also led by a former fighter from the Kosovo UCK (Ali Ahmeti). The declaration signed in Prizren by him and Arben Xhaferi, the leader of the main Albanian party in the governing coalition in Skopje, recognised the integrity of Macedonian territory. Evidently the political will to follow the Presevo model in order to defuse the crisis before it was too late did not exist. The view that, in doing this, there was a risk that the guerrillas would be 'legitimated' should be judged against the de-legitimisation of the government in the eyes of an important part of Macedonia's Albanian-speaking population.

The agreement negotiated on southern Serbia permitted the return of the Yugoslav Army (VJ) to the security zone. It thrust Nebojsa Covic to the front of the political stage. Now, the 'man of dialogue and reason', who is rightly contrasted with the bellicose agitators of the Milosevic era, is also the man who has recently proposed a draft constitution for a Serb entity in Kosovo. So, were the negotiations and concessions made on the Presevo valley just a bargaining chip to be used in negotiations over the Mitrovica enclave? Flushed with success, the man credited with the peaceful resolution of the southern Serbia question has also been the one who has relaunched the debate in Serbia on the prime taboo subject: the future status of Kosovo.[11]

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[10] Hashim Thaci allegedly attended the celebration of the first anniversary of the UCPMB in February 2001. Its leadership originated in Kosovo.

[11] All the Serb media are concentrating on this debate. The weekly *Reporter* (no. 164, 13 June 2001) includes a special feature called 'Old and new maps of the division of Kosovo' that describes various plans to divide Kosovo; it includes that of Covic but also those drawn up by the *Wehrmacht* made during the Second World War and by the writer Dobrica Cosic and his colleagues of the Serbian Academy of Sciences (SANU).

V.3 The future of Kosovo: four options

There are 'good' reasons to avoid talking about Kosovo's future status. The external reasons are mainly to do with the international consensus on Resolution 1244 that made it possible to end the conflict. Calling it into question would incur Russia's wrath, with consequences quite out of proportion to the importance of Kosovo. The internal reasons boil down to doing nothing that might compromise the transition to democracy of the new government in Belgrade. Between the two lies the regional dimension, i.e. the domino theory: calling into question the fact that Kosovo is a part of Yugoslavia would set a precedent that could destabilise other parts of the region, beginning with neighbouring Macedonia.

Each of these objections is important, but not insurmountable. Russia is not really interested in the fate of Kosovo but in that of Chechnya. Kosovo is pointed to as an example of 'humanitarian interference' that threatens national sovereignty. Nearly all Russian rhetoric on the subject (the domino theory of separatism, the threat of 'Islamic terrorism' or the criminalisation of an entire population) can be applied equally to Kosovo and Chechnya. It is striking how Chechnya is in the minds of Russians when they speak of Kosovo yet absent from Western dialogue with Russia. The second objection (that we should not complicate Kostunica's task) can also be turned around: it could in a way simplify his task. To assert, at the very moment of Milosevic's arrest, that the future of Kosovo might be outside Yugoslavia would be to ascribe that reality to the legacy of the old regime, especially as the same objection (that Belgrade's transition should not be hampered) was used – and subsequently forgotten – as an argument for not insisting on Milosevic's transfer to the ICTY at The Hague. Lastly, the argument that this would be a precedent that could affect Macedonia is not really convincing, because destabilisation is happening without the question of Kosovo's final status being addressed (or precisely because it is not being addressed).

As a result, the bad news is that there is no satisfactory solution for the future status of Kosovo; if there were one, it would already be known. The good news is that the protagonists in both Belgrade and Pristina are aware of that, and could, despite their differences, be brought to the negotiating table provided that the framework, objectives and limits were clearly established by the international community, which has been directly involved in Kosovo

since 1999. General elections are due to be held in Kosovo before the end of the year. It is therefore high time to think about certain options that could be put on the agenda with the creation of democratically elected bodies there. The following are the four main options:[12] (1) the partition of Kosovo; (2) an extended international protectorate; (3) a revised Yugoslav federation that is acceptable to all; (4) 'conditional independence' for Kosovo. There is no watertight separation between these options. Possibly there could be a continuum, a sequence ranging from international protectorate to an interim solution with coexistence of the three component parts of rump Yugoslavia leading to a process of 'conditional independence' for Kosovo.

The partition of Kosovo

What will the new map of the Balkans look like post-Yugoslavia? That is the recurring question in most of the successor states. Should there be a recomposition of existing groupings along ethnic lines or should the status quo be preserved at all costs? Is partition a way of defusing a destabilising conflict, or does it merely lead to an unending spiral of new conflicts? At the beginning of June 2001 the Macedonian Academy of Sciences presented its proposal to divide Macedonia into Slav and Albanian-speaking parts. Prime Minister Ljubco Georgievski declined to disown the project – unlike President Boris Trajkovski – thus exposing the divisions at the highest levels of government but above all the inconsistent and ambivalent attitudes of Macedonians towards their own state. The incident is firstly a good argument for closing Academies of Science in the region as a matter of urgency because they produce dangerous nationalist projects. Yet it also reveals a paradox: this proposed new division of the country coincided with the signature by the guerrilla leader of an undertaking to respect Macedonia's territorial integrity.

At the same moment, Nebojsa Covic, the Serbian Deputy Prime Minister, flushed with the success of his negotiation on the Presevo valley, also put forward a proposal for partition, concerning mainly the creation of a Serb

[12] The options set out here are based on a study made by the Independent International Commission on Kosovo chaired by Judge Richard Goldstone, whose report was presented to the UN Secretary-General in October 2000. See IICK, *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000), pp. 259-97.

entity in northern Kosovo.[13] The proposal was presented in Serbia as a moderate, realistic viewpoint that clearly rejected the fantasy of a Serb reconquest of Kosovo. There would in fact be good grounds for having a Serb entity in Kosovo if it were designed as an interim solution that guaranteed the security of the Serb population in a Kosovo in the process of working out a Constitution, but not with a view to partition. Yet the Covic project considers the possibility of Yugoslav security forces (the Army and Interior Ministry Police) thus 'returning' to Kosovo, something that would be totally unacceptable to the Kosovo Albanians, for whom it would amount to a new declaration of war. The proposal would also be unacceptable to the international community: it would mean that it had intervened militarily in Kosovo to put an end to ethnic cleansing only to see a division along ethnic lines established that would inevitably be accompanied by new population movements.

An international protectorate

Since June 1999, and in accordance with UN Security Council Resolution 1244, Kosovo has been under an international administration (UNMIK). Its results so far are positive overall so far as reconstruction and reducing the level of interethnic violence (but not its elimination) are concerned; it is still a partial failure in the fields of justice and police, and in the creation of conditions that allow non-Albanian refugees to return. In theory it might be desirable to perpetuate this situation; after all, the purpose of protectorates is to freeze a situation and gain time. But has time really been 'gained', and is one quite sure that one can 'freeze' the status quo?

