

## 10 The 'Final' Yugoslav Issue

### The evolution of international thinking on Kosovo, 1998–2005

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When Kosovo declared independence, in February 2008, it was quickly recognized by the United States and by most of the European Union.<sup>1</sup> However, just ten years earlier, these states had taken a very different view on the question of statehood for the province. In 1998, when the conflict first came to international attention, the prevailing opinion of the international community was that Kosovo did not merit independence alongside the republics of former Yugoslavia. Indeed, in the media it was often referred to as a 'separatist conflict'.<sup>2</sup> To this extent, efforts to resolve the situation were centred on providing the province with some form of meaningful self-government. Indeed, even after the NATO intervention, in 1999, which brought to an end Belgrade's direct rule over Kosovo, and instituted UN administration, some form of autonomy remained the preferred outcome for Kosovo. And yet, by late-2005, when the decision was taken to start status talks, it was clear that a change of opinion had already taken place. Instead of self-government, the mainstream view appeared to be that independence was the only viable option for the province.

This chapter examines how and why this transformation occurred. It traces the development of the Kosovo issue up until the start of status talks, showing that the move from autonomy to independence was a direct result of growing instability caused by the lack of a formal and finalised status, and the realization that any attempt to push for the retention of Serb sovereignty over the province would lead to further fighting. In other words, the argument that Kosovo required independence was not based on any change in attitudes towards the resolution of ethnic conflict, a wider acceptance of the principle of self-determination,<sup>3</sup> or a change in the underlying principles of international law.<sup>4</sup> Instead, and as will be shown, the decision to support independence in the case of Kosovo was based on the need to formulate an exit strategy in response to growing instability on the ground.

#### **The origins of the conflict**

While Serbs and Kosovo Albanians will often point to ancient claims to the territory, the modern roots of the conflict can be traced back to the First

Balkan War, in 1912.<sup>5</sup> Following the defeat of the Ottoman forces, and despite opposition from its largely Albanian inhabitants, Kosovo was divided between the Kingdoms of Serbia and Montenegro. Thereafter, in 1918, Kosovo became part of the new Kingdom of Serbs, Croats and Slovenes – renamed Yugoslavia in 1929. The creation of the Federal People's Republic of Yugoslavia at the end of the Second World War saw the area reincorporated into Serbia, this time as an autonomous region called Kosovo and Metohija (Kosmet for short), a process that also saw the demarcation of Kosovo's present-day boundaries.

While this marked an explicit recognition of its special status, the decision did not go far enough for Kosovo's Albanians. Over the coming years they gradually began to demand that they be recognized as a nation within Yugoslavia, and for Kosovo to become the seventh Yugoslav republic – alongside Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia. Such a move, which would have separated them from Serbia, but not from Yugoslavia, was not accepted by Marshal Tito, the Yugoslav leader, and the Socialist government. According to the official Yugoslav ideology, only the South Slavs could qualify for their own republic, and be recognized as a nation within Yugoslavia. This status could not be awarded to peoples within Yugoslavia considered to have an external homeland or belonging to transnational stateless groups, such as the Ruthenians, Jews and Roma. In the case of Kosovo, the existence of an independent Albania precluded recognition as a nation. Instead, the Kosovo Albanians were recognized as a 'nationality' alongside, amongst others, Hungarians, Slovaks and Italians.<sup>6</sup>

Although this subordinate status was effectively reconfirmed in 1963, in the latter half of the 1960s the Kosovo Albanians began to gain an increased standing in the federation, experiencing, 'an overall national, political, economical and cultural revival and development.'<sup>7</sup> This was most clearly symbolized by the founding of Pristina University, which lectured in both Albanian and Serbo-Croat. However, rather than dampen national sentiments, this in fact led to demonstrations, in 1968, calling for Kosovo to be recognized as a republic. While this did not occur, in 1974 Kosovo was upgraded from an autonomous region to an autonomous province of Serbia; thereby gaining equality with Vojvodina, in the north of Serbia, which had been awarded this status in 1946.<sup>8</sup> It now came to enjoy almost all the rights and privileges granted to a republic, including its own constitution, assembly and seat on the federal council. Crucially, though, it was still denied the right of secession – a privilege theoretically enjoyed by republics.<sup>9</sup> Thus pressure for the province to be upgraded to a republic continued to grow. In 1981, a series of student riots highlighted the strength of feeling over the issue. Meanwhile, as many Serbs started leaving the province amidst growing anti-Serbian prejudice, the question of Kosovo also became increasingly politicized in Serbia. In 1985, a number of Serbian intellectuals prepared a memorandum in which, amongst other things, they argued that the Serbs of Kosovo were facing 'genocide' at the hands of the Albanian majority and

called on Serbia to reassert its authority over the province. This 'threat' to the Kosovo Serbs provided an ideal issue for Slobodan Milošević, a rising official within the ruling Communist Party, to enhance his political career. In 1989, having assumed the Serbian Presidency, he effectively removed the province's autonomy, instituting direct rule from Belgrade.

The collapse of Yugoslavia transformed the debate in Kosovo. Following the examples set by Slovenia and Croatia, the Kosovo Albanians now focused their campaign on formal statehood, holding a referendum on independence and electing Ibrahim Rugova, a firm adherent of non-violent resistance to Serb rule, as their unofficial president, in May 1992. Meanwhile, fearful that the bloody war in Bosnia could proliferate to Kosovo, the United States warned Milošević that any attempt by Belgrade to react with force to developments in the province would meet with air strikes – a threat that was subsequently repeated the following year by the new Clinton administration.<sup>10</sup> At the same time, however, the Kosovo Albanian claim for independence went unrecognized by the international community. In 1992, the Badinter Arbitration Commission, a body set up by the European Union to consider the legal issues arising from the dissolution of Yugoslavia, concluded that the six formal republics of Yugoslavia were states emerging from the collapse of the federation, and thus could be recognized.<sup>11</sup> Crucially, though, Kosovo was not mentioned. Therefore, despite its former standing as a unit within federal Yugoslavia, and the fact that it had enjoyed almost all the rights of a republic, Kosovo was nevertheless denied international recognition.

Although there was little desire within the international community to recognize Kosovo as an independent state, the start of peace talks in Dayton aimed at ending the civil war in Bosnia was seen by many in Kosovo as an opportunity for their own claims to be addressed. But it was not to be. Although some in the US Administration wished to raise the issue, the need to keep Milošević – who insisted that Kosovo was an internal matter for Serbia – engaged in the overall process meant that it was kept off the agenda.<sup>12</sup>

### **The Kosovo conflict, 1998–99**

The decision severely undermined Rugova's credibility. After following a policy of passive resistance, many now felt that the only way to secure independence was to fight for it. In February 1996, the Kosovo Liberation Army (KLA) launched its first attack against a Serbian police patrol. Over the next couple of years the movement gradually intensified its operations and by early 1998 the KLA had become increasingly bold in its attacks and now appeared to be in control of parts of the province. Importantly, though, the weight of opinion appeared to be on Serbia's side. Speaking in Pristina, Robert Gelbard, the US special envoy for the Balkans, famously described the KLA as a terrorist organization.<sup>13</sup> In response to this apparent 'green light', Serbian security forces launched several operations against presumed KLA strongholds, which resulted in significant civilian casualties.<sup>14</sup> This marked a



turning point in the conflict. Meeting at the start of March, the Contact Group – a political body made up of Britain, France, Germany, Italy, Russia and the United States – demanded that formal negotiations now begin between Belgrade and the Kosovo Albanian leadership. Soon afterwards, the UN Security Council passed Resolution 1160. Condemning Serbia's 'excessive force' against civilians and the 'acts of terrorism' by the KLA, the resolution made it clear that the talks should be based on autonomy and meaningful self administration.<sup>15</sup>

Responding to this, Washington initiated a peace process between the two sides. At the same time, Russia, fearful that NATO would intervene if the fighting did not stop, put pressure on Milošević, who promised to scale back Serb activities in the province and agreed to the establishment of the 50-strong Kosovo Diplomatic Observer Mission.<sup>16</sup> But the lull in fighting did not last long. In August, following a further series of KLA attacks, Serb forces launched yet another counter-offensive. By September, the violence was escalating quickly. In response, the Security Council passed another resolution. Again condemning Belgrade's 'excessive and indiscriminate' force, the resolution proposed the establishment of an observer mission to oversee a ceasefire in the province.<sup>17</sup> It also repeated the call for a solution based on autonomy, a position confirmed by Madeleine Albright, the US Secretary of State. As she stated at the time, 'We have made it clear to Milošević and Kosovars that we do not support independence for Kosovo, that we want Serbia out of Kosovo, not Kosovo out of Serbia.'<sup>18</sup>

This in turn acted as a spur for the KLA. Unhappy with the continued international support for autonomy as a model for a solution, it continued its attacks in the hope that this would provoke a heavy handed Serbian response, which in turn would force Western leaders to act decisively on behalf of the Kosovo Albanians.<sup>19</sup> Milošević duly obliged. Mistakenly believing that NATO would not act, or that Russia would prevent an attack, he ordered the continuation of counter-insurgency operations. However, in January 1999, Western patience finally ran out when the bodies of 45 Albanians were discovered in the hamlet of Račak. Following a meeting of the Contact Group, the various sides, including the KLA, were summoned to a peace conference at a chateau in the French town of Rambouillet, on the outskirts of Paris.<sup>20</sup> Emulating the coercive form of diplomacy that had brought an end to the conflict in Bosnia, the parties were told that they had two weeks to agree to the details of the peace plan developed by Hill, or else face the consequences.<sup>21</sup>

Despite this stern warning, the initial discussions proved fruitless. In response, therefore, international mediators unveiled a finalised set of proposals, which, amongst other things, included provision for a major conference on the future of Kosovo, to be held three years later, which would '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 the Accords, and the Helsinki Final Act, and to undertake a comprehensive assessment of the implementation of this Agreement and to

consider proposals by any Party for additional measures.<sup>22</sup> However, while the Kosovo Albanian delegation reluctantly agreed to accept the terms of the proposal, Milošević rejected the document. Although willing to accept the main plan, especially as it reaffirmed Yugoslav sovereignty over Kosovo, he opposed the annexes to the agreement giving NATO forces access to all of Yugoslavia.<sup>23</sup>

Just days later, and following a final attempt to reach an agreement, NATO launched Operation Allied Force, a bombing campaign targeting a range of strategic targets in Serbia, including bridges and refineries, and Yugoslav forces operating in Kosovo. At this point, a major humanitarian crisis erupted. Responding to the NATO attack, Milošević ordered Serb forces to step up their operations against the Kosovo Albanian population. In the weeks that followed, approximately 850,000 people were either forcibly expelled or fled the province, taking refuge in neighbouring Albania and Macedonia.

Meanwhile, on 9 May, at a meeting in Germany, the leaders of the G8 initialled a seven point set of principles for the settlement of the Kosovo issue. Significantly, this once again proposed a solution that supported some form of autonomy, noting that the end of hostilities would lead to, 'a political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region'.<sup>24</sup> This provided Moscow, which had thus far been sidelined altogether, with the political cover it needed to help bring the air campaign to an end. At the start of June, Victor Chernomyrdin, the envoy of the Russian Federation, accompanied Martti Ahtisaari, the president of Finland, who was representing the European Union, to Belgrade where they presented Milošević with a finalized set of principles.<sup>25</sup> Informed that they were non-negotiable, and with reports that Moscow was now willing to accept an imposed solution if Serbia did not comply,<sup>26</sup> Milošević had no choice but to accept the terms. The next day the decision was ratified by the Yugoslav parliament. Six days later, another agreement confirmed the withdrawal of all Yugoslav forces from the province and the deployment of a UN civil mission and a security force – the Kosovo Protection Force (KFOR) – under NATO control.<sup>27</sup>

### **Kosovo under international administration**

On 10 June, the United Nations Security Council passed Resolution 1244 (1999). This formally brought the province under international control, authorizing the creation of the United Nations Interim Administration Mission in Kosovo (UNMIK). But even at this point, autonomy remained on the table as the preferred solution. Under paragraph 10 of the resolution, UNMIK was tasked with creating the conditions, 'under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and

overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo'. This in turn would pave the way, according to paragraph 11, for 'a final settlement'.

While the exact nature of the 'final settlement', and the timeline for reaching an agreement, were not stated, even at this stage, there were those who believed that a decision should have been taken to grant Kosovo independence at this point.<sup>28</sup> However, even after the bombing campaign, and the large scale revenge attacks waged by Kosovo Albanians against the Serbian inhabitants of the province in the aftermath of the establishment of the UN administration, international officials still saw the possibility of reaching a deal based on some form of autonomy once the situation in the province had settled down.<sup>29</sup> However, as far as the Kosovo Albanians were concerned, there was no going back on their demands for statehood. Having managed to secure NATO intervention to support their armed campaign against Serbia, they accepted that a limited period of time as an international protectorate was little more than a necessary prelude to independence. As one leading political figure stated, the Kosovo Albanian leadership 'understood that Serbia cannot just get out, and the process of independence for Kosovo cannot be initiated without the presence of NATO, the EU, and the OSCE. A Western protectorate, and later independence through a referendum, is the national strategy of the Albanians of Kosova.'<sup>30</sup>

Although some within the US State Department may also have believed, or hoped, that statehood was 'clearly on the way',<sup>31</sup> events now appeared to swing the other way. In October 2000, Milošević was forced from power by an alliance of democratic opposition parties.<sup>32</sup> At the same time, UNMIK officials stressed that the unveiling of a Constitutional Framework, in May 2001, which established the Provisional Institutions of Self-Government (PISG),<sup>33</sup> did not cede control over areas that might in any way be seen to take away the sovereign rights of Belgrade.<sup>34</sup> As Hans Haekkerup, the Special Representative of the UN Secretary General (SRSG) and head of UNMIK, explained, Kosovo officially remained an integral part of the Federal Republic of Yugoslavia, as set down in Resolution 1244.<sup>35</sup> This view appeared to be further confirmed when Haekkerup signed an agreement with Nebojša Čović, the moderate deputy prime minister of Serbia, which not only established a more formal process of consultation between UNMIK, the PISG and Belgrade, but also confirmed that UNMIK would not take any steps towards resolving Kosovo's final status.<sup>36</sup> Not unexpectedly, the Kosovo Albanian leadership were 'outraged' by the document.<sup>37</sup>

The impression that Kosovo's path towards statehood was now on the back-burner only grew after 11 September 2001. As US attention became focused on the Middle East, in Europe there was a marked reluctance to deal with the status question as this could destabilize Serbia's democratic transformation. Independence was simply not on the agenda.<sup>38</sup> This message was reinforced in May 2002, when the Kosovo Assembly passed a resolution annulling a



controversial border agreement that had been between Yugoslavia and Macedonia – despite calls from the EU and UN not to do so. Although the new SRSG, Michael Steiner, had been a strong advocate of NATO intervention in 1999, and was known to favour ‘conditional independence’,<sup>39</sup> he could not let such an obvious challenge to Resolution 1244 stand. He therefore annulled the resolution and banned Kosovo Albanian officials from attending a number of international meetings.<sup>40</sup>

The incident not only created a serious rift between the UN and the Kosovo Albanians,<sup>41</sup> it also signalled the degree to which, after three years of international administration, pressure for a status decision was now increasing sharply. In an attempt to lessen the growing tensions, the new SRSG, Michael Steiner, unveiled what would become known as the ‘Standards before Status’ policy.<sup>42</sup> Under this scheme progress would need to be made in eight key areas – such as the establishment of democratic institutions and the enforcement of the rule of law – before the province could conceivably start to think about its final status.<sup>43</sup> Although the policy was applauded internationally, it did little to ease the calls for a status decision from the Kosovo Albanian leadership. Indeed, in Pristina, there was talk of holding a referendum as a prelude to a unilateral declaration of independence.<sup>44</sup> With concern growing about the implications of an indefinite delay, in November 2003, the Contact Group announced that a review of the standards would take place in mid-2005. If ‘sufficient’ progress had been made, a process to determine the final status of Kosovo could then begin.<sup>45</sup> The announcement was welcomed by the Security Council.<sup>46</sup>

### **The move towards status talks, and independence**

Despite this important move, less than six months later Kosovo suffered its worst outbreak of fighting since 1999. On 16 March 2004, three Albanian boys drowned in the Ibar. Although there was no evidence to support the story, within hours the media, including RTK, the national broadcaster, were reporting that they had been chased into the river by dogs belonging to Kosovo Serbs. It could not have come at a worse time. That same day a series of demonstrations were taking place to protest about the indictment of a number of KLA leaders for suspected war crimes committed in 1999. Thus the anger directed towards the UN was magnified and directed towards the Serbs as well. Despite the best efforts of KFOR to contain the violence, it rapidly spread across the province. This was aided in part by the ambivalence of local leaders. Rugova, who had forged his reputation on passive resistance, refused to condemn the violence.<sup>47</sup>

The impact of the riots was enormous. By the time the fighting was contained, on 19 March, it was estimated that almost 51,000 people had taken part in at least 33 separate incidents across the province. As a result, 19 people had been killed, 8 Serbs and 11 Albanians, and over 1,000 injured. Over 550 homes had been burned, along with 27 monasteries and churches.

This had left approximately 4,100 people displaced. This number included not just Kosovo Serbs, but also members of the other minorities, including the Roma.<sup>48</sup> Naturally, the riots had an immensely negative effect on inter-communal relations. Whatever trust that may have been developing between Serbs and Albanians was severely undermined. The incidents also led to a breakdown in contacts between Belgrade and Pristina. In the aftermath of the violence, the technical talks between the Kosovo PISG and the Serbian Government stopped.

However, the riots also marked a catastrophic blow to the standing of UNMIK and KFOR. For a start, after five years of work, they highlighted just how little headway had been made towards ethnic reconciliation between Serbs and Albanians. It also had a profound impact on the relationship the two bodies had with both communities. The Kosovo Serbs, and the other minorities, had lost whatever trust they had in the UN to protect them.<sup>49</sup> Meanwhile, reports of peacekeepers failing to prevent attacks, or fleeing in the face of violence, coupled with reports that the Kosovo Police Service had participated in incidents, had fatally undermined the authority of the UN in the eyes of the Kosovo Albanians. As a report by Human Rights Watch noted several months later, 'The international community has lost tremendous ground in Kosovo as a result of the March violence: ethnic Albanian extremists now know that they can effectively challenge the international security structures, having demolished the notion of KFOR and UNMIK invincibility.'<sup>50</sup> Matters were not helped by the fact that many of those involved in the attacks were never brought to justice or were given unduly light sentences.<sup>51</sup>

The realization that the international community in Kosovo was unable to stop the fighting transformed the whole debate over status. It was now understood that the question of Kosovo's future could not be put off indefinitely. A decision would be needed sooner rather than later. It also made it all but certain that statehood would be the final outcome. As two senior officials from UNMIK later observed, 'Violence had once again advanced the independence agenda as nothing else in the previous five years had.'<sup>52</sup>

This was seemingly proven just months later when Kai Eide, a senior Norwegian diplomat, delivered a political assessment of the situation in Kosovo to the UN Secretary-General.<sup>53</sup> Noting the growing levels of frustration and dissatisfaction, in part caused by a 60–70 per cent unemployment rate, Eide emphasized that it was now necessary to take a longer perspective on Kosovo's future status. To this end, and despite the fact that the UN had unveiled a comprehensive 117-page Standards Implementation Plan just two weeks after the riots,<sup>54</sup> the standards before status policy needed to be replaced by a 'priority based standards policy'. Rather than insist on improvements across the board as a pre-requisite for status talks, an 'unrealistic and unachievable goal', attention should instead be focused on Kosovo's most urgent needs, including those areas relating to a future status process. Likewise, he concluded that UNMIK was no longer the appropriate body to run Kosovo's affairs. Instead, and assuming that any eventual status decision would see



Pristina run its own affairs, it was now time for the European Union to take greater responsibility in the province.<sup>55</sup> As two former UNMIK officials later explained, the riots had 'produced a paradigm shift that some might describe as accepting reality and others as giving up.'<sup>56</sup>

By now any thoughts of autonomy appeared to have disappeared altogether. It was quite clear that the Kosovo Albanians would not accept anything short of full statehood. This was seen by their reaction to Belgrade's proposals for extensive self rule, presented in mid-2004, which was based on the principle of 'more than autonomy, but less than independence'.<sup>57</sup> As one leader explained, Kosovo had been given autonomy under the 1974 Yugoslav Constitution, but this had later been rescinded. It would not happen again. 'Independence is the only solution for Kosovo'.<sup>58</sup> More to the point, the proposals received short shrift from the international community. Although there had been no more serious incidents of violence since the riots the previous year, the threat of further attacks was ever present. More worryingly, there was an increasing fear that in the future the violence might now be directed towards UNMIK and KFOR. Whereas once the Serbs had been viewed as the occupying power, many Kosovo Albanians, such as 'Self-Determination' (*Vetëvendosje*), a pro-independence protest movement, were now starting to view the international presence as a form of colonial occupation. Indeed, by the summer of 2004 the widespread view in Kosovo was that the international administration was no longer opening the way to independence, but was now an obstacle to that goal.<sup>59</sup> This was graphically highlighted in March 2005 when Ramush Haradinaj was forced to step down as prime minister following his indictment on war crimes charges by the ICTY,<sup>60</sup> which in turn led to several bomb attacks on UNMIK property. Meanwhile, patience was running out in Washington. With pressing concerns elsewhere, such as Iraq and Afghanistan, the United States, which had long been keen to drawdown its presence in the Balkans and hand over to the European Union, was now growing increasingly impatient with the situation.<sup>61</sup> The problem, however, was that while the European Union was willing to take a greater role in Kosovo,<sup>62</sup> without a clear status any EU presence ran the risk of being seen as little more than a replacement for UNMIK, with all the dangers that this would entail. Given that autonomy was out of the question, independence now became the only way out.

It therefore came as little surprise when, on 23 May, Annan announced in his latest report on Kosovo that he had decided to appoint a special envoy to conduct a full review of the progress made towards the implementation of the standards.<sup>63</sup> After receiving the endorsement to the Security Council for the review, Annan again turned to Eide to carry out the task. Although Annan was quick to point out that the outcome of the review was not a foregone conclusion, few believed this. The prospect of violence if a negative report was produced meant that most observers believed that the start of formal status talks was now almost certain.<sup>64</sup> And so it was the case. On 4 October, Eide presented his review to the Secretary-General. Even though progress towards

the implementation of standards had been 'uneven', he nevertheless recommended the start of status talks, and noted that the time had come for the EU, in particular, to take a lead role in Kosovo.<sup>65</sup> Annan immediately welcomed the report's findings. Sending the report to the President of the Security Council, he fully endorsed the call for status talks.<sup>66</sup> However, despite the fact that Belgrade was surprised and disappointed by the recommendations,<sup>67</sup> London and Washington were adamant that the prevailing situation was no longer sustainable. It was time to decide Kosovo's final status.<sup>68</sup>

By now, few were in any doubt that this meant statehood. As Janez Drnovšek, the Slovenian president, noted, it was not just the entire international community that knew that Kosovo would become independent, Serbia's politicians did too.<sup>69</sup> Speaking in Pristina a few weeks before the UN sponsored talks began, John Sawers, the political director of the British Foreign and Commonwealth Office, openly stated that independence was the likely outcome of the process,<sup>70</sup> a view repeated soon afterwards by Jack Straw, the British Foreign Secretary, who stated that independence was 'almost inevitable'.<sup>71</sup> Indeed, even Russia was felt – incorrectly, as it turned out – to have come to the conclusion that independence was now the only option. For example, the demands put in place by the Contact Group – including Russia – that any solution must be acceptable to the people of Kosovo, was seen to be a coded reference to statehood. Indeed, the UN team appointed to manage the status talks, which was led by Martti Ahtisaari, understood this to mean that independence was now regarded as the only viable option. To this end, the status process was not about discussing status options, such as autonomy. Instead, it was about creating the structures for a Kosovo state.<sup>72</sup>

