



Centre for Policy Studies

KOSOVO: LAW & DIPLOMACY

Mark Littman QC

*Every truth has two sides; it as well to look at
both, before we commit ourselves to either –
Aesop, ca. 600 BC*

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INTRODUCTION

A MATTER OF DISPUTE

The British Government's justification for NATO's intervention in Kosovo was that it was necessary "to avert what would otherwise be a humanitarian disaster in Kosovo."¹ Whether this justification stands up to analysis has increasingly become a matter of dispute.

For example, the operation has also been opposed by the following statesmen:

Dr Henry Kissinger (Secretary of State, USA, 1973-77, Nobel Peace Prize 1973):

"The whole business was misconceived."²

Lord Carrington (UK Foreign Secretary 1979-82, Secretary General of NATO 1984-88, Chairman European Conference on Yugoslavia 1990-92)

"I think what NATO did by bombing Serbia actually precipitated the exodus of the Kosovo Albanians into Macedonia and Montenegro. I think the bombing did cause the ethnic cleansing... NATO's action in Kosovo was mistaken... what we did made things much worse."³

¹ Hansard, col. 161, 23 March 1999.

² Quoted in an interview with B. Johnson, published in the *Daily Telegraph*, 28 June 1999.

³ Lord Carrington, *SAGA Magazine*, September 1999.

Jimmy Carter former President of the USA:

“Our destruction of civilian life there [in Yugoslavia] has now become senseless and excessively brutal.”⁴

Nelson Mandela, former President of South Africa:

“NATO’s actions are equally criminal with those of Milosevic.”⁵

And several commentators have also condemned the action:

Lord Rees-Mogg, Editor of *The Times* 1967-81:

“The NATO action did not prevent the humanitarian tragedy... NATO had no Security Council authority for starting the bombing and clearly has no present UN authority to continue it or to intensify it, let alone to start a ground war... In the 20th century, painfully and falteringly, mankind has developed a system of international law under the United Nations to maintain peace and protect human rights. As a subordinate arm of that law NATO is invaluable; as a mutineer against that law NATO would be doomed.”⁶

Simon Jenkins, Editor of *The Times*, 1990-92:

“The turbulent 20th-century is about to end on a note of stupendous irony; a worsted NATO pleading with Russia to sue for peace.”⁷

Robert Fisk, *The Independent*:

“In just a few short sound-bites , we are now bestialising a whole people . Serbs Out, NATO In, Refugees Back . That was how George Robertson – with appalling simplicity and even more awful results – summed up the West’s ambitions in Kosovo.....it remains a sad and devastating fact that the vast majority of war crimes-almost the entire mass dispossession and ‘ethnic cleansing’ of Albanians occurred after NATO had begun its war.”⁸

Michael Mandelbaum, *Foreign Affairs*:

“Every war has unanticipated consequences, but in this case virtually all the major political effects were unplanned, unanticipated and unwelcome. The war itself was a grotesque error in political judgement. Having begun it, Western political leaders declared that they were fighting

⁴ Quoted in Lord Rees-Mogg, “Flying above the law,” *The Times*, 31 May 1999.

⁵ Ibid.

⁶ Lord Rees-Mogg, “Flying above the law,” *The Times*, 31 May 1999.

⁷ S. Jenkins, “Three strikes and out,” *The Times*, 21 April 1999.

⁸ R. Fisk, “Was it rescue or revenge?,” *Independent*, 21 June 1999.

for the sake of the people of the Balkans, who nevertheless emerged from the war considerably worse off than they had been before... the war set precedents that it would be neither feasible or desirable to follow.”⁹

Michael Gove, *The Times*:

“...wise diplomacy could always have averted the need for bombardment... The bombardment campaign followed the failure of the Rambouillet talks on Kosovo’s future. The sticking point was NATO’s imperious demand for the control of Kosovo and freedom to operate throughout Yugoslavia.”¹⁰

And a number of politicians opposed NATO’s campaign. The day after the bombing started, there was a debate on the question in the House of Commons. While the Government’s decision to support the attack was supported by front bench speakers of both Opposition parties and by the House at large, it was, however, strongly opposed by individual members from across the political spectrum. For example:

Tony Benn MP (Labour)

“This policy is ill thought-out. It is not legal in character; it is not moral in its implication... and will inflict terrible damage on the Balkans for years to come.”¹¹

Alan Clark MP (Conservative)

“This war is clumsy, wasteful and shambolic.”¹²

Sir Raymond Whitney MP (Conservative)

“We are witnessing a fiasco on a scale this country has not seen for generations.....From this Government created fiasco we must learn important lessons for the future.”¹³

Tam Dalyell MP (Labour)

“NATO’s bombs have blasted the germinating seeds of democracy out of the soil of Kosovo, Serbia and Montenegro and ensured that they will not sprout again for a long time.”¹⁴

Alex Salmond MP (SNP)

“Nor has the bombing campaign helped the people of Kosovo. The atrocities against them have been intensified.

⁹ M. Mandelbaum, “A Perfect Failure – NATO’s War Against Yugoslavia”, in *Foreign Relations*, September/October 1999.

¹⁰ M. Gove, “How Tony Blair lost the Waugh,” *The Times*, 4 August 1999.

¹¹ Hansard, col. 609, 19 April 1999.

¹² Hansard, col. 597, 19 April 1999.

¹³ Hansard, col. 614, 19 April 1999.

¹⁴ Hansard, col. 625, 19 April 1999.

The Prime Minister claims this has nothing to do with the NATO action. Does anyone at all take that opinion seriously? General Sir Michael Rose who commanded the UN forces in Bosnia certainly does not. He argues that the Serbian militia, unable to do much damage to NATO forces 20,000 feet up in the air, will exact revenge on people who are much more vulnerable on the ground... It is an action of dubious legality, but above all one of unpardonable folly..."¹⁵

And **Sir Michael Rose** himself said at the time:

"Bombs never have and never can solve complex political or humanitarian problems of the world. History shows us no successful examples in such circumstances and I am afraid that it will be the same story now."¹⁶

¹⁵ Televised address, 29 March 1999.

¹⁶ Quoted in the *Guardian*, 10 April 1999.

CONCLUSIONS

Was the Campaign Lawful?

The Government, while correctly accepting that the Kosovo bombing could not be justified if it involved a grave breach of international law, wrongly assured the House of Commons and the British public that it did not involve such a breach, while refusing the Yugoslav challenge to have the point tested before the International Court of Justice. See Chapter One (pages 1 to 7).

Was the Campaign Necessary?

It is possible that the Kosovo problem could have been settled by diplomacy and without the use of force. It is certain that NATO did not make every effort to do so: at a critical point in the discussions at Rambouillet, NATO abandoned diplomacy in favour of a package of non-negotiable demands contained in a document described by Dr Kissinger as "a terrible diplomatic document", as a "provocation" and as "an excuse to start bombing". And it is likely that, if the terms which were agreed at the end of the campaign had been put forward at Rambouillet, then the ethnic cleansing and the war could have been averted. See Chapter Two (pages 8 to 15).

Was the Campaign Successful?

NATO failed in its stated objective of averting a humanitarian disaster in Kosovo. It did not prevent the disaster of the Albanian exodus but, on the contrary, either

caused or precipitated it. It also caused an additional humanitarian and environmental disaster throughout the whole of Yugoslavia. It has not, despite praiseworthy efforts to do so, succeeded in stopping ethnic cleansing in Kosovo. It has only reversed the roles of persecutor and persecuted. Furthermore, it has not solved the underlying problems in Yugoslavia. The region will remain unstable for the foreseeable future. See Chapter Three (pages 16 to 21).

THE NEED FOR A REAPPRAISAL

The time has therefore come for a reappraisal of NATO's actions in Yugoslavia.

Some may think that, the war now being at an end, such a reappraisal is now unnecessary or can be left to future historians.¹⁷

There are, however, strong reasons for starting to ask some questions about both the cause and the outcome of the war.

Firstly, both the President of the United States and the Prime Minister have urged us to treat the intervention as an example to be followed elsewhere.¹⁸ Until now, the generally accepted view has been that, under both international law and the United Nations Charter, force may only be used against another State either in self-defence or under the authority of the Security Council of the United Nations.¹⁹

The Government now claims that there is, or ought to be, a principle that it is lawful for force to be used against another State, without the authority of the Security Council, where this is necessary "to avert what would otherwise be a humanitarian disaster."²⁰ Such a principle would presumably be available not only to NATO, but to any state, such as Russia, China or Indonesia. There are at any one time between 30 and 40 violent conflicts taking place in the world, in any one of which such a principle might be invoked.²¹

Furthermore, the war and the principle alleged to justify it are being used as a further expansion of European Union

¹⁷ See for example, J. Keegan, "How we beat Milosevic: leave it to the historians", *Daily Telegraph*, 12 July 1999.

¹⁸ See the Prime Minister's article in *Newsweek*, 19 April 1999.

¹⁹ *Halsbury's Laws of England*, 4th edition, "Foreign Relations: Legality and the Use of Force."

²⁰ Hansard, col. 161, 23 March 1999.

²¹ According to the International Institute for Strategic Studies, there were 31 armed conflicts continuing throughout the world (as of 1 August 1999).

“defence capabilities.” George Robertson, Defence Secretary during the conflict and now Secretary General of NATO, has called for a greatly enlarged military capability for the European Union so as to be able to provide “more immediately employable and more efficiently sustainable troops in future conflicts.” He has made it clear that this enhanced capability is intended to be used, on the model of the Kosovo intervention, around the world for what are described as “non-Article 5 crisis management operations which the North Americans and European allies might choose to undertake in the future... A strengthened European capability would allow us to undertake European-led crisis management operations, in circumstances in which the whole Alliance [NATO] is not engaged.”²² The reference to “non-Article 5 crisis management operations” is the clause in the NATO Treaty that defines the purpose of NATO as being collective self-defence. The additional “military capabilities” are not intended, therefore, for NATO’s self-defence operations but for some other purposes which are neither defined nor limited in geographical scope.

Secondly, in a democratic country, our leaders are accountable. If, in the execution of their mandate, they do something legally or morally wrong, we must know. Moreover, the nature of democracy is such that we must share the moral responsibility for the acts of our chosen leaders.

Thirdly, the campaign was extremely expensive: thousands of civilians on both sides lost their lives, with tens of thousands maimed and hundreds of thousands losing their homes, livelihoods and possessions. The cost of the war and the damage it caused could, according to third party estimates, be as high as \$100 billion – the equivalent of over \$50,000 for every man, woman and child in Kosovo. The environmental damage is also immense. Who is going to bear this cost?

²² See Lord Robertson, *Kosovo: an account of the crisis*, Ministry of Defence, 1999. See Appendix 7 for extracts from this paper.

CHAPTER ONE

WAS IT LEGAL?

From the very beginning, the Government accepted that the Kosovo operation had to be legal (as defined by international law) if it was to justify its actions. Examples of statements to this effect include:

Any military action by British forces would have to be lawful under international law.

– Tony Lloyd, Minister of State, Foreign Office, 3 February 1999.²³

It is clear we have legal authority for action to prevent humanitarian catastrophe.

– Robin Cook, Foreign Secretary, 1 February 1999.²⁴

We are in no doubt that NATO is acting within international law. Our legal justification rests upon the accepted principle that force may be used in extreme circumstances to avert a humanitarian disaster.

– George Robertson, Defence Secretary, 25 March 1999.²⁵

I say very firmly that the United Kingdom has acted and will continue to act in conformity with international law.

– John Morris, Attorney-General, at the International Court of Justice at the Hague, 11 May 1999.²⁶

²³ Hansard, col. 689, 3 February 1999.

²⁴ Hansard, col. 605, 1 February 1999.

²⁵ Hansard, col. 617, 25 March 1999.

²⁶ *ICJ Reports*, 11 May 1999.

THE IMPORTANCE OF INTERNATIONAL LAW

The Government was right to emphasise that NATO had to justify that its actions conformed with international law. The importance of international law lies in the fact that, without it and the institutions created to enforce it, we would be back in the condition in which we were 100 years ago when all wars were lawful. In the past century the world has been struggling to escape towards a more civilised and peaceful society. The attempt has certainly not been completely successful, as is evidenced by the many terrible wars that have taken place in this century, but some progress has been made. This is shown by the Hague (1954) and various Geneva Conventions (1864, 1868, 1929, and 1949) on the conduct of war, the creation of the League of Nations (1919), the Pact of Paris 1926, which outlawed war as an instrument of policy, by the creation of the International Court of Justice (ICJ) at the Hague (1945) to arbitrate and conciliate disputes so that they might be settled by peaceful as opposed to violent means, and above all by the creation of the United Nations (1945).

“The overwhelming majority of contemporary legal opinion comes down against the existence of a right of humanitarian intervention” – Foreign Office Policy Document No.148 (1986)

The applicable law is settled by major international treaties, particularly the Charter of the United Nations, and by the established custom of nations. To treat international law as of no importance would be to turn the clock back one hundred years. The Government is right, therefore, to have accepted that conformity to international law was an essential pre-condition of legitimacy of the Kosovo operation.

The relevant law is to be found in treaties and in the practice of states. One such treaty, of great importance, is the Charter of the United Nations, which has been ratified by 185 of approximately 190 states. By its own terms, it prevails over all other treaties. The following provisions of the Charter are particularly relevant to the question of the legality of the NATO action in respect of Kosovo :

Article 2(3)

All members “shall settle their international disputes by peaceful means in such a manner that international peace and security , and justice are not threatened.”

Article 2(4)

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Article 53

..no enforcement action shall be taken under regional arrangements or by regional agencies without the authorisation of the Security Council.

THE PROHIBITION OF THE USE OF FORCE

It is generally accepted that the use of force in the settlement of disputes between states is absolutely prohibited except in two circumstances:

- in self-defence, or
- under the authority of the Security Council.²⁷

Suggestions have been made by a minority of writers that, in addition to the exception of self-defence, there is also an exception where forceful intervention is necessary to prevent a humanitarian disaster. However, such a suggestion has no basis in treaty law, little basis in state practice (all of which is disputed) and limited support from academic writers.²⁸

“...finally, on prudential grounds, the scope for abusing such a right [of humanitarian intervention] argues strongly against its creation” – Foreign Office Policy Document No.148 (1986)

This also seems to have been the British Foreign Office view, as expressed in Foreign Policy Document Number 148 (1986):²⁹

...the overwhelming majority of contemporary legal opinion comes down against the existence of a right of humanitarian intervention, for three main reasons:

- first, the UN Charter and the corpus of modern international law do not seem specifically to incorporate such a right;
- secondly, state practice in the past two centuries, and especially since 1945, at best provides only a handful of genuine cases of humanitarian intervention, and, on most assessments, none at all;
- and finally, on prudential grounds, that the scope for abusing such a right argues strongly against its creation.

As Akehurst, argues, “claims by some states that they are entitled to use force to prevent violations of human rights may make other states reluctant to accept legal obligations

²⁷ *Halsbury’s Laws of England*, 4th edition re-issue 1996 vol. 49 (1) para. 501.

²⁸ See Appendix 2 for a summary of legal opinion which argues in favour of humanitarian intervention.

²⁹ *BYBIL*, Vol. 57, 1986.

concerning human rights." In essence, therefore, the case against making humanitarian intervention an exception to the principle of non-intervention is that its doubtful benefits would be heavily outweighed by its costs in terms of respect for international law."

"...the protection of human rights, a strictly humanitarian objective, cannot be compatible with the mining of ports, the destruction of oil installations, or again with the training, arming and equipping of the contras" – ruling of the International Court of Justice, Nicaragua v. United States, 1985

This view is strongly supported by a decision of the International Court of Justice given in 1985 (*Nicaragua v. United States*). At that time the Court heard a complaint by Nicaragua against the USA in respect of alleged hostile acts against Nicaragua, including the arming of the "contras". The USA sought to justify these acts by alleging violations by Nicaragua of human rights. The ICJ rejected this plea:

...while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect. With regard to the steps actually taken, the protection of human rights, a strictly humanitarian objective, cannot be compatible with the mining of ports, the destruction of oil installations, or again with the training, arming and equipping of the contras. The Court concludes that the argument derived from the preservation of human rights in Nicaragua cannot afford a legal justification for the conduct of the United States.³⁰

Finally, a similar view was given in 1991 by the distinguished international lawyer, Professor Oscar Schachter.

International law does not, and should not, legitimize the use of force across national lines except for self-defence (including collective self-defence) and enforcement measures ordered by the Security Council. Neither human rights, democracy or self-determination are acceptable legal grounds for waging war, nor for that matter, are traditional just causes or righting wrongs. This conclusion is not only in accord with the UN Charter as it was originally understood; it is also in keeping with the interpretation adopted by the great majority of States at the present time.³¹

³⁰ *ICJ Reports*, pp134-5 paras 267 and 268, 1986.

³¹ Professor Oscar Schachter, *International Law in Theory and Practice*, 1991.

THE INTERNATIONAL COURT OF JUSTICE

On 29 April 1999 Yugoslavia brought proceedings against several members of NATO, including the UK, before the International Court of Justice alleging that the NATO intervention was unlawful.

The ICJ is an arm of the United Nations and is the general, universal and permanent judicial institution for the settlement of international disputes by peaceful means. Submissions on behalf of the Yugoslav complaint were made by Professor Etinski, Professor of International Law at the University of Novi Sad and Professor Brownlie, Chichele Professor of Public International Law at the University of Oxford.³²

Professor Etinski noted that the prohibition on the use of force has become a rule of *jus cogens* – a norm of international law from which no derogation is permitted – so that NATO states were not permitted to contract out of it at regional level. He relied on much of the evidence outlined above: state practice and treaty law (supported by later UN General Assembly declarations) – to show that intervention of this nature is not permitted by international law.

In support, Professor Brownlie cited the opinions of major international jurists, such as Professor Schwebel, Professor Schachter and Professor Simma. In addition he cast doubt on whether the action in Kosovo could be regarded as humanitarian in any case, particularly given the nature of the bombing campaign. He made the crucial point that Security Council authority was not sought; if there was a genuinely humanitarian motive, he contended, this would have been done. Finally he submitted that even the model of humanitarian intervention which those who promoted its existence as a doctrine of international law subscribe to could not support the kind of action which NATO was taking in Kosovo, again given the nature of the bombing.

Their submissions are cogent and persuasive. Relevant extracts are set out in Appendix 1.

Submissions on behalf of the UK

A response to these submissions was made on behalf of the UK by distinguished team of lawyers consisting of Sir Franklin Berman QC, HM Attorney-General John Morris QC and Professor Christopher Greenwood, Professor of International Law at the LSE.

However, no member of the UK team addressed any of the propositions or legal authorities cited on behalf of the complainant. They

³² See Appendix 1.

concentrated entirely on a jurisdictional issue: a caveat to the UK's acceptance of the Court's compulsory jurisdiction where the other party had made the complaint less than 12 months after accepting the Court's jurisdiction. The Yugoslav case fell within this exception to the UK's general acceptance and so it fell on this technicality.

The Court was bound to sustain this objection since, as Judge Rosalyn Higgins, the British judge at the ICJ, put it:

...the jurisdiction of the Court – even if one might regret this state of affairs as we approach the 21st century – is based on consent.³³

However, the UK could have waived this objection and accepted the Yugoslav challenge to have the legality of the bombing tested before the Court. It chose not to do so. The Government thus deprived the British public of the opportunity of an authoritative decision on this crucial matter.

By resort to a legal technicality, the Government thus deprived the British public of the opportunity of an authoritative decision on this crucial matter

In his speech, the Attorney General said:

I say very firmly that the UK has acted and will continue to act, in accordance with international law.³⁴

Why then did the Attorney General not welcome the opportunity to gain the support of the Court for the UK position?³⁵

³³ Separate opinion of Judge Higgins, *ICJ Reports*, 2 June 1999.

³⁴ *ICJ Reports*, 11 May 1999.

³⁵ A report in the *Sunday Express* of 3 October 1999 stated that:

Tony Blair dumped Attorney General John Morris because he challenged NATO's bombing campaign in the Kosovo war, according to senior ministers... John Morris was present at all "War Cabinet" meetings in Downing Street to give advice on international law and is said to have frequently irritated Mr Blair. **One minister said: "He was awkward about the bombing. He kept coming up with excuses why we shouldn't do it."**

John Morris was shadow Attorney General for most of the 18 years that Labour was in Opposition. He ceased to be Attorney General in the summer reshuffle.

In Sir Franklin Berman's opening speech on behalf of the UK, he reminded the Court of the long attachment the UK had accorded to the principle of the judicial settlement of international disputes.

Would it not be appropriate that we should show our dedication to this principle by accepting, even at this late stage, the jurisdiction of the Court to the Kosovo dispute? We would then have a decision on this important question upon which we could all rely.³⁶

Given the weight of opinion and legal authority against the NATO position, the paucity of evidence in its favour and the reluctance of the UK to test its view before the ICJ, it is difficult to avoid the conclusion that the NATO action was illegal.

Furthermore, if (contrary to the apparently overwhelming weight of legal opinion) the Court should hold that there is a principle of humanitarian intervention, it would almost certainly give guidance as to the conditions and modalities of such an exception; for example, how grave would the infringement of human rights have to be to invoke it? What type or degree of force can be employed to correct it? Would the principle of proportionality be applicable? And could the principle be invoked without the prior resolution of the Security Council?

Given the weight of opinion and legal authority against the NATO position, the paucity of evidence in its favour and the reluctance of the UK to test its view before the ICJ, it is difficult to avoid the conclusion that the NATO action was illegal.

³⁶ The ICJ has not finally discharged the UK from the proceedings. In the case of certain other defendants who have submitted to the jurisdiction, the Court will presumably give a substantive decision in due course.

CHAPTER TWO

WAS IT NECESSARY?

It cannot be said that the use of force is necessary unless it can be clearly demonstrated that all measures short of force (and in particular measures of diplomacy) have been exhausted.

The Prime Minister in his article in *Newsweek* (19 April 1999) said as much when, in answer to a criticism that NATO had waited too long, said:

I say it was right to give the negotiations every chance.

The Chief Rabbi, Dr Jonathan Sacks – who supported the war – said the same thing in an extract from sermon published in *The Times* :

Military intervention is a terrible thing. Innocent people get killed. There is no clean war. You undertake it only when negotiation, diplomacy and international pressure have been exhausted.³⁷

But at Rambouillet, the possibilities of negotiation, diplomacy and international pressure were not exhausted.

THE RAMBOUILLET CONFERENCE

A basis for political agreement

The conference took place at Rambouillet between 12 February and 23 March 1999. It was only at the end of this conference that NATO

³⁷ Dr Jonathan Sacks, “Human tragedies are wrongs that have no national boundaries,” *The Times*, 9 September 1999.

informed Yugoslavia that, if it did not at once sign the whole of the draft agreement submitted to it, Yugoslavia would be subjected to aerial assault unlimited in scope, character or duration until it submitted.

An analysis of the course of this conference suggests that NATO cannot justifiably claim that it had exhausted the opportunities of peaceful settlement. The conference began on 6 February 1999 when the parties were handed detailed proposals for a political settlement. The crucial feature of this proposed political settlement was to be the grant of a high level of political autonomy to the province of Kosovo within the Federal Republic of Yugoslavia, on the basis of full respect for human rights, democracy and the equality of citizens and national communities. This was spelt out in great detail in a draft which in its final form occupied more than 100 closely typed pages. By far the greater part of this draft was concerned with the political settlement.

Yugoslavia had, well before the final ultimatum date, accepted the substance of the political proposals.

So far as these political aspects were concerned, Yugoslavia had, well before the final ultimatum date, accepted the substance of the proposals. As early as 23 February 1999 a consensus had been reached on substantial autonomy for Kosovo. This is shown quite clearly by a statement of that date issued by the Office of the High Representative for the Contact Group which read :

Contact Group Ministers met in Rambouillet on 23 February at the end of more than two weeks of intensive efforts to reach an agreement on substantial autonomy for Kosovo, while respecting the national sovereignty and territorial integrity of the Federal Republic of Yugoslavia. These have been complex and difficult negotiations, as we expected. The important efforts of the parties and the unstinting commitment of our negotiators Ambassadors Hill, Petrisch and Mayorski, have **led to a consensus on substantial autonomy for Kosovo, including on mechanisms for free and fair elections to democratic institutions , for the governance of Kosovo, for the protection of human rights and the rights of national communities, and for the establishment of a fair judicial system. A political framework is now in place,** as set out in the Rambouillet Accords, and the groundwork has now been laid for **the implementation Chapters of the Agreement including the modalities of the invited international civilian and military presence in Kosovo. It is essential that the agreement on the interim accord be completed and signed as a whole.**

[Emphasis added]

Discussions continued on the details of the draft political settlement. The attitude of the Yugoslav delegation on these details is illustrated by the tone and content of a letter dated 15 March 1999 from Professor Markovic, Head of the Yugoslav Delegation, to the negotiators for the Contact Group. This reads :

After the meeting, your experts have undertaken to submit to us their positions related to our proposals. We would appreciate if the positions of the experts, as well as the positions of the Kosmet Albanians be sent to us in writing, so that we may study them and prepare for the further work.

Appendix 3 contains clauses from the Rambouillet draft dealing with the political aspects which had been agreed by 15 March 1999.

From all this it is apparent that so far as the political provisions were concerned, diplomacy was close to success and a viable formula had been agreed in some detail.

MILITARY PROVISIONS OF RAMBOUILLET DRAFT

The Rambouillet negotiations collapsed not because of failure to agree on a political settlement but because of the failure to agree on the non-negotiable military clauses put forward by NATO.

These military provisions concerned the role of NATO in carrying out the agreed political settlement. NATO's military "proposals" were delivered to Yugoslavia on the day before the final date initially fixed for the signing of the agreement, although this was in fact extended.

These "proposals" were contained in Chapter 7 of the draft and Appendices A and B thereto. Whether they can be described as "proposals" is doubtful: it was made clear from their first introduction that they were non-negotiable. They were, therefore, demands. Moreover, they were demands which NATO intended to enforce whether Yugoslavia agreed to them or not. This was not negotiation. It was dictation.

These "proposals" were draconian and might be regarded as a model for the military occupation of an enemy country that had been defeated in war. They provide not only for NATO to have the right to a complete occupation of Kosovo, but also to have an unlimited right of access, for an unlimited time, for unlimited purposes, throughout Yugoslavia under conditions of total immunity.³⁸ They are not terms that Yugoslavia, or

³⁸ It is interesting to note that the UN action in East Timor did not demand the right of access for UN troops to the whole of Indonesia.

any other sovereign state that had not been defeated in war, could possibly have been expected to accept.³⁹

Thus the draft provides:

NATO personnel shall enjoy, together with their vehicles, vessels, aircraft and equipment **free and unimpeded access throughout the FRY** [i.e. Former Republic of Yugoslavia] including associated airspace and territorial waters. This shall include **but not be limited to**, the right of bivouac, maneuver, billet and utilisation of any areas or facilities as required for support training, and operations.

The military proposals are not terms that Yugoslavia, or any other sovereign state that had not been defeated in war, could possibly have been expected to accept

NATO shall **be immune from all legal process whether civil, administrative or criminal.**

NATO personnel under all circumstances and at all times, shall be immune from the Parties jurisdiction in respect of any administrative, criminal or disciplinary offences which may be committed by them in the FRY.

The authorities in the FRY shall facilitate on a priority basis and with all appropriate means, all movement of personnel, vehicles, vessels, aircraft, equipment, or supplies, through or in the airspace, ports, airports, or roads used. **No charges may be assessed against NATO for air navigation landing or take-off of aircraft...**

NATO is granted the use of airports, roads, rails and ports without payment of fees, duties, dues, tolls or charges occasioned by mere use.

The above clauses are but a small selection of the military clauses to which Yugoslavia was required to submit to. If it failed to submit, the bombing would start.

It is not surprising that Dr Kissinger should have said of this document:⁴⁰

³⁹ While a summary of an early draft of the Treaty was placed in the House of Commons Library on 1 March 1999, the full Treaty proposals, together with the military annexes, were not placed in the Library until 1 April 1999 – the first day of the Parliamentary recess, one week after both the bombing started and the first debates on NATO's campaign.

The Rambouillet text, which called on Serbia to admit NATO troops throughout Yugoslavia was a provocation, an excuse to start bombing. Rambouillet is not a document that an angelic Serb could have accepted. **It was a terrible diplomatic document that should never have been presented in that form.**

This was not, in fact, the pursuit of diplomacy at all. It was the abandonment of diplomacy in favour of dictation. It was this “terrible diplomatic document” that NATO made the *casus belli*.

WAS THERE AN ALTERNATIVE?

It is sometimes asked: “What else NATO could have done?”

Firstly, NATO could have dropped the requirement that the military clauses were non-negotiable and continued negotiation on the basis of the Yugoslav offer to accept an international force to implement the agreed political settlement.

The Yugoslav offer was made at a formal press conference on 23 February 1999, when the chief Serb negotiator said:

The Federal Republic of Yugoslavia is ready to consider the scope and character of an international presence in Kosovo with a view to implementing the agreement to be adopted at Rambouillet.

On 23 March 1999, the Serbian Assembly adopted a resolution to the same effect. This offer to negotiate the composition of a monitoring force was ignored by NATO, which was demanding compliance with its non-negotiable military demands.

Secondly, if agreement on an implementation force could not have been reached at Rambouillet, NATO could have referred the matter back to the Security Council. The side-lining of the Security Council by NATO at this vital stage meant that NATO had decided to ignore the reminder given by the Security Council in Resolution 1203 (1998) that: “primary responsibility for the maintenance of international peace and security is conferred on the Security Council.”

Thirdly, NATO could have proposed, as both Dr Kissinger and Lord Carrington have suggested, the strengthening, rather than the withdrawal, of the force of international observers.

⁴⁰ Quoted in an interview with B. Johnson, published in the *Daily Telegraph*, 28 June 1999.

Fourthly, NATO could have made concessions at Rambouillet, concessions which they eventually agreed to make after 10 weeks of bombing. These concessions could have included the following:

1. That any international force would have to be authorised by the United Nations.
2. That such an international force would contain an element other than NATO.
3. That the civil administration to be installed would be under the control of the United Nations.
4. That the international force would have no access to any part of Yugoslavia outside Kosovo.
5. That the force should have a specific obligation to disarm the KLA.
6. That the sovereignty of Yugoslavia over Kosovo should be acknowledged and confirmed.

Given that these conditions appeared to be acceptable to NATO at the end of the campaign, then why did NATO not concede them at Rambouillet? Then the humanitarian disasters in both Kosovo and the rest of Yugoslavia would almost certainly have been avoided. As Michael Gove said in *The Times* on 4 August 1999: “wise diplomacy could always have averted the need for bombardment.”

It can be concluded therefore that NATO did not, before using force, explore, sufficiently or at all, alternative possibilities which could have led to a satisfactory peaceful settlement. In particular, in relation to the implementation of the agreed political solution, NATO had abandoned diplomacy in favour of dictation, backed up by the threat of force. NATO cannot claim that the bombing was necessary.

***NATO had abandoned diplomacy in favour of dictation,
backed up by the threat of force***

WERE THE SERBS THE ONLY AGGRESSORS?

A common misapprehension is that, in the several weeks leading up to the start of bombing on 24 March 1999, there was a continuation of Serb aggression against the Albanians. This is true. But it ignores the fact that so too was there a continuation of aggression on the part of the Albanians.

A more accurate picture can be obtained from extracts from current official NATO, OSCE⁴¹ and UN reports, extracts of which can be found in Appendix 7. These reports show that, although there was considerable Serb military activity in this period, it was by no means one-sided. These reports support the statement of the OSCE that, although there was the use of disproportionate force by the Serbs, it was “in response to persistent attacks and provocations by the Kosovo Albanian paramilitaries.”

THE HOLBROOKE AGREEMENT, OCTOBER 1998

In October 1998, the United States sent Richard Holbrooke as its senior envoy to Belgrade to negotiate a cease-fire which was to include a substantial withdrawal from Kosovo of Serbian troops and police. There have been claims that that Yugoslavia broke this agreement. This, it has been alleged, was further evidence that Milosevic could not be trusted.

However, the evidence appears to show that this allegation is less than fair.

Firstly, Yugoslavia did reduce its forces to the agreed level and did so very quickly. This is shown by a statement made on 9 November 1998 by Christopher Hill, the United States special envoy for Kosovo. He told a meeting of NATO Parliamentary delegates in Edinburgh that:

...the humanitarian and security situation in Kosovo has improved significantly in the past few weeks.

Similarly, on 27 November 1998, Robin Cook reported in the House of Commons that most refugees had returned to their settlements, with only some hundred still living in the open.⁴²

It is correct that shortly afterwards the numbers of active Yugoslav troops and police again increased but this was in response to two new factors.

The first was NATO's failure to make the KLA discontinue its attacks or to prevent it even from increasing them. Evidence of this is contained in Appendix 5 which shows the aggressive nature of KLA attacks during the weeks following the Holbrooke agreement.

The second was the fact that, by March 1999, Yugoslavia was faced with the military provisions of the Rambouillet draft, which spelt out the non-negotiable intent of NATO to occupy Kosovo and to deploy in the rest of Yugoslavia in the very near future. The extra troops then deployed in Kosovo evidence Yugoslavia's intent not to submit to this threat.

⁴¹ Organisation for Security and Co-operation in Europe.

⁴² Hansard, col. 441, 27 November 1999.

This is confirmed by certain statistics. On 23 March 1999 NATO reported to the UN that the Yugoslavian forces in Kosovo exceeded the Holbrooke figure of 11,300 by 3,500-5000. These excesses were dwarfed by the increases after the bombing started when the estimated figures for the Yugoslavian forces rose to over 50,000, more than four times the Holbrooke figure: in other words, at that time, the Yugoslav army was holding its troops back. A major reason for the subsequent increase is likely to have been the threat by NATO to occupy both Kosovo and Serbia.

Finally, as NATO was fully aware of the Yugoslav troop deployment throughout this period, why did it continue to press for a Yugoslav signature to the draft agreement at Rambouillet if it believed that the Yugoslav signature of no value?

CHAPTER THREE

WAS IT SUCCESSFUL?

The Government's justification for the NATO intervention was that it was necessary "to avert what would otherwise be a humanitarian disaster in Kosovo." The "humanitarian disaster" that it sought to avert was the "cleansing" of the Albanians from Kosovo. Plainly, the bombing did *not* avert this disaster. The "ethnic cleansing" went rapidly ahead, despite – or because of – the bombing. In this central and critical respect, therefore, the bombing was a failure: NATO was unsuccessful in achieving its primary objective.

Indeed, not only did NATO fail, by its bombing, to *prevent* the humanitarian disaster in Kosovo. There is strong reason to believe that it actually *caused or precipitated* it.

Lord Carrington, who was for several years Secretary-General of NATO, expressed this view in an interview published in the September 1999 issue of *SAGA* magazine:

I think what NATO did by bombing Serbia actually precipitated the exodus of the Kosovo Albanians into Macedonia and Montenegro. I think the bombing did cause the ethnic cleansing.

THE KOSOVAN EXODUS: A PREDICTABLE OUTCOME

Ample evidence supports Lord Carrington's view. Indeed, the consequences of the bombing were both predictable and widely predicted.

On 25 March 1999 the *Guardian* reported that “many feared that the bombing would enrage the Serbs and encourage them to retaliate on a large scale against the Kosovars”. This report was quoted in the House of Commons the next day.

On 28 April 1999, in a BBC Panorama Special, General Wesley Clark, who was the Supreme Commander of the NATO forces in Kosovo, said:

We knew there were going to be some horrendous atrocities. We knew it was going to be fast and violent. We knew it might lead to the expulsion of Kosovars from certain regions of Kosovo. That it would lead to the wholesale expulsion of the Kosovo Albanian population, no, we had no indication of that.

[Emphasis added]

In addition, both the Pentagon and the Director of the CIA warned that ethnic cleansing would be the result of the bombing.⁴³ Thus, in the *Washington Post* on 7 April 1999 it was reported that :

CIA Director George J. Tenet warned that the Serbs might respond with a campaign of ethnic cleansing.

And in the *Guardian* of 6 April 1999 it was reported that Kenneth Bacon, the Pentagon spokesman, said :

In the Pentagon, in this building, we were not surprised by what Milosevic has done.

Finally, George Robertson wrote in his paper of October 1999 that:

We were conscious that military action might be seized upon by Milosevic as an excuse to accelerate the offensive already under way. But while we had anticipated that the offensive could involve operations against the KLA and violent repression of the civilian population, we could not have predicted the full horror and extent of the brutality.

The Serb response was savage and inexcusable. But it was predictable. The Serbs could not retaliate against the bombing aircraft because of the height at which they were flying. All they could do was to retaliate – with excessive violence – against the unfortunate Kosovo Albanians who were supporting NATO. From the above statements, it seems that NATO realised that the bombing was likely to result in “violent repressions” of the civilian population, “horrendous atrocities” and “a campaign of ethnic cleansing” but did not know how bad it would be. NATO let the Kosovan Albanians carry the risk.

⁴³ House of Commons Research Paper 99/48 note 131, citing the *Guardian*, 6 April 1999, *Washington Post*, 7 April 1999, *International Herald Tribune*, 6 April 1999.

THE BRITISH GOVERNMENT'S DEFENCE

NATO has defended itself against the charge of provoking the ethnic cleansing by claiming that the Serbs were putting into force a pre-existing plan. In negotiating with President Milosevic, NATO considered that it was dealing with a man who had broken treaties in the past, who had supported paramilitary organisations throughout the states of the Former Republic of Yugoslavia – organisations guilty of numerous crimes – and who had made no secret of his desire to see the back of Kosovo's Albanian population.

However, the dramatic rise in the rate of displacements only occurred after the bombing started. Thus, in the report of NATO to the UN dated 23 March 1999 it was stated that 100,000 persons had been displaced in the areas controlled by the KLA in the previous three months. This was a rate of about 33,000 a month. During the NATO bombing, the rate rose to an average of about 250,000 a month and very much higher in the first weeks after the start of the bombing. It is also confirmed, explicitly, by the statements by General Clark and others to the effect that NATO expected the bombing to provoke serious displacements and atrocities.

The Serb response was savage and inexcusable. But it was predictable

In George Robertson's October paper, he reports that his German colleague Rudolf Scharping revealed on 9 April 1999 details of "a covert Serbian plan drawn up months before" to expel Kosovo Albanians from their homeland.⁴⁴ If NATO Ministers were certain that Serbian forces were planning a programme of mass expulsions, why did they then create a situation which would facilitate such expulsions?

CAN NATO CLAIM VICTORY?

On 10 June 1999 NATO discontinued the bombing. This was as the result of an agreement between NATO and Yugoslavia brokered by the Russians. The terms of this agreement are contained in two documents:

- Agreement of 4 June 1999 between NATO, Russia and Yugoslavia.
- Security Council Resolution 1244/1999 of 10 June 1999.

⁴⁴ Details of this plan, its provenance and its reliability are sketchy. Even Louise Arbour, the Chief Prosecutor of the UN Criminal Court for Yugoslavian Affairs has stated: "As to Operation Horseshoe, I have my doubts as to its capacity to prove anything... Mostly such things [i.e. documents given to her by various NATO countries] look more like verbal descriptions and conclusions." See *Der Spiegel*, 27 April 1999.

Copies of both agreements can be found in Appendix 8.

The Security Council Resolution gave the legal sanction and authority of the United Nations to the Agreement of 4 June 1999.

It has sometimes been suggested that this settlement represented a “victory” for NATO but the settlement was more complicated than that. By June 1999, NATO was in difficulty. The bombing had not brought a Serb capitulation. The threatened land invasion remained unlikely in view of the well-publicised differences within NATO. NATO had on its hands a million or so refugees who had only received a limited welcome in other countries. NATO was suffering considerable public embarrassment over the so-called “collateral damage” caused by repeated errors in the bombing which it seemed unable to control. And the campaign was beginning to run out of time.

Accordingly, the Allies were now prepared to make concessions that they were not prepared to make in March and were prepared to accept Russian intervention as a mediator. These concessions included:

1. The signatories to the Peace Agreement would be the United Nations and Yugoslavia and the party responsible for enforcing the resultant Treaty would be the United Nations, not NATO. This is important. The attempt by NATO to dispense with Security Council authority for the NATO ultimatum struck at the very heart of the United Nations and arguably threatened its survival. Yugoslavia’s refusal to accept the ultimatum and the agreed restoration of the authority of the Security Council under the June settlement removed this grave threat to the future of the UN. The paradoxical conclusion is that Yugoslavia may have saved the United Nations.
2. That the monitoring force be an international force with a Russian element.
3. That the civil administration would be under the control of the Security Council.
4. That the international force would have no access to any part of Yugoslavia outside Kosovo.
5. That the force would have a specific obligation to disarm the KLA, who were not to be recognised.
6. That the sovereignty of Yugoslavia over Kosovo would be acknowledged and confirmed without any limit of time.
7. That there would be no referendum on the status of Kosovo after three years.

Yugoslavia, on the other hand, was obviously anxious to stop the bombing and in return had to accept the complete evacuation of its troops from Kosovo in favour of an international force led by NATO.

What emerged, therefore, was a compromise and one that could have been reached by competent diplomacy without the bombing.

WILL THE ETHNIC CLEANSING STOP?

Few can claim that the current settlement offers much chance of lasting peace and security in the region. Grave problems remain unsolved. In some cases, they have been aggravated by NATO's actions.

The Security Council resolution provides for "the safe and free return of all refugees"; for assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo; for the establishment of "a secure environment for the return of the refugees"; for the "maintenance of civil law and order"; and for the "promotion of human rights." This Resolution applies to "all refugees" and not merely to the Albanian Kosovans.

Few can claim that the current settlement offers much chance of lasting peace and security in the region

So far the well-meaning efforts of the occupying forces to protect the Serbs have had limited success. The Serb ethnic cleaning of the Albanians has stopped but it has been replaced by ethnic cleaning of the Serbs by the Albanians. Since the international force took over control, the great majority of the Serbs have been driven out. The UNHCR has estimated that, out of a population of not much more than 200,000 before the war, more than 200,000 Serbs have fled Kosovo. In addition, an estimated 30 Serbs are being killed every week.⁴⁵

Other minority groups in Kosovo are under threat. The Economist Intelligence Unit estimates that 50,000 gypsies have fled Kosovo or are waiting in camps around Pristina waiting to go. The 20,000 Turks in the province are also said to be in fear of reprisals and are preparing to leave the province.⁴⁶

⁴⁵ UNHCR *Refugees Daily*, 18 October 1999.

⁴⁶ *Yugoslavia (Serbia-Montenegro) Country Report*, Economist Intelligence Unit, 3rd Quarter 1999.

WILL THE CONSTITUTIONAL SETTLEMENT HOLD?

The interim civil administration to be set up in Kosovo under the authority and control of the Security Council is required to aim at substantial autonomy and self-government in Kosovo *within the Federal Republic of Yugoslavia*. This clearly requires a dialogue between the UN and Yugoslavia to settle the details of the balance between the central and provincial governments (as was discussed at Rambouillet). It is not clear how this is to be achieved and whether it is the intention that such a constitution will be negotiated or imposed.

The resolution requires full account to be taken of the principles of sovereignty of Yugoslavia. This is plainly intended to cover sovereignty over Kosovo. Representatives of the Kosovo Albanians have made it clear, however, that their aim is total independence, with the option of uniting with Albania and thus forming the nucleus of a Greater Albania which might, in turn, have aspirations towards the Albanians of Macedonia. Until recently members of NATO have shown no sympathy for this Albanian claim for independence but it seems from recent newspaper reports that some quarters in the USA are now saying that such independence should be regarded as inevitable. This is not likely to be welcomed by some members of NATO, particularly Greece.

The medium term status of Kosovo is uncertain. As the Economist Intelligence Unit has pointed out:

Peace will hold while the international powers are directly engaged in Kosovo, but until the final status of the province is resolved, there will be some risk of renewed conflict in the future. That implies both a long posting for KFOR and continued political and economic uncertainty which will affect not only Kosovo, but the wider region.⁴⁷

⁴⁷ *Yugoslavia (Serbia-Montenegro) Country Report*, Economist Intelligence Unit, 3rd Quarter 1999.

CHAPTER FOUR

THE COST

KOSOVO ALBANIAN CASUALTIES

It has been alleged by NATO that the Serbs in Kosovo killed as many as 10,000 Albanians during the 11 weeks of aerial bombardment. This figure has not so far been verified and may be an exaggeration.⁴⁸ In comparison, in the months before NATO intervened, approximately 2,400 people – from both the Albanian and Serb communities – had been killed. The bombardment can therefore be said to have escalated the killing of Albanians.

Similarly, the forced displacement of Albanians was accelerated during the bombardment: at the outset of NATO's campaign, 100,000 people were estimated to have left their homes during the previous three months. By its end, 1,400,000 were displaced.

⁴⁸ At the end of July, the UN special representative, Bernard Kouchner, cited a figure of 11,000 Kosovan deaths. He subsequently retracted this estimate, claiming that UN investigations were under way and a firm estimate could not be made until they were completed. More recently, a leading article in *The Times* (2 November 1999) has cast doubt on early reports of the scale of the Kosovan casualties: "The number of ethnic Albanians murdered or executed during the springtime hostilities may be lower than at first suspected – perhaps in the hundreds, not tens of thousands."

YUGOSLAV CASUALTIES

In addition to the major humanitarian catastrophe that NATO's bombardment precipitated on the Albanian population, it also resulted in the death and maiming of significant numbers of the civilian population of Yugoslavia.

The Economist Intelligence Unit⁴⁹ reports that NATO probably killed more Serb civilians than soldiers during its 11 week bombardment of the country, with an estimated death toll of 1,500 civilian deaths and 8,000 wounded. At least 450 of these died as a result of a series of NATO "mistakes" while others died in "collateral damage".⁵⁰ Inasmuch as there were 23,614 bombs dropped these figures do not seem exaggerated.

In addition, there are the civilian casualties after the cessation of the bombing caused by unexploded cluster-bombs. One canister of cluster bombs will completely devastate an area the size of a football pitch. During the NATO air assault in Kosovo there were 355 cluster-bomb attacks from MRLS aircraft. An MRLS M77 can fire 12 rockets, each containing 644 bomblets, a total of 7,728 bomblets per strike. An appreciable proportion of these fail to detonate on contact with the ground. As they do not self-destruct, they create a continuing peril on the ground. According to a report in *The Times* on 16 August 1999, there were then still about 14,000 unexploded bomblets lying around in Kosovo. The area of Kosovo is approximately half that of Wales. Such bombs are very sensitive and look like toys so that they are particularly dangerous to children. According to another report, in the first month after the bombing ceased, such bombs killed or maimed an average of five persons a day and since then has continued at an average of two a day.

MATERIAL DAMAGE

Estimates of material damage to the Yugoslav economy are as difficult and potentially unreliable as estimates of casualties. The Yugoslav Government has suggested a figure as high as \$100 billion; a somewhat less partial source is the G17 group of independent Yugoslav economists which has estimated that the cost of the economic damage caused by NATO's bombing at \$30 billion.⁵¹

⁴⁹ *Yugoslavia (Serbia-Montenegro) Country Report*, Economist Intelligence Unit, 3rd Quarter 1999.

⁵⁰ Major incidents include: 48 civilians wounded in attack on Belgrade of whom one died (30 April); 16 civilians killed and 13 wounded, including 4 children and 9 Albanians as result of direct hit on a bus on a regular service in Kosovo (1 May); 20 civilians killed and 43 injured, mostly women, children and elderly persons, as result of another direct hit on a bus in Kosovo (3 May); 10 civilians killed as result of cluster-bombing on Nis (7 May); 4 members of diplomatic staff killed during destruction of Chinese Embassy in Belgrade (7 May).

⁵¹ This estimate excludes the cost of environmental damage, and the damage to residential housing and human capital loss in Kosovo.

The Economist Intelligence Unit has made its own calculation of the estimate of total war damage in Yugoslavia. Its conclusions are:

...it will take Yugoslavia ten years to regain its post-war (1998) level of GDP, a similar recovery period for Bosnia and somewhat longer than in the cited post-second world war cases. Under the assumption of a 6% average post-war recovery growth rate and 3% growth rate in the absence of war, the two series of GDP would take 18 years to converge. The opportunity cost, or the discounted present value of the two economic streams is **\$59.8 billion**. This represents our estimate of the total economic cost, or damage inflicted, by the war. [Emphasis added]

In addition, significant damage was caused during the campaign to property in Kosovo. The UNHCR estimates that over 25% of buildings sustained “heavy damage” with 70,000 houses in need of reconstruction. \$3 billion has been pledged in aid already.

THE DAMAGE TO BRITAIN’S REPUTATION

According to a survey carried out by the British Council after the war had ended, the reputation of the United Kingdom in the Balkans has suffered as a result of NATO’s bombardment.⁵² It is interesting to note that countries which took a less hawkish view of the campaign did not suffer such a loss of approval. The table below shows how Britain’s reputation was damaged by NATO’s campaign in comparison to that of Germany:

NET APPROVAL RATING⁵³

	UK	Germany
Serbia	- 62	- 56
Russia	- 48	- 33
Montenegro	-40	- 29
Macedonia	-23	- 14
Bosnia	-18	+ 3
Bulgaria	-12	- 3
Romania	-25	- 1
Czech Republic	-12	- 7
Hungary	+ 2	+ 3
Croatia	+ 14	+ 17
Albania	+ 71	+ 59

⁵² See *The Image of Britain in the Balkans and Russia, Presentation of results*, British Council, 24 September 1999. The results are based on the findings of an independent market research company which conducted 13,319 interviews in the ten countries in the region between 11 June and 21 August.

⁵³ Respondents were asked the question: “Thinking about your current situation, overall has your opinion of these countries and institutions got better, has it got worse or has your opinion stayed the same?” In the case of Serbia, 3% of respondents said their image of the UK had improved while 65% said it had got worse, giving a net score of –62. Conversely, in Albania, 72% said it had got better and 1% that it had got worse, giving a net score of +71.

THE ENVIRONMENTAL DAMAGE

The NATO bombardment of key Yugoslav installations caused considerable environmental damage.⁵⁴ During the first weeks of the campaign, the bombing had been focussed on military targets; but from the sixth week, the focus of the bombardment changed to, in the words of the Economist Intelligence Unit, “the systematic targeting of Serbia’s economic infrastructure”:

The target list was progressively expanded to include not only transport infrastructure and fuel dumps, but television and radio stations, civilian factories, oil refineries, power stations, electricity distribution and water supplies.

...Among the worst hit towns was Pancevo, an industrial town north of Belgrade in which refineries, a fertiliser plant and petro-chemical works were repeatedly targeted. The damage released toxic chemicals into the air and the Danube, including an estimated 1,500 tonnes of vinyl chloride, at least 3,000 times higher than permitted levels. Huge quantities of other noxious chemicals burned or gushed out of storage facilities, including 15,000 tonnes of ammonia (which was to be used to make fertiliser), 800 tonnes of hydrochloric acid, 250 tonnes of liquid chlorine, vast quantities of dioxin and 100 tonnes of mercury. The oil refinery at Pancevo was repeatedly bombed: 20,000 tonnes of crude oil were burnt up in one bombardment alone, and a cloud of black smoke hung in the air for ten days.

There are also fears that the use of uranium-tipped weaponry by NATO has led to major contamination in the region.

THE CULTURAL DAMAGE

There has also been widespread destruction of Serb churches. This is described in a letter from the Bishop of Raska and Pritzen dated 15 July 1999, contained in Appendix 5.

THE PRICE OF WAR

The cost of the military campaign itself has not been published. However, the International Institute for Strategic Studies estimates that the utilisation and replacement cost of NATO’s campaign amounts to \$11 billion with the peace-keeping and support for Kosovo estimated (by

⁵⁴ As with casualties and economic estimates of war damage, the impact of environmental damage is extremely difficult to estimate accurately. Western Governments have obvious reasons for downplaying the environmental cost as do the Serbian authorities (they do not want to intensify popular dissatisfaction with the Government). On the other hand, environmental agencies and Serbian opposition groups are likely to exaggerate the scale of the damage.

the United Nations) at a further \$7.7 billion p.a.⁵⁵ With a conservative assumption that the peacekeepers will be in Kosovo for at least three years, the cost of NATO's decision to go to war in Kosovo can be calculated as:

Economic damage in Serbia:	\$60 billion
Economic damage in Kosovo:	\$3 billion
Military costs to NATO:	\$11 billion
Peace-keeping support:	\$23 billion(\$7.7 bn for 3 years)
Total:	\$97 billion ⁵⁶

In other words, the NATO bombing of Yugoslavia cost the equivalent of \$50,000 for every man, woman or child in Kosovo.

⁵⁵ See *The 1999 Chart of Armed Conflict*, International Institute for Strategic Studies, August 1999.

⁵⁶ This figure excludes the cost of the war to third party countries in the region.

CHAPTER FIVE

SOME QUESTIONS

The evidence available today suggests that the NATO operation with respect to Kosovo was unlawful, unnecessary and unsuccessful. And its cost, in every sense, was huge.

It follows that if it is to be regarded as a precedent it is not a precedent to be followed but to be avoided.

We may feel proud of the humane and efficient performance of our armed forces under the excellent command of General Sir Michael Jackson in trying to conciliate the opposing factions in Kosovo under the NATO occupation. With this exception, we have little if any reason for pride in the UK's role in this venture.

It is not impossible that the Government can provide further evidence to assuage the concerns which are being increasingly voiced about the bombardment. That would be welcome. But in the absence of any further official information, we should conduct further investigations into various aspects of the operation. A number of questions must be asked.

THE LEGAL QUESTIONS

Is it lawful for force to be used against another State, without the authority of the Security Council, where this is necessary "to avert what would otherwise be a humanitarian disaster"?

What was the legal advice upon which the Government assured Parliament that the intervention was undoubtedly lawful?

Why was the full draft of the Treaty, including the all-important military annexes, only placed in the House of Commons Library on 1 April 1999 – the first day when Parliament had risen for the Easter recess, more than one week after the bombing had started and eight days after the first debates on Kosovo took place in the House of Commons?

Did the Government receive any written advice from the Law Officers before it gave its assurance that the war was, in the then Attorney General's words, "lawful under international law?" Will the government publish this advice?

If the Government continues to maintain that the action was lawful, why will it not accept the jurisdiction of the International Court of Justice to confirm this?

A SUCCESSFUL PRECEDENT?

If the principle of armed intervention on humanitarian grounds is to be accepted, how grave would the infringement of human rights have to be to invoke it? What type or degree of force could be employed to correct it? Would the principle of proportionality be applicable? Which institution (or institutions) has (or have) the authority to define a potential humanitarian disaster? Could the principle be invoked without the prior resolution of the Security Council?

The Government claims that the intervention was successful. Does this claim justify the expansion of European Union defence capabilities? Under what authority would such capabilities undertake, in George Robertson's words, "crisis management operations, in circumstances in which the whole Alliance [NATO] is not engaged"? What are the costs of the "qualitative and quantitative military contribution" to be made by Member States to NATO's budget?

WAS THE WAR NECESSARY?

Why did NATO insist on the insertion of the non-negotiable military clauses at Rambouillet, terms which were equivalent to demanding the capitulation of a sovereign state?

If NATO's leaders believed that it was impossible to trust Milosevic, why did it continue to press for a Yugoslav signature to the draft agreement at Rambouillet if it believed that the Yugoslav signature of no value?

Why were the terms agreed on 4 May so much more lenient to the Yugoslavs than those which NATO put forward at Rambouillet?

CONSEQUENCES OF THE WAR

What advice did the Government have on 23 and 24 March 1999 of the likely effect of bombing upon the treatment by the Serbs of the Albanians in Kosovo ?

Who is to bear the costs of the war, including that of humanitarian relief, environmental recovery and economic support?

Is the Government still resolved to carry out the terms of the Security Council Resolution 1244 of 10 June 1999 or is it moving towards secession for Kosovo ?

In sum, we should recall the words of the International Court of Justice in the *Nicaragua* case:

“...the protection of human rights, a strictly humanitarian objective, cannot be compatible with the mining of ports, the destruction of oil installations, or again with the training, arming and equipping [of the rebels]”

Does the British Government disagree with the Court of Justice?

APPENDIX 1

SUBMISSIONS OF COUNSEL FOR YUGOLAVIA TO THE INTERNATIONAL COURT OF JUSTICE

EXTRACT FROM THE ADDRESS OF PROFESSOR
ETINSKI, PROFESSOR OF LAW AT THE UNIVERSITY
OF NOVI SAD

2. The use of force against the Federal Republic of Yugoslavia is illegal.

The acts of bombing of the Yugoslav territory are in breach of the obligation not to resort to the threat or use of force against another State, which exists as a general rule of customary law and as a basic principle of the Charter of the United Nations and has a nature of *jus cogens*. Bruno Simma is right when he says:

In contemporary international law, as codified in the 1969 Vienna Convention on the Law of Treaties (Articles 53 and 64), the prohibition enunciated in Article 2(4) of the Charter is part of *jus cogens*, i.e., it is accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same peremptory character. Hence, universal *jus cogens*, like the prohibition embodied in Article 2(4), cannot be contracted out of at the regional

level. Further, the Charter prohibition of the threat or use of armed force is binding on States both individually and as members of international organizations, such as NATO, as well as on those organizations themselves.⁵⁷

...

2.3 The Security Council of the United Nations is exclusively empowered by the United Nations Charter to decide on the use of force, according to provisions of Chapter VII of the Charter. The United Nations Security Council may utilize regional arrangements or agencies for enforcement action. But according to Article 53 of the Charter “no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council...” NATO and its member States are without authorization of the Security Council for the use of force against the Federal Republic of Yugoslavia.

I find it opportune here to quote a few provisions. First, Article 103 of the Charter of the United Nations:

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

And second, Article 7 of the 1949 North Atlantic Treaty, which is quite in harmony with Article 103 of the Charter and reads as follows:

The Treaty does not affect, and shall not be interpreted as affecting, in any way the rights and obligations under the Charter of the Parties which are Members of the United Nations, **or the primary responsibility of the Security Council for the maintenance of international peace and security.**

[Emphasis added]

...

3. Nothing can justify use of force against the Federal Republic of Yugoslavia.

The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by consensus in the General Assembly as resolution 2625 (XXV) of 24 October 1970, says:

⁵⁷ “NATO, the UN and the Use of Force: Legal Aspects,” *EJIL*, 1999, Vol. 10, No. 1.

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, **armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.**

The International Court of Justice has strictly applied this fundamental principle. It made clear its legal understanding of the principle in the Nicaragua case as follows:

The Court also notes that Nicaragua is accused by the 1985 finding of the United States Congress of violating human rights... while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect. With regard to the steps actually taken, the protection of human rights, a strictly humanitarian objective, cannot be compatible with the mining of ports, the destruction of oil installations, or again with the training, arming and equipping of the contras. **The Court concludes that the argument derived from the preservation of human rights in Nicaragua cannot afford a legal justification for the conduct of the United States**, and cannot in any event be reconciled with the legal strategy of the respondent State, which is based on the right of collective self-defence.⁵⁸

Professor Schachter is quite clear in his *International Law in Theory and Practice*, published in 1991. On page 128, he says:

International law does not, and should not, legitimize the use of force across national lines except for self-defence (including collective self-defence) and enforcement "measures ordered by the Security Council. **Neither human rights, democracy or self-determination are acceptable legal grounds for waging war, nor for that matter, are traditional just causes or righting wrongs.** This conclusion is not only in accord with the UN Charter as it was originally understood; it is also in keeping with the interpretation adopted by the great majority of States at the present time."

⁵⁸ Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), Merits, Judgment, *ICJ. Reports*, 1986, pp.134-135, paras. 267 and 268).

EXTRACT FROM THE ADDRESS OF PROFESSOR
BROWNLEE, CHICHELE PROFESSOR OF PUBLIC
INTERNATIONAL LAW AT OXFORD UNIVERSITY

...the attack on the territory of Yugoslavia involves a continuing breach of Article 2, paragraph 4, of the Charter.

In my submission, the principle of Article 2, paragraph 4, stated in 1945 remains unqualified. As Professor Virally, amongst others, has pointed out, the preparatory work of the Charter indicates unequivocally that intervention for special motives was ruled out by the inclusion of the phrase "against the territorial integrity or political independence of any State". (See Cot and Pellet, *La Charte des Nations Unies*, 1985, p. 114.) That is the contribution by Professor Virally.

The subsequent practice of the member States of the United Nations has not produced a departure in general international law. Such a departure would, in principle, be a major aberration and would require consistent and substantial evidence. Such a change in customary law has not been asserted to exist, much less proved, by a single member State of NATO.

III. Confirmation of this position

The position of the Charter was confirmed, 25 years later, in 1970, in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation. As the Court will readily appreciate, the Declaration provides evidence of the consensus among States on the meaning of the principles of the Charter. In particular, the Declaration confirmed:

The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter.

The document then has an official commentary:

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in

order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.

The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

Nothing in the foregoing paragraphs shall be construed as affecting the relevant provisions of the Charter relating to the maintenance of international peace and security.

The general legal régime of the Charter was affirmed by Professor Schwebel, as he then was, in his Hague lectures delivered in 1972 under the heading "Aggression, Intervention and Self-defence in Modern International Law" (*Recueil des Cours*, Vol. II (1972), pp. 413-497).

The basic principles of the legal régime relating to the use of force were also reaffirmed in the Definition of Aggression adopted by the General Assembly on 14 December 1974 (resolution 3314 (XXIX)). Article 5 of the definition provides that: "No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression."

IV. Reliable sources give no recognition to the doctrine of humanitarian intervention

In my submission, the respondent States cannot rely upon the alleged doctrine of humanitarian intervention. There is no evidence of such a development in customary international law. Moreover, officials of the respondent States have, in fact, sought to rely upon resolutions of the Security Council, and not a doctrine of humanitarian intervention. I refer to the expression viewed by the Foreign Secretary of the United Kingdom, Mr Robin Cook, on 19 October 1998, and the speech in Parliament by Mr Blair, Prime Minister, on 23 March this year.

Reliable authority covering a period of 30 years has failed to recognise a principle of humanitarian intervention.

I shall review the relevant authorities in chronological order.

The first is that of Dr Marjorie Whiteman, editing the famous *Digest of International Law* in accordance with United States practice (Vol. 12, pp. 204-215 (1971) (Tab 3)). It is of course an official publication of the United States Department of State. Dr Whiteman sets out various opinions – some in favour, some against – but she offers no endorsements of the principle by the United States Government. That is in 1971.

Secondly, there are the views of Professor Schwebel, as he then was, in the Hague Academy Lectures of 1972. In his substantial review of the subjects of aggression and intervention, Mr Schwebel did not make a single reference to humanitarian intervention. That is in 1972.

Thirdly, there is the view of Professor Oscar Schachter, which appears in the *Michigan Law Review* (Vol. 82 (1984), p. 1629). Professor Schachter wrote that:

...governments by and large (and most jurists) would not assert a right to forcible intervention to protect the nationals of another country from atrocities carried out in that country.

Fourthly, there is the British Foreign Office view expressed in Foreign Policy Document No. 148. This is set out in full in the *British Year Book of International Law*, Volume 57 (1986), beginning at page 614.

The key passage reads thus:

II.22. In fact, the best case that can be made in support of humanitarian intervention is that it cannot be said to be unambiguously illegal. To make that case, it is necessary to demonstrate, in particular by reference to Article 1(3) of the UN Charter, which includes the promotion and encouragement of respect for human rights as one of the Purposes of the United Nations, that paragraphs 7 and 4 of Article 2 do not apply in cases of flagrant violations of human rights. **But the overwhelming majority of contemporary legal opinion comes down against the existence of a right of humanitarian intervention**, for three main reasons: first, the UN Charter and the corpus of modern international law do not seem specifically to incorporate such a right; secondly, state practice in the past two centuries, and especially since 1945, at best provides only a handful of genuine cases of humanitarian intervention, and, on most assessments, none at all; and finally, on prudential grounds, that the scope for abusing such a right argues strongly against its creation. As Akehurst

argues, "claims by some states that they are entitled to use force to prevent violations of human rights may make other states reluctant to accept legal obligations concerning human rights." In essence, therefore, **the case against making humanitarian intervention an exception to the principle of non-intervention is that its doubtful benefits would be heavily outweighed by its costs in terms of respect for international law.** [Footnote omitted.]

I next come to the opinion of Professor Yoram Dinstein, in his monograph on *War, Aggression and Self-Defence* (CUP, 1988, p. 89 (Tab. 4)). Professor Dinstein concluded that:

Nothing in the Charter substantiates the right of one State to use force against another under the guise of ensuring the implementation of human rights.

There is then the view of Professor Randelzhofer of Germany, in the volume edited by Bruno Simma, *The Charter of the United Nations: A Commentary* (OUP, 1994, (Tab. 6) at pp. 123-124).

Professor Randelzhofer considers that there is no room for the concept of humanitarian intervention either in the Charter or in customary law.

And lastly, we have the views of Professor Bruno Simma, writing in the *European Journal of International Law* (Vol. 10 (1999), available on the Internet). He regards the use of force for humanitarian purposes as incompatible with the United Nations Charter in the absence of the authorisation of the Security Council (Tab. 8).

Mr President, these sources cover a period of 30 years and constitute the careful opinions of well-known authorities of various nationalities.

V. On the facts, this attack on Yugoslavia cannot qualify as humanitarian intervention

Mr President, aside from the legal issues, there are very strong grounds for the disqualification of the so-called air strikes as a humanitarian intervention.

First: There is no genuine humanitarian purpose. The action against Yugoslavia, as many diplomats know, forms part of an ongoing geopolitical agenda unrelated to human rights. When in 1995, 600,000 Serbs were forced out of the Krajina, the respondent States stayed silent.

Secondly: The modalities selected disqualify the mission as a humanitarian one. Bombing the populated areas of Yugoslavia and using high performance ordnance and anti-personnel weapons involve policies completely inimical to humanitarian intervention. Moreover, bombing from a height of 15,000 feet inevitably endangers civilians, and this operational mode is intended exclusively to prevent risks to combat personnel.

The population of Yugoslavia as a whole is being subjected to inhumane treatment and punishment for political reasons. One thousand two hundred civilians – 1,200 civilians – have been killed so far, and 4,500 seriously injured.

Some groups of civilians – including television personnel – have been deliberately targeted. Several attempts have been made to assassinate the Head of State of Yugoslavia. And so, in our view, these modalities clearly disqualify the claim to act on humanitarian grounds.

Thirdly: The selection of a bombing campaign is disproportionate to the declared aims of the action. Thus, in order to protect one minority in one region, all the other communities in the whole of Yugoslavia are placed at risk of intensive bombing.

Fourthly: The pattern of targets and the geographical extent of the bombing indicates broad political purposes unrelated to humanitarian issues.

VI. Major considerations of international public order disqualifying the bombing as a humanitarian action

Mr President, in addition to these factual elements, there are major considerations of international public order which, both individually and cumulatively, disqualify the bombing of Yugoslavia as a humanitarian action.

First: As the respondent States know very well, the so-called crisis originated in the deliberate fomenting of civil strife in Kosovo and the subsequent intervention by NATO States in the civil war. This interference is continuing. In such conditions those States responsible for the civil strife and the intervention are estopped from pleading humanitarian purposes.

In this context it is relevant to recall that the International Law Commission draft of 1980 on *State Responsibility* provides in Article 33 (in material part) that:

2. In any case, a state of necessity may not be invoked by a State as a ground for precluding wrongfulness...

...(c) if the State in question has contributed to the occurrence of the state of necessity. (YILC, 1980, Vol. II (Part Two), pp. 34-52).

Secondly: The threats of massive use of force go back seven months and have throughout been intended to produce not a genuine peaceful settlement but a dictated result. The massive air campaign was planned some time ago for the purposes of general coercion in order to force Yugoslavia to accept NATO demands. NATO first threatened air strikes in October of last year, and this is a matter of public knowledge.

Thirdly: There has been no attempt to obtain Security Council authorization. Members of the Court, if this was an obviously humanitarian intervention acceptable to the international community as a whole, why was it not possible to ask for the authorization of the Security Council?

Fourthly: There is no evidence that the *jus cogens* principle concerning the use of force has been replaced by any other principle of *jus cogens*.

VII. The exponents of humanitarian intervention in the literature envisaged a radically different model

Mr President, my next point is this. If the views of the few exponents of humanitarian intervention are studied, it becomes clear that they did not envisage anything like the NATO bombing of the populated areas of Yugoslavia, the damage to the system of health care, the destruction of the civilian infrastructure, the use of prohibited weapons, and the destruction of cultural property on a large scale...

APPENDIX 2

ALTERNATIVE VIEWS ON THE LEGALITY OF THE CAMPAIGN

An alternative view of the legality of the campaign can be found in the August 1999 edition of *Counsel*, in a debate between Professor Michael Byers of Duke University and Cambridge University, and Marc Weller, of the Centre for International Studies at Cambridge University. Professor Byers, citing many of the arguments outlined above, supports the view that the NATO intervention was a “clear violation of international law”. Mr Weller, however, takes the view that, while no obvious legal justification can be found in treaty or in practice for humanitarian intervention without the authority of the Security Council, support can be found in the “legal doctrine of representation”.

Mr Weller argues that there are cases where a government may lose its authority to represent the people it governs. He states that:

“The most obvious cases are colonial regimes and armed occupation, where the effective authorities are manifestly unrepresentative.”⁵⁹

Further support for this approach comes from the distinguished legal writer, Sir Hirsch Lauterpacht, who noted in 1955 that:

⁵⁹ This view has previously been stated in terms of “sovereignty” by, for example, the well known liberal international legal scholar, W. Michael Reisman. See “Sovereignty and Human Right in Contemporary International Law”, 84 *AJIL*, p866.

There is a substantial body of opinion and practice in favour of the view that there are limits to the discretion [of states in the treatment of their own nationals] and that when a state renders itself guilty of cruelties against and persecution of its nationals in such a way as to shock the conscience of mankind, intervention in the interests of humanity is legally permissible.⁶⁰

An erstwhile official of the State Department in the US, Daniel Wolf, writes firmly in favour of such a right, citing historical and contemporary evidence to support his view, and notes that:

while a highly authoritative body of literature continues to assert that the Charter prohibition on the use of force precludes humanitarian intervention, the trend is clearly in the opposite direction.⁶¹

These views are not, however, without their problems. Mr Weller's argument runs up against two difficulties.

Firstly, the Security Council Resolution of June 1999 relating to Kosovo confirmed the integrity of the territory of Yugoslavia, including Kosovo, and provided that the autonomy to be granted to the province was to be within the Federation of Yugoslavia. It was not the objective of NATO to remove Kosovo from the sovereignty of the Belgrade government. It is therefore difficult to maintain that the Federation totally lost the right of representation in relation to Kosovo.

Secondly, even if Yugoslavia did somehow lose the right to represent the people of Kosovo, it does not follow that NATO was acting lawfully in attacking Yugoslavia without the authority of the Security Council.

The collective view of these figures is interesting and worthy of academic note, but it is neither the current status of international law nor is it an acceptable destination for international law. The ability of any state or group of states (say, the CIS, or Nigeria) to take military action in another country on the back of apparent human rights violations is an immensely powerful tool and one whose use must be restricted. Intervention on these grounds could too easily be claimed spuriously and too easily be used as a cloak for other motives.

⁶⁰ *Oppenheim's International Law*, 5th Edition (1955).

⁶¹ "Humanitarian Intervention", 9 *Michigan Yearbook of International Legal Studies*, p 333.

APPENDIX 3

SELECTED CLAUSES OF THE RAMBOUILLET DRAFT WHICH WERE AGREED BY YUGOSLAVIA

ARTICLE I: PRINCIPLES

1. All citizens in Kosovo shall enjoy, without discrimination, the equal rights and freedoms set forth in this Agreement.
2. National communities and their members shall have additional rights specified in Chapter 1. Kosovo, Federal, and Republic authorities shall not interfere with the exercise of these additional rights. The national communities shall be legally equal as specified herein, and shall not use their additional rights to endanger the rights of other national communities or the rights of citizens, the sovereignty and territorial integrity of the Federal Republic of Yugoslavia, or the functioning of representative democratic government in Kosovo.
3. All authorities in Kosovo shall fully respect human rights, democracy, and the equality of citizens and national communities.
4. **Citizens in Kosovo shall have the right to democratic self-government through normative, executive, judicial, and other institutions** established in accordance with this Agreement. They shall have the opportunity to be represented in all institutions in Kosovo. The right to democratic self-government shall include the right to participate in free and fair elections.

5. Every person in Kosovo may have access to international institutions for the protection of their rights in accordance with the procedures of such institutions.
6. The Signatories accept that they will act only within their powers and responsibilities in Kosovo as specified by this Agreement. Acts outside those powers and responsibilities shall be null and void. Kosovo shall have all rights and powers set forth herein, including in particular as specified in the Constitution at Chapter 1.
7. The Signatories agree to cooperate fully with all international organizations working in Kosovo on the implementation of this Agreement.

ARTICLE II: CONFIDENCE-BUILDING MEASURES

End of Use of Force

1. Use of force in Kosovo shall cease immediately.
2. The status of police and security forces in Kosovo, shall be governed by the terms of this Agreement. Paramilitary and irregular forces in Kosovo are incompatible with the terms of this Agreement.
3. The Signatories recognize that **all persons have the right to return to their homes**. Appropriate authorities shall take all measures necessary to facilitate the safe return of persons, including issuing necessary documents. The Signatories shall take all measures necessary to readmit returning persons to Kosovo.
4. The Signatories shall cooperate fully with all efforts by the United Nations High Commissioner for Refugees (UNHCR) and other international and non-governmental organizations concerning the repatriation and return of persons, including those organizations, monitoring of the treatment of persons following their return.

Access for International Assistance

5. There shall be no impediments to the normal flow of goods into Kosovo, including materials for the reconstruction of homes and structures.
6. All staff, whether national or international, working with international or non-governmental organizations including with the Yugoslav Red Cross, shall be allowed unrestricted access to the Kosovo population for purposes of international assistance. All persons in Kosovo shall similarly have safe, unhindered, and direct access to the staff of such organizations.

Other Issues

8. The Parties shall immediately comply with all requests for support from the Implementation Mission (IM). The IM shall have its own broadcast frequencies for radio and television programming in Kosovo. The Federal Republic of Yugoslavia shall provide all necessary facilities, including frequencies for radio communications, to all humanitarian organizations responsible for delivering aid in Kosovo.

Detention of Combatants and Justice Issues

10. All abducted persons or other persons held without charge shall be released. The Signatories shall also release and transfer in accordance with this Agreement all persons held in connection with the conflict. The Parties shall cooperate fully with the International Committee of the Red Cross (ICRC) to facilitate its work in accordance with its mandate, including ensuring full access to all such persons, irrespective of their status, wherever they might be held, for visits in accordance with the ICRC's standard operating procedures.
11. The Signatories shall provide information, through tracing mechanisms of the ICRC, to families of all persons who are unaccounted for. The Signatories shall cooperate fully with the ICRC and the International Commission on Missing Persons in their efforts to determine the identity, whereabouts, and fate of those unaccounted for.
12. Each Signatory :
 - (a) shall not prosecute anyone for crimes related to the conflict in Kosovo, except for persons accused of having committed crimes against humanity and international law. In order to facilitate transparency, the Parties shall grant access to foreign experts (including forensics experts) along with state investigators;
 - (b) shall grant a general amnesty for all persons already convicted of committing politically motivated crimes related to the conflict in Kosovo. This amnesty shall not apply to those properly convicted of committing crimes against humanity and international law at a fair and open trial conducted pursuant to international standards.

Independent Media

1. Recognizing the importance of free and independent media for the development of a democratic political climate necessary television, radio, and Internet for the reconstruction and development of Kosovo, the Parties shall ensure the widest possible press freedoms in Kosovo in all media, public and private, including print.

APPENDIX 4

LETTER FROM BISHOP OF RASKA AND PRIZREN

THE ORTHODOX BISHOP OF RASKA AND PRIZREN
GRACANICA MONASTERY

General Sir Michael Jackson, COMKFOR, Pristina
H.E. Bernard Kouchner, Special Representative of the Secretary-
General for Kosovo, UNMIK, Pristina
H.E. Sergio Vieira de Mello, UNMIK, Pristina
UNESCO, Secretary General

Dear Gentlemen,

Confronted with alarming and serious incidents which occurred in Kosovo and Metohija in the course of the last month, after the deployment of KFOR in the province, we are writing to you again.

We are well aware what had happened in this area before your arrival, during the conflict between the VJ and MUP of Serbia on the one side and the so-called UCK on the other, as well as the two months' period of the NATO bombing campaign against FRY, especially Kosovo and Metohija.

However, the immediate concern of ours at the moment are the crimes against the Serbian population which have occurred in the presence of the international peace forces since the peace agreements have been signed (UN Security Council Resolution 1244 and the Military Agreement between the NATO and VJ in Kumanovo).

According to the Military Agreement the KFOR has allowed safe withdrawal of VJ and various paramilitary groups but has not managed yet to establish secure surrounding and the peaceful life for all inhabitants of Kosovo and Metohija, which is one of its commitments envisaged by the Agreement.

Now the Albanians are oppressing Serbs and are committing the same crimes against Serbs and other non-Albanian communities which were committed against the Kosovo Albanians in the time of Milosevic's regime. But these recent crimes occur in the time of peace and with the presence of KFOR, very often just in front of their eyes!

Undoubtedly, in the war time the acts of kidnapping, rape, murder and massacre of the innocent people, burning of their homes and their religious sites (just because they belong to the people of other religion) are horrendous crimes. But in our opinion it is much greater a crime to commit and allow similar criminal acts after the peace has been established. That is exactly what the Serbian population is suffering at the moment.

After the withdrawal of the VJ from the Albanian border and the arrival of the KFOR troops, hordes of UCK gunmen, various armed and criminal gangs marched without any control from Albania into Kosovo. In only two weeks' time almost all Serbs were forced to leave from Suva Reka, Prizren, Djakovica, Decani, Pec, Djurakovac, Klina, Istok (Metohija region), Urosevac, Vucitrn, Srbica and thus caused the swiftest and a complete ethnic cleansing from that part of the province. More than 80,000 Serbs had to leave their homes.

At the same time, beside the exodus of the Orthodox Serbian people and numerous crimes and atrocities (forceful expulsions from flats and houses, robberies, rapes, kidnappings, murders, massacres of innocent people) there is a process of a systematic eradication of the Serbian spiritual heritage. So far there have been several serious attacks on our churches and monasteries. The churches are being looted, burned, demolished and vandalized. Beside all aforementioned churches and monasteries in almost all cases the monastery buildings "konaks" and parish homes were also looted or set on fire.

It has also come to our knowledge that some churches in Gnjilane area have also been vandalized and set on fire but we have not managed so far

to confirm these information because we do not have the freedom of movement.

Gentlemen, only during the first month of "the peace" in Kosovo we have experienced such disastrous consequences. Therefore, we are extremely worried whether after all what has happened (and what might happen in future) any of the expelled Serbs would dare to go back to their homes and their shrines.

Inhuman acts of looting, burning of homes are revolting indeed but even more revolting are destructions of the old religious and cultural monuments - churches, monasteries, mosques, teqies, because these are the houses of God and his people and belong to the world's cultural heritage and the Civilization. Just imagine what darkness, inhumanity, anti-culture and barbarism stand behind these destructions of the religious and national monuments in Kosovo at the threshold of the greatest Christian Jubilee – the 2,000 anniversary of Christianity amidst the civilized Europe.

We sincerely believe that you would be able to secure peace and stability in the province with the help of KFOR, the international police and the civil administration. We only wonder whether any of the Kosovo Serbs would live to see that day until all decisive and necessary steps are taken immediately to prevent and stop further crimes and violence against the remaining Serb population. It is in your capacity to establish peace and order. Once again we express our most urgent request to you to do all you can in order to fulfil the commitment which you have undertaken in front of the UN and the entire world.

In this way you would be able to persuade the remaining Serbs to stay at their homes and encourage our refugees to return. Only in this context we would be able to work and cooperate with you on establishing of the civil and democratic society in Kosovo based on multiethnic, multicultural and multiconfessional principles.

Gracanica Monastery

July 15, 1999

Sincerely Yours

+ARTEMIJE

Bishop of Raska and Prizren

Bishop of Raska and Prizren

APPENDIX 5
**OFFICIAL REPORTS OF ARMED
CONFLICTS IN KOSOVO: 1 JANUARY
TO 24 MARCH 1999**

1. REPORT OF THE SECRETARY GENERAL OF THE
UNDATED 17 MARCH 1999

33. It is obvious that the humanitarian problems in Kosovo are the consequences of the armed conflict and the political crisis and they are difficult to separate from the security issues... According to OSCE, the current security environment in Kosovo is characterized by the disproportionate use of force, including mortar and tank fire, by the Yugoslav authorities in response to persistent attacks and provocations by the Kosovo Albanian paramilitaries.

25. A resumption of hostilities in Kosovo in January and February resulted in new displacement of population. Clashes between Kosovo Albanian paramilitary units and Serbian forces in the Podujevo area have prevented the return of some 15,000 displaced from about 17 villages. Serb and Albanian homes along the main Pristina-Podujevo road remain deserted, as intermittent fighting occurs some 3 kilometres to the west. This area has witnessed a pattern of displacement, return and fresh displacement. In Drenica, Suva Reka, Stimlje, Prizren and

Vucitrn similar clashes also led to a new displacement of population. In some cases return took place, at least of some of the displaced, as soon as the violence passed; in other places, where the presence of Serbian security forces or Kosovo Albanian paramilitary units continued, fear prevented early return.

26. February was also marked by the continuing departure of the Serbian population from towns and villages where they had been in the minority, or where clashes between Kosovo Albanian paramilitary units and security forces occurred. According to information provided by the Serbian Commissioner for Refugees, some 90 villages in central and western Kosovo have lost their entire Serbian population in recent months, while towns like Podujevo and Kosovska Mitrovica have seen a reduction of the Serbian population. The estimated number of displaced Serbs within Kosovo is 10,000 while 30,000 more have moved to other parts of Serbia.

2. LETTER DATED 23 MARCH 1999 FROM THE SECRETARY GENERAL OF NATO TO THE SECRETARY GENERAL OF THE UN

I am writing to provide you with a further report on compliance by the parties to the conflict in Kosovo with Security Council resolutions 1199 (1998) of 23 September 1998 and 1203 (1998) of 24 October 1998 and by the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) with commitments provided to NATO on 25 October 1998.

KVM = Kosovo Verification Mission;

MUP = Special Police;

UCK = Kosovo Liberation Army;

VJ = Yugoslav Army.

Extract of Reports

- 16-23 January: MUP/VJ continue security operations in Decane and Stimlje areas.
- 24-30 January: UCK attacks MUP element in vicinity of Bistrazin. One MUP policeman is wounded, two UCK are killed.
UCK attacks a MUP police station near Rogovo; one MUP officer is killed. MUP respond in a security operation that leaves 24 Kosovo-Albanians dead.
VJ respond with tank fire to UCK attempt to seize VJ bulldozer.
UCK kills two MUP policemen in Gornji Streoc.
- 31 January VJ/MUP shelling in Podujevo against civilian

- 7-14 February VJ/MUP forces fire on the village of Lapastica, near Podujevo.
 UCK conducts harassing attacks against VJ positions near Dulje and Gornja Lapastica. No injuries reported.
 VJ forces in the vicinity of Luzane open fire on targets in the direction of the village of Godisnjak. Targets include a mosque.
- 15-22 February UCK opens fire on a MUP patrol in the vicinity of Lopusnik and attack a police station in Orahovac.
 VJ shell Studecane, causing thousands of civilians to leave the area for safety.
- 23 February-1 March VJ/MUP forces deployed to the area around Bukos for live-fire "exercises" engaged UCK forces with automatic weapons and tank fire. MUP and Serbian civilians are trapped in a house in Bukos as UCK forces fired on them. Five MUP are injured in the siege.
 VJ forces reinforced with MUP and supported by two tanks and an unspecified quantity of mortars launch an attack against UCK positions near Vucitrn. Sporadic fighting continues in this area through 27 February.
 UCK and MUP clash in Randubava leaves two Kosovar Albanian civilians dead.
 UCK ambushes a MUP patrol in Krivovo leaving one MUP policeman dead and another seriously wounded.
 UCK ambush near village of Gajare, outside Kacanik, leaves one Serbian policeman killed and four wounded.
- 2-8 March Combined VJ/MUP security operations continue in the Federal Republic of Yugoslavia-former Yugoslav Republic of Macedonia border area for the entire week. Force activity is most notable in the Kacanik area, where villages inhabited by civilians are shelled. Serb force activity causes a large number of civilians to leave their homes.
 VJ live-fire "exercises" continue in the Bukos area. UCK retaliate with mortar attacks against some VJ positions.
 UCK attack a MUP convoy near Vrsevec (Vucitrn

area). Eleven MUP are injured.

UCK attack a MUP convoy along the Pristina-Pec highway.

VJ forces fire on the village of Gjurica with at least 10 tanks.

Combined VJ/MUP security operations targeted against known and suspected UCK strongholds begin in the Kovoska Mitrovica area.

Combined VJ/MUP security operations begin in the Vucitrn and Malisevo-Orahovac areas. By the end of the week, these operations extend to the area south-west of Prizren.

UCK attack a MUP patrol near Zur.

9-16 March

Combined VJ/MUP sweep operations continue through the week near Vucitrn, Malisevo-Orahovac, Dus, the Cicavica Mountains and the Federal Republic of Yugoslavia-former Yugoslav Republic of Macedonia border.

UCK attack MUP patrol in Zur; MUP and UCK clashes follow.

VJ employ artillery and tank fire against UCK positions near Streoce, Mijalic, Drvare and Osilane.

UCK conduct attacks against Serb police stations and VJ convoys.

17-22 March

VJ forces attacked UCK-held areas in the Shale and Llap UCK sub-zones, as well as UCK positions in the Podujevo areas.

VJ units near the village of Glogovac fire on UCK fighters and their positions with artillery.

APPENDIX 6

UN SECURITY COUNCIL RESOLUTION 1244 (1999)

RESOLUTION 1244 (1999)

Adopted by the Security Council at its 4011th meeting, on 10 June 1999

The Security Council,

Bearing in mind the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security,

Recalling its resolutions 1160 (1998) of 31 March 1998, 1199 (1998) of 23 September 1998, 1203 (1998) of 24 October 1998 and 1239 (1999) of 14 May 1999,

Regretting that there has not been full compliance with the requirements of these resolutions,

Determined to resolve the grave humanitarian situation in Kosovo, Federal Republic of Yugoslavia, and to provide for the safe and free return of all refugees and displaced persons to their homes,

Condemning all acts of violence against the Kosovo population as well as all terrorist acts by any party,

Recalling the statement made by the Secretary-General on 9 April 1999, expressing concern at the humanitarian tragedy taking place in Kosovo,

Reaffirming the right of all refugees and displaced persons to return to their homes in safety,

Recalling the jurisdiction and the mandate of the International Tribunal for the Former Yugoslavia,

Welcoming the general principles on a political solution to the Kosovo crisis adopted on 6 May 1999 (S/1999/516, annex 1 to this resolution) and welcoming also the acceptance by the Federal Republic of Yugoslavia of the principles set forth in points 1 to 9 of the paper presented in Belgrade on 2 June 1999 (S/1999/649, annex 2 to this resolution), and the Federal Republic of Yugoslavia's agreement to that paper,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2,

Reaffirming the call in previous resolutions for substantial autonomy and meaningful self-administration for Kosovo,

Determining that the situation in the region continues to constitute a threat to international peace and security,

Determined to ensure the safety and security of international personnel and the implementation by all concerned of their responsibilities under the present resolution, and acting for these purposes under Chapter VII of the Charter of the United Nations,

1. Decides that a political solution to the Kosovo crisis shall be based on the general principles in annex 1 and as further elaborated in the principles and other required elements in annex 2;
2. Welcomes the acceptance by the Federal Republic of Yugoslavia of the principles and other required elements referred to in paragraph 1 above, and demands the full cooperation of the Federal Republic of Yugoslavia in their rapid implementation;
3. Demands in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo will be synchronized;
4. Confirms that after the withdrawal an agreed number of Yugoslav and Serb military and police personnel will be permitted to return to Kosovo to perform the functions in accordance with annex 2;
5. Decides on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcomes the agreement of the Federal Republic of Yugoslavia to such presences;
6. Requests the Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence, and further requests the Secretary-General to instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner;

7. Authorizes Member States and relevant international organizations to establish the international security presence in Kosovo as set out in point 4 of annex 2 with all necessary means to fulfil its responsibilities under paragraph 9 below;
8. Affirms the need for the rapid early deployment of effective international civil and security presences to Kosovo, and demands that the parties cooperate fully in their deployment;
9. Decides that the responsibilities of the international security presence to be deployed and acting in Kosovo will include:
 - (a) Deterring renewed hostilities, maintaining and where necessary enforcing a cease-fire, and ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces, except as provided in point 6 of annex 2;
 - (b) Demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups as required in para. 15 below;
 - (c) Establishing a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered;
 - (d) Ensuring public safety and order until the international civil presence can take responsibility for this task;
 - (e) Supervising demining until the international civil presence can, as appropriate, take over responsibility for this task;
 - (f) Supporting, as appropriate, and coordinating closely with the work of the international civil presence;
 - (g) Conducting border monitoring duties as required;
 - (h) Ensuring the protection and freedom of movement of itself, the international civil presence, and other international organizations;
10. Authorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo;
11. Decides that the main responsibilities of the international civil presence will include:
 - (a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648);

- (b) Performing basic civilian administrative functions where and as long as required;
 - (c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;
 - (d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities;
 - (e) Facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords (S/1999/648);
 - (f) In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement;
 - (g) Supporting the reconstruction of key infrastructure and other economic reconstruction;
 - (h) Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid;
 - (i) Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;
 - (j) Protecting and promoting human rights;
 - (k) Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo;
12. Emphasizes the need for coordinated humanitarian relief operations, and for the Federal Republic of Yugoslavia to allow unimpeded access to Kosovo by humanitarian aid organizations and to cooperate with such organizations so as to ensure the fast and effective delivery of international aid;
 13. Encourages all Member States and international organizations to contribute to economic and social reconstruction as well as to the safe return of refugees and displaced persons, and emphasizes in this context the importance of convening an international donors' conference, particularly for the purposes set out in paragraph 11 (g) above, at the earliest possible date;
 14. Demands full cooperation by all concerned, including the international security presence, with the International Tribunal for the Former Yugoslavia;
 15. Demands that the KLA and other armed Kosovo Albanian groups end immediately all offensive actions and comply with the requirements for demilitarization as laid down by the head of the international security presence in consultation with the Special Representative of the Secretary-General;

16. Decides that the prohibitions imposed by paragraph 8 of resolution 1160 (1998) shall not apply to arms and related *matériel* for the use of the international civil and security presences;
17. Welcomes the work in hand in the European Union and other international organizations to develop a comprehensive approach to the economic development and stabilization of the region affected by the Kosovo crisis, including the implementation of a Stability Pact for South Eastern Europe with broad international participation in order to further the promotion of democracy, economic prosperity, stability and regional cooperation;
18. Demands that all States in the region cooperate fully in the implementation of all aspects of this resolution;
19. Decides that the international civil and security presences are established for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise;
20. Requests the Secretary-General to report to the Council at regular intervals on the implementation of this resolution, including reports from the leaderships of the international civil and security presences, the first reports to be submitted within 30 days of the adoption of this resolution;
21. Decides to remain actively seized of the matter.

Annex 1: Statement by the Chairman on the conclusion of the meeting of the G8 Foreign Ministers held at the Petersberg Centre on 6 May 1999

The G-8 Foreign Ministers adopted the following general principles on the political solution to the Kosovo crisis:

- Immediate and verifiable end of violence and repression in Kosovo;
- Withdrawal from Kosovo of military, police and paramilitary forces;
- Deployment in Kosovo of effective international civil and security presences, endorsed and adopted by the United Nations, capable of guaranteeing the achievement of the common objectives;
- Establishment of an interim administration for Kosovo to be decided by the Security Council of the United Nations to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo;
- The safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian aid organizations;
- A political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of the KLA;
- Comprehensive approach to the economic development and stabilization of the crisis region.

Annex 2

Agreement should be reached on the following principles to move towards a resolution of the Kosovo crisis:

1. An immediate and verifiable end of violence and repression in Kosovo.
2. Verifiable withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable.
3. Deployment in Kosovo under United Nations auspices of effective international civil and security presences, acting as may be decided under Chapter VII of the Charter, capable of guaranteeing the achievement of common objectives.
4. The international security presence with substantial North Atlantic Treaty Organization participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.
5. Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.
6. After withdrawal, an agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the following functions:
 - Liaison with the international civil mission and the international security presence;
 - Marking/clearing minefields;
 - Maintaining a presence at Serb patrimonial sites;
 - Maintaining a presence at key border crossings.
7. Safe and free return of all refugees and displaced persons under the supervision of the Office of the United Nations High Commissioner for Refugees and unimpeded access to Kosovo by humanitarian aid organizations.
8. A political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions.

9. A comprehensive approach to the economic development and stabilization of the crisis region. This will include the implementation of a stability pact for South-Eastern Europe with broad international participation in order to further promotion of democracy, economic prosperity, stability and regional cooperation.
10. Suspension of military activity will require acceptance of the principles set forth above in addition to agreement to other, previously identified, required elements, which are specified in the footnote below.⁶² A military-technical agreement will then be rapidly concluded that would, among other things, specify additional modalities, including the roles and functions of Yugoslav/Serb personnel in Kosovo:

Withdrawal

- Procedures for withdrawals, including the phased, detailed schedule and delineation of a buffer area in Serbia beyond which forces will be withdrawn;

Returning personnel

- Equipment associated with returning personnel;
- Terms of reference for their functional responsibilities;
- Timetable for their return;
- Delineation of their geographical areas of operation;
- Rules governing their relationship to the international security presence and the international civil mission.

⁶² Other required elements:

- A rapid and precise timetable for withdrawals, meaning, e.g. seven days to complete withdrawal and air defence weapons withdrawn outside a 25 kilometre mutual safety zone within 48 hours;
- Return of personnel for the four functions specified above will be under the supervision of the international security presence and will be limited to a small agreed number (hundreds, not thousands);
- Suspension of military activity will occur after the beginning of verifiable withdrawals;
- The discussion and achievement of a military-technical agreement shall not extend the previously determined time for completion of withdrawals.

APPENDIX 7

EXTRACTS FROM KOSOVO: AN ACCOUNT OF THE CRISIS

The following extract is taken from *Kosovo: an account of the crisis*, published on the Ministry of Defence website in October 1999.

...we need to examine ways in which member states can increase their qualitative and quantitative military contribution to NATO's overall capabilities. The priority lies in such areas as precision attack weapons, secure communications and strategic movement assets. Interoperability of systems will, of course, be a key component of this.

Third, there is a particular need to boost European capabilities. In order to strengthen our ability to use force effectively, we Europeans need to improve the readiness, deployability and sustainability of our armed forces and their ability to engage in both high intensity operations and those of an expeditionary nature. This would strengthen our contribution to NATO, which remains the sole instrument for collective defence. NATO will still be the natural choice for the conduct of non-Article 5 crisis management operations which North American and European Allies might choose to undertake in the future. A strengthened European capability would allow us to undertake European-led crisis management operations, in circumstances in which the whole Alliance is not engaged.

The purpose for which these arms are intended to be used by NATO is stated to be “non-Article 5 crisis management.”

This appears to be a reference to a clause in the NATO Treaty (Article 5) that defines the purpose of NATO as being collective self-defence. The additional “military capabilities” are not intended, therefore, for NATO’s self-defence operations but for some other purposes which are neither defined nor limited in geographical scope.