The period of direct 'international' administration is likely to be called into question sooner than chancelleries might wish. The new 'constitutional framework' for Kosovo promulgated by Bernard Kouchner's successor Hans Haekkerup in May 2001 indeed provides for elections of members of the Kosovo Assembly, which will then elect a president.[14] Now, the political

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13 The Covic plan is inspired by maps published by Branislav Krstic, *Kosovo pred sudom istorije* (History's Judgement on Kosovo), Belgrade, 2000.

14 The Kosovo Serbs refused to take part in the negotiations on the 'constitutional framework', which would have involved them in a process of negotiation on the future of Kosovo. Belgrade prefers to stick to the letter of Resolution 1244. The meeting in June between Haekkerup and Kostunica on the 'constitutional framework' was consid-

forces present in Kosovo (including moderates like Veton Surroi, publisher of the daily *Koha Ditore*) have stated quite clearly that during the election campaign the debate on the Constitution will be reopened. In principle, UNMIK will control only three ministries – defence, foreign affairs and security – but for how long will the coexistence of two powers be viable? A democratically legitimated assembly could quickly come into conflict with the international administration, which will retain its veto right. One could be heading straight for a conflict between a democracy in the making and the international protectorate. If the former were to declare its sovereignty, what would the latter respond – 'Look again at Resolution 1244, which holds that Kosovo is a part of Yugoslavia'? If one wants to prevent a conflict between two legitimate entities gradually becoming a conflict between frustrated nationalism and a disputed protectorate, it will not be possible to dodge the issue of Kosovo's sovereignty and future status.

A restructured Yugoslav federation

A revised and acceptable Yugoslav federation that is able to arrive at a compromise between the autonomy of its component parts and the requirements of an internationally recognised state would be the solution preferred by international diplomacy (because it keeps the consensus on Resolution 1244) and the new Belgrade government (because it would close the Milosevic chapter and maintain access to the sea). As this approach avoids continued fragmentation, it is also preferred by most countries in the region that are worried about destabilisation. But apart from the question of whether it is the most desirable solution, it has to be said that it is not very realistic. First, the idea of Yugoslav federalism may, after a decade of war conducted under its flag, still be popular in Serbia but is still seen in Kosovo, and to a certain extent in Montenegro, as an instrument of Serb domination. There is not much sense in the Yugoslav idea itself. Yugoslavia was the state of the southern Slavs. Since all the other Slavs have left it, how can it be expected that the only non-Slavs (the Albanians) will remain in an unlikely cohabitation with the Serbs? The idea of a reconfigured Yugoslavia rests on the tidy hypothesis, but one that has rarely been borne out in the Balkans, that nationalism divides but democracy unites. The period after

ered a fruitful discussion by the former, and as having failed to produce agreement on any point by the latter.

Milosevic was instructive in this respect: Djukanovic boycotted Kostunica's election victory, which led the Serbs in Kosovo to boycott that of Rugova in the Kosovo municipal elections. The real partners of the new Belgrade government in Montenegro are not the 'democrats' but Milosevic's supporters. If Montenegro opts for independence the question will become an academic one and Kostunica will be the president of a virtual state that will have ceased to exist. Yet even if a compromise were to avoid that option *in extremis*, that does not make the return of Kosovo to the Yugoslav fold any more probable. How can one imagine that a population, half of whom were driven out of their country in spring 1999 by the Yugoslav authorities (and whose identity cards were destroyed precisely to make sure that all links with the country were thereafter severed), could one day consider themselves 'citizens' of that country and ask it for a new passport? After all that has happened in Kosovo since 1989, nobody there will agree to return to Yugoslavia.[15] For two years Kosovo has been divorced from the Yugoslav administration and institutions. The fall of Milosevic has spread the illusion that Yugoslavia could be revived. The idea has the sweet smell of prewar nostalgia and from a diplomatic point of view has certain attractions. It is, alas, unrealistic.

Conditional independence

Independence is the declared aim of all the Albanian parties in Kosovo. They disagree on the means and the time necessary to achieve it. The Albanians were promised a referendum on independence at Rambouillet in February 1999. The main objection to it is concern for regional stability. Yet that is to overlook what would happen to regional stability if one attempted to keep Kosovo in Yugoslavia by force. The concept of conditional independence attempts precisely to take into account both the realities of a de

[15] In the course of its missions in Kosovo in 1999 and 2000, the Independent International Commission on Kosovo did not come across a single Albanian who would accept Kosovo's return to Yugoslavia. One example among many others is Azem Vlasi, the last Yugoslav leader of Kosovo, an opponent of nationalism and today a supporter of independence: 'Living with Serbia is no longer an option. In my region, Kamenica, we have always lived together, Serbs and Albanians. Then during the NATO air raids they burnt my house down and this year four Serbs assassinated my brother. Why? I am afraid that [the Kosovo Albanians] will no longer allow Belgrade's army to return to Kosovo, and that the era of Serb domination is over.' See Rémy Ourdan, 'Voyage en ex-Yougoslavie', *Le Monde*, 28 juin 2001.

facto detachment from FRY and the fears of Serbs and neighbouring countries. It combines the principle of a transfer of power from the international administration to new, democratically elected institutions in Kosovo and the idea of international controls on the implementation of conditions, of which the main ones are:

- explicit renunciation of any modification of borders, and therefore of any idea of a Greater Albania;
- respect for the human rights of all Kosovo citizens, in particular the rights of minorities (Serbs and others) to equal access to and treatment by the courts, police and administration. Right to a separate culture must be respected in the educational system, and places of worship protected;
- rejection of the use of force in the settling of internal and external disputes in a regional cooperative framework.

Some will argue that the 'constitutional framework' proposed by the international community is already a move in the direction of self-government and a considerable transfer of powers, thus in a sense making the quest for sovereignty superfluous. Yet to permit uncertainty to remain concerning the aim of the process of transfer of sovereignty would be to allow, on both the Albanian and Serb sides, the political debate to be sidetracked towards competition to see who is the more nationalist (on one side, who will be the most zealous defender of the cause of independence, and on the other who will be the most radical advocate of the reconquest of Kosovo). Independence made conditional in this way would therefore have the objective of freeing Serb nationalism from its burden of the Kosovo question. It brought Milosevic to power and sparked off a decade of war. The sooner Belgrade says goodbye to Kosovo the better it will be for democracy in Serbia.

In the concept of 'conditional independence', conditionality is as important as independence, since it presupposes, for the Kosovar political élite, renunciation of the classical concept of territorial sovereignty in favour of the twenty-first century concept of shared sovereignty. Absolute sovereignty in the Balkans means insecurity, whereas security goes hand in hand with shared sovereignty. Such a step will, however, only be plausible if one can progress beyond the logic of international protectorates (like Bosnia or Kosovo) or quasi-protectorates (Albania, Macedonia) to a regional cooperative framework that is solidly attached to Europe. That implies re-

politicising the Stability Pact for South-Eastern Europe, which was launched as a European Union initiative immediately after the Kosovo war as a link between regional cooperation and rapprochement with the EU. It also means considering, under the aegis of the European Union and the Contact Group, holding a conference to settle the outstanding business of the war of Yugoslav dissolution at which all parties would agree to make concessions or suffer the consequences because all would benefit from something more important: a strategy of integration into a Europe of democracies. It would be a conference, not to redraw the map of the Balkans as was done in the past,[16] but to work out a European future for all of the region.

Translated from the French.

[16] Yet that is apparently what David Owen has in mind in proposing a new Congress of Berlin. See 'Redessiner la carte des Balkans', *Le Monde*, 20 mars 2001. In May, in a completely different spirit, the Yugoslav Minister for Foreign Affairs, Goran Svilanovic, suggested that an international conference should be held to settle postwar differences.

Chapter Six

THE EVER-CHANGING CONTOURS OF THE KOSOVO ISSUE

Thanos Veremis

When the West decided to intervene in Kosovo its NATO protagonists were drawing from their Bosnian experience. They believed that a limited bombardment of Serb military targets would freeze the crisis and disentangle Milosevic's forces from the Kosovo Liberation Army (KLA) rebels. With the two adversaries back to their benches, NATO could then begin to supervise an agreement modelled on the Dayton Accord precedent. The bombardment of the Federal Republic of Yugoslavia (FRY), however, altered the situation on the ground. The KLA was established in the Albanian political scene as a new powerful variable while an old one, the Serb presence in Kosovo, was being hounded out of the equation. The West failed to acknowledge this change of variables and continued to treat the future of the region as though its military intervention had merely restored the *status quo ante* in the Serb-Albanian antagonism.

The outcome of the intervention was therefore unexpected and perplexing. New developments had narrowed the options of future solutions to either a continuation of the present protectorate indefinitely or the granting to Kosovo of independence from Serb sovereignty.[1]

The Serb government that ensued from the December 2000 elections may feel constrained by its public opinion in negotiating the future of its virtual province, but does not have to worry about providing food and order to Kosovo's inhabitants. As of June 1999 these tasks have been responsibilities of the United Nations.

Would an independent Kosovo constitute the beginning of stabilisation of the western Balkans and the end of Western worries in the region? Anyone who is remotely aware of the Prizren Declaration of 1878 and the subse-

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1 Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000). An example of bad timing.

quent attempts of the Kosovo Albanians to prevent Montenegro from acquiring its Adriatic outlet and later the march of Albanian forces into Skopje in 1912, will desist from the optimism of considering Kosovar independence the end of history and therefore of irredentism in the region.

A cost-benefit analysis of policy choices presupposes a view of the West's regional priorities. Western agendas have varied before and after the bombing. Before, the EU had lent moral support to LDK leader Ibrahim Rugova and his non-violent protestations and the United States had issued warnings to Slobodan Milosevic to desist from unleashing his army against the Kosovo Albanian parallel state. There was, however, a consensus among Western interlocutors that the FRY's external borders were not to be altered and that therefore autonomy appeared to be the only possibility the Albanians could expect from their Western friends.

There was a time before the bombing when a 'special regime', as opposed to the discredited 'autonomy', might still have gone a long way in negotiations between the two sides.[2] Although Rugova had declared he would not consider anything short of independence, the main procedural problem for Western mediators was how to overcome his reluctance to talk with Milosevic without the presence of a third party, while the latter insisted that outsiders had no business in the domestic affairs of Serbia. In the tug-of-war between the two, the West had opted for a version of autonomy that would significantly improve the rights of the Kosovo Albanians.

The bombing changed all that. The West committed itself to the underdog with an extraordinary use of force that surpassed all predictions.[3] The Kosovo Albanians, after suffering atrocities and dislocation, were granted, in fact, their old dream of emancipation from Serb rule. Although in theory still a part of Serbia, the UN-NATO protectorate will not return to the *status quo ante.* Along with an 86-year-old dream came an even older Albanian vision of irredentism which included Tetovo, parts of Montenegro, Presevo valley, and, of course, Albania.

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2 Fehmi Agani, Rugova's second in command who was assassinated during the Kosovo war, explained this in a 1996 Rhodes conference to this author.

3 John R. Lampe, *Yugoslavia as History*, 2nd edn. (Cambridge: Cambridge University Press, 2000), p. 414.

From the outset of the protectorate, this author argued against the mainstream, in favour of a rapid granting of independence to Kosovo especially while the prestige and popularity of KFOR were still considerable. An independence granted by the benefactors of Kosovo rather than one to come as the inevitable result of a messy KLA struggle, would spare the neighbourhood a lot of grief, a future democratic Serb regime the cost of recognising a fait accompli, and the Kosovars the hardship of political cohabitation with their armed patriots. It would also allow western mediators to impose strict conditions and guarantees on the constitution of the new state prohibiting an alteration of borders at the expense of its neighbours' territorial integrity.

Much has since changed. The political structure of the former parallel state has been eroded by the administration of the protectorate, and the objective of the KLA has been to keep the irredentist appetite of its followers alive. What is more important is that the new democratic regime in Belgrade has brought the FRY back into international focus.

It is nevertheless possible that the Western arbiters of Kosovo will submit to inertia – and that the region will revert to the state of benign neglect which powers reserve for the least pressing issues on their agendas. Despite the admonitions of the former Special Representative of the Secretary-General (SRSG) of the United Nations in Kosovo, Bernard Kouchner, in the 24 November 2000 EU-Western Balkans Summit in Zagreb, the Final Declaration of the Summit (adopted by EU heads of state and some of their Balkan counterparts) did not mention Kosovo at all.

The September 2000 elections for the FRY President and the December parliamentary elections in Serbia were a set-back for Montenegrin and Kosovo bids for independence. Wary of losing Western attention, an offshoot of the KLA, the Liberation Army of Presevo, Medvedja and Bujanovac (UCPMB), holding a few square kilometres inside the south-eastern corner of Serbia, around the village of Dobrosin since mid-1999, began to resume violence against the Serb police units in the district. Inhabited by an ethnic Albanian minority, the municipalities of Presevo, Medvedja and Bujanovac are situated on Serbia's border with both Kosovo

and FYROM. If this passage is denied to Serbia, FYROM will be deprived of territorial contact with its Yugoslav neighbours.[4]

British and US soldiers responsible for patrolling the porous south-eastern border of Kosovo with Serbia had been unable to prevent UCPMB infiltration and random killings of Serbs in the demilitarised zone.[5] This area, within Serb territory, was demilitarised in accordance with the Military Technical Agreement (MTA) of 9 June 1999. The MTA banned the Yugoslav Army from the 5 km-wide ground separation zone and only police units of the Serb Interior Ministry (MUP) were allowed to maintain order there. The inability, at least of the US unit, to prevent infiltration is attributed by one analyst to a patent American position, '. . . while European NATO members are willing to accept some risk as inherent in peacekeeping, the US Army puts force protection first. Critics say the US approach comes at the expense of the operational aims.'[6]

Following UCPMB attacks against the MUP police early in 2000, KFOR engaged the political leader of the 'disbanded' KLA, Hashim Thaci, to counsel restraint. The change of regime in Belgrade and the disintegration of the MUP command structure[7] gave the UCPMB the opportunity to step up its attacks against the Serbs in the region. On 22 November the UCPMB leader, Shefket Myslui, ordered an attack on MUP forces, killing four policemen and sparking off an official Serb ultimatum to KFOR to remove the insurgents from the demilitarised zone or the Yugoslav Army would be deployed in breach of the MTA. Prudence, however, prevailed in the Yugoslav government and the ultimatum was quietly revoked. The FRY President, Vojislav Kostunica, however, pressed by the Serb population of Presevo valley, insisted that the demilitarised zone be narrowed to just 1 km, allowing the Yugoslav Army to dislodge the rebels. NATO initially showed little readiness to renegotiate the treaty, but on 27 February 2001, US Secretary of State Colin Powell with the Secretary-General of NATO standing beside him, said that NATO was prepared to carry out a 'phased and continued reduction of the ground safety zone' and return the area to Serbian authorities. The significance of this revision of the original demilita-

4 Zoran Kusovac, 'New KFOR Alert', *Jane's Defence Weekly* (JDW), 3 January 2001.
5 JDW, 25 October 2000.
6 JDW, 3 January 2001.
7 JDW, 25 October 2000.

rised zone was that it allowed Serbian soldiers back into the three-mile (5 km) wide buffer zone along the Kosovo border.[8]

All sides to the conflict appeared to be drawing lessons from the last war. The Albanian UCPMB attempted a repetition of the KLA's successful strategy that had made the Kosovo war possible, by provoking the Serbs into excessive countermeasures that would trigger another Western intervention. The Serbs appear to have learned from past blunders and have showed unusual restraint. The Serb government produced a peace plan that ruled out autonomy for the Presevo valley but proposed demilitarisation of the region and reinstatement of civil rights for the ethnic Albanians that had been stripped away by the Milosevic regime. The Serb Deputy Prime Minister, Nebojsa Covic, included the integration of Albanians into the Serbian police forces of the Presevo region.[9] The UCPMB initially appeared unwilling to give up its goal of 'liberating' the Presevo region and uniting it with Kosovo. For a while the rebels controlled the buffer zone along Serbia's border with Kosovo and held positions within a mile of the town of Bujanovac and Serbia's main highway to the south. The ball was in NATO's court and its Secretary-General took the opportunity to initiate a policy that might contribute to the organisation's transition from a military alliance into a crisis-management institution.

Lord Robertson named his own peace emissary to southern Serbia, in a clear departure from NATO's Cold War insouciance for human and civil rights violations, committed even by its own members in the past, (Portugal, Greece and Turkey). The emissary, Pieter Fieth, held the first round of talks with Albanian and Serb leaders in a bid to bring the two together over the border incidents and perhaps to a future arrangement of wider scope. Although Fieth could not moderate a deal on NATO's behalf, he was trying to facilitate talks between the two sides. The Secretary-General also dispatched a NATO delegation to FYROM, a state that had begun to suffer repeated attacks by the National Liberation Army (NLA), another KLA offshoot, since January 2001. Clashes with KLA forces that find a safe haven in the Albanian border villages in the north of FYROM have cost the lives of several Slav-Macedonian soldiers. The constant traffic of rebels and

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8 Jane Perlez, 'US and NATO Back Access for Serbia to Kosovo Buffer', *The New York Times*, 28 February 2001.

9 Carlotta Gall, 'Serbs Offer Peace Plan in Attempt to End Albanian Rebellion', *The New York Times*, 12 February 2001. Also see Perlez, op. cit.

weapons into FYROM forced the Government to close its borders with Kosovo. FYROM President Boris Trajkovski met with the KFOR Commander and the new head of UNMIK, Hans Haekkerup, to discuss the danger that continued KLA provocations posed to the fragile ethnic relations of his state.

Although KFOR has a back-up logistical mission in Skopje, it has no authorisation to take any military action there. It was KFOR troops in Kosovo that opened fire on rebel gunmen infiltrating FYROM territory in early March. The predicament that US troops found themselves facing, however, was that to carry out their mission as peacekeepers regardless of cost would have meant disobeying orders from Washington not to expose themselves to danger. Their solution in the Presevo instance was to leave the mopping-up operations to Serb forces by dismantling most of the demilitarised zone that the rebels had used for cover.[10]

The signing of a border demarcation agreement between FRY and FYROM, which was pending for years, is perhaps indicative of Serbian concern over its Presevo valley dispute. Albania's Foreign Minister Pascal Milo, who praised the agreement, added his hopes for a representation of the Albanian minority in South Serbia in future negotiations. Such influential figures in Kosovo politics as Ramush Haradinaj expressed their irritation for not being consulted on this agreement.

Another ongoing flash-point has been the town of Mitrovica (40 km north of Pristina), one of the few that maintain significant Albanian and Serb populations. Each ethnic group has its own sector, divided by the river Ibar. The segregation of the two communities has been safeguarded by KFOR troops whose daily task is to prevent bloodshed. What makes the domination of Mitrovica important are the Strepce mines that lie beneath the town. Dr Rugova has placed high hopes on the reopening of the mines, and presents his visitors with pieces of Strepce ore as souvenirs. Although the value of the mines has been questioned by Western experts, the Kosovo Albanians consider them an important national asset. Mitrovica and its Serb hinterland were, according to Serb sources, given by Tito to Kosovo as part

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[10] Mathew Kaminski, 'NATO Takes on the Role of Balkan Peace Broker,' *The Wall Street Journal*, 5 March 2001. Carlotta Gall, 'NATO Soldiers Fire on Kosovo Albanians', *The New York Times*, 8 March 2001.

of an ethnic gerrymandering technique that would discourage future secessionist tendencies. Their return to Serbia may be the only condition that would make Kosovo's independence palatable to the Serbs. This, however, does not appear to be an Albanian option, as French riot troops have struggled to maintain the status quo in the town.[11]

After a year of Albanian-instigated violence in the region, the independence option receded in Western calculations. Western policy planners were faced with the possible repercussions of a radical change in Kosovo's status on the entire neighbourhood, and were less willing to contemplate independence. In the 4th Balkan Summit that took place in Skopje on 24 February 2001, Balkan leaders reiterated their support for UN Security Council Resolution 1244 which mandated that Kosovo should remain within the FRY. An old hand in Balkan issues, Evangelos Kofos streamlined his proposal of a Western 'Trusteeship' which could replace the Protectorate as an internationally recognised institution that would acculturate Kosovo to the ways of the EU. 'Many of the provisions and practical applications of Resolution 1244 could be incorporated into the new text. UNMIK and KFOR could continue to operate under a different name. States granted mandate could include European Union or UN Security Council member states . . . By joining the "Trusteeship" Kosovo could move gradually toward self-government or independence, according to article 76b of the Charter. A "Cyprus clause" banning unification with third countries without the consent of the signatories of the Kosovo Trusteeship Accord, could be a moderating factor.'[12] On 15 May 2001 Hans Haekkerup announced the 'Constitutional Framework for the Provisional Self-Government of Kosovo' and announced national elections for the 17 November 2001, to determine the 120 seats of Kosovo's Assembly. Although Kosovo Albanians will be given a front seat in their country's administration, Haekkerup will maintain his right to exercise his veto, and full independence has therefore been postponed to another day. Most Albanians, including Rugova, Thaci and former KLA warrior-turned-politician and businessman, Haradinaj, have complained that the 'Framework' ignored the Rambouillet provision for a revision of the interim government after three years. Yet no Albanians threatened to abstain from the future elections – a position adopted by the

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11 Nicholas Wood, 'French Troops in Kosovo Clashes', *The Guardian*, 31 January 2001.

12 Evangelos Kofos, 'Gia Mia Diaforetiki Prosengisi sto Provlima tou Kossifopediou' (For a Different Approach to the Kosovo Problem), *Kathimerini*, 17 February 2001.

Serb representatives who consider the 'Framework' an official expulsion of the Serb element from Kosovo.[13]

UNSC Resolution 1244 called for the withdrawal of all FRY military, police and paramilitary forces from the province and the deployment of an international civil and security presence under the command of the United Nations Interim Administration Mission in Kosovo (UNMIK) and the NATO-led KFOR. The Resolution also envisaged the appointment of a Special Representative of the UN Secretary General to administer Kosovo and to ensure that UNMIK and KFOR would work towards the same goals. Regulation No. 1 of 25 July 1999 stated that 'all legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the SRSG.' The UN was to become the interim government of Kosovo and the SRSG its interim international administrator.

Resolution 1244 mandated UNMIK to establish a functioning interim administration, to develop provisional institutions for democratic and autonomous self-government and to facilitate a political process designed to determine Kosovo's future status. UNMIK advocates of freezing the status of Kosovo, point to the victory of anti-Milosevic forces in Serbia and the success of moderate Albanians in Kosovo's municipal elections as favourable developments towards a mutually acceptable solution. 'What are needed now', according to Alexander Yannis, a former UNMIK official, 'are time, a local consensus for the implementation of Resolution 1244 that provides a road map to meet the minimum objectives of both Kosovar Albanians and Serbs and the maximum of neither, and a long-term commitment by the international community.'[14] Are there, however, strong indications that, despite favourable electoral developments in Serbia and Kosovo, time is on the side of the angels? Is there any sign that a local consensus over implementation of Resolution 1244 is building up between Albanians and the remnants of the Serb community?

UNMIK's everyday mundane considerations have relegated building a civil society to a more opportune moment. In the meantime, Kosovo and its adjacent zones of anomy, are emerging as the new Barbary coast of Europe.

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13 Tim Judah, 'Kosovo's Foreseeable Future Decided', *Balkan Crisis Report*, no. 248, 18 May 2001.

14 Alexandros Yannis, *Kosovo Under International Administration: An Unfinished Conflict* (Athens: ELIAMEP and PSIS, 2001).

Those engaged in the illegal traffic of drugs, people, weapons and violence aspire to make this region a crossroads of crime that will eventually link up with the criminal multinationals in the Balkans and beyond. A new form of irredentism inspires and is inspired by the prospect of spreading this lucrative, anomic regime in the territories of collapsed or failed states where lawlessness is rife. Albania, FYROM, Montenegro, the Presevo valley and even Bosnia-Herzegovina, are on the agenda of mafias waging their operations with impunity. Still lacking a set of legal rules, a detached judicial system and an arm of the law to implement justice, Kosovo relies on KFOR in these areas. KFOR is, however, ill-equipped to perform the task of policing Kosovo for infringements of the penal code. It has been busy protecting the diminishing Serb and Roma elements under its authority and appears to be fighting a losing battle against terrorist technology and clandestine killings.

Western intervention may have liberated the Albanians from Serb rule but at a high cost for the population of Kosovo. Among the consequences of the military fallout is the presence of the KLA in politics and society. At the time of liberation, KLA leader Hashim Thaci was presented by US media as an Andrew Jackson type of democrat-warrior. Now his image is being reversed in the Western mass media. He appears, in the light of subsequent information, as a young man ill-prepared for the responsibilities of leadership that his sudden advent in Kosovar politics created.

There is little doubt that independence and irredentism have gone hand in hand for most Kosovo Albanians, and that the image of the armed patriot is still popular among a younger segment of the population. Yet Rugova's peaceful resistance to Serb rule in the 1990s and the experiment of the Albanian 'parallel state' provided the foundations for the construction of a future civil society. The municipal elections of October 2000 proved that Rugova is still the most popular political figure, and public perceptions of Thaci's involvement in corruption, diminished his party's returns to 27 per cent of the votes cast. The best hope for a Kosovo free of strongmen and mafias lies perhaps with journalists, activists and academics, but without the rule of law and public security such figures will never survive the rough and tumble introduced by the war to local politics. Veton Surroi's, three-step approach to the problem is certainly the most insightful. 'The first would be to an internationally agreed self rule that would give democratic content to the Kosovar shell. The second would be an inclusive decision making on the

permanent status of Kosova . . . the day after needs to include the third step, relations with the EU.'[15] Yet Surroi and his peers will not be involved in the party politics of Kosovo until present ambiguities are cleared. UNMIK and KFOR are unwittingly sustaining the inertia of this vicious circle.

Another consequence of the war was that the UNMIK administration employed some of the better qualified people of the parallel state with high (by Kosovar standards) salaries. The further demand for such people by the plethora of NGOs and international organisations dismantled the apparatus of the Albanian authorities and deprived public agencies of their most experienced employees.

What is to be done in this mercurial part of the western Balkans? The diagnosis above might suggest certain remedies. The first is for UNMIK to engage the local élites in the management of Kosovo, not as highly paid second-class employees, but as future masters of their region's fate. When UNMIK is called upon to reduce its presence, it should not leave Kosovo to the mercy of a parallel, mafia-driven state. This brings us to the imperative of establishing the rule of law with all its instruments of implementation and enforcement. Civil society cannot take root in a state of anomy, and collapsed states will only breed mafias and (to use Ernest Gellner's concept) will encourage the 'segmentary' society to prevail.

Once the domestic forces of modernisation are at the helm, then Serbia and its virtual province must sit together in an honest effort to solve the ambiguities of status and territory. By doing so they will have set a precedent for the entire western Balkans. Surroi's concept of 'polycentrism' (Albanian communities in the Balkans will communicate freely between states where Albanians traditionally live) would certainly offer the best remedy to irredentism if the concept is systematically promoted by élites and politicians of these communities. But is it possible to speak of flexible and non-rigid borders if armed incursions occur daily? NATO's responsibility is to ensure the inviolability of these borders before they revert to the flexible regime of a polycentric world.[16]

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[15] Veton Surroi, 'Ten Concepts that Will Define the Future of Kosova', *Journal of Southeast European and Black Sea Studies*, forthcoming, 2002.

[16] Jane Perlez, 'US Won't Send its Kosovo G.I.'s on Peacekeeping Patrol in Serbia', *The New York Times*, 9 March 2001. 'At the boundary between Kosovo and Serbia proper, "there is a pretty profound disagreement between the United States and Britain", one

Another approach would be a solution that views the western Balkans as an economic unit whose long-standing social and political ills will not improve if they are not addressed in unison. So far this has not happened. The resolve of the international community after Dayton to set the Balkans on the road to recovery waned only to be revived by the war in Kosovo. Some innovative remedies that will gradually replace the defunct irredentist agendas with a project of regional reconstruction and development that will make an EU membership prospect possible are necessary.[17]

The West is saddled with many responsibilities that spring from its humanitarian intervention. In the ongoing discussion of whether NATO's action has created a precedent for the future, opinions vary. There are those however, who believe that regardless of the soundness of the decision to bomb FRY, the deed has established a strong precedent for responding to all similar, or worse violations of human rights committed by sovereign states against their own citizens. If NATO fails to make humanitarian intervention a concept of universal application, the war against the FRY will become an act of summary justice against a target with little cost to Western economic and political interests.[18]

The prudence displayed by the post-Milosevic Serbian leadership in the Presevo valley conflict deprived the KLA of its ability to bait the Serbs into a repetition of 1999. On 21 May, the Albanian guerrillas came to terms with this reality and agreed to disarm under KFOR supervision.[19] A new KLA incarnation, the NLA, made FYROM the target of its baiting strategy. Throughout April and May 2001 the Albanian rebels launched their operations against the north-west of FYROM with the agenda of alleviating the alleged hardships of their kin under Slav rule.

official said. "We have consistently said we do not see a role for KFOR troops in the sovereign territory of Serbia".'

17 See, in particular, Laza Kekic, 'Aid to the Balkans: Addicts and Pushers', *Journal of Southeast European and Black Sea Studies*, vol. 1, no. 1, January 2001, pp. 20-40.

18 Albrecht Schnabel and Ramesh Thakur (eds.) *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action and International Citizenship* (Tokyo: United Nations University Press, 2000).

19 The document of disarmament was signed by the militia's leader, Shefket Musliu, and NATO envoy Shawn Sullivan.

On 2 May, FYROM President Boris Trajkovski secured backing by US President George Bush for a plan to resolve ethnic grievances in his country through dialogue. Soon after the meeting of the two presidents, however, NLA rebels shot more FYROM soldiers. On 3 May the Government unleashed helicopter and artillery fire against Albanian villages suspected of complicity with the rebels. Prime Minister Ljubco Georgievski was admonished by Western sources not to fall into the NLA trap by answering rebel provocations with undue violence, and on 11 May he announced that the country's four main political parties had agreed to form a broader coalition that would address ethnic problems. On 13 August delegates from the Macedonian Slav majority and the Macedonian Albanian minority concluded an agreement on Ohrid which provided for significant constitutional amendments and reform that improve the status of Albanians in FYROM. The document requires ratification by the parliament, with a two-thirds majority, within 45 days of signature. Whether the agreement will restore peace in a badly divided country remains to be seen, as the views of the inhabitants diverge on this question.

There are certainly those among the Albanian leaders in FYROM who would rather pursue a route of modernisation and development within a multicultural state than submit to the atavistic calling of the irredentist sirens from Kosovo. Yet the rift between the youth of the two communities – Macedonian Slav and Macedonian Albanian – is growing wider with every day that passes. Having fought a successful campaign of public relations, former President Kiro Gligorov managed to prevail over Greek objections concerning the designation of his state. His party, however, failed to draw a useful lesson from success – that underdog status can prove a powerful weapon when addressing the Western media and their public.[20]

The ongoing problem in the Balkans in general could be associated with the 'old pictures that persist in the minds' of political élites. The delusion of Balkan leaders throughout the dissolution of Yugoslavia, that the strategic value of their states remained intact in the post-Cold War era, has been responsible for most of the blunders committed in this region. The West, on the other hand, has failed to reconsider the positive or negative significance

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[20] George Kapopoulos 'Antistrophi Metrisi gia ta Skopia', *Kathimerini*, 8 June 2001. Also see, Irena Guzelova, 'Macedonia hits back after village ambush', *Financial Times*, 4 May 2001.

of that least developed part of Europe after the Cold War and has relegated it to a backwater among its strategic priorities. The war in Kosovo was not necessarily an act of addressing the chronic problems of the region, but rather a disjointed reaction by Western governments that were drawing conclusions from their indecisiveness during the Bosnian crisis and a military alliance in search of a new vocation. Reconstruction and stabilisation will now require their serious involvement.

Conclusion

KOSOVO INDEPENDENCE AND REGIONAL STABILITY ARE NOT INCOMPATIBLE

Dimitrios Triantaphyllou

The issue of the future status of Kosovo boils down to a basic equation – it needs to be resolved in a framework which abets, rather that deters, regional stability and co-operation. The contributions to this *Chaillot Paper* demonstrate that the yardsticks for measuring stability vary substantially with some contributors being worried by the destabilising effects of Kosovo's independence while others are concerned by the opposite; i.e., the reaction of the Albanian population.

In many ways, the euphoria of 2000, with the democratic revolution in Serbia, has given way to a number of regional security threats which are not attributable to Milosevic's regime (but in part to its legacy). The regional security threats could be considered spillovers of the Kosovo issue – first in southern Serbia and later in the Former Yugoslav Republic of Macedonia (FYROM). Latent instability could lead to a further spillover of the crisis into Montenegro, whose eastern parts are predominantly populated by ethnic Albanians, south-western Serbia (Sandjak), and Albania. This all gives rise to those scenarios about a 'Greater Albania' or a 'Greater Kosovo' or an inability or unwillingness on the part of many ethnic groups in the region to accept the concept of multiethnic, multicultural, and multi-confessional states.

In spite of the many logical and coherent arguments presented here regarding the need to freeze the status issue, this author believes that that issue needs to be addressed today. To say that 'most of the current difficulties on the ground would not go away the day after any settlement is reached' is to justify the non-resolution of the status issue by looking at the question through the wrong lenses. The reality of Balkan politics and the successive NATO-EU politico-military-economic interventions in the region during the 1990s is that the EU will remain involved in one way or another despite its efforts to disentangle. The United States's modest volte-face in FYROM is indicative of the difficulties of disengagement. In order for the European

Union to assure the success of its *mission civilisatrice* in the Balkans via the Stability Pact, the Stabilisation and Association Agreements (SAAs), the perspective of EU membership, and whatever new instrument might be invented tomorrow, it has to remain on the ground. In fact, the Kosovo experience clearly demonstrates that the need to micro-manage the establishment of the rule of law along with the local actors by, for example, directing the fight against organised crime, is crucial.

Addressing the status issue today does not mean that Kosovo is granted independence but that the prospect of independence is on the table. It also shows that the moderates are being rewarded for their non-violent approach. Does not the prospect of independence ensure the commitment of the local actors in Kosovo to the building of the rule of law and viable institutions?

The problem of imposing a solution that the local actors might not be comfortable with is that, whether one wants it or not, they can provoke greater international involvement through new low-intensity campaigns. In other words, can the EU rid itself of an unstable Balkans by simply proposing and imposing a solution which might be totally logical but impractical in practice and assuming that peace and stability will return to the region? The answer is no.