## Conclusion

Although statehood eventually came to be seen as the only viable outcome for Kosovo, it represented a marked shift in thinking from the original view taken of the conflict. Until 1999, and despite the events in Yugoslavia, Kosovo was seen by the international community as little different from the wide range of ethnic and separatist conflicts elsewhere in the world. The Badinter Arbitration Committee – a commission formed in 1991 by the European Union under the chairmanship of Robert Badinter, the president of the French Constitutional Court, to consider the legal implications of the break up of Yugoslavia – clearly stated that while the right of secession was open to the republics, it was not applicable to minority communities within the republics. In the case of Kosovo, the report made no recommendation for recognition alongside the republics.<sup>73</sup> Thus, by default, the position of the Kosovo Albanians was regarded as analogous to the Serbs of Croatia and Bosnia, and by extension to other minority communities throughout the republics. In these cases, the Committee ruled that right of self-determination was not conceived as a right to statehood, 'instead, self-determination in this context was reduced in content to human and minority rights, and to

autonomous structures of governance in areas where Serb constituted a local majority.<sup>74</sup> As a result of these decisions, when Kosovo came to prominence at the end of the 1990s, the UN Security Council therefore resolved that any settlement must recognize Yugoslavia's territorial integrity, in accordance with the UN Charter and the Helsinki Final Act, and should therefore be focused on some form of 'enhanced status', 'which would include a substantially greater degree of autonomy and meaningful self-administration.'<sup>75</sup>

Significantly, even after the NATO intervention, and despite calls for a quick resolution of the status question, it appeared as though some form of self-rule remained the optimum and most desired outcome in the minds of most international officials. While many US officials were quite clearly ardent supporters of independence even before the intervention, they did not represent mainstream international thinking. Instead, the hope was that once the initial trauma of the events of that year had subsided there might be a possibility for some form of reconciliation and political solution based on extensive autonomy. As one official pointed out, as the efforts to keep Serbia and Montenegro united showed, there was simply no wish to create further states in the Balkans.<sup>76</sup> However, it gradually became clear that the decision to intervene in Kosovo, and subsequently establish an international administration, necessarily changed the parameters of a settlement – in reality, if not in principle. As far as the Kosovo Albanians were concerned, the NATO intervention had taken place for their benefit and represented a further step towards independence. While they were willing to accept a limited period of international rule, there was no question that this would be a transitory phase leading to statehood sooner rather than later. Moreover, any suggestions of autonomy were completely rejected by the Kosovo Albanian leadership. In view of this, and given rising frustrations in the province, and the danger that this could lead to violence directed towards international administrators and peacekeepers, it was seen as imperative to resolve the status issue, and do so in a manner acceptable to the majority of Kosovo's inhabitants.<sup>77</sup> Thus, despite the recognition of Serbia's sovereignty over Kosovo recognized under Resolution 1244, and the previous efforts to find a solution based on self-rule, there appeared to be little choice but to shift support towards independence. In other words, those countries that had originally supported humanitarian intervention – perhaps without fully realizing at the time the complexity, and general brutality, of the conflict they were facing in Kosovo<sup>78</sup> – had no choice but to support independence in order to extricate themselves from the situation before they too became seen as some form of neo-colonial occupier.

In this sense, the decision to support statehood was not about recognizing the unique case created by the break up of Yugoslavia or the fighting of 1998–99, as was later claimed. Had that been the case, the best option would have been to pursue independence in 1995, at the time of Dayton, or in 1999, as has been widely suggested.<sup>79</sup> At that time, when Milošević was still in power, the political costs would have been lower, and the justification greater. Instead, the shift in favour of statehood came about in response to the



unstable situation that had arisen following the decision to intervene, and the establishment of international administration, both of which were seen by Kosovo Albanians as a clear indication of Western support for their statehood. Moreover, with the realization that UNMIK had essentially failed in its task of building a functioning multi-ethnic democracy in Kosovo it now became obvious, as pointed out by Eide, that the task of managing Kosovo would fall on the European Union. However, given the political climate in Kosovo, the EU would not be able to take on this role, which would certainly require a more robust approach towards state building than that taken by UNMIK, unless the Kosovo Albanian population believed that they were independent. For all these reasons, and despite the earlier decision to support autonomy, as status talks began independence had come to be widely regarded as the only viable option for Kosovo – or so it seemed.

## Notes

- 1 By the start of June 2008, just 42 of the 192 members of the United Nations had recognized Kosovo. In addition to the US and most of the EU, Kosovo was also recognized by other leading economic democracies, including Japan, Canada and South Korea. Please note that this chapter originally appeared in the *Journal of Balkan and Near Eastern Studies*, vol. 11, no. 2, June 2009. It is reprinted here with kind permission.
- 2 Throughout this period, the conflict was often referred to as a separatist conflict in the international media. For example, 'Kosovo peace efforts continue', *BBC News*, 10 May 1998; 'EU tightens sanctions on Serbia over Kosovo', *CNN*, 8 June 1998; 'Conflict in the Balkans: The Tactics', *New York Times*, 12 June 1998; 'Conflict in the Balkans: The Separatists', *New York Times*, 29 March 1999.
- 3 As one British official told the author, the word 'self-determination' was being avoided at all costs. Kosovo was not a case of self-determination. It was a unique case devolving from the dissolution of Yugoslavia in the 1990s. However, speaking on the margins of a UN Security Council debate in December 2007, Sir John Sawers, the British permanent representative at the UN, stated the following: 'You have the principle of territorial integrity. You also have the principle of self-determination. There are times when those principles are in tension with one another, and the principle of territorial integrity is qualified by the principle of self-determination.' 'Media Stakeout: Informal comments to the Media by the Permanent Representative of the United Kingdom, Ambassador Sir John Sawers KCMG, on the situation in Kosovo and other matters', Webcast, *UN Website*, 19 December 2007.
- 4 This chapter will not examine the legality or otherwise of the decision to support independence. For a review of this issue see the debate between Alice Lacourt, a legal advisor at the Foreign and Commonwealth Office, and Dr Ralph Wilde, Reader in Law, UCL. 'Kosovo: International Law and Recognition', A Summary of the Chatham House International Law Discussion Group meeting held on 22 April 2008.
- 5 For a background history of Kosovo, see N. Malcolm, *Kosovo: A Short History*, 2nd ed. (London, Pan Books, 2002); M. Vickers, *Between Serb and Albanian: A History of Kosovo* (New York: Columbia University Press, 1998); and T. Judah, *Kosovo: War and Revenge* (New Haven: Yale University Press, 2002).
- 6 It is perhaps easier to think of these 'nationalities' as national minorities, although this term was never used in Socialist Yugoslavia.
- 7 R. Marmullaku, 'Albanians in Yugoslavia: A Personal Essay', in D. Djokić (ed.), *Yugoslavism: Histories of a Failed Idea, 1918–1992* (London: Hurst, 2003), p. 307. For an overview of the position of the Kosovo Albanians see, H. Poulton, 'Macedonians and Albanians as Yugoslavs', in the same volume.

- 8 Significantly, and as a further concession to the Kosovo Albanians, the term 'Metohija' was dropped from the official name of the province. This term, which roughly translates as 'Land of the Monasteries' in Serbian, and refers to the Western part of the province, was widely resented by Kosovo Albanians as a throwback to Medieval Serbia. Under the Constitution, Serbia continues to refer officially to the province as 'Kosovo and Metohija', often shortened to 'Kosmet'. 'Constitution of the Republic of Serbia', 30 November 2006.
- 9 In reality, it was rather unclear as to where the right really lay: with the republics or with the nations. The question was thus left open to interpretation.
- 10 R. Caplan, 'International Diplomacy and the Crisis in Kosovo', *International Affairs*, vol. 74, no. 4, 1998, p.753.
- 11 The opinions of the Commission can be found as appendices to Alain Pellet, 'Appendix: Opinions No. 1, 2 and 3 of the Arbitration Committee of the International Conference on Yugoslavia', *European Journal of International Law*, vol. 3, no. 1, 1992.
- 12 W. Clark, *Waging Modern War* (New York: Public Affairs, 2001), p. 65.
- 13 'The KLA – terrorists or freedom fighters?', *BBC News*, 28 June 1998.
- 14 'The KLA – terrorists or freedom fighters?', *BBC News*, 28 June 1998.
- 15 'Statement on Kosovo adopted by the members of the Contact Group, meeting in London on 9 March 1998', S/1998/223; and 'Statement on Kosovo issued by members of the Contact Group in Bonn on 25 March 1998', *UN Security Council Document*, S/1998/272. UN Security Council Resolution 1160(1998), 28 March 1998.
- 16 O. Levitin, 'Inside Moscow's Kosovo Muddle', *Survival*, vol. 42, no. 1, Summer 2000, p. 130. T. Youngs, 'Kosovo: The Diplomatic and Military Options', *House of Commons Research Paper 98/93*, 27 October 1998, p. 11.
- 17 UN Security Council Resolution 1199 (1998), 23 September 1998. The Kosovo Verification Mission (KVM) was formed under the auspices of the Organization for Security and Cooperation in Europe (OSCE). Agreement on the OSCE Kosovo Verification Missions signed in Belgrade, on 16 October 1998, by the Chairman-in-Office of the OSCE and the Foreign Minister of the Federal Republic of Yugoslavia (CIO.GAL/65/98/Corr.1).
- 18 'In Balkans Again, Promises, Promises', *New York Times*, 14 October 1998.
- 19 As one KLA leader stated, 'all solutions but independence are not acceptable to the K.L.A.', 'In Balkans Again, Promises, Promises', *New York Times*, 14 October 1998. 'The KLA brought NATO to Kosova: An Interview with Hashim Thaqi', in William Joseph Buckley (editor), *Kosovo: Contending Voices on Balkan Intervention* (Cambridge: Eerdmans, 2000), p. 287.
- 20 For an account of the Rambouillet talks see A.J. Bellamy, 'Lessons Unlearned: Why Coercive Diplomacy Failed at Rambouillet', *International Peacekeeping*, vol. 7, no. 2, Summer 2000, pp. 95–114; and, M. Weller, 'The Rambouillet Conference on Kosovo', *International Affairs*, vol. 75, no. 2, April 1999.
- 21 'Statement to the Press by NATO Secretary General, Javier Solana', 30 January 1999.
- 22 'Interim Agreement for Peace and Self-Government in Kosovo, February 23 1999', Chapter 8, Article 3.
- 23 Judah, *Kosovo*, p. 220. As noted, Milošević believed that NATO forces could be used either to detach Kosovo from Serbia, or to depose him.
- 24 Annexe 1, UN Security Council Resolution 1244 (1999), 10 June 1999.
- 25 Annexe 2, UN Security Council Resolution 1244 (1999), 10 June 1999.
- 26 'Moscow Set To Back UN Resolution on Kosovo', *International Herald Tribune*, 3 June 1999.
- 27 'Military Technical Agreement between the International Security Force (KFOR) and the Governments of Federal Republic of Yugoslavia and the Republic of Serbia', 9 June 1999.
- 28 Paddy Ashdown, comments made during an interview on *Sky News*, 9 December 2007. Capitalizing on Serbia's defeat, and Russia's weakness, Western decision makers would almost certainly have been in a stronger position to impose this type of settlement. Although it may not have been entirely easy to engineer given that Russia would still have been able to block a Security Council resolution recognizing the move, it would certainly

- have been far easier to explain and justify than a decision to do so taken a number of years later. Indeed, by failing to act at that time, NATO created a troubling paradox neatly summed up by Sir Ivor Roberts, the former British Ambassador to Yugoslavia, 'It is hard to explain to Serbs why, when Milošević was still in power, a settlement was imposed which left Kosovo legally and formally part of Serbia. But having overthrown Milošević and lived according to the rules of the international community for the last seven years, the Serbs now face being punished by losing nearly 20 per cent of their territory.' Ivor Roberts, 'Partition is the best answer to the Kosovo question', *The Independent*, 5 December 2007. The same point was also made by Tadić at the UN Security Council meeting following the declaration of independence. 5839th Meeting of the Security Council, *UN Security Council Document*, S/PV/5839, 18 February 2008.
- 29 British official, comments to the author, December 2007.
  - 30 B. Shala, 'Because Kosovars are Western, There Can be No Homeland without a State', in W.J. Buckley (editor), *Kosovo: Contending Voices on Balkan Interventions* (Cambridge: Eerdmans, 2000), p. 187.
  - 31 'Report: U.S. officials expect Kosovo independence', *CNN*, 24 September 1999. John Bolton, who had served as the US permanent representative to the UN throughout 2006, noted on several occasions the deep rooted anti-Serbian attitudes within the State Department and argued that the United States should not recognize a unilateral declaration of independence. John Bolton, interview with Voice of America, October 2007. See also, 'SAD za nezavisno Kosovo' [USA for an Independent Kosovo], *BBC Serbian Service*, 11 May 2007.
  - 32 Despite this, the Kosovo Albanian leaders made it clear that nothing had changed. As far as they were concerned, the new administration in Belgrade was little different from the previous regime. 'Reaction in Kosovo to Koštunica's Victory', *International Crisis Group*, 10 October 2000, p. 2.
  - 33 Constitutional Framework for Provisional Self-Government, UNMIK/REG/2001/9, 15 May 2001.
  - 34 Constitutional Framework for Provisional Self-Government, UNMIK/REG/2001/9, 15 May 2001. The range of competencies covered were listed as: (a) Economic and financial policy; (b) Fiscal and budgetary issues; (c) Administrative and operational customs activities; (d) Domestic and foreign trade, industry and investments; (e) Education, science and technology; (f) Youth and sport; (g) Culture; (h) Health; (i) Environmental protection; (j) Labour and social welfare; (k) Family, gender and minors; (l) Transport, post, telecommunications and information technologies; (m) Public administration services; (n) Agriculture, forestry and rural development; (o) Statistics; (p) Spatial planning; (q) Tourism; (r) Good governance, human rights and equal opportunity; and (s) Non-resident affairs.
  - 35 'Haekkerup believes that Kosovo is still within the FRY', *UNMIK Press Summary*, 2 August 2001.
  - 36 'UNMIK-FRY Common Document', 5 November 2001.
  - 37 'Kosovo's unconventional new chief', *BBC News*, 14 February 2002. I. King and W. Mason, *Peace at Any Price: How the World Failed Kosovo* (London: Hurst, 2006), pp. 122–23.
  - 38 T. Gallagher, *The Balkans in the New Millennium: In the Shadow of War and Peace* (London: Routledge, 2005), p.154. It was stated to the author by a senior British official who had worked on Kosovo that in 2002–3 there had still been no shift towards independence in British thinking. London's position, and that of the other European members of the Contact Group, was that various options were considered open. British official, comments to the author, October 2008.
  - 39 'Kosovo's unconventional new chief', *BBC News*, 14 February 2002; King and Mason, *Peace at Any Price: How the World Failed Kosovo*, p. 175.
  - 40 'Kosovo: Mixed Feelings at Steiner Exit', *Institute for War and Peace Reporting*, 6 June 2003.
  - 41 'UN vetoes Kosovo border resolution', *BBC News*, 23 May 2002.
  - 42 Congressional Research Service, 'Kosovo's Future Status Policy and U.S. Policy', *CRS Report for Congress*, January 27, 2005, p. 2.



- 43 The basic standards had in fact been initially presented by Steiner to the Security Council in April 2002. However at this stage, they were explicitly linked to a final status.
- 44 In response, Zoran Djindjić, the Serbian prime minister, who had been sounding an moderate tone on Kosovo up until this point, such as by accepting the PISG and supporting efforts to reintegrate Kosovo Serbs, suggested that if this happened the Serbian community in Bosnia could follow suit. This was followed by calls for Serbian troops to re-enter the province and for the convening of a conference to discuss Kosovo's final status by June, at the latest. Rather than a new, hard-line policy, the statements instead seem to have been directed to the domestic audience in advance of early elections. Indeed, many expected him to continue to follow a moderate line after the polls, perhaps by pursuing some form of partition – an idea that appeared to be gaining ground internationally. 'Djindjić Launches Battle for Kosovo', *Institute for War and Peace Reporting*, 10 February 2003. However, any moves in this direction were effectively halted when, on 12 March, Djindjić was assassinated. Apart from the devastating effect his death had on Serbian politics, it transformed the course of discussions over the future of Kosovo. Neither of his successors as prime minister, Zoran Živković and Vojislav Koštunica, could, or would, take such a moderate view on the future of the province – although Živković later advocated the partition of Kosovo as the 'least worse' solution. 'Partition is fate of Kosovo', *Reuters*, 7 November 2004.
- 45 'State's Grossman, UN's Holkeri Discuss Kosovo Strategy', *USINFO*, 7 November 2003.
- 46 'Security Council Presidential Statement, Expresses Support for "Standards for Kosovo", Welcome Launch of Review Mechanism', Press Release, *UN Security Council Document, SC/7951*, 12 December 2003. The exact requirements were set out in, 'Standards for Kosovo', *UNMIK*, 10 December 2003.
- 47 A full account of the events can be found in, 'Failure to Protect: Anti-Minority Violence in Kosovo, March 2004', *Human Rights Watch*, vol. 16, no. 6(D), July 2004.
- 48 'Failure to Protect: Anti-Minority Violence in Kosovo, March 2004', *Human Rights Watch*, vol. 16, no. 6(D), July 2004, p. 7.
- 49 'Failure to Protect: Anti-Minority Violence in Kosovo, March 2004', *Human Rights Watch*, vol. 16, no. 6(D), July 2004, p. 3; Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, *UN Security Council Document, S/2005/335*, 23 May 2006, paragraph 10. Out of the 4100 that had been forced to flee from their homes, a year later over 1600 had yet to return to their rebuilt houses, an operation conducted by the UN. This was on top of the tens of thousands that the UN noted had already been displaced since 1999.
- 50 'Failure to Protect: Anti-Minority Violence in Kosovo, March 2004', *Human Rights Watch*, vol. 16, no. 6(D), July 2004, p. 3.
- 51 'The Response of the Justice System to the March 2004 Riots', Report, *Organisation for Security and Cooperation in Europe*, December 2005, p. 4.
- 52 King and Mason, *Peace at Any Price*, p. 191.
- 53 'The Situation in Kosovo: Report to the Secretary-General of the United Nations', Brussels, 15 July 2004.
- 54 Kosovo Standards Implementation Plan, *UNMIK*, 31 March 2004.
- 55 Kai Eide, 'Kosovo: the way forward', *NATO Review*, Winter 2004.
- 56 King and Mason, *Peace at Any Price*, p. 189.
- 57 'Plan for the political solution to the situation in Kosovo and Metohija', Government of Serbia, 2004. In essence, it proposed that the ethnic Albanians, who were openly recognized as the majority in the province, be granted an extremely high level of self rule and called for the Kosovo Serbs and the province's other communities to be granted a high degree of self-governance – in other words, as the document explained, they should be given a degree of, 'autonomy within autonomy'.
- 58 'Kosovo: Independence or the Broadest Autonomy?', *RFE/RL Reports*, vol. 7, no. 12, May 2005.
- 59 'Even in Eager Kosovo, Nation-Building Stalls', *Christian Science Monitor*, 22 September 2004. 'Kosovo Loses Patience with UN as Economy Flags', *New Scotsman*, March 29, 2005.

- 60 'Haradinaj et al.: Initial Indictment', *International Criminal Tribunal for the Former Yugoslavia*, Case No. IT-04-84-I, 24 February 2005.
- 61 This was suggested by Donald Rumsfeld, the US Defense Secretary, in a news conference in June 2006. 'Secretary Rumsfeld News Conference at the Meeting of NATO Defense Ministers, Brussels, Belgium'. U.S. Department of Defense, Office of the Assistant Secretary of Defense (Public Affairs), News Transcript, 9 June 2005. This was not a new position. As early as 2001, Donald Rumsfeld had wanted to withdraw US forces from peacekeeping in the Balkans. 'Rumsfeld seeks exit from Bosnia', *The Guardian*, 19 May 2001.
- 62 'A European Future for Kosovo', Com (2005) 156, *European Commission*, Brussels, 20 April 2005.
- 63 Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, *UN Security Council Document*, S/2005/335, 23 May 2005.
- 64 Congressional Research Service, 'Kosovo's Future Status Policy and U.S. Policy', *CRS Report for Congress*, January 27, 2005, p. 4.
- 65 The full text of the report can be found as an annexe to a letter sent by the UN Secretary General to the Security Council President. 'Letter dated 7 October 2005 from the Secretary-General addressed to the President of the Security Council', *UN Security Council Document*, S/2005/635, 7 October 2006.
- 66 'Letter dated 7 October 2005 from the Secretary-General addressed to the President of the Security Council', *UN Security Council Document*, S/2005/635, 7 October 2005. The UN Secretary-General was careful not to prejudge the outcome of the process, simply noting that, 'the question of autonomy and independence has been raised, and we have to talk to Belgrade and Pristina'. 'Kosovo set for "breakaway" talks', *BBC News*, 7 October 2006.
- 67 'Kosovo set for "breakaway" talks', *BBC News*, 7 October 2006.
- 68 'Kosovo set for "breakaway" talks', *BBC News*, 7 October 2006. 'Launch of Process to Decide Kosovo's Final Status: Statement by RT Hon Douglas Alexander MP', *Foreign and Commonwealth Office*, London, 8 October 2005.
- 69 'International community knows "Kosovo will become independent" – Slovene leader', *STA News Agency*, 27 October 2005.
- 70 'Kosovo can win independence, says British diplomat', *Reuters*, 6 February 2006. This said, a few days later, Sawers gave an interview to B92 in which he appeared to backtrack slightly, noting that independence was an 'option'. 'Independence is an option', *B92*, 31 January 2006.
- 71 'New Kosovo PM wants independence', *BBC News*, 10 March 2006.
- 72 This has been explicitly stated by both Martti Ahtisaari and his deputy, Albert Rohan. Martti Ahtisaari, 'Kosovan Questions: National, Regional, International', Roundtable held at the School of Slavonic and East European Studies, *University College London*, 9 September 2008; Albert Rohan, 'International Conflict Resolution: The Case of Kosovo', Public Lecture, *University of Kent*, 19 October 2007. For an analysis of the Ahtisaari process see M. Weller, 'The Vienna Negotiations on the Final Status of Kosovo', *International Affairs*, vol. 84, no. 4, July 2008.
- 73 B.S. Brown, 'Human Rights, Sovereignty, and the Final Status of Kosovo', *Chicago-Kent Law Review*, vol. 80, 2005, p. 239.
- 74 Weller, 'The Rambouillet Conference on Kosovo', p.214. The full second opinion of the Committee can be found as an appendix to Pellet, 'The Opinions of the Badinter Arbitration Committee'.
- 75 UN Security Council Resolution 1160(1999), 31 March 1998.
- 76 Senior British diplomat working on the Balkans, comments at a closed discussion, September 2008.
- 77 As Sir John Sawers, the British representative at the UN stated, 'The international community cannot be party to a settlement that is opposed by over 90 per cent of a territory's population. Apart from anything else, it would be contrary to our overriding priority of upholding peace and security'. 'Serbia denounces Kosovo move at UN', *Financial Times*, 18 February 2008.

- 78 As two former UNMIK officials explained, the international community 'failed to understand that the Kosovo conflict of the late nineties ... was only the latest chapter in a long-running competition between two peoples for control of territory. The international community realised too late that its alliance with the Albanian militants was somewhat arbitrary. Both opposed Serb atrocities, but while the international community was against the atrocities, the guerrillas were against the Serbs. Most Albanians who took up arms to challenge Serbian oppression did not object to one ethnic group bullying all the others; they just wanted to be the one on top', King and Mason, *Peace at Any Price*, pp. 243–44.
- 79 See a range of examples, 'UN envoy on Kosovo's status says "independence is the only option"', *UN News Centre*, 26 March 2007; 'U.S. Envoy Discusses Kosovo Independence Declaration', *PBS*, 18 February 2008; 'Joint EU reaction on Kosovo's declaration of independence – Doris Pack MEP', Press Release, *EPP-ED Group in the European Parliament*, 20 February 2008; 'Harper defends Kosovo recognition as unique case', *CBC*, 19 March 2008; 'The U.S. and Russia at Odds Over Kosovo', *VOA News*, 25 February 2008; 'Joy in Kosovo, Anger in Serbia', *Time*, 17 February 2008.