

## RECENT DEVELOPMENT

### HUMAN RIGHTS ABUSES IN YUGOSLAVIA: TO BRING AN END TO POLITICAL OPPRESSION, THE INTERNATIONAL COMMUNITY SHOULD ASSIST IN ESTABLISHING AN INDEPENDENT KOSOVO

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At the time this article went to press, events in Kosovo were accelerating at a rapid pace. NATO began a campaign of air strikes against Yugoslavia at the end of March;<sup>1</sup> one week after Serbian officials refused to negotiate at peace talks coordinated by the United States.<sup>2</sup> Two weeks into the air strike campaign, Slobodan Milosevic, the President of Yugoslavia, announced a unilateral cease fire that was rejected by NATO commanders.<sup>3</sup> The United States began sending relief to ethnic Albanians refugees in Macedonia soon after Milosevic's offer was rejected,<sup>4</sup> signaling that it may expect hostilities to continue. Even though the international community seems to be in agreement that something must be done to protect the ethnic Albanians in Kosovo, none of the principal actors in the international community has proposed securing independent statehood for Kosovo. It is the opinion of the author that independence, asked for by the leaders of the ethnic Albanian population in Kosovo, is a necessary step towards a permanent peaceful resolution of the conflict. This article attempts to justify that independence under the principles of international law.

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<sup>1</sup> *Six Days of Air Strikes on Yugoslavia*, AGENCE FRANCE PRESSE, Mar. 30, 1999, available in LEXIS, NEWS Library, AFP File.

<sup>2</sup> *Time Running Out for Milosevic as NATO Air Strikes Prepared: Albright*, AGENCE FRANCE-PRESSE, Mar. 22, 1999, available in LEXIS, NEWS Library, AFP File.

<sup>3</sup> *Clinton Vows to Continue Bombing, Ruses Aid to Refugees*, DEUTSCH PRESSE-AGENTUR, April 5, 1999, available in LEXIS, NEWS Library, DPA File.

<sup>4</sup> *Id.*

## I. THE PROBLEM

In the summer of 1998, violence between Serbian authorities and ethnic Albanians in the Yugoslavian province of Kosovo exploded. Between February 28 and March 1, Serbian police killed eighty ethnic Albanians in the Kosovo town of Drenica.<sup>5</sup> The crackdown was in response to an attack on a bus-load of Serbian police by members of the Kosovo Liberation Army.<sup>6</sup> For the next several months, as the violence continued, over 230,000 ethnic Albanians fled their homes, creating a tremendous refugee problem for both Yugoslavia and its neighbors. The violence within the province should be a major concern to the international community not only because of the threat to ethnic Albanians, but because escalation into a larger conflict involving other nations in the region is likely. NATO has already executed air strikes against Serbia, and Albania has come close to taking military action against Yugoslavia. Furthermore, tensions in the area are far from settled since the signing of the Dayton Accords in 1995.<sup>7</sup> If the U.S. and the European powers are serious about maintaining the peace they claim to have achieved in southern Europe, intervention by the international community will have to be swift.

What follows is a brief history of the conflict, as well as the internal and international political context in which it exists. An examination is made into the various solutions that have been proposed by actors in the international community. This paper argues that the only feasible and sensible solution to the crisis is for the United States and NATO to follow through on the precedents set by the Dayton Accords<sup>8</sup> and grant Kosovo independent statehood.

### A. Kosovo

Kosovo is a region in the southern most part of central Yugoslavia.<sup>9</sup> It is bordered on the southwest by Albania and on the southeast by Macedo-

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<sup>5</sup> See Lee Hockstader, *Amid Tensions, Kosovo Holds Illegal Elections*, WASH. POST, Mar. 23, 1998, at A12.

<sup>6</sup> See *id.*

<sup>7</sup> Bosnia and Herzegovina-Croatia-Yugoslavia: General Framework Agreement for Peace in Bosnia and Herzegovina With Annexes, Dec. 14, 1995, 35 I.L.M. 75 [hereinafter Dayton Accords].

<sup>8</sup> See *id.*

<sup>9</sup> See OXFORD ATLAS OF THE WORLD 42 (Oxford University Press ed., 1995).

nia.<sup>10</sup> Due west lies an area of Yugoslavia referred to as Montenegro, and Kosovo shares its remaining borders with the largest Yugoslavian province, Serbia.<sup>11</sup>

Kosovo was a province in the Ottoman Empire that was ceded to Serbia after the defeat of Turkey in the Balkan Wars of 1912-1913.<sup>12</sup> Even though the province was comprised mostly of ethnic Albanians, it was not made part of the bordering nation of Albania which was created at the same time.<sup>13</sup> Kosovo was granted autonomous status within Yugoslavia by the Yugoslavian Constitution of 1974.<sup>14</sup> In 1990, the nationalist leader of Serbia, Slobodan Milosevic, secured constitutional amendments that revoked the autonomous status of both Kosovo and Vojvodina, a province at the northern tip of present Yugoslavia.<sup>15</sup> Since that time, Kosovo has remained under Serbian domination.

Ethnic Albanians now comprise ninety percent of the two million people in Kosovo.<sup>16</sup> Although Albanians have always been the majority in Kosovo, their majority status within the region was enhanced by both an unusually high birth rate among Albanians<sup>17</sup> and by population shifts that took place during the Yugoslav War.<sup>18</sup> Almost all of the Albanian population in Kosovo adheres to a moderate form of Islam.<sup>19</sup>

Serbians regard Kosovo as part of their historic heartland, even though the ancestors of the Albanians, the Illyrians, lived there in pre-Roman times.<sup>20</sup> The area was the seat of the Serbian Patriarchate, as well as the seat of Serbian culture during the Middle Ages.<sup>21</sup> Serbians fought with the Ottoman Turks in Kosovo Polje in 1389, in a battle today remembered during Serbia's celebration of St. Vitus Day.<sup>22</sup> Finally, the presence of

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<sup>10</sup> See *id.*

<sup>11</sup> See *id.*

<sup>12</sup> See ALI L. KARAOSMANOGLU, *CRISIS IN THE BALKANS* 6 (1993).

<sup>13</sup> See *id.*

<sup>14</sup> See Fabian Schmidt, *Kosovo: The Time Bomb That Has Not Gone Off*, RFE/RL RESEARCH REPORT, Oct. 1, 1993, at 22.

<sup>15</sup> See *id.*

<sup>16</sup> See Ismet Hajdari, *Milosevic Expects Ethnic Kosovo*, AP, Dec. 31, 1998.

<sup>17</sup> See ELEZ BIBERAJ, *KOSOVO: THE BALKAN POWDER KEG* 6 (1993).

<sup>18</sup> See REXHAP ISMAJLI, *The Right to Self-Determination* (1993), reprinted in *KOSOVO IN THE HEART OF THE POWDER KEG*, at 205 (Robert Elsie ed., 1997).

<sup>19</sup> See KARAOSMANOGLU, *supra* note 12.

<sup>20</sup> See ISMAJLI, *supra* note 18, at 195.

<sup>21</sup> See Schmidt, *supra* note 14, at 21.

<sup>22</sup> See *id.*

several ancient Christian Orthodox churches in the area serves as an emotional link to Kosovo for many Serbians.<sup>23</sup>

### B. Human Rights Abuses

Although the oppression in Kosovo has not yet escalated to the brutal level of "ethnic cleansing" that shocked the world during the Yugoslav War, it has been significant.<sup>24</sup> Serbia has been oppressing ethnic Albanians in Kosovo since February 27, 1989, when the Serbian government in Belgrade declared a "state of emergency" and sent in troops to crush miners' strikes and student demonstrations.<sup>25</sup> One month later, on March 23, the Serbian government unilaterally revoked Kosovo's autonomous status and brutally crushed demonstrations that were held in protest.<sup>26</sup> In July 1990, Serbia dismissed all Albanian political institutions in Kosovo after a referendum in Serbia that approved constitutional changes stripping Kosovo and Vojvodina of their autonomy.<sup>27</sup> On August 8, 1990, the Serbian forces shut down the Albanian newspaper, *Rilindja*, and seized its building.<sup>28</sup> During the same year, Serbian authorities set up a uniform system of instruction for all the schools in Kosovo and at the University of Pristina which restricted the use of the Albanian language, and was openly oriented toward Serbian nationalism.<sup>29</sup> Serbian reaction to the ensuing Albanian protests was to dismiss 75,000 doctors, teachers, workers, police, professors, and civil servants,<sup>30</sup> even though Kosovo experienced an unemployment rate of forty percent in 1990.<sup>31</sup> In addition, Serbian authorities abolished the local courts and removed all the judges.<sup>32</sup> In July 1993, Serbia forced a mission from the Conference on Security and Cooperation in Europe to leave Kosovo, after it

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<sup>23</sup> See *id.* at 22.

<sup>24</sup> See generally Human Rights Watch, *Open Wounds: Human Rights Abuses in Kosovo* (1993).

<sup>25</sup> *Europe: Major Events in Kosovo Since 1989*, AAP NEWSFEED, Mar. 5, 1998, available in LEXIS, NEWS Library, AAPNEW File.

<sup>26</sup> See *id.*

<sup>27</sup> See *id.*

<sup>28</sup> See Schmidt, *supra* note 14, at 23.

<sup>29</sup> See *id.*

<sup>30</sup> See *id.*

<sup>31</sup> See SUSAN L. WOODWARD, *BALKAN TRAGEDY: CHAOS AND DISSOLUTION AFTER THE COLD WAR* 53 (1995).

<sup>32</sup> See *id.*

condemned Serbian oppression.<sup>33</sup> Continued Serbian oppression has caused tremendous economic strife in Kosovo, Yugoslavia's poorest region even before the Serbian takeover.<sup>34</sup> Student demonstrations were again brutally crushed by Serbian troops in September 1997.<sup>35</sup>

As one might expect, Serbia's actions constitute violations of international law. Article 27 of the International Covenant on Civil and Political Rights states: "In those states in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."<sup>36</sup> Article 20 forbids states from advocating "national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence."<sup>37</sup> Although Serbia has arguably also violated the Universal Declaration of Human Rights, a state's obligations under the Covenant are less speculative in that the Covenant is expressly applicable to the rights of "minorities."<sup>38</sup> Although an optional protocol for the Covenant was created, the Covenant itself is an "obligation of States under the Charter of the United Nations."<sup>39</sup>

### C. Kosovo's Political Response

Kosovo's political leaders created a shadow government soon after the region's autonomous status was abolished. The provincial legislature of Kosovo declared the revocation of autonomy to be unconstitutional and began meeting secretly in 1990.<sup>40</sup> On September 7, 1990, legislators met in the town of Kacanik and approved a constitution making Kosovo a republic within the Yugoslavian federation.<sup>41</sup> Voters approved the document in a referendum one year later.<sup>42</sup> On October 19, 1991, the legislature

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<sup>33</sup> See *Europe*, *supra* note 25.

<sup>34</sup> See BIBERAJ, *supra* note 17, at 7.

<sup>35</sup> See *Europe*, *supra* note 24.

<sup>36</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter Covenant].

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> See Schmidt, *supra* note 14, at 23.

<sup>41</sup> See *id.*

<sup>42</sup> See *id.*

declared Kosovo an independent nation, but it has only received recognition as a sovereign from Albania.<sup>43</sup> Various political parties organized and held a presidential and parliamentary election on May 24, 1992.<sup>44</sup> Even though Serbian forces threatened reprisals and declared the vote illegal, ninety percent of the population turned out to vote, and eight groups of international observers supervised the voting.<sup>45</sup> Ibrahim Rugova of the Democratic League of Kosovo, the only presidential candidate, was unanimously elected.<sup>46</sup> The newly elected Albanians refused to meet with Serbian officials to discuss upcoming Serbian elections and human rights issues because the talks were not to take place on neutral ground.<sup>47</sup> Aside from a brief interlude during 1992 when Milan Panic served as Prime Minister of Yugoslavia, almost no cooperative talks or relations with Serbia have taken place.<sup>48</sup> On March 22, 1998, under threats from Serbian authorities, voters in Kosovo again voted to re-elect the unopposed Rugova and his shadow parliament.<sup>49</sup>

Rugova, in conjunction with religious leaders, has tried to prevent violence on the part of ethnic Albanians and promote a campaign of non-violent resistance to Serbian authority.<sup>50</sup> It appears, however, that his ability to prevent violence may be on the decline. By March 1998, a group calling itself the Kosovo Liberation Army ("KLA") had taken credit for several terrorist bombings of Serbian targets.<sup>51</sup>

Throughout summer 1998, the KLA's strength continued to grow. Originally, the KLA was comprised of a small number of members, but by July 1998, it enjoyed wide popular support across Kosovo and controlled roughly one third of the territory.<sup>52</sup> Among the twenty or so towns controlled by the KLA is Malisevo, which borders the nation of Albania. The rebels use this town as a hub for supplying their outposts with foodstuffs

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<sup>43</sup> See *id.*

<sup>44</sup> See *id.*

<sup>45</sup> See *id.*

<sup>46</sup> See Schmidt, *supra* note 14, at 23.

<sup>47</sup> See *id.*

<sup>48</sup> See *id.*

<sup>49</sup> See Hockstader, *supra* note 5.

<sup>50</sup> See *id.*

<sup>51</sup> See *id.*

<sup>52</sup> See R. Jeffrey Smith, *Kosovo Rebel Leaders Hard to Find; U.S. Efforts to Get Them to Peace Talks Unsuccessful*, WASH. POST, June 28, 1998, at A25.

and weapons.<sup>53</sup> Richard Gelbrand, the U.S. envoy to the European nations coordinating efforts to resolve the conflict, stated in July 1998 that "the KLA is now a factor on the ground."<sup>54</sup> Gelbrand also stated that the nations coordinating efforts to resolve the conflict "would attempt to interrupt [the KLA's] ability to sustain themselves on the ground" if the KLA refused to help broker a solution.<sup>55</sup> Gelbrand's statement reflects the present reality of the situation in Kosovo. Whether or not the KLA participates in a solution to the crisis, they will have to be dealt with by those seeking stability in the region.

Throughout the Serbian domination of the last decade, Rugova and others appealed to the international community and have until recently, received little in the way of substantive assistance. Although several Western leaders commented early in 1993 that ethnic cleansing would not be tolerated in the area, little more was done for Kosovars until 1999.<sup>56</sup> In frustration over continued oppression, ethnic Albanians began to lose faith in the pacifistic Rugova and looked instead to the KLA for deliverance.

#### *D. Limited International Response*

In July 1993, a mission sent by the Conference on Security and Cooperation in Europe was forced to leave Kosovo after condemning increasing Serbian oppression.<sup>57</sup> In August 1993, the United Nations Subcommission for the Protection of Minorities passed a resolution on Kosovo charging Serbia with discrimination against Albanians and human rights violations.<sup>58</sup> The war in Bosnia and Herzegovina, which did not end until the Dayton Accords were signed on December 14, 1995, overshadowed the problem in Kosovo for the next several years.<sup>59</sup>

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<sup>53</sup> See Guy Dinmore, *Refugees At Heart of Ground Zero; Kosovo Clash Drives 60,000 From Homes*, WASH. POST, June 15, 1998, at A15.

<sup>54</sup> *Id.*

<sup>55</sup> Paul Geitner, *U.S., Europe Demand an Immediate Cease-Fire in Kosovo*, WASH. POST, July 9, 1998, at A24.

<sup>56</sup> See Fabian Schmidt, *Has the Kosovo Crisis Been Internationalized?*, RLE/RL RESEARCH REPORT, Nov. 5, 1993, at 36.

<sup>57</sup> See *Europe*, *supra* note 25.

<sup>58</sup> See *Situation in Kosovo*, U.N. Sub Commission on Prevention of Discrimination and Protection of Minorities, 45th Sess., 26th mtg. at 35, U.N. Doc. E/CN.4/Sub2/RES/1993/9 (1993).

<sup>59</sup> See *Europe*, *supra* note 25.

After the completion of the Yugoslav War, leaders in Kosovo became more demanding and more vocal in their appeals. On March 30, 1996, in response to a call by former United States Ambassador Warren Zimmerman that Kosovo be partitioned, Rugova stated that independence was the only acceptable solution to the Kosovo problem.<sup>60</sup>

The international community has begun to call for solutions to the problem in Kosovo, but it has stopped short of recognizing Kosovo as an independent state. The United States Congress passed a resolution in August 1996 that called for self-determination of Kosovo and the appointment of a special American envoy for the province.<sup>61</sup> In February 1997, Kosovo stressed its commitment to independence by declining to meet with Max Van Der Stoel, the High Commissioner For Minorities of the Organization for Security and Cooperation in Europe ("OSCE"), on the grounds that "Albanians in Kosovo are not a minority solely because that is the desire of Belgrade and others in the OSCE."<sup>62</sup> Rugova underscored the same sentiments to a group of British MPs who visited Kosovo later the same month.<sup>63</sup> In March 1997, the U.N. General Assembly adopted a resolution calling for the Serbian authorities to take action to bring an end to the repression of ethnic Albanians.<sup>64</sup> In April 1997, Rugova met with the former U.S. envoy to Yugoslavia, John Kornblum.<sup>65</sup> Kornblum urged that a solution for Kosovo be found within Serbia and stated that the idea of an independent Kosovo had not so far contributed to peace in the region.<sup>66</sup>

Kornblum is not alone in his opinion that Kosovo should not be treated as an independent nation. A few months after his visit, the Balkan countries held a summit on the island of Crete.<sup>67</sup> Signifying the international view,

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<sup>60</sup> See *Kosovo Albanian Leader Rejects Autonomy, Urges Independence*, BBC SUMMARY OF WORLD BROADCASTS, Apr. 1, 1996.

<sup>61</sup> See *Kosovo Albanian Leader Welcomes US Congress Resolution on Province*, BBC SUMMARY OF WORLD BROADCASTS, Aug. 7, 1996.

<sup>62</sup> See *Ethnic Albanians Indignant at Being Called a Minority*, BBC SUMMARY OF WORLD BROADCASTS, Feb. 11, 1997. Van Der Stoel had been appointed special envoy to Kosovo by the Organization for Security and Cooperation in Europe.

<sup>63</sup> See *Albanian Leader Meets European MPs*, BBC SUMMARY OF WORLD BROADCASTS, Feb. 28, 1997.

<sup>64</sup> See *id.*

<sup>65</sup> See *Albanian Leader Says Talks With U.S. Envoy Very Significant*, BBC SUMMARY OF WORLD BROADCASTS, Apr. 21, 1997.

<sup>66</sup> See *id.*

<sup>67</sup> See *"Government of Republic of Kosovo" Protests Absence From Crete Summit*, BBC SUMMARY OF WORLD BROADCASTS, Nov. 5, 1997.

no representatives from Kosovo were invited.<sup>68</sup> Underscoring its position that Kosovo is a completely internal matter, Yugoslavia rejected a Franco-German proposal to grant Kosovo a special status in November 1997. In February 1998, the U.S. envoy to the Balkans, Robert Gelbard, accused Serbian authorities of being responsible for the violence but still rejected Kosovo's demands for independence.<sup>69</sup> Later that month, the European Union demanded that provincial autonomy within Yugoslavia be restored to Kosovo.<sup>70</sup>

After repeated frustration over the continued violence, the international community began to take actions designed to cease Serbian aggression and KLA terrorism. In late May 1998, NATO expanded its military exercises in Albania and Macedonia to help secure their border and to serve as a warning to Milosevic.<sup>71</sup> In June 1998, the United States joined most of the western European nations in imposing sanctions on Yugoslavia.<sup>72</sup> On June 8, 1998, acting EU Council President Robin Cook warned that several EU member nations were calling for military action against Serbia.<sup>73</sup> The United States suspended airline service to Yugoslavia in mid June, and NATO staged air exercises over Albania and Macedonia.<sup>74</sup> However, United Nations action was stymied because of Russian support of the Serbs and Russian opposition to any military action against Milosevic. To complicate matters, after Russia and China promised to veto any proposed U.N. action, France, Italy, Denmark, and Germany declared that they would not back the use of force without U.N. approval. Even though air exercises over Albania and Macedonia continued, the international community refused direct military intervention.

In November 1998, the United States offered a proposal that would have given Kosovo political authority within Yugoslavia. The proposal was rejected by Kosovo's political leaders, although it was called a "step

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<sup>68</sup> *See id.*

<sup>69</sup> *See Europe, supra* note 25.

<sup>70</sup> *See id.*

<sup>71</sup> *See The Kosovan Cauldron*, THE TIMES, June 1, 1998.

<sup>72</sup> *See 30,000 More Refugees After New Serb Action, Say Kosovo Albanians*, DEUTSCHE PRESSE-AGENTUR, July 1, 1998, available in LEXIS, NEWS Library DPA File.

<sup>73</sup> *See Cook Agrees Euro Sanctions Over Kosovo*, SCOTTISH DAILY RECORD, June 9, 1998.

<sup>74</sup> *See NATO "Refining" Military Options on Kosovo*, XINHUA ENGLISH NEWSWIRE, June 24, 1998.

forward" by Rugova's advisor.<sup>75</sup> In the same month, Yugoslavia prevented the entry of a U.N. war crimes prosecutor into Kosovo.<sup>76</sup> Soon after the U.S. proposal failed, violence again escalated in the region. Fifty people were killed in the Kosovo town of Pec. Finally, in January 1999, the United States and the European powers met in London and issued an ultimatum,<sup>77</sup> which set a February 19, 1999 deadline for Serbian and Kosovar officials to come to a peace settlement.<sup>78</sup> As the United States and European powers outlined a plan for peace, an assault on an ethnic Albanian village resulted in the death of twenty-four people.<sup>79</sup> The tentative plan called for ground troops in the region and air strikes against Serbia.<sup>80</sup> None of the major powers, however, suggested independence for Kosovo.<sup>81</sup>

While figures in the international community call for Kosovar autonomy within Yugoslavia, Serbian authorities continue to victimize the people of Kosovo. Violence between the KLA and the Serbian army occurs daily, and one of the world's largest refugee crises worsens.

## II. POSSIBLE SOLUTIONS

In May 1998, President Clinton stated in a press conference:

[Y]ou've got a part of Serbia which is 90 percent Albanian. And they want some kind of autonomy and to have their legitimate concerns addressed. The Serbs don't want to give up a big part of their country, which they believe—and is legally, part of their country. So they obviously need to sit down and talk through how the legitimate aspirations of the Kosovo Albanians can somehow be manifest in giving them some measure of self-government and decision-making

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<sup>75</sup> Guy Dinmore, *Kosovo Plan Removes Serbia's Authority*, FIN. TIMES, Nov. 19, 1998, at A2.

<sup>76</sup> *See War Crimes Prosecutor Refused Visa for Kosovo*, DEUTSCHE PRESSE-AGENTUR, Nov. 5, 1998, available in LEXIS, NEWS Library, DPA File.

<sup>77</sup> *See* Thomas M. Lippman, *Ultimatum in Kosovo*, ATLANTA J.-CONST., Jan. 30, 1999, at A1.

<sup>78</sup> *See id.*

<sup>79</sup> *See id.*

<sup>80</sup> *See id.*

<sup>81</sup> *See id.*

authority over their lives within the framework of Serbia. There are over 50 different ways this could be worked out in a humane, legitimate way. They do not have to kill each other to get this done, and they should not do that.<sup>82</sup>

While President Clinton may have overstated the simplicity of the crisis, the President's assertion that there are numerous ways to address the problem is correct. A number of possible solutions have been suggested by international legal scholars, human rights organizations, and governmental institutions. While opinions regarding the appropriate remedy are almost as varied as the number of commentators, the consensus is that forces outside of Yugoslavia need to act quickly to avoid further bloodshed.

#### A. *Peace Negotiations*

At least one human rights organization believes that before any decisions are made regarding Kosovo's status, dialogue between the Albanians and the Serbians should be developed. The Transnational Foundation for Peace and Future Research ["TFF"] has criticized Congressman Benjamin Gilman, Chairman of the International Relations Committee of the United States House of Representatives, for advocating sanctions against Yugoslavia, supporting an independent Kosovo, and recommending that NATO and U.N. troops be sent to the area.<sup>83</sup> The TFF recommends a hearing in the United Nations General Assembly, a "Non-Violence Pact" between the parties, and meetings across Europe between groups of Serbs and Albanians.<sup>84</sup>

Over the summer of 1998, while violence escalated in the Kosovo province, negotiators from the United States attempted to bring Albanians and Serbs together for peace talks. In mid-May, 1998, U.S. diplomats claimed a "breakthrough" when Rugova dropped his demand that international mediators play a direct role in the talks.<sup>85</sup> Previously, Rugova had insisted upon the involvement of mediators for as long as the U.S. was

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<sup>82</sup> President Bill Clinton, Press Conference with Italian Prime Minister Prodi, May 6, 1998, *reprinted in* WASH. POST, May 7, 1998, at A12.

<sup>83</sup> See *Kosovo—Why It Is Serious. What Not To Do*, TFF PRESSINFO 34, (visited Mar. 5, 1998) <<http://www.transnational.org/pressinf/pf34.htm>>.

<sup>84</sup> See *Kosovo—What Can Still Be Done*, TFF PRESSINFO 35, (visited Mar. 6, 1998) <<http://www.transnational.org/pressinf/pf35.htm>>.

<sup>85</sup> Katrina Kratovac, *Kosovo Opponents Agree to Sit Down and Talk*, AAP NEWSFEED, May 14, 1998.

closely involved in the peace process.<sup>86</sup> By the time Rugova dropped his demand, however, the KLA had taken over one-third of the province and informed Rugova that they were unwilling to negotiate.<sup>87</sup> U.S. forces and European countries considered cracking down on the KLA's underground funding, at the same time they enacted sanctions and openly considered military action against the Serbs.<sup>88</sup> Finally, in late July 1998, the Kosovo Albanians agreed on a negotiating team with the conditional support of the KLA.<sup>89</sup>

Even though the Serbs and the Kosovars had finally signaled a willingness to negotiate, hostilities continued. By August 1998, an estimated 250,000 Kosovars had become refugees.<sup>90</sup> Many Kosovar refugees fled to neighboring countries, and, as a result, broadened the geographical scope of the conflict's impact.<sup>91</sup>

A dramatic example of the ineffectiveness of the attempted talks occurred in late June 1998, when the U.S. negotiator, Richard Holbrooke, traveled through the town of Decane.<sup>92</sup> Holbrooke had been in Belgrade for a meeting with Serbian authorities that had lasted for several hours, during which they assured him that hostilities had ceased.<sup>93</sup> As Holbrooke passed through Decane, he saw Serbian soldiers standing in the shadows with rifles while ethnic Albanians sat on the curb playing checkers.<sup>94</sup> Holbrooke sent a telegram back to the U.S. State Department, stating "we have just seen the Truman Show in Decane."<sup>95</sup>

By the middle of August 1998, the KLA had withdrawn its support for Rugova's negotiating team.<sup>96</sup> A few days after the KLA withdrew its

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<sup>86</sup> *Id.*

<sup>87</sup> *Eur:US Gets Milosevic and Rugova to Talk Peace*, AAP NEWSFEED, May 13, 1998.

<sup>88</sup> *See Ian Black & Jonathan Steele, Cook Warns Kosovo Guerillas*, GUARDIAN, Oct. 22, 1998, at 18.

<sup>89</sup> *See Kosovo Rebels Support Joint Stand for Talks with Belgrade*, AGENCE FRANCE PRESSE, July 30, 1998, available in LEXIS, NEWS Library, AFP File.

<sup>90</sup> *See UN Pledges to Step Up Protection for Refugees in Crisis Situations*, AGENCE FRANCE PRESSE, Sept. 30, 1998, available in LEXIS, NEWS Library, AFP File.

<sup>91</sup> *See Tami Freedman, Ogata Accuses Serbs of Waging Offensive in Kosovo*, AGENCE FRANCE PRESSE, Sept. 30, 1998, available in LEXIS, NEWS Library, AFP File.

<sup>92</sup> *See Douglas Waller, Mission Impossible*, TIME, July 6, 1998 at 68.

<sup>93</sup> *See id.*

<sup>94</sup> *See id.*

<sup>95</sup> *Id.*

<sup>96</sup> *See Kosovo Hard Liner Breaks Away From Talks on Peace Settlement*, BOSTON GLOBE, Aug. 15, 1998 at A2.

support, the Albanian negotiators refused to meet in protest over the continued Serbian offensive.<sup>97</sup> Soon after the break in negotiations, a desperate Rugova pleaded with the U.S. to establish a no-fly zone over Kosovo.<sup>98</sup> On the same day, Veljko Odanovic, the Serbian Governor of Kosovo, offered the province autonomous status.<sup>99</sup> However, less than a month after the offer was made, 15,000 Albanians were forced from their homes in the wake of a Serbian attack on the town of Drenica.<sup>100</sup>

What could be accomplished by talks between the two peoples is difficult to see. Belief that negotiations will solve the crisis is very optimistic, if not naive. The Serbs claim they are willing to extend autonomy, but it was their unilateral revocation of Kosovo's autonomy nine years ago that precipitated the present crisis. It should be no surprise that Albanians are unwilling to accept an agreement from negotiators who refuse to cease hostilities during the negotiations. It should be no surprise that Albanians, who have suffered so long, do not believe that autonomy will be respected by Serbs after the present hostilities end. Yet, the international community insists on an autonomy-based solution.

#### *B. Autonomous Status*

As previously mentioned, both EU and U.S. diplomats have called for Kosovo's autonomous status to be returned. Even if one discounts the fact that Serbia's unilateral revocation of Kosovo's autonomous status in 1990 precipitated the crisis, such a strategy necessitates an assurance of protection from outside forces, which the international community is reluctant to offer.

The only model for autonomy within the new Yugoslavia (excluding Serbia, of course) is Montenegro. Montenegro's population agreed to sovereign status in the new Yugoslavia by referendum in 1992.<sup>101</sup> Under the Yugoslavian Constitution, Montenegro has its own assembly, president,

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<sup>97</sup> See Ibrahim Dsmeni, *Kosovo Leader Warns of "Ethnic Cleansing,"* AGENCE FRANCE-PRESSE, Aug. 28, 1998, available in LEXIS, NEWS Library, AFP, File.

<sup>98</sup> See Alexandra Nihsic, *As Sporadic Skirmishes Continue, Kosovo Peace Talks Get Slowly Underway,* AGENCE FRANCE-PRESSE, Aug. 22, 1998, available in LEXIS, NEWS Library, AFP File.

<sup>99</sup> See *id.*

<sup>100</sup> See *Ethnic Albanians Sources Say 15,000 Flee Attack in Northwest,* BBC SUMMARY OF WORLD BROADCASTS, Sept. 14, 1998.

<sup>101</sup> See *Profile of Montenegro* (visited Feb. 18, 1999) <<http://www.montenet.org/profile/profile.htm>>.

and judiciary.<sup>102</sup>

Even though Montenegro enjoys some independence from Serbia and still belongs to Yugoslavia, Montenegro does not provide a perfectly analogous example for those that advocate autonomy within Yugoslavia for Kosovo. One important distinguishing factor is religion. Montenegro, unlike Kosovo and like Serbia, is majority Orthodox Christian.<sup>103</sup> In addition, Montenegro's position within Serbia is not without controversy. The decision to join Yugoslavia has been constantly re-examined within Montenegro, and several political parties now advocate Montenegro's independence.<sup>104</sup> The federation between Montenegro and Serbia is not recognized by many countries, including the United States.<sup>105</sup> In late May 1998, President Milosevic's cronies in the Yugoslavian parliament ousted the country's Premier, Radoja Kotic, a Montenegrin. Milosevic then backed the losing candidate in the race for President of Montenegro, a candidate that promised to end Montenegro's stirrings for independence.

Underscoring the weakness of the Yugoslavian federation, Montenegro's Deputy Prince Minister declared in July 1998, that if Kosovo were granted autonomy within Yugoslavia, Montenegro would secede.<sup>106</sup> With both of the two republics within Yugoslavia opposing an autonomous status for Kosovo, forcing such an arrangement would not likely bring peace to Yugoslavia.

### C. Independence

The elected representatives of Kosovo have expressed their desire for an independent nation. The nations of the world, though, are reluctant to assist in establishing Kosovo as an independent nation, as it may not qualify for recognition as an independent nation under international law. However, continued denial of Kosovar independence perpetuates the injustices done to the Kosovar people.

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<sup>102</sup> See *Politics in Montenegro* (visited Feb. 18, 1999) <<http://www.montenegro.org/religion.htm>>.

<sup>103</sup> See *Religion in Montenegro* (visited Feb. 18, 1999) <<http://www.montenegro.org/religion.htm>>.

<sup>104</sup> See *Profile of Montenegro*, *supra* note 101.

<sup>105</sup> See *Montenegro at a Glance, Recent Political Development* (visited Feb. 18, 1999) <<http://www.montenegro.org/glance.htm>>.

<sup>106</sup> See *Deputy Premier Against Kosovo on Third Yugoslav Republic*, BBC SUMMARY OF WORLD BROADCASTS, July 24, 1998.

The Montevideo Convention on Rights and Duties of States, written in 1933 and adopted by the Seventh International Conference of American States, sets out four requirements that are considered the customary characteristics of statehood in modern international law.<sup>107</sup> The requirements are: "a permanent population, a defined territory, [a] government, and a capacity to enter into relations with other States."<sup>108</sup>

Permanent populations are broadly defined as "an aggregate of individuals of both sexes" living together as a community, regardless of whether they all belong to the same race.<sup>109</sup> Furthermore, permanency of the population is not negated by large scale immigration or emigration such as the emigration which has occurred as a result of the present crisis.<sup>110</sup> Descendants of ethnic Albanians have lived in Kosovo since the dawn of the millennium.<sup>111</sup> Kosovo's ethnic Albanians comprise ninety percent of the region's population, and the ethnic Albanians are members of the same religious faith.<sup>112</sup> Thus, ethnic Albanians in Kosovo constitute a population as defined by international law.

Territory is measured by the ability of a state to exercise control over a geographic area.<sup>113</sup> Ethnic Albanians cannot claim *to control* Kosovo, but this is due to Serbia's refusal to return Kosovo's previously held autonomous status.<sup>114</sup>

Government is defined as a "political organization that compels obedience of the bulk of the population."<sup>115</sup> Albanian shadow officials have been able, on at least two occasions, to hold elections in which over eighty-five percent of the population voted.<sup>116</sup> While ethnic Albanians do not control their own territory, they are able to encourage their citizens to participate in a shadow government. Such political participation lends credence to their recognition as an independent state.

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<sup>107</sup> See P.K. Menon, *THE LAW OF RECOGNITION IN INTERNATIONAL LAW* 32 (1994).

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 33.

<sup>111</sup> See Dušan T. Bataković, *Kosovo-A Proposal (articles)* (visited Feb. 18, 1999) <<http://www.bglink.com/personal/batakovic/kosovo.html>>.

<sup>112</sup> See *On the Edge*, *THE ECONOMIST*, Feb. 13, 1999, at 51.

<sup>113</sup> See Menon, *supra* note 107, at 34.

<sup>114</sup> See *Europe*, *supra* note 25.

<sup>115</sup> Menon, *supra* note 107, at 36.

<sup>116</sup> See *Kosovo Spring - From Autonomy to Repression (1974-1989)* (visited Feb. 18, 1999) <<http://www.intl-crisis-group.org/projects/sbalkans/reports/kos02main.htm>>.

Finally, capacity to enter into relations with other states is typically analyzed in a strictly legal sense, requiring independence from outside authority in negotiating with other nations.<sup>117</sup> Though not free from outside control, Kosovo has nevertheless hosted political officials from other countries and has been recognized as an independent nation by Albania.<sup>118</sup>

The standards for international recognition are not met by the shadow government in Kosovo. It is clear, however, that the only obstacle to Kosovo's nationhood is Serbian repression. Intervention by either the U.N. or NATO would be needed to create an independent state.

U.N. Preventive Deployment Forces have been able to successfully secure the border between the new nation of Macedonia, a former province within Yugoslavia, and Serbia.<sup>119</sup> Part of that success is due to Macedonia's independence. It is easier for the United Nations to defend a defined national border that is recognized by other countries. Macedonia, while sympathetic to the Kosovars, officially opposes Kosovo's independence. Afraid of angering Serbia, Macedonia refused to consider allowing NATO troops to launch a Kosovo intervention mission from its territory.<sup>120</sup> The mandate providing for the NATO patrol, presently protecting Macedonia's border with Serbia, will soon expire.<sup>121</sup> Because Macedonia's border will no longer be protected by NATO forces, Macedonia is reluctant to support a NATO Kosovo mission.

The Kosovo situation and the experience of the former Yugoslavian republics raise a problem in international law. When may a minority within a country, united in ethnicity, religion, economics, politics, and geography, separate itself from a government that no longer represents that minority? Although Kosovo has never been an independent country, it has enjoyed limited self-rule.

Professor Bryan Schwartz and Susan Waywood are among the international scholars who have tried to articulate criteria under which repressed minorities can assert their "right to self-determination."<sup>122</sup> They predicate

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<sup>117</sup> See *id.* at 37-38.

<sup>118</sup> See *id.*

<sup>119</sup> See United Nations Office of Communications and Public Information, *Former Yugoslav Republic of Macedonia-UNPREDEP* (last modified Mar. 4, 1998) <[http://www.un.org/Depts/DPKO/Missions/unpre\\_p.htm](http://www.un.org/Depts/DPKO/Missions/unpre_p.htm)>.

<sup>120</sup> See *id.*

<sup>121</sup> See *id.*

<sup>122</sup> Bryan Schwartz & Susan Waywood, *A Model Declaration on the Right of Succession*, 11 N.Y. INT'L L. REV. 1 (1998).

their notion of such a right on the idea that "individuals do not exist to serve the state, but governmental structures exist to serve individuals."<sup>123</sup> Schwartz and Waywood explain when the right becomes applicable:

In general, the population of part of an existing state only has a unilateral right to self-determination in the form of sovereign statehood when it is clear that the existing state has engaged in the serious denial of these basic rights, and there is no realistic possibility that these rights can be honored within a reasonable time frame by less drastic means such as limited self-government within the existing state.<sup>124</sup>

Schwartz and Waywood pose fourteen questions. They believe the answers to their questions would assist the international community in assessing claims to self-determination.<sup>125</sup> The first six questions focus primarily on human rights and suggest that the answers should demonstrate that the minority seeking to secede has been denied fundamental human rights.<sup>126</sup> As already mentioned, Kosovars suffer as a result of Serbian violations of international human rights agreements.<sup>127</sup> The focus of Schwartz and Waywood's next set of questions is on political stability; the answers suggest that the minority conduct a referendum on secession and agree to observe international human rights laws.<sup>128</sup> A referendum favoring independence in Kosovo is highly probable, and the Kosovars have proved capable of holding and participating in elections, even under strained circumstances.<sup>129</sup> Questions ten and eleven reveal a concern for outside agitation; they ask whether the new state would be open only to the oppressed ethnic group and whether a neighboring nation of the same ethnicity encouraged secession by the minority from the oppressing state.<sup>130</sup> Although Albania is a neighboring nation of the same ethnicity and has

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<sup>123</sup> *Id.* at 1.

<sup>124</sup> *Id.* at 10.

<sup>125</sup> *See id.* at 10-11.

<sup>126</sup> *See id.* at 10-11.

<sup>127</sup> *See* Section B., *supra*.

<sup>128</sup> *See id.* at 11.

<sup>129</sup> *See Kosovo Calm as Voters Go to the Polls in Shadow Elections*, DEUTSCHE PRESSE-AGENTUR, March 22, 1998, available in LEXIS, NEWS Library, DPA File.

<sup>130</sup> *See id.*

encouraged Kosovo's secession, Serbian repression drove Kosovars to seek help from Albania.<sup>131</sup> Question twelve from the list asks if the minority group has made a reasonable effort to negotiate.<sup>132</sup> The shadow government of Kosovo was ready to discuss returning to autonomous status until 1997, when violence began to increase exponentially.<sup>133</sup> Questions thirteen and fourteen from the list ask whether the proposed nation would honor international agreements and have the resources and population to support the *business* of statehood.<sup>134</sup> There is no reason to believe that an independent Kosovo would not comply with international agreements. In addition, Kosovo has successfully maintained a shadow government for nine years, despite its small size and lack of wealth.<sup>135</sup> Kosovo's population is roughly the same as the newly created neighboring states of Macedonia and Croatia.<sup>136</sup>

Kosovo, therefore, satisfies most of the requirements under the Schwartz-Waywood analysis. The question that needs to be asked is why Kosovo was treated differently from other provinces in the former Yugoslavia. The other provinces, now states, asserted similar claims to the right of self-determination.<sup>137</sup> Intervention was utilized for every other former province of Yugoslavia that has now been established as a separate nation.<sup>138</sup> Why is it that Slovenia, Croatia, Macedonia, and Bosnia and Herzegovina are entitled to nationhood and Kosovo is not?

#### D. Unification with Albania

Albanian intellectual, Rexhep Qosja, has written that the only just solution for Kosovo is unification with the bordering nation of Albania.<sup>139</sup> Qosja

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<sup>131</sup> See *Albania: Kosovo Could Have Status of Montenegro or Bosnian Serbs*, DEUTSCHE PRESSE-AGENTUR, March 23, 1998, available in LEXIS, NEWS Library, DPA File.

<sup>132</sup> See Schwartz & Waywood, *supra* note 122.

<sup>133</sup> See *Albanian Leader Calls Yugoslav President's Offer of Dialogue Demagoguery*, BBC SUMMARY OF WORLD BROADCASTS, Feb. 10, 1997.

<sup>134</sup> See Schwartz & Waywood, *supra* note 122.

<sup>135</sup> See *Kosovo Calm as Voters Go to the Polls in Shadow Elections*, *supra* note 129.

<sup>136</sup> See RAND McNALLY, ALMANAC OF WORLD FACTS (1994).

<sup>137</sup> See *Serbian Assembly Adopts a Declaration on Self-Determination*, BBC SUMMARY OF WORLD BROADCASTS, Dec. 30, 1991; see also Michael Delmonte, *Conflict in Kosovo*, IRISH TIMES, Sept. 16, 1998 at 17; see also Zivko Jcsic, *Conflict in Kosovo*, IRISH TIMES, Sept. 24, 1998 at 15.

<sup>138</sup> See WOODWARD, *supra* note 31, at 146-47.

<sup>139</sup> See Rexhep Qosja, *The Albanian Question and Its Solution* (1994), reprinted in *KOSOVO IN THE HEART OF THE POWDER KEG*, at 207 (Robert Elsie ed., 1997).

sees the struggle in Kosovo as part of the struggle of ethnic Albanians for respect and liberty throughout this century.<sup>140</sup> He criticizes the Democratic League of Kosovo for not making an issue of the mass migration of young ethnic Albanians to other European countries.<sup>141</sup> Their flight, Qosja says, “means the strength we need for liberation is being sapped.”<sup>142</sup> Qosja fears that the other Balkan states would not permit a second Albanian state in the region, but he also wants to see unification with Albania because together they comprise the “national state of the Albanian people.”<sup>143</sup>

Despite the uncertainty that Kosovo’s secession could lead to a Greater Albania, its potential is cited as the most common objection to independence. The nearby nation of Macedonia is, by one estimate, twenty-one percent Albanian.<sup>144</sup> Montenegro has a sizable Albanian population, as does Bosnia-Herzegovina.<sup>145</sup> These nations understandably fear a loss of territory and internal strife. Despite its bitter rivalry with Macedonia, Greece issued a joint statement against NATO intervention in Kosovo.<sup>146</sup> The KLA’s existence makes the threat of a Greater Albania more real. In July 1998, Jakup Krajsniqi, spokesman for the KLA, stated that the guerilla movement was “fighting for the liberation of all occupied Albanian territories . . . and their unification with Albania.”<sup>147</sup>

However, in order for the Greater Albania scenario to play out and pose a threat to neighboring countries, the KLA or an Albanian army would have to gain considerable strength. Those that fear a Greater Albania must also assume ethnic Albanians would feel it necessary to support a KLA attempt to unite Albanian populations in countries where there is an absence of ethnic discrimination.

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<sup>140</sup> See *id.*

<sup>141</sup> See *id.* at 495.

<sup>142</sup> Interview between Rexhep Qosja and Robert Elsie, in *KOSOVO IN THE HEART OF THE POWDER KEG*, at 495 (Robert Elsie ed. 1997).

<sup>143</sup> *Id.* at 498.

<sup>144</sup> See *Republic of Macedonia, CIA World Factbook 1993* (visited Feb. 18, 1999) <[http://www.b-info.com/places/Macedonia/republic/CIA\\_factbook.shtml](http://www.b-info.com/places/Macedonia/republic/CIA_factbook.shtml)>.

<sup>145</sup> See RAND MCNALLY, *supra* note 135.

<sup>146</sup> See *id.*

<sup>147</sup> Jasmida Mironski, *Macedonia Kosovo*, AGENCE FRANCE-PRESSE, July 13, 1998, available in LEXIS, NEWS Library, AFP File.

### III. CONCLUSION

While unification with Albania might be an inevitable consequence of the liberation of Kosovo from Serbian control, it should not be the means of independence. Such a move might unnecessarily draw other actors into the conflict. Also, it is uncertain whether Albania would want to incorporate Kosovo, an area of high unemployment and economic devastation. In addition, it would be presumptuous to make such a move when the shadow government of Kosovo has never suggested it. The conflict that has occurred in Kosovo over the last eight years will likely continue. The recent emergence of terrorism as a form of resistance combined with persistent Serbian reprisals has brought the crisis to a flash point. The international community is acting to prevent another round of ethnic cleansing in the Balkans, but how far it will go to protect Kosovo is still unknown.

The most plausible solution to the crisis is for the U.N. and NATO to continue the policy they have already established with regard to the other former Yugoslavian provinces. Forces that are already present in the area could be used to protect the border between Serbia and Kosovo. This would allow Rugova and the shadow parliament to establish an independent Kosovo—independent of Yugoslavia and independent of Serbian oppression.