One of the reasons that tolerance and support for the Kosovars is rapidly diminishing might be the fact that the international community has not done enough to support the moderates in their struggle against the hard-liners by urging them to be more comprehensive and outspoken in their fight against the extremists and the construction of a multiethnic Kosovo which does not pose a threat to its minorities and its neighbours. It was only after the Macedonian crisis took a turn for the worse in the spring and summer of 2001 that the international community began cracking down on the extremists in Kosovo by forcing the resignation of some of them from the Kosovo Protection Corps (KPC), barring their entry into the EU and the United States, attempting to regulate diaspora activity, fighting organised crime, and controlling the Kosovo-Macedonia border more effectively. Going back on some of the promises made in the Rambouillet accord (which is considered the point of reference by the Kosovars), in particular the status issue, which was supposed to be discussed by referendum in three years, complicates the bargaining power of the moderates and allows hotheads to keep

resolving to use arms given their non-understanding that the setting has changed to the detriment of all Kosovars and regional stability.

The core concern is not so much the independence of Kosovo, which is more or less a given unless the international community decides very clearly to change its position and go back on its commitments by accepting Serb tutelage over Kosovo despite its likely consequences. The issue is the impact of an independent Kosovo on regional stability. Can an independent Kosovo be a stabilising factor in the region? What kind of provisos can be introduced so that the independence of Kosovo does not lead to further regional disintegration? What kind of pressure can the international community apply to ensure that the Albanians in FYROM will not rise up again and that the Slav majority in that state will fully implement the August Framework Agreement?

A comprehensive approach to the region

The problem has been the impossibility to establish a comprehensive policy for the region and to tackle the region's problems head-on. The favourable region-wide environment that emerged with the fall of Milosevic can only be preserved if the international community is present and comprehensive in its support. Maybe some of this lack of coordination by the European Union and its member states is justified. Only in the early 1990s, with the onset of the Yugoslav crisis and partly as a reaction to it, did they begin to formulate a more cohesive CFSP, with its wide array of policy instruments such as Joint Actions, Common Strategies, and the like. But ten years on, more is expected from the European Union.

A comprehensive approach is crucial. Such an approach does not imply simply reacting to developments and stepping in either by providing one's good offices or through military intervention. The comprehensive approach demands simultaneously dealing with the Kosovo situation today, ensuring that the institutional structures in FYROM work properly, assisting Serbia in its democratisation, ensuring that Albania does not deviate from its policy of European integration, etc. It also implies greater hands-on involvement, more detailed management by a physical presence on the ground to deter possible future hostilities and to focus on problems common to all which the local actors might not have the capacity to deal with on their own (for

example, combating organised crime).[1] The comprehensive approach also entails sticking by basic principles such as insisting on multiethnic states, the guaranteeing of far-reaching minority and individual rights and democratic values. Because the promotion of such democratic values can be inherently destabilising (Allin), the commitment on the part of the EU needs to be there for the long term and the process needs to be assiduously managed to guarantee that all the resources spent on the region over the last decade actually produce regional stability and prosperity.

Drawing parallels across the board in terms of possible domino effects should Kosovo become independent leads to stopgap measures to prevent independence based on wishful thinking that there might be another solution on the horizon in a few years, such as a loose three-entity Yugoslav federation (Altmann); the Kosovars need to show that they are responsible and then a solution will be possible (Dassù); or time should be given to the Serb authorities to establish themselves (Veremis). And then what? This return to realpolitik, which suggests that the intervention in Kosovo was an exception rather than a precedent, leaves the Kosovo exception in limbo because it does not seek to resolve it now for fear of its consequences for the region.[2] That is to say, simply forgetting that there was an international intervention in Kosovo will not make the 'ratchet effect' (Allin) go away. In other words, while Kosovo's independence cannot (and should not) be prevented, mechanisms aimed at limiting the precedent of achieving in this manner need to be devised. By sticking to and insisting on its principles among other means in a cohesive, coordinated framework, the EU would be actually contributing substantially to clearly establishing the terms of reference. After all, the financial-technical enticements it holds and the military presence of its member states on the ground within NATO give it considerable influence.

By universally applying basic principles, the EU would not have to fear any domino effect, should Kosovo become independence. In FYROM, the key is assuring the firm implementation of the Framework Agreement to which the

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1 Many of these arguments have been presented in Dimitrios Triantaphyllou, 'Conclusion' in Dimitrios Triantaphyllou (ed.), 'The southern Balkans: perspectives from the region', *Chaillot Paper* 46 (Paris: Institute for Security Studies of WEU, April 2001), pp. 63-6.

2 The terms 'return to Realpolitik' and the 'Kosovo exception' are borrowed from Daniel Vernet, 'Kosovo-Macédoine, retour à la Realpolitik,' *Le Monde*, 27 March 2001.

EU substantially provided its good offices is making economic assistance contingent on the local parties fulfilling their obligations. In Bosnia, fears that Serbs in Republika Srpska might as a consequence want to join Serbia need not prevail. A careful evaluation by Belgrade of what it stands to lose in terms of financial resources and integration into Euro-Atlantic structures will quickly convince it that it is in its interests to deter its co-ethnics. After all, Serbia today is a multiethnic state (even without Kosovo), not a mono-ethnic one. The EU and the region would also be best served if Serbia were persuaded to drop its proposal for a two-entity (i.e., partitioned) Kosovo put forth by Deputy Prime Minister Nebosja Covic. Belgrade cannot on the one hand repeatedly criticise UNMIK and the international community for not having done enough to protect the Serbs and other minorities in Kosovo, given their mass exodus, while on the other suggesting ethnic partition. Partition could actually be the precedent that would motivate advocates of separatism in FYROM, Bosnia, Montenegro, and elsewhere. If the EU in that event stuck to the principles elaborated above, nothing would come of this. And rightly so. An independent Kosovo should be one that stands within its current geographic boundaries and is committed fully to EU values.

Direct dialogue between Belgrade and Pristina [3]

In parallel with the implementation of a sweeping EU policy for the region, the local actors need to be urged to begin talking to each other. The uneasy peace in FYROM and southern Serbia clearly suggests the need to do more that what is currently being done. In other words, both Serbia and the Kosovars stand to lose if developments in FYROM take a turn for the worse. For Serbia, further fighting in FYROM will inspire extremists in Kosovo to continue dreaming of a 'Greater Kosovo'; for independence-minded moderate Kosovo Albanians, continued trouble across the border significantly reduces any significant international support for a peaceful independence. Under these conditions both Pristina and Belgrade have more to gain by talking to each other.

[3] This section draws from Dimitrios Triantaphyllou, 'Talking Cure for the Balkans,' letter to the editor, *Survival*, vol. 43, no. 3, Autumn 2001, pp. 201-3.

Though the situation in the region seems to be improving with the appearance of like-minded democratic, pro-European élites across South-Eastern Europe, new checks and balances are emerging between the Kosovars and the international community. In other words, the Kosovars are being portrayed as the bad guys given the violence in Southern Serbia, in FYROM and in Kosovo proper, and Serbia's ability to shed its pariah image since the overthrow of Milosevic.

There is a perception game in play between Pristina and Belgrade. Pristina views Belgrade with suspicion due to the mixed signals it is sending the Kosovars. On the one hand, Kostunica is perceived as part of the problem due to his administration's slow progress regarding the release of Albanian prisoners in Serb jails and its ambiguous ties to Kosovo's Serbs. On the other hand, the self-control exercised by the Serb authorities in southern Serbia with the positive formulation of the Covic plan, the establishment of a Truth and Reconciliation Commission, and the public exhumation of Kosovar victims of the Milosevic regime indicate a change for the better in Belgrade.

For Serbia, its priorities are the resolution of a myriad of domestic problems such as reviving a crumbled economy, addressing social and legal issues (such as changing its laws with regard to war crimes), and effectively maintaining cohesion among the ruling coalition of 19 parties. Beyond these domestic concerns, Yugoslavia and Serbia have to resolve the statehood issue if they are to define their borders. In other words, the pending questions of Montenegro and Kosovo and their future relationship with Belgrade prevent Yugoslavia from functioning as a normal state. The extradition of Milosevic to the ICTY followed by the political arm-wrestling between the federal president and the Serbian prime minister clearly indicate the constitutional volatility of the FRY.

Given that public opinion polls in Serbia show that a growing number of Serbs assume that Kosovo is lost to Serbia, the emphasis should be on finding the appropriate mechanisms for effective cooperation between Kosovo and Serbia. This option avoids the issue of UNSC Resolution 1244 and the problems its modification would engender (Judah).

Though the Rugova mandate is not solid to date, the new Constitutional Framework for the Provisional Self-Government of Kosovo and the

17 November elections in Kosovo provide his moderates with a real chance to speak on behalf of Kosovo. Though not granted independence, Rugova should begin convincing his electorate that the Constitutional Framework is a step towards the independence he has been fighting for over the last decade. Belgrade could actually help assure victory of the moderates in Kosovo by stepping in now and proclaiming itself willing to talk to Pristina on the status issue by admitting that the prospect of independence exists, though it is by no means a given. This does not admit that Kosovo is independent nor that it has been granted conditional independence but that it is a possibility. Belgrade's overture to Pristina would in principle suggest that it considers Pristina an equal partner at the negotiating table, thereby strengthening Rugova's claim that independence by peaceful means is possible. Should Rugova lose the November elections to the more hard-line Hashim Thaci and Ramusj Haradinaj, their room for manoeuvre would be confined to the parameters established by Belgrade's willingness to talk.

Belgrade's overtures can only meet with international approval now that NATO has agreed that the Yugoslav forces are no longer seen as a threat (as their gradual entry into the Ground Safety Zone in southern Serbia seems to suggest). In fact, the EU and the United States should be in favour of immediate dialogue for fear that increasing frustration among the Kosovars could be expressed in terms of attacks on KFOR forces. Casualties among American soldiers could lead to a quick withdrawal of American troops from the region due to domestic public opinion, notwithstanding the 'we came in together, we will leave together' rhetoric from Washington. In other words, all bets are off should there be many US casualties.

In terms of the content of the dialogue between Belgrade and Pristina, the emphasis should be on addressing a number of ground-level problems common to Kosovars and Serbs alike. These include poverty, underdevelopment, organised crime, weak state institutions, corruption, lack of democratic tradition and a slow transition to democracy. The current Greek-Turkish approach, which emphasises cooperation on a number of low politics issues, could serve as a model.[4] Here the focus, for example, could be on jointly tackling organised crime or underdevelopment.

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[4] For more, see Dimitris Keridis and Dimitrios Triantaphyllou (eds.), *Greek-Turkish Relations in the Era of Globalization*, (Dulles, VA: Brassey's, 2001). See also http://www.mfa.gr/foreign/bilateral/relations.htm.

Also, both sides should commit to rein in their own. That is to say, Belgrade should send clear messages to Kosovo's Serbs that their future lies in their integration in Kosovo's institutions, and Pristina should convince the more extremist Kosovars that continuing the violence in Kosovo proper or exporting it to FYROM harms the cause of independence. Both sides should also commit themselves to changing the activities of their diasporas from funding or fuelling nationalist causes to contributing to viable economic projects. The Kosovar side could commit itself by proclaiming that it respects the Kosovo-Macedonia border. Also, Belgrade could quickly release its remaining Kosovar prisoners, while the Kosovars could seriously tackle the issue of missing Serbs, and even establish a Truth and Reconciliation Commission (after all, ethnic cleansing is not exclusive).

Such a process of dialogue is obviously of benefit to both Serbs and Kosovars at this time due to the recognition by both sides that the question of status should be addressed sooner rather than later. Even if the status of Kosovo is left in abeyance for a number of years as a result of the talks, the parameters of its eventual resolution can only be established with the consent of both Belgrade and Pristina. Consequently, this would significantly reduce the chances of violence and instability and the fear of a withdrawal of KFOR (or part of it) and allow the focus to be on addressing the ground-level problems common to both. In this setting, one can conclude that dialogue between Belgrade and Pristina might be the only viable option for resolving Kosovo's status.

Summing up

According to Rupnik, the Balkans can be defined by the triptych fragmentation, recomposition, integration. The uncertainty surrounding the contours and the character of the state can only be dispelled if addressed today with the participation of both a committed and coordinated international community (in particular the EU) and the local actors. A firm and persistent engagement of the international community to condemn the use of violence, reward the continued development of democratic trends, support economic restructuring and development, and combat transnational security risks is vital.

It took the crisis in FYROM in the spring and summer 2001 for the European Union to begin the formulation of a more comprehensive approach to the region. The Gymnich-type meeting of EU foreign ministers of 9 September 2001 is extremely revealing of the developing consensus in the EU for a comprehensive approach to the Balkans:

> 'Where the political issues are concerned, we agreed that we must maintain the pressure on the parties to ensure that they respect the agreement in terms of according equal importance to disarmament and the adoption of constitutional amendments. The agreed schedule must be adhered to.
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> We have decided to maintain and augment the presence of the European Union on the ground. The Council members agreed on the principle of sending in more observers. It is essential for the European Union to be constantly represented on the ground.
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> As for economic assistance, the Union will have to draw the Macedonians' attention to the extent of the assistance that has been provided by the EU since the start of the conflict. It should be pointed out to them that the non-humanitarian part of our assistance is contingent upon progress being made towards finding a political solution to the crisis.
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> We all insisted on the need to avoid a security vacuum when NATO withdraws. The option considered by partners as the most realistic would be the deployment of a force on the basis of the one that is already present (NATO plus force) with, if possible, a mandate from the United Nations Security Council . . .
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> Where security is concerned, several speakers insisted on the need to tackle arms trafficking.
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> The Union's action in this regard should be part of a wider effort. It should be consistent with the process that began in Zagreb. The regional aspects, and most notably the elections in Kosovo, should be taken fully

into account. It was suggested that a regional conference could be organised . . .'[5]

Under these conditions, a comprehensive approach which ensures that Kosovo's frontiers are a product of a bilateral accord with Serbia, focuses on ridding Kosovo of its mafia structures, secures provisos ruling out a 'Greater Albania' or a 'Greater Kosovo' and commits Kosovo's ruling élite to EU principles could very much guarantee an independent Kosovo which is not a threat to regional stability.

[5] Informal meeting of Foreign Ministers (Gymnich), Press Conference by the EU Presidency, 9 September 2001, in http://www.eu2001.be.

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