INTERMEDIATE SOVEREIGNTY AS A BASIS FOR RESOLVING THE KOSOVO CRISIS

(A Discussion Paper)

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Foreword

The International Crisis Group has decided to publish the report, prepared by the Public International Law and Policy Group, as a contribution to the debate on the future status of Kosovo. The views expressed in the paper are those of the authors and do not necessarily represent the position of the International Crisis Group.

While the recent agreements brokered by US envoy Richard Holbrooke between the West and Yugoslavia may, if respected, lead to a short-term lull in violence against civilians in Kosovo, they do not provide the basis for a lasting peace. Preventing a renewal of conflict will require a political settlement which satisfies the main demands of the majority Albanian population and at the same time protects the rights of the minority Serbs. Given the apparent overwhelming support for independence among Kosovo's Albanian population, such a settlement is unlikely to be sustainable unless it at least holds out the prospect of real constitutional change.

Western governments have been reluctant to admit discussion of independence for Kosovo as a policy option for fear that such discussion might open a "Pandora's Box" of problems by encouraging other minority populations in the region to press for independence. Of particular concern is the prospect of Macedonia's ethnic Albanians – who make up almost a quarter of that country's population – launching a bid for sovereignty based on the precedent of an independent Kosovo. Pessimists predict an ensuing nightmare scenario in which a new wave of disintegration and ethnic segregation takes hold, sparking new local wars and threatening the fragile peace in Bosnia where Bosnian Serb leaders might be tempted to abandon the Dayton Agreement and announce the secession of Republika Srpska from Bosnia.

The legal analysis contained in this report is significant because it sets out the legal arguments that differentiate the Kosovo Albanians' claim to independence from those of other minority groups in the region. By reference to the constitution of the former Yugoslavia, recognized principles of international law and legal precedent expressed in decisions of the International Court of Justice and various international treaties, the authors argue that independence for Kosovo would not necessarily create a dangerous precedent for the rest of the region.

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EXECUTIVE SUMMARY

To promote a resolution of the Kosovo crisis, the international community should propose arrangements granting the people of Kosovo the status of intermediate sovereignty. The status of intermediate sovereignty would entail arrangements whereby the people of Kosovo would be entitled to exercise specified sovereign rights, while retaining specified links to the self-proclaimed Federal Republic of Yugoslavia (FRY) and committing to respect fundamental principles of international law, for a period of three to five years. After this period, Kosovo would be entitled, subject to an internationally conducted referendum within Kosovo, to seek recognition from the international community.

During the interim period, the people of Kosovo would exercise complete legislative, executive and judicial control over their internal affairs relating to economic development, internal security, education, taxation, extraction and processing of natural resources, transportation, health care, media and news broadcasting, cultural development, and the protection of minority rights. The people of Kosovo would also be entitled to begin to conduct their own international affairs and appoint international representatives.

In exchange for the exercise of these rights, Kosovo would be required to implement specific guarantees that it would protect the rights of all minority populations within its territory, respect the territorial integrity of neighboring states such as Macedonia and Albania, renounce any intention of political or territorial association with Albania, and accept its borders as confirmed by the 1974 Yugoslav Constitution. Kosovo representatives would also participate in the government of the Federal Republic of Yugoslavia to the degree necessary to ensure an effective transition to its own international status.

To ensure the protection of the rights of the inhabitants of Kosovo, both Albanian and Serbian, international monitors from the OSCE and EU, as well as independent non-governmental organizations, would be entitled to establish monitoring missions and would be accorded complete and unrestricted access to Kosovo and be required to publicly report their findings. In addition to monitoring the protection of human rights, these organizations would certify the complete withdrawal from Kosovo within six months of all Yugoslav and Republic of Serbia military, paramilitary and police forces, as well as any other external forces.

At the end of this interim period the criteria for recognition of Kosovo would include the traditional legal criteria of territory, population, government and capacity to conduct international relations, as well as the additional political criteria of whether it had fulfilled its commitment to protect the rights of all minority populations within its territory, respected the territorial integrity of Macedonia and Albania, rejected any political or territorial association with Albania, and maintained the status of its borders. Once recognized by

the international community, Kosovo would remain bound by these commitments, and would revoke its participation in the Yugoslav federal government.

This approach to a peaceful resolution of the Kosovo crisis is based on principles of international law, which provide that all self-identified groups with a coherent identity and connection to a defined territory are entitled to collectively determine their political destiny in a democratic fashion, and to be free from systematic persecution. In cases where self-identified groups are effectively denied their right to democratic self-government and are consequently subjected to gross violations of their human rights, they are entitled to seek their own international status in order to ensure the protection of those rights.

The case for intermediate sovereignty is further supported by: 1) the legal and factual similarity between Kosovo and the other Republics of the former Yugoslavia which were deemed by the international community to be entitled to international recognition; 2) the legal precedent of earned recognition established by the international community in recognizing Slovenia, Croatia, Bosnia-Herzegovina and Macedonia; 3) the fact that Yugoslavia has dissolved, and the international community has rejected Serbia/Montenegro's claim to continue its international legal personality; 4) the historical fact that Kosovo, while legitimately part of Yugoslavia, has never been legitimately incorporated into Serbia; 5) the fact that the people of Kosovo have been subjected to ethnic aggression; and 6) recent precedent set by the Russian/Chechen Accords and the Northern Ireland Peace Agreement.

INTERMEDIATE SOVEREIGNTY AS A BASIS FOR RESOLVING THE KOSOVO CRISIS

To promote a resolution of the Kosovo crisis, the international community should propose arrangements granting the people of Kosovo the status of intermediate sovereignty.

I. Statement of Proposed Policy Approach of "Intermediate Sovereignty"

The status of intermediate sovereignty would entail arrangements whereby the people of Kosovo would initially be entitled to exercise specified sovereign rights, while retaining specified links to the self-proclaimed Federal Republic of Yugoslavia (FRY) and committing to respect fundamental principles of international law, for a period of three to five years. The borders of Kosovo both during and after this period would be those as existed in 1974 when Kosovo's status as an autonomous province of the Socialist Federal Republic of Yugoslavia (SFRY) within the Republic of Serbia was confirmed by the 1974 Constitution. During the three to five year period, the people of Kosovo would exercise complete legislative, executive and judicial control over their internal affairs relating to economic development, internal security, education, taxation, extraction and processing of natural resources, transportation, health care, media and news broadcasting, cultural development, and the protection of minority rights.

During this three to five year period, the people of Kosovo would be entitled to begin to conduct their own international affairs and appoint international representatives. At this time, Kosovo would be required to implement specific guarantees that it would protect the rights of all minority populations within its territory (and, towards that end, make concrete progress towards an independent national judiciary with interim international participation), respect the territorial integrity of neighboring states such as Macedonia and Albania, renounce any intention of political or territorial association with Albania, and accept its borders as confirmed by the 1974 Yugoslav Constitution. Kosovo representatives would also participate in the government of the FRY to the degree necessary to ensure an effective transition to an international status for Kosovo.

To ensure the protection of the rights of the inhabitants of Kosovo, both Albanian and Serbian, international monitors from the OSCE and EU, as well as independent non-governmental organizations, would be entitled to establish monitoring missions and would be accorded complete and unrestricted access to Kosovo and be required to publicly report their findings. In addition to monitoring the protection of human rights, these organizations would certify the complete withdrawal from Kosovo within six months of all Yugoslav and Republic of Serbia military, paramilitary and police forces, as well as any other external forces.

At the end of this period, Kosovo would be entitled, subject to an internationally conducted referendum within Kosovo, to seek recognition from the international community. The criteria for recognition of Kosovo would include the traditional legal criteria of territory, population, government and capacity to conduct international relations, as well as the additional political criteria of whether it had fulfilled its commitment to protect the rights of all minority populations within its territory, respected the territorial integrity of Macedonia and Albania, rejected any political or territorial association with Albania, and maintained the status of its borders. Once recognized by the international community, Kosovo would remain bound by these commitments, and would revoke its participation in the Yugoslav federal government.

II. The Legal Basis for a Policy Approach of Intermediate Sovereignty for Kosovo

According to the general principles of international law, all self-identified groups with a coherent identity and connection to a defined territory are entitled to collectively determine their political destiny in a democratic fashion, and to be free from systematic persecution. In cases where self-identified groups are effectively denied their right to democratic self-government and are consequently subjected to gross violations of their human rights, international law does not require that they remain a constituent territorial unit of the oppressive state.

To preserve the balance between the principle of territorial integrity and the fact that territorial units may under some circumstances legitimately disassociate from their parent state, international law and recent state practice indicate that as a precondition to the legitimate attainment of international status, a self-identified group seeking to disassociate itself from the parent state must affirmatively demonstrate that it has been denied the ability to exercise its right of democratic self-government and that its people have been denied basic human rights. Recent state practice also indicates that a territorial unit seeking to attain international status must respect the principle of *uti possidetis* (i.e., “as you possess”) and should articulate a legitimate basis for its disassociation from the parent state.

Although the Kosovo Albanians constitute a self-identified group with a territorial connection, they have been systematically denied their right to collectively engage in democratic self-government. This denial has been accompanied by increasing levels of systematic persecution, state-sponsored oppression and discrimination, and denials of basic human rights. The Kosovo Albanians are thus not required to remain within the political structure of the self-proclaimed FRY, and may legitimately claim an international status of their own, subject to the principle of *uti possidetis* and the articulation of a legitimate basis for its disassociation from the self-proclaimed FRY.

In the case of the dissolution of the former SFRY, the republics of Slovenia, Croatia, Bosnia-Herzegovina and Macedonia were deemed entitled to disassociate from Yugoslavia on the basis that they had been denied the proper exercise of their right of democratic self-government, they possessed clearly defined borders within the umbrella state, and in some cases they had been subject to ethnic aggression and crimes against humanity committed by the paramilitary and military forces of the central government. Notably, the international community did not consider that entities such as the Republika Srpska, although entitled to a right of political autonomy, were entitled to disassociate from Bosnia-Herzegovina as they had not been denied the proper exercise of their political rights, and they did not posses the status of an internal republic with historically defined borders.

In acknowledging the independence of Slovenia, Croatia, Bosnia-Herzegovina and Macedonia, the international community, and in particular the European Community, established a number of preconditions, such that their attainment of international status would be exercised consistent with the principles of *uti possidetis* and respect for territorial integrity. Most important, the international community recognized these states within the borders that they possessed as constituent territorial units of the former Yugoslavia. The international community also required these states to hold a referendum confirming the wishes of the general public to seek independence, and to demonstrate their commitment to respect fundamental principles of international law, including those relating to the protection of minority rights, democratic processes of governance and economic organization, and the protection of human rights. In certain instances, the international community further required the new states to make commitments to respect the territorial integrity of and renounce any territorial claims against specific neighboring states.

Like the republics of Slovenia, Croatia, Bosnia-Herzegovina and Macedonia, Kosovo is entitled to attain international status on the basis that its population has been denied the proper exercise of its right to collectively determine its political fate in a democratic fashion by being excluded from the political process within the self-proclaimed FRY. Moreover, the Kosovo Albanians have been denied the ability to enjoy basic human rights such as access to education and health care and freedom from torture and arbitrary imprisonment. In addition, the entity of Kosovo possesses clearly defined internal borders, and prior to the initiation of the dissolution of Yugoslavia, possessed almost exactly the same rights and obligations as the other republics of the former Yugoslavia. And, like many of the other republics, Kosovo now has become the victim of ethnic aggression and crimes against humanity perpetrated by forces loyal to the Serbian regime.

The legal basis for intermediate sovereignty is enhanced by the dissolution of the Yugoslavia, since the United States and other major powers have explicitly declined to recognize the self-proclaimed FRY as the continuity of the Yugoslavia, and many of these states have further refused to recognize the FRY as a state or to grant it membership in international organizations. Under these

circumstances Kosovo occupies a very similar situation to the other republics of the Yugoslavia which attained international status.

As with the other republics of the former Yugoslavia, the international community may properly recognize Kosovo within its current territorial boundaries (consistent with the doctrine of *uti possidetis*) following its demonstration of commitment to fundamental precepts of contemporary international law, including respect for human rights, in particular those of the Serb minority in Kosovo, and respect for the territorial integrity of Macedonia and other neighboring states. Moreover, in addition to the precedents set for conditional recognition by the cases of Slovenia, Croatia, Bosnia-Herzegovina and Macedonia, precedents for interim arrangements have been established by the Northern Ireland Peace Agreement.

III. Historical Background

On December 1, 1918, following the end of World War I, Kosovo became a part of The Kingdom of Serbs, Croats and Slovenes, which in 1929 became Yugoslavia. In 1919, in response to a denial of their basic human rights, including the right to education in the Albanian language, an estimated 10,000 rebels took up arms against the central government of the Kingdom. The suppression of this revolt involved the commission of widespread atrocities, the arming of Serbian civilians, and the relocation of women and children to internment camps in central Serbia.[1] Subsequent to this revolution, the central government accelerated a colonization program, promising sizable tracts of land and exemption from taxes for ethnic Serbians willing to relocate to Kosovo.[2]

In 1929, Yugoslavia was divided into nine governorships, with the territory of Kosovo being dispersed amongst three governorships.[3] From that time until World War II, much of the land held by Kosovo Albanians was confiscated and transferred to the state. From 1933 the government of Yugoslavia also conducted consultations with the government of Turkey regarding the prospects for expelling between 200,000 and 300,000 Kosovo Albanians to Turkey. In 1938 an agreement was reached with Turkey to expel as many as 400,000 Kosovo Albanians. This agreement was frustrated by the initiation of World War II.[4]

During World War II, Yugoslavia was occupied by Axis forces, with Kosovo being partitioned between Bulgaria, Albania (governed by Italy), and Germany. Following the end of the war, the state of Yugoslavia was reconstituted, with the 1946 Yugoslav constitution providing that Kosovo would be an Autonomous

[1] Noel Malcolm, *A Short History of Kosovo*, p. 273-76 (1998).
[2] Malcolm, supra, p. 280-81. It is estimated that approximately 70,000 individuals settled in Kosovo as a result of the colonization program.
[3] Malcolm, supra, p. 283.
[4] Malcolm, supra, p. 285-86.

Region within the Republic of Serbia. Although the 1946 constitution did not address in detail the rights and obligations of the Autonomous Region of Kosovo, the Serb Republic constitution provided that Kosovo would direct its own economic and cultural development and that it would be responsible for protecting the rights of its citizens.[5] At this time, the Yugoslav government relaxed the restrictions on the use of the Albanian language and reduced the intensity of the colonization program, which had been halted by the war – during which time many of the Serbian colonists had been forced to return to Serbian territory.

In 1963, Yugoslavia adopted a new constitution, which promoted Kosovo to an Autonomous Province, but effectively decreased some of its federal rights. Yet, in 1968 the constitution was amended to provide Autonomous Provinces the status of "socio-political communities" which was the same term used to describe the other Republics making up Yugoslavia. The Autonomous Provinces were also provided the right to engage in all activities associated with Republic level status, except for those tasks which were of concern to the Republic of Serbia as a whole.[6] In early 1969, the Kosovo Albanians were permitted to fly the Albanian flag as their "national emblem," and later that year the University of Prishtina was established. Throughout the 1970's the Kosovo Albanians increased their participation in the economic sector, political bureaucracy, and local police forces, with Kosovo Albanians holding two-thirds of the membership in the local League of Communists, and three-fourths of the membership in the local police and security forces.[7]

In 1974 Yugoslavia adopted yet another constitution, which provided that the Autonomous Province of Kosovo, as well as the Autonomous Province of Vojvodina, would be entitled to a status nearly equivalent to that of the other six republics of Yugoslavia. In particular, Kosovo was entitled to participate in the federal government, with its own representative on the rotating federal Presidency and with elected Parliamentarians in the federal Parliament. Moreover, Kosovo adopted its own constitution, as authorized by for in the Yugoslav Constitution of 1974.

In the early 1980's, after Tito's death, the Kosovo Serbians began to agitate for a return to the earlier political system, in which the Kosovo Serbians held greater privilege and power. In 1985, the Serbian Academy of Sciences drafted a "Memorandum," which essentially called for a revocation of the rights accorded Kosovo under the 1974 constitution, and the creation of a greater Serbia. In 1987, Slobodan Milosevic, then a deputy to the President of the Serbian Party, traveled to Kosovo to hear demands by Kosovo Serbians. In response to an orchestrated riot by Serbian nationalists, Mr. Milosevic delivered an extemporaneous speech calling for the "defense of the sacred rights of the

[5] Malcolm, supra, p. 289-93, 315-17.
[6] Malcolm, supra, p. 324-25.
[7] Malcolm, supra, p. 326.

Serbs."[8] In late 1987, Mr. Milosevic used the growing political unrest in Kosovo as a platform for assuming the presidency of the Serbian League of Communists.

In early 1988 the Serbian assembly adopted amendments to the Serbian constitution which removed Kosovo's control over the Kosovan police force, criminal and civil courts, civil defense, and economic, social and education policy. Moreover, the amendments effectively prohibited the use of Albanian as an official language in Kosovo. To force these amendments through the Kosovo parliament as required by the Federal constitution, members of the Serbian security forces surrounded the Kosovo Parliament building with tanks and armored personnel carriers, and inserted special police and communist party functionaries amongst the Kosovo delegates.[9] These actions were met by mass demonstrations of the Kosovo Albanian population and resulted in the declaration of a state of emergency in Kosovo by the Serbian regime.

In March and June of 1990 the Serbian assembly issued a series of decrees meant to entice Serbs to return to Kosovo, while suppressing the rights of the Kosovo Albanians. The decrees for instance created new "Serb only" municipalities, forbade the sale of property to Albanians by departing Serbs, closed the Albanian language newspaper, closed the Kosovo Academy of Sciences, and dismissed thousands of state employees.[10] In response, on July 2, 1990 the Albanian members of the Kosovo Assembly declared Kosovo "an equal and independent entity within the framework of the Yugoslav federation."[11] The Serbian regime responded by dissolving the Kosovo Assembly and the government. And finally, in late 1990 the Serbian regime expelled 80,000 Kosovo Albanians from state employment.

The members of the dissolved Albanian assembly responded by holding a secret meeting and creating a constitutional law for the Republic of Kosovo, and then holding a referendum on the question of whether Kosovo should be declared a sovereign and independent republic. According to Kosovo Albanian sources, 87 percent of eligible voters participated in the vote, with 99 percent voting in favor of independence. Subsequently, using the same procedure of underground voting, the Kosovo Albanians held an election on May 24, 1992, whereby they elected a new assembly and government.[12] More recently in the spring of 1998, the Kosovo Albanians held a second round of parliamentary elections as required by their constitutional law.

From 1989 until the present, the Kosovo Albanians have been denied not only the ability to participate in the federal government, but also the ability to participate in the local formal political structures responsible for determining the political fate of Kosovo. Moreover, the Kosovo Albanians have been subjected

[8] Malcolm, supra, p. 341-42.
[9] Malcolm, supra, p. 343-45.
[10] Malcolm, supra, p. 345-46.
[11] Malcolm, supra, p. 346.
[12] Malcolm, supra, p. 347.

to a systematic denial of their basic human rights, which includes a policy of arbitrary arrests, police violence, detention incommunicado, torture, summary imprisonment and economic marginalization. Most recently, the Kosovo Albanians have become the victims of Serbian ethnic aggression, which has resulted in the displacement of over 350,000 civilians, the deliberate destruction of over 18,000 homes, the siege of almost half of the population centers, and the looming prospects of mass starvation as the winter approaches.

In addition to politically and economically marginalizing the Kosovo Albanians, the Serbian regime also began a process of marginalizing the other Yugoslav republics by blocking the rotation of the federal Presidency and removing non-serbs from key federal positions. In response, Slovenia and Croatia declared independence in June 1991. The Serbian regime retaliated by ordering the Yugoslav National Army and associated paramilitary forces to occupy strategic positions in Slovenia and Croatia. The ensuing conflict resulted in the commission of mass atrocities against civilians in Croatia. Prompted by the fear of facing the same fate as the Kosovo Albanians, the republics of Bosnia-Herzegovina and Macedonia declared independence as well. Slovenia and Croatia were recognized as independent states in early 1992,[13] while Bosnia-Herzegovina was recognized later in the year, [14] and Macedonia was recognized in late 1993.[15] The Serbian regime responded to these declarations of independence by instigating a war of ethnic aggression, which relied extensively on terrorizing civilians to accomplish its objects of ethnic separation.[16] The intensity and barbarity of these acts eventually led to the creation of an international tribunal to prosecute those responsible for war crimes and crimes against humanity.

After failing to prevent the secession of Slovenia, Croatia, Bosnia-Herzegovina and Macedonia, Serbia and Montenegro declared the formation of a joint state, the Federal Republic of Yugoslavia, which it claimed continued the international legal personality of Yugoslavia.[17] The European Community and United States denied Serbia/Montenegro's claim to be the continuation of Yugoslavia and refused to recognize it as a state.[18]

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[13] The European Community announced recognition of Slovenia and Croatia on January 15, 1992. Keesings, Vol. 38, No. 1 p. 38703 (January 1992).

[14] The United States then recognized Slovenia, Croatia and Bosnia as independent states on April 7, 1992. Keesings, Vol. 38, No. 4, p. 38848 (April 1992).

[15] On December 16, 1993, six members states of the European Union recognized Macedonia under the name Former Yugoslav Republic of Macedonia. Eventually, all the European Community member states, except Greece, recognized Macedonian independence. The United States recognized Macedonia on February 9, 1994. White House Press Release, U.S. Recognition of the Former Yugoslav Republic of Macedonia, (February 9, 1994).

[16] Notably, on June 27, 1992, the European Community issued a declaration declaring that while all parties were responsible for the continuing violence, the greatest share of responsibility for the crisis fell on the Serbian leadership and the JNA controlled by it. Keesings, Vol. 38, No. 6., p. 38943 (June 1992).

[17] Keesings, Vol. 38, No. 4, p. 38848 (April 1992).

[18] U.S. Department of State, Chronology: Developments related to the Crisis in Bosnia, March 10 - August 28, 1992, in Dispatch Vol. 3 No. 35, p. 676 (August 31, 1992).

IV. The Entitlement of the People of Kosovo to Attain a Degree of International Status in order to Ensure their Right to Collectively Determine their Political Destiny and to be Free from Systematic Persecution

Although international law and state practice strongly support the principle of a state's territorial integrity, in certain circumstances territorial units of a state have legitimately disassociated themselves from the parent state and created or resumed their own international status. Recent examples include the separation of the Baltic states from the former Soviet Union, the subsequent dissolution of the Soviet Union and the attainment of statehood by all of its former republics, the separation of Czechoslovakia into the Czech Republic and Slovakia, and the dissolution of the SFRY leading to statehood for Slovenia, Croatia, Bosnia and Herzegovina, and Macedonia.

As proclaimed by former Secretary General of the United Nations, Boutros-Ghali:

"sovereignty, territorial integrity and independence of states within the established international system, and the principle of self-determination of peoples, both of great value and importance, must not be permitted to work against each other in the period ahead."[19]

A. The Denial of the Kosovo Albanian's Right to Collectively Determine their Political Fate through Democratic Means and to be Free from Systematic Persecution as a Precondition for the Creation of an Independent Status for Kosovo

To preserve the balance between the principle of territorial integrity and the fact that territorial units may under some circumstances legitimately disassociate from their parent state, international law and recent state practice indicate that the people of a territorial unit seeking disassociation from the predecessor state must have been denied the ability to exercise their right of self-determination, and must respect the principle of *uti possidetis*. Recent state practice also indicates that a territorial unit seeking to attain international status should articulate a legitimate basis for its secession.

Recent developments in international law support the proposition that if a self-identified people with a territorial nexus are denied their right to collectively determine their political fate through democratic means and to be free from systematic persecution, they will inevitably become entitled to attain international status in order to protect these rights. As a result, noted scholars have argued

[19] UN doc. A-47-277, S-24 111, June 17, 1992, p.5. See also, the Final Act of the Conference on Security and Cooperation in Europe, which stresses that all principles of international law (i.e. human rights, fundamental freedom, self-determination, etc.) should be interpreted whilst taking the others into account. ILM p. 1293 (1975).

that, "a minority within a state, especially if it occupies discrete territory, may have a right to secede - roughly analogous to a decolonization right - if it is persistently and egregiously denied political and social equality as well as the opportunity to retain its cultural identity."[20] Similarly, scholars have declared more bluntly that "severe deprivations of human rights often leave no alternative to territorial separation."[21]

In fact, international law is affirmatively agnostic as to whether certain groups of people have or do not have a right to attain international status. It is thus more appropriate to consider the denial of the right of self-determination at least as a precondition to the attainment of international status.[22] As articulated by Ved Nanda, for a group of people to seek international status, "there must be little hope that any action short of separation would satisfy the sub-group's desire for effective participation in the [democratic] process."[23] The greater the degree of a group's exclusion from the democratic process the more valid the option of providing that group with international status becomes.[24]

1. The Denial of Self-Determination as a Precondition to the Attainment of International Status

The denial of the exercise of the right of democratic self-government as a precondition to the creation of international status is supported most strongly by the United Nations' 1970 Declaration on Friendly Relations, wherein the General Assembly set out the familiar competing imperative of territorial integrity, but with an important caveat:

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States *conducting themselves in compliance with the principle of equal rights and*

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[20] Frederic Kirgis, Jr., *The Degrees of Self-Determination in the United Nations Era*, 88 "American Journal of International Law" p. 307 (1994), citing Thomas Franck, *Postmodern Tribalism and the Right to Secession*, in "Peoples and Minorities in International Law" p. 13-14, (1993).

[21] Ved Nanda, *The New Dynamics of Self-Determination: Revisiting Self-Determination as an International Law Concept: A Major Challenge in the Post-Cold War Era*, 3 ILSA "Journal of International and Comparative Law" p. 443, (1997).

[22] See Thomas M. Franck, *Fairness in the International Legal and Institutional System,* 240 in "Recueil des Cours" 135 (1993-III).

[23] Ved Nanda, *Self-Determination Under International Law: Validity of Claims to Secede*, 13 "Case Western Reserve in Journal of International Law" p. 277 (1981).

[24] As Frederic Kirgis (supra, p. 308) has written

> "One can thus discern degrees of self-determination, with the legitimacy of each tied to the degree of representative government in the state. The relationship is inverse between the degree of representative government, on the one hand, and the extent of destabilization that the international community will tolerate in a self-determination claim, on the other. If a government is at the high end of the scale of democracy, the only self-determination claims that will be given international credence are those with minimal destabilizing effect. If a government is extremely unrepresentative, much more destabilizing self-determination claims may well be recognized."

self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color.[25] [emphasis added]

By this act, the General Assembly indicated that states are entitled to invoke the right of territorial integrity so long as they possess "a government representing the whole people belonging to the territory without distinction as to race, creed or color."[26] Where such a government is not present, "peoples" within existing states will be entitled to an unlimited right to self-determination.[27] This reading of the clause is supported by a member of the United States delegation who participated in drafting the Declaration: "a close examination of its text will reward the reader with an affirmation of the applicability of the principle of self-determination to peoples within existing states and the necessity for governments to represent the governed."[28]

More recently, in considering whether Quebec could properly secede from Canada, the Canadian Supreme Court found that,

"a right to secession only arises under the principle of self-determination of peoples at international law where 'a people' is governed as part of a colonial empire; where 'a people' is subject to alien subjugation, domination or exploitation; and possibly where 'a people' is denied any meaningful exercise of its right to self-determination within the state of which it forms a part.[29]

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[25] Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, GA Res. 2625 (XXV) (Oct. 24, 1970).

[26] Antonio Cassese (in *Self-Determination of Peoples* p. 112, (1995)) has 'translated' this clause in the following manner:

> "If in a sovereign State the government is 'representative' of the whole population, in that it grants equal access to the political decision-making process and political institutions to any group and in particular does not deny access to government to groups on the basis of race, creed or color, then that government respects the principle of self-determination; consequently, groups are entitled to claim a right to self-determination only where the government of a sovereign State denies access on such grounds."

[27] The savings' clause in the Friendly Relations Declaration might arguably be read as applying only to governments that are unrepresentative by virtue of distinctions based on "race, creed or color." Distinctions based on political opinion, for example, might not trigger the clause. Whatever the persuasiveness of this reading, it is important to note that the 1993 Vienna Declaration of the World Conference on Human Rights, which was accepted by all United Nations member states, reiterated the savings clause but without this limiting language. Paragraph 2 of Part I speaks of states, "possessed of a government representing the whole people belonging to the territory *without distinction of any kind*" (emphasis added). This version of the clause withholds the assurance of territorial integrity from states whose governments exclude citizens for any reason whatever.

[28] Robert Rosenstock, *The Declaration of Principles of International Law Concerning Friendly Relations: A Survey*, 65 "American Journal of International Law" p. 732 (1971). See also, McCorquodale, supra, p. 880 "[i]t appears that only a government of a State which allows all its peoples to decide freely their political status and economic, social and cultural development has an interest of territorial integrity which can possibly limit the exercise of a right of self-determination.".

[29] Decision of the Supreme Court of Canada in the Matter of Section 53 of the Supreme Court Act, R.S.C., 1985, C. S-26; and in the matter of A Reference by the Governor in Council Concerning Certain Questions Relating to the Secession of Quebec from Canada, as set out in Order in Council P.C. 1996-1997, dated September 30, 1996, at para. 154 [hereinafter Decision of the Supreme Court of Canada].

The Court then went on to declare,

A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its internal arrangements, is entitled to maintain its territorial integrity under international law and to have the territorial integrity recognized by other states.[30]

As the Court found that the people of Quebec had not been "denied meaningful access to government to pursue their political, economic, cultural and social development, they were not entitled to secede from Canada."[31] Implicitly, however, had the Court found that the people of Quebec were denied any such a right of democratic self-government and respect for human rights, then secession from Canada might have been permissible.

As a government's legitimacy derives from a people's exercise of the right of self-determination and from its conduct in accordance with its obligation to protect and promote the fundamental human rights of all of its people, the question must therefore be asked whether a government has been imposed on people by force, or by an exercise of self-determination.

Before assessing whether the Kosovo Albanians have been denied their right of democratic self government and respect for human rights, it is necessary to establish that these rights affirmatively exist in international law, the exact nature of these rights, and whether the Kosovo Albanians are entitled to these rights.

2. Whether the People of Kosovo Possess a Right to Collectively Determine their Political Destiny and to be Free from Systematic Persecution

Under international law a self-identified group of people may, in specific instances, make claim to certain human rights, which include the right to collectively determine their political destiny in a democratic fashion, and to be free from systematic persecution. In many instances the rights enjoyed by self-identified groups are collectively referred to as the right of self-determination. This section briefly sets forth the status of the right of self-determination in international law, the exact nature and scope of the right of self-determination, and explores whether the Kosovo Albanians constitute a group entitled to self-determination.

[30] Decision of the Supreme Court of Canada, at para. 154.
[31] Id.

a. The Status of the Right of Self-Determination in International Law

The collection of rights referred to as the right of self-determination is recognized as "one of the essential principles of contemporary international law."[32] The principle of self-determination is recognized in the Charter of the United Nations,[33] and the "right" to self-determination is included in the Declaration on Granting of Independence to Colonial Countries and Peoples,[34] the United Nations' International Covenant on Economic, Social and Cultural Rights, and Covenant on Civil and Political Rights,[35] and the Declaration of Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations ("Declaration on Friendly Relations").[36]

The principle of self-determination has also been recognized in the jurisprudence of the International Court of Justice. In the Court's advisory opinion concerning Namibia, it affirmed the right to self-determination as defined by the United Nations, declaring that "the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them."[37] In the Case Concerning East Timor the Court declared that "the principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court . . . it is one of the essential principles of contemporary international law."[38] Finally, the right of self-determination was acknowledged in the European Community's Guidelines on Recognition issued by the Conference on Yugoslavia Arbitration Committee.[39]

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[32] Case Concerning East Timor, 1995 ICJ 90, p. 102 (Advisory Opinion of June 30).
[33] UN Charter article 1(2): "To develop friendly relations among nations on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."
[34] GA Res. 1514 (XV), 15 UN GAOR Supp. (No. 16). UN Doc. A/4684 (1961).
[35] The International Covenants on Economic, Social and Cultural Rights International Covenant on Civil and Political Rights, GA Res 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc A/3616 (1966), 999 UNTS 171, entered into force March 23, 1976.
[36] GA Res. 2625, UN GAOR, 25th Sess. Sup. No. 28, at 121 UN Doc. A/8028 (1970). The Declaration on Friendly Relations is considered to state existing international law regarding the right to self-determination. Notably, the Declaration on Friendly Relations expanded the available right of self- determination to include not only colonial countries but "any other political status freely determined by a people." Id.
[37] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), 1971 ICJ REP. 16, pp. 31-32 (Advisory Opinion of June 21) (the "Namibia Case").
[38] Case Concerning East Timor, 1995 ICJ 90, p. 102 (Advisory Opinion of June 30); see also Western Sahara, 1975 ICJ Reports 12, p. 33 (Advisory Opinion of Oct. 16) (the "Western Sahara Case").
[39] Guidelines on the Recognition of New States, 31 ILM p. 1486 (1992).

b. The Nature of the Right of Self-Determination

Although these various charters, conventions, and court opinions vary slightly in their articulation of the exact nature of the right of self-determination, there is broad agreement that the right includes the ability of a group to collectively determine its political destiny through democratic means, and for the members of the group to be able to freely exercise fundamental human rights.

1) The Right to Collectively Determine the Political Destiny of the Self-Identified Group through Democratic Means

Most articulations of the right of self-determination originate from the concept of self-determination promoted by American President Woodrow Wilson: democracy.[40] Definitions of self-determination thus include: the right of "a people organized in an established territory to determine its collective political destiny in a democratic fashion;"[41] the right "of people living within an independent and sovereign state to freely choose its own government, to adopt representative institutions and to periodically . . . elect their representatives through a free procedure with freedom to choose among alternative candidates or parties . . . organized through a unitary system, a federal system, or a system with arrangements for autonomy;"[42] "authentic self-rule, or democracy;"[43] the right of "cultural groupings to the political institutions necessary to allow them to exist and develop according to their distinctive characteristics;"[44] "the right of all

[40] Democracy, as defined in Blacks Law Dictionary: "that form of government in which the sovereign power resides in and is exercised by the whole body of free citizens directly or indirectly through a system of representation, as distinguished form a monarchy, aristocracy, or oligarchy". See also, Hurst Hannum, *Autonomy, Sovereignty and Self Determination* p.27 (1990) (citing John P. Humphrey, *Political and Related Rights* in "Human Rights in International Law: Legal and Policy Issues", Theodor Meron (ed.) p. 193 (Oxford: Clarendon Press, 2 vols. 1984)

> "The proposition . . . that every people should freely determine its own political status and freely pursue its economic, social and cultural development has long been one of which poets have sung and for which patriots have been ready to lay down their lives"

See also, Morton H. Halperin et al. *Self Determination in the New World Order* p.125. See also, Decision of the Supreme Court of Canada, supra, at paras. 63-65, which finds that

> "democracy is fundamentally connected to substantive goals, most importantly, the promotion of self-government," and that "democracy accommodates cultural and group identities," and "must be guided by the values and principles essential to a free and democratic society . . [which embody] respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society.".

[41] Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 "American Journal of International Law" p. 52 (1992).

[42] Asbjorn Eide, *Minority Situations: In Search of Peaceful and Constructive Solution*, 66 "Notre Dame Law Review" p. 1335 (1991).

[43] Patrick Thornberry, *The Democratic or Internal Aspect of Self Determination* (with some remarks on Federalism), in "Modern Law of Self-Determination" (Christian Tomuschat ed.) (1993).

[44] S. James Anaya, *The Capacity of International Law to Advance Ethnic or Nationality Rights Claims*, 75 "Iowa L. Rev." p. 842 (1990).

segments of a population to influence the constitutional and political structure of the system under which they live;"[45] sustained freedom of choice;[46] "the right to participate in one's own government;"[47] and a democratic form of government with wider participation."[48]

Consistent with this equation of self-determination with democratic participation, the international community has increasingly emphasized the importance of democratic institutions to all states. It has done so with the clear goal of having disputing groups within states resolve their differences through political dialogue rather than armed conflict, whether secessionist or otherwise. The international community has recognized that the exclusion of groups from participation in national governing institutions is often the first step in the process of marginalization that may end in struggles for secession. As a result, the international commitment to democracy has become not only a normative requirement of human rights regimes but a prerequisite to states acquiring a range of international entitlements. This is especially true in Europe.[49]

Beyond equating the right of self-determination with democracy, many of the international legal instruments have articulated in some detail the standard by which a state's behavior must be judged. For instance, the United Nations has provided in the Covenant on Economic, Social and Cultural Rights, and the Covenant on Civil and Political Rights that by virtue of the right of self-determination, all people have the right to freely determine their political status and freely pursue their economic, social and cultural development and freely dispose of their natural wealth and

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[45] Lee C. Buchheit, *Secession: The Legitimacy of Self Determination* 14 (1978).
[46] Lung-Chu Chen, *Self-Determination and the World Public Order*, 66 "Notre Dame Law Review" p. 1291 (1991).
[47] Hannum, *Rethinking Self-Determination*, supra, p. 25.
[48] Ved Nanda, supra, p. 443.
[49] See 36 "Harvard International Law Journal" p. 1; 17 "Yale Journal International of Law" p. 539; and J. Crawford, *Democracy and International Law*, 64 "British Yearbook of International Law" p. 113 (1994). See also, Case of the Socialist Party v. Turkey, Case 20/1997/804/1007, European Court of Human Rights (May 25, 1998) declaring at paragraph 41, "there can be no democracy without pluralism. . ." and at paragraph 45 "One of the principal characteristics of democracy is the possibility if offers of resolving a country's problems through dialogue, without recourse to violence, even when they are irksome;" Case of United Communist Party of Turkey v. Turkey, Case 133/1996/752/951, European Court of Human Rights (January 30, 1998), at paragraph 45 declaring "Democracy is without doubt a fundamental feature of the European public order . . . [The Court] has pointed out several times that the [European] Convention was designed to maintain and promote the ideals and values of a democratic society . . . Democracy thus appears to be the only political model contemplated by the Convention and, accordingly, the only one compatible with it." See further the Human Rights Committee General Comment 25 on Article 25 ICCPR (December 7, 1996), which argues that "Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.".

resources, and in no case may a people be deprived of its own means of subsistence.[50]

Moreover, the Declaration on Friendly Relations expands the right of all peoples to provide that they must be permitted "freely to determine, without external interference, their political status and to pursue their economic, social and cultural development."[51] The Declaration further requires that a state must be possessed of a "government representing the whole people belonging to the territory without distinction as to race, creed or color."[52] The Universal Declaration of Human Rights proclaims as a standard of achievement for all peoples and all nations that "everyone has the right to take part in the government of his country, directly or through freely chosen representatives" and the "will of the people shall be the basis of the authority of government expressed through genuine election." Consistent with this standard, the Universal Declaration also requires that all individuals be accorded rights to freedom of opinion and expression, freedom of thought, conscience and religion, education; and a social and international order in which the rights and freedoms set forth can be fully realized.[53]

The International Court of Justice has also elaborated on the nature of the right of self-determination as set forth in the United Nations Covenants. In the Western Sahara case, for example, the Court approved "the principle of self-determination and its concern to see that principle applied within a framework that will guarantee the inhabitants of the Sahara under Spanish domination free and authentic expression of their wishes, in accordance with the relevant United Nations resolutions on the subject."[54]

2) The Inclusion of Fundamental Human Rights

The right of self-determination is both necessary for the fulfillment of and incorporates a host of traditional human rights such as political participation, non-discrimination, freedom of association, legal due process – including freedom from arbitrary incarceration, freedom from torture, and the opportunity to pursue economic advancement, which are necessary to prevent the persecution of members of a self-identified

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[50] The International Covenants on Economic, Social and Cultural Rights International Covenant on Civil and Political Rights, supra, articles 1, 2:

"1. All people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All Peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the Principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."

[51] Declaration on Friendly Relations, supra.

[52] Id. (principle (e)).

[53] Universal Declaration of Human Rights (December 10, 1948) GA Res 217 A (III) articles 18, 19, 21, 26, 29.

[54] Western Sahara Case, supra, at 35.

group. The UN Human Rights Committee has underlined the importance of self-determination as a human right by noting that "states set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as article 1 apart from and before all of the other rights in the two Covenants."[55]

This interconnection between self-determination and other human rights was recognized by the Committee on the Elimination of Racial Discrimination. In a 1996 General Recommendation, the Committee observed that, "the implementation of the principle of self-determination requires every state to promote, through joint and separate action, universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations."[56] Similarly, in analyzing the right as it appears in Article 1 of the Covenant on Civil and Political Rights, the United Nations Human Rights Committee declared that the right to self-determination "and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law."[57] Moreover, in the 1993 Vienna Declaration, United Nations member states declared that they considered, "the denial of the right of self-determination as a violation of human rights."[58]

By ensuring a democratic form of government, which international law has increasingly recognized as essential to the protection of human rights generally, the right of self-determination promotes the achievement of more specific human rights by the members of the group.[59] As a result, in the course of examining states' reports on compliance with the Covenant on Civil and Political Rights, the Committee has consistently linked self-

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[55] Human Rights Committee, General Comment No. 12, 39 UN GAOR (Supp. No. 40), at 142 (April 13, 1984).

[56] Committee on the Elimination of Racial Discrimination, General Recommendation XXI on Self-Determination, UN Doc. CERD/48/Misc.7/Rev 3, paragraph 3 (March 8, 1996).

[57] Human Rights Committee, General Comment No. 12, paragraph 2, 39 UN GAOR (Supp. No. 40) (April 13, 1984).

[58] Vienna Declaration and Programme of Action, June 25, 1993, paragraph 2, UN Doc. A/Conf.157/24 (Part I) (1993).

[59] Vienna Declaration, supra, paragraph 8 ("[d]emocracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing"); CSCE, Charter of Paris for a New Europe, 30 ILM p. 194 (1991) ("[d]emocracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person"); GA Res. 46/137, paragraph 3 (December 17, 1991) ("the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms, embracing political, economic, social and cultural rights"); Inter-American Commission on Human Rights, Report No. 14/93, Case 10.956 (Mexico) (October 7, 1993), in Annual Report of the Inter-American Commission on Human Rights 1993 259, 269 (1994) ("[t]he close relationship between representative democracy as a form of government and the exercise of political rights so defined, also presupposes the exercise of other fundamental rights"); African Commission on Human and Peoples Rights, Achuthan and Chirwa v. Malawi, Cases No. 64/92 and 72/92 (1994), in 18 Human Rights Law Journal 29 (1997) ("[m]ultiparty elections have been held [in Malawi], resulting in a new government. The Commission hopes that a new era of respect for the human rights of Malawi's citizens has begun.").

determination to the inclusiveness of states' political institutions, as without self-determination, one cannot be sure that the institutional apparatus is in place for vital and meaningful self-government.[60] Similarly, adherence to a range of other human rights, no one of which may affect a citizenry as a whole, ensures that the collective right of self-determination will be given full effect.

c. The Status of the Kosovo Albanians as a Self-Identified Group Entitled to the Right of Self-Determination

For a self-identified group to be accorded a set of human rights protections which are necessary for that group to exercise collective control over decisions affecting the life of their community, they must demonstrate a central focus of identity, such as ethnicity, nationality, indigenous status or religion that makes them distinct from the dominant population. The group must also demonstrate a clear connection to a particular territory. The people of Kosovo are entitled to the right of self-determination on the basis that they possess a territorial connection to Kosovo which has remained constant for much of the past 1,000 years, and on the basis that they possess a distinct identity based on their shared national heritage, culture, language and ethnicity.

1) The Legal Basis for Being Considered a Group Entitled to the Right of Self-Determination

For a group to be entitled to a right to collectively determine its political destiny, it must possess a focus of identify sufficient for it to attain distinctiveness as a people. Thus, for instance, in the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, self-determination is phrased in universal terms, referring to "all peoples." In addition, the Human Rights Committee has recognized that "Article 1 enshrines an inalienable right of all peoples."[61] Although “peoples” has often been referred to in international organizations as

[60] As Malcolm Shaw explains in *International Law* p. 217-18 (4th ed. 1997):
> “In the context of the significance of the principle of self-determination within independent States, the Committee has encouraged states parties to provide in their reports details about participation in social and political structures, and in engaging in dialogue with representatives of states parties, questions are regularly posed as to how political institutions operate and how the people of the state concerned participate in the government of their state. This necessarily links in with considerations of other articles of the Covenant concerning, for example, freedom of expression (article 19), freedom of association (article 22) and the right to take part in the conduct of public affairs and to vote (article 25). The right of self-determination, therefore, provides the overall framework for the consideration of the principles relating to democratic government.”

[61] Human Rights Committee, General Comment No. 12, paragraph 1, 39 UN GAOR (Supp. No. 40) (April 13, 1984).

relating to national minorities,[62] Professor Ian Brownlie has explained that, "the heterogeneous terminology which has been used over the years -- the references to 'nationalities', 'peoples', 'minorities', and 'indigenous populations' -- involves essentially the same idea."[63] Other commentators have sought to meld the various definitions within the term “ethno-national group,” which is a politically self-conscious subnational group that asserts plausible historical claims to a particular territory, and that shares racial, linguistic, cultural, or historical characteristics that distinguish the members of the group from the dominant population.[64]

Groups entitled to exercise the right to collectively control their political destiny have also traditionally demonstrated close connections to a particular territory. This requirement is highlighted in the various reports of state parties to the Covenant on Civil and Political Rights, which describe their compliance with Article 1 on Self-Determination.[65] Moreover, Judge Dillard has summarized the people/territory nexus of the colonial era in his well-known restatement of the self-determination principle: "it is for the people to determine the destiny of the territory and not the territory the destiny of the people."[66]

The connection between groups and territory serves the practical goal of facilitating the various forms of autonomy that are often the remedy prescribed by an internal right of self-determination. Unless a group is situated within a defined territory and, by virtue of its overwhelming

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[62] See for instance the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. GA Res. 47/135 (December 18, 1992). This definition’s focus on ethnicity, religion and language is in keeping with the coverage of the inter-war minority treaties. In an early decision interpreting one such treaty, the Permanent Court of International Justice defined a "community" or "minority" as "a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and unite by this identity of race, religion, language and traditions in a sentiment of solidarity." Advisory Opinion No. 17, Greco-Bulgarian "Communities", 1930 PCIJ (ser. B), No.17, at 21 (July 31). In a later case the Court spoke of a group that differs from a majority population "in race, language or religion." Minority Schools in Albania, 1935 PCIJ (ser. A/B) No. 64, at 17 (April 6).

[63] Ian Brownlie, *The Rights of Peoples in Modern International Law*, in “The Rights of Peoples” (James Crawford, ed. 1988). See also Hannum, *Autonomy, Sovereignty, and Self-Determination*, (describing rights for specific groups). See generally United Nations: General Assembly Resolution and Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 32 I.L.M. 911 (1993); United Nations, Study of the Problem of Discrimination Against Indigenous Populations, UN Doc. E/CN.4/Sub.2/1986/7.

[64] David Wippman, *Hearing Voices Within the State: Internal Conflicts and the Claims of Ethno-National Groups*, 27 “New York University Journal of International Law and Politics,” p. 586 (1996).

[65] See, e.g., Third Periodic Report of France to the Human Rights Committee, UN Doc. CCPR/C/76/Add.7, paras. 6-17 (May 15, 1997) (section of report on compliance with Article 1 describes situation of Overseas Departments and Overseas Territories); Fourth Periodic Report of the Russian Federation to the Human Rights Committee, UN Doc. CCPR/C/84/Add.2, paragraph (February 22, 1995) ("[t]he way in which the right to self-determination is understood in Russia embraces various forms of national territorial and national cultural autonomy"); Initial Report of the United States of America to the Human Rights Committee, UN Doc. CCPR/C/81/Add.4, paragraph 30 (August 24, 1994) (section of report on compliance with Article 1 describes Native American tribes as "unique aggregations possessing attributes of sovereignty over both their members and their territory.").

[66] Western Sahara Case (Advisory Opinion), 1975 ICJ 12, 122 (separate opinion of Judge Dillard).

numbers or long-standing presence, exercises effective control over that territory, the provision of a right to self-determination would be a meaningless exercise. A group without territory simply does not have a place in which its right to self-determination can be exercised. Similarly, a group claiming a defined territory but without a following among the population of that territory will have little success in self-rule. A territory/people nexus is also in the interest of the state recognizing a group's right to self-determination. In acknowledging the right and making legislative and constitutional provisions for a degree of collective self-government the state will need to specify the perimeters of the regions to which these rights apply. Federal arrangements, for example, require the existence of states or provinces with well-defined borders.

2) The Factual Basis for the Kosovo Albanians Claim to the Right of Self-Determination

Based on archeological excavations and explorations, many historians assert that the Kosovo Albanians, as well as other Albanians, descended from the Illyrians, who inhabited the region from the early part of the second century B.C. In particular, it is believed the Illyrian tribe Dardan lived on the present territory of Kosovo. More historically provable is that from 1048 A.D. Albanians were sufficiently established in the region to organize and participate in coordinated military engagements.[67] During much if its history, Kosovo functioned as a semi-autonomous entity within various occupying empires, including the Ottoman Empire, until 1918, when it became part of Yugoslavia. Throughout its incorporation within Yugoslavia, Kosovo was recognized as a distinct geographical region with clearly defined borders, culminating in its attainment of autonomous province status with the 1974 Yugoslav constitution.

The Kosovo Albanians, which make up 90 percent of the population of Kosovo, share an Islamic religious identity,[68] speak the same language, share the same customs, operate within a common clan based culture,[69] and accept an identifiable alternative-government as the only institution capable of legitimately representing their collective interests. Moreover, the Kosovo Albanians possess a racial background distinct from that of the Slavic Muslims within the territory of the former Yugoslavia.

That the Kosovo Albanians constitute a group entitled to the right of self-determination is particularly evident in the pronouncements of United Nations bodies on the situation in Kosovo. The United Nations Human Rights Committee's Special Rapporteur on the FRY, for example, addressed the plight of the Kosovars under the heading "The Situation of

[67] Malcolm, supra, p. 28-29.
[68] 95 percent of the Kosovo Albanians identify themselves as Muslim, with 5 percent identifying themselves as Catholic. Most of the Kosovo Serbians are Orthodox Christians. Malcolm, supra, at 15.
[69] See Malcolm, supra, at 15-16.

Minorities."[70] In addition, the General Assembly and the Committee on Elimination of Racial Discrimination in its several sessions has implied that Albanians are not only an ethnical group but a race as well. In recognition of this fact, the Committee on Elimination of Racial Discrimination has instituted a process of consultation to promote understanding between races and ethnic groups and has demanded elimination of all forms of racial discrimination in the FRY.[71]

Moreover, the United Nations organs considering the predicament of the Kosovars have done so using the language of self-determination. In December 1992, the Human Rights Committee used the language of self-determination in urging the Yugoslav government to "put an end to the repression of the Albanian population in the province of Kosovo and adopt all necessary measures to restore the former local self-government in the province."[72] In March 1997 the General Assembly demanded that the Kosovo Albanians be granted the sort of local autonomy rights typical of an internal right of self-determination, by calling upon Yugoslavia to "allow the establishment of genuine democratic institutions in Kosovo, including the parliament and the judiciary, and respect the will of its inhabitants."[73] The Security Council issued a similar demand in March 1998, calling for a "meaningful dialogue on political status issues," and expressing its "support for an enhanced status for Kosovo which would include a substantially greater degree of autonomy and meaningful self-administration."[74]

3. The Denial of the Kosovo Albanians' Right to Collectively Determine their Political Fate through Democratic Means and to be Free from Systematic Persecution

The Kosovo Albanians have been denied any meaningful access to the government of the Federal Republic of Yugoslavia, and have consequently been unable to pursue their political, economic, cultural and social

[70] Report on the Situation of Human Rights in the Territory of the Former Yugoslavia submitted by Ms. Elisabeth Rehn, Special Rapporteur Pursuant to Commission Resolution 1997/57, UN Doc. E/CN.41998/15 (October 31, 1997), section X. See also Committee on the Elimination of Racial Discrimination, General Recommendation XXI on Self-Determination, UN Doc. CERD/48/Misc.7/Rev 3, paragraph 3 (March 8, 1996); GA Res. 47/135 (December 18, 1992); Committee on the Elimination of Racial Discrimination, General Recommendation XXI on Self-Determination, UN Doc. CERD/48/Misc.7/Rev 3, paragraph 5 (March 8, 1996).

[71] GA/RES/48/153, Section 18(b), Situation of Human Rights in the Territory of the Former Yugoslavia: Violation of Human Rights in the Republic Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), 85th Plenary Meeting, December 20, 1993 ("85th Plenary Meeting"); Press Release, RD/868, March 14, 1996; Press Release, RD/870, March 15, 1996. <http://www.un.org>.

[72] Comments of the Human Rights Committee: Federal Republic of Yugoslavia (Serbia and Montenegro), UN Doc. CCPR/C/79/Add.16, paragraph 8 (December 28, 1992).

[73] GA Res. 51/111, paragraph 2(c) (March 5, 1997).

[74] SC Res. 1160, paras 4 and 5 (March 31, 1998).

development. Moreover, they have been actively prohibited from pursuing such development as they have been systematically denied their most basic human rights and have been subjected to ethnic aggression by the Serbian regime. The Albanians of Kosovo have thus clearly met the precondition for secession of being denied their right of self-determination.

a. The Denial of the Kosovo Albanians' Right to Democratic Self-Government

As noted above, in 1974 Yugoslavia adopted a new constitution that defined the provinces of Kosovo and Vojvodina as constituent members of the Yugoslav Federation. Under this constitution, Kosovo Albanians possessed a seat in the Federal Parliament, the Constitutional Court, and the Presidency, were entitled to human and other general rights, and had complete authority over their educational systems. Kosovo Albanians also operated their own Assembly and police, as well as banking, judicial, and educational systems.[75] As a result, the population of Kosovo, both Albanian and Serbian, was able to exercise its right of democratic self-government.

By the late 1980's Slobodan Milosevic assumed power within the Serbian government and with the threat of the use of force pushed through constitutional amendments to revoke the autonomy of Kosovo (as well as Vojvodina).[76] In 1989 Mr. Milosevic imposed a partial state of emergency and deployed the Serbian military in an attempt to force the Kosovars into accepting the new constitution, which transferred control of Kosovar security and judicial forces to the government of Serbia. In 1990, Kosovo Albanian government officials resigned under these changes and announced the creation of the Constitution of the Republic of Kosovo. The Kosovo Albanians then proceeded to establish parallel administrative structures that included a separate government, and education, health care, social services and taxation systems. Because of threats by the Serbian police, the Republic of Kosovo Parliament has been unable to convene for a full session for a number of years.[77] As a result of theses circumstances, the Kosovo Albanians are without representation in the central government of the Federal Republic of Yugoslavia, and are unable to effectively engage in democratic self-government.

b. The Denial of Basic Human Rights for the Kosovo Albanians

As a result of the near-apartheid regime in Kosovo, the Kosovo Albanians suffer not only democratic disenfranchisement, but also systematic persecution. In the past decade, the policies of the Serbian

[75] International Crisis Group, *Kosovo Spring*, p. 27 (Brussels 1998).
[76] Kovacevic, Slobodanka and Dajic, Putnik, *Chronology of the Yugoslav Crisis 1942-1993*, p. 21.
[77] *Kosovo Spring*, supra, p. 27-29.

government have resulted in unemployment for many Albanians,[78] the deterioration of the Albanians' educational system,[79] the abuse of human rights,[80] and the emigration of thousands of Kosovo Albanian refugees in response to these conditions.[81]

Under the deteriorating economic situation in Kosovo, Serbs have replaced most Kosovo Albanians in public jobs, resulting in a 70% unemployment rate for the Kosovo Albanians. As a consequence, most Kosovo Albanians rely on monetary support sent from relatives working abroad. [82] Moreover, due to the Serbian regime's systematic dismantling of the Albanian educational system, the Kosovo Albanians now have no access to formal means of academic advancement. In 1990, the Serbian Parliament declared as void the education legislation passed by the pre-1989 Kosovo Parliament and implemented its own Serb-oriented, uniform education program for all elementary and secondary schools in Serbia. Serbian officials cut off funding for and physically prevented students from attending those schools that chose not to follow the program.[83] To ensure the disengagement of Kosovo Albanian students from the school system, the Serbian Parliament restricted Albanian secondary school enrollment to one-third of the eligible Albanian schoolchildren. Students were thus forced to resume secondary and college-level classes in private homes, and to print their textbooks in secret.[84]

More traditional human rights abuses against ethnic Albanians by Serbian government officials include cases of disappearances, torture, arbitrary arrests and detentions, show trials for political prisoners, and deliberate and indiscriminate attacks on civilians, including women and children.[85] According to the Council for the Defense of Human Rights and Fundamental Freedoms (CDHRF), 1997 human rights abuses against ethnic Albanians included: 35 cases of violent death, five of

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[78] Malcolm, supra, p. 349.
[79] Humanitarian Law Center, *Education of Kosovo Albanians*, 24 "Spotlight", p. 3 (1998).
[80] International Helsinki Federation for Human Rights, Human Rights in Albania, Belarus, Slovakia, and the Federal Republic of Yugoslavia, http://www.ihf-hr.org/reports/9804gene.htm#Federal (July 1, 1998).
[81] Amnesty International, Public Statement, Federal Republic of Yugoslavia: Amnesty International's Current Recommendations Concerning the Crisis in Kosovo Province, (June 11, 1998).
[82] European Action Council for Peace in the Balkans and Public International Law and Policy Group of the Carnegie Endowment for International Peace, *Kosovo-From Crisis to Permanent Solution*, p. 6 (November 1, 1997).
[83] *Education of Kosovo Albanians*, supra, p. 3.
[84] In September of 1996, the Italian Catholic Communita di Sant' Egidio mediated an agreement between Mr. Milosevic and Dr. Rugova that was designed to "commence normalization" of the educational system via the return of Albanian students and teachers to the schools. This agreement, however, has failed to be implemented as the Serbian regime interprets the Agreement as providing for the assimilation of Kosovo Albanian schoolchildren into the Serbian education program, whereas the Albanian constituents understand it as the return of Albanian students without attached conditions. *Kosovo Spring*, supra, p. 50-54.
[85] Human Rights in Albania, Belarus, Slovakia, and the Federal Republic of Yugoslavia, supra.

which resulted from police brutality; 5,031 cases of ill-treatment or torture; 596 arbitrary arrests; 1,288 persons summoned or taken to police stations for "informative talks;" 425 civilians' homes raided; and over 10,000 other cases of human rights abuses against Kosovo Albanians by Serbian police.[86]

In 1997, the CDHRF documented 1,740 incidents of physical torture, the most common methods including kicking and beating with truncheons, wooden sticks, or sharp objects. In addition, judicial proceedings do not conform with international standards of due process.[87] In detention cases, law enforcement authorities frequently ill-treat detainees, hold them beyond the legal 72 hours without bringing formal charges, deny detainees access to their lawyers, and deny their family members information as to their whereabouts.[88]

The denial of the opportunity for democratic self-government, and abrogation of the most basic human right have resulted in the emigration of more than 400,000 Kosovo Albanians since 1990,[89] and an additional 150,000 rejected asylum-seekers who temporarily remain in Western Europe.[90] Sources from the region estimate that in addition there are now approximately 200,000 internally displaced Kosovo Albanians.[91] Leaving Kosovo has recently become extremely perilous due to the minefields laid by the Yugoslav army along the Yugoslavian-Albanian border.[92] Serbian officials have also undertaken efforts to seal off borders and make travel through Kosovo laborious as well as dangerous.[93] Even non-governmental organizations such as the International Commission of the Red Cross have been denied access by Serbian government officials to those areas of greatest concern.[94]

The situation in Kosovo has become even more unstable in recent months. Serbian and Yugoslav army forces have been holding at least 13 pre-dominantly Albanian towns under siege or partial blockade, under which civilians live under shelling, sniper, and air attacks.[95] For the past four months, humanitarian aid including food and medical supplies have

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[86] Human Rights in Albania, Belarus, Slovakia, and the Federal Republic of Yugoslavia, supra.
[87] Human Rights in Albania, Belarus, Slovakia, and the Federal Republic of Yugoslavia, supra. For example, in a 1997 ruling the court sentenced defendants charged with acts of terrorism to long prison terms without the presentation of appropriate evidence and based on confessions elicited from defendants through torture. Id.
[88] Human Rights in Albania, Belarus, Slovakia, and the Federal Republic of Yugoslavia, supra.
[89] *Kosovo-From Crisis to Permanent Solution*, p. 6.
[90] Amnesty International USA, Public Statement, Federal Republic of Yugoslavia: Amnesty International's current recommendations concerning the crisis in Kosovo province (June 11, 1998).
[91] Open Society Institute, Kosovo Briefings 10, osi-dc.org (June 16, 1998).
[92] Open Society Institute, Kosovo Briefings 2, osi-dc.org (June 12, 1998).
[93] Open Society Institute, Kosovo Briefings 4, osi-dc.org (June 16, 1998).
[94] Federal Republic of Yugoslavia: Amnesty International's current recommendations concerning the crisis in Kosovo province, supra.
[95] Open Society Institute, Kosovo Briefings 7, osi-dc.org (June 24, 1998).

been unable to access these villages that harbor 750,000 civilians, or more than one third of Kosovo's population.[96] Food supplies are quickly reaching an end, and the refugee numbers are swelling.[97] IDP's and permanent residents have been driven from the three of these villages, Srbica, Decani, and Junik.[98] Furthermore, Serbian forces have been indiscriminate in their pursuit of Kosovo Albanian armed resistance fighters. For instance, in early 1998, 25 Albanian civilians were killed in Serbian paramilitary attacks in the Drenica region, and 59 Albanian women, children, and old men from Prekaz were killed during an attack on their village.[99] One of the most atrocious cases includes the recent shooting of a nine-year old boy playing in his yard by a Serbian sniper.[100]

In 1995 the General Assembly acknowledged the gross violation of human rights in Kosovo and condemned the measures and practices of discrimination and the violations of human rights of ethnic Albanians in Kosovo committed by the authorities of the Federal Republic of Yugoslavia, and called upon the authorities to release all political prisoners and cease the prosecution of political leaders and members of local human rights organizations.[101] More recently, in March 1997, the General Assembly, citing the reports of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia, condemned all violations of human rights in Kosovo, in particular repression of the ethnic Albanian population and discrimination against them, as well as acts of violence in Kosovo. The General Assembly then called on the Serbian authorities to take all necessary measures to bring to an immediate end all human rights violations against ethnic Albanians in Kosovo, in particular the discriminatory measures and practices, arbitrary searches and detention, the violation of the right of fair trial and the practice of torture and other cruel, inhuman or degrading treatment, and to revoke all discriminatory legislation, in particular that which has entered into force since 1989. [102]

Reflecting the concerns of the General Assembly, the Security Council adopted Resolution 1160 on March 31, 1998, which condemned the use of excessive force by Serbian police forces against civilians and peaceful demonstrations in Kosovo.[103] Similarly, on March 2, 1998, the U.S.

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[96] Id.
[97] Id.
[98] Id.
[99] Human Rights in Albania, Belarus, Slovakia, and the Federal Republic of Yugoslavia, supra.
[100] Open Society Institute, Kosovo Briefings 3, osi-dc.org (June 15, 1998).
[101] Press Release GA/SHC/3348, December 11, 1995 ("Press Release"), <http://www.un.org>.
[102] A/RES/51/111, Match 5, 1997 ("General Assembly Resolution"). <http://www.un.org>. The Special Rapporteur reports describe the continuing grave human rights situation in Kosovo, including in particular police brutality, killings resulting from such violence, arbitrary searches and arrests, torture and ill-treatment of detainees, the deliberate maltreatment, prosecution and imprisonment of political and human rights activists, the mass dismissals of civil servants and discrimination against pupils and teachers, acts which are mainly perpetrated against ethnic Albanians.
[103] S/Res/1160(1998), <http://www.un.org>.

Department of State condemned the use of a water cannon by Serbian police to break up a peaceful demonstration in Prishtina and the beating of a Voice of America reporter to the point of requiring hospitalization.[104] The London Contact Group has also issued statements concerning the gross violation of human rights in Kosovo, and calling for the Serbian military, paramilitary and police forces to end to all actions against civilians, remove repressive units, respect the rights of refugees to return to their homes, and provide unimpeded access for international monitoring and humanitarian groups.[105]

Given the pervasive denial of the Kosovo Albanians' right to collectively determine their political fate by democratic self-government and to be free from systematic persecution, they meet the denial of self-determination precondition to the attainment of international status. As any internal mechanisms for self-determination could be abrogated, as was done with the relevant provisions of the 1974 Yugoslav constitution, it is necessary for Kosovo to attain international status in order to ensure its right to attain a meaningful degree democracy for its people and to protect them from the gross violations of their human rights.

B. The Role of Uti Possidetis in Balancing the Principle of Territorial Integrity with the Creation of an International Status for Kosovo

The international law doctrine of uti possidetis has recently evolved to a status where it may assist in balancing the principle of territorial integrity with the creation of an independent status for Kosovo.[106] The doctrine generally provides that an entity in legitimate possession of territory at the time of a dispute over ownership or at the time of the decolonization or dissolution of a state be entitled to retain and be granted permanent legal right to such territory and that in such circumstances the borders of the territory as they exist at such time should not be modified. In particular, the doctrine provides a valid basis for declaring that the borders of a Kosovo holding international status would be exactly the same as the internal borders established by the 1946 and 1974 constitutions.

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[104] US Department of State, Office of the Spokesman, Press Statement, (March 2, 1998), <http://secretary.state.gov/www/briefings/statements/1998/ps980302b.html>.

[105] London Contact Group Meeting, Statement on Kosovo, (March 9, 1998): <http://secretary.state.gov/www/travels/980309_kosovo.html>;
See also Secretary of State Madeline K. Albright, Statement at the Contact Group Meeting on Kosovo, Bonn, Germany, (March 25, 1998) (as released by the Office of the Spokesman, U.S. Department of State): <http://secretary.state.gov/www/statements/1998/980325.html>;
Statement on Kosovo issued by the Contact Group, Bonn, Germany, (July 8, 1998): <http://www.state.gov/regions/eur/stm_980708_kosovo.html>.

[106] The doctrine of uti possidetis is generally traced to Roman law; there, it is said to have served as a procedural device in civil litigation over real property. J. Moore, Costa Rica - *Panama Arbitration: Memorandum on Uti Possidetis*, p. 5-8 (1913). By the 19th century, however, the doctrine had been transplanted into the realms of international law and diplomatic practice. There, the uti possidetis doctrine assumed a new character in disputes over the territorial boundaries of states emerging from colonial status.

Originating with the Spanish decolonization of South America in the 19th Century,[107] the doctrine of uti possidetis significantly evolved following the Second World War, when the withdrawal of European colonial powers from their African possessions gave rise to the potential for territorial boundary disputes between the newly-independent African states. After a measure of debate, African leaders decisively pledged in the 1964 Cairo Declaration to "respect the frontiers existing on their achievement of independence.[108] The legal and political emphasis has been not upon the characteristics of the population of the state but upon the territorial definition of the state. The notion of the nation-state was replaced by the concept of territorial-state. It prevented the independence and stability of new states from incessant boundary disputes and endless armed conflicts, once the colonial powers had left. With few exceptions, African states respected this attitude towards their colonial frontiers for the next 35 years

The International Court of Justice considered the status of the *uti possidetis* doctrine, as a rule of international law, in the Frontier Dispute (Burkina Faso/Mali) case.[109] Although the parties' special agreement accepted the applicability of the *uti possidetis* doctrine as a binding rule of decision, the Court's judgment strongly implied that the doctrine was a "rule of general scope" and a "general principle[110] The Court reasoned: "the principle is not a special rule which pertains solely to one specific system of international law. It is a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new states being endangered by fratricidal struggles.[111] Subsequent commentary generally, but not exclusively, accepted that the *uti possidetis* doctrine had been elevated to the status of a binding rule of general customary international law.[112]

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[107] The departure of Spanish colonial forces from South America during the 19th century gave rise to potential and actual disputes between newly emergent American states over their territorial boundaries. Initially, three large territorial groupings claimed independence from Spanish rule; soon, however, these groups split further along the internal lines of the former administrative divisions of the Spanish empire. H. Herring, *A History of Latin America*, p. 260-91 and 434-37 (1955). The process of adopting Spain's former internal administrative divisions as the new international territorial boundaries of American states was referred to as an application of the doctrine of *uti possidetis*. Beagle Channel (Arg./Chile), 52 International Law Review 93, p. 125 (1977); Frontieres Colombo-Venezueliennes (Colom./Venez.), 1 Report of International Arbitral Awards 225, p. 228 (1922) (Swiss Fed. Council); Frontier Dispute (Burkina Faso/Mali), 1986 ICJ 554, p. 661-62 (December 22) (Abi-Saab, J., sep. op.). The doctrine was seen as ensuring that no portions of the South American continent would assume the status of *terra nullius*, thereby inviting extra-regional intruders an opportunity to assert territorial claims; the doctrine was also seen as a mechanism for minimizing territorial disputes between newly independent states.

[108] Organization of African Unity Resolution on Border Disputes, AGH/Res.16(I), reprinted in, I. Brownlie, Basic Documents on African Affairs 360 (1971).

[109] 1986 ICJ Reports, p. 554 (December 22).

[110] 1986 ICJ Reports, p. 565.

[111] 1986 ICJ Reports, p. 565.

[112] Sorel & Mehdi, *L'Uti possidetis entre la consécration juridique et la pratique: essai de réactualisation*, p 40 in "Ann. Français de Droit International" p. 12 (1994); M. Reisman, *The Constitutional Crisis in the United Nations*, p. 87 in "American Journal of International Law" p. 92 (1993).

The Court also had an opportunity to address the issue of whether the principle of *uti possidetis* conflicted with the desire of a self-identified group of people to all live within the same state (for instance a greater Albania). The Court observed that "the overriding interest of preserving the independence that has been achieved by much sacrifice and the maintenance of the status quo in terms of African boundary should be seen as the wisest course that was taken by African statesman". The Court further remarked that "the essential requirement of stability in order to survive, to develop and gradually to consolidate their independence in all fields, has induced African States judiciously to consent to the respecting of colonial frontiers, and to take account of it in the interpretation of the principle of self-determination of peoples.[113]

Most recently, the legal status of the *uti possidetis* doctrine was considered by the Arbitration Commission, chaired by Judge Robert Badinter, established by the European Community and its member states, to address various legal questions resulting from the dissolution of Yugoslavia. In Opinion No. 3, the Arbitration Commission declared:

"Except where otherwise agreed, the former boundaries become frontiers protected by international law. This conclusion follows from the principle of respect for the territorial status quo and, in particular, from the principle of *uti possidetis*. *Uti possidetis*, though initially applied in settling decolonization issues in America and Africa, is today recognized as a general principle.... linked not solely to the decolonization process but to the phenomenon of the obtaining of independence, wherever it occurs.[114]

Relying on this rationale, the Badinter Commission concluded that, following the dissolution of the former Yugoslavia, the former "internal boundaries" between Croatia, Serbia, and Bosnia-Herzegovina possessed the status of international borders.

The principle of *uti possidetis* thus provides ample authority for the proposition that the borders of Kosovo during the proposed 3-5 year interim period and subsequent to its recognition by the international community should be those established by the 1946 and 1974 constitutions. Accordingly, under the approach of intermediate sovereignty, Serbia would not be able to alter the present borders of Kosovo, nor would Kosovo be able to incorporate within its borders any territory belonging to Macedonia, or associate itself with the territory of Albania.

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[113] 1986 ICJ Reports, p. 567.

[114] Conference on Yugoslavia, Arbitration Commission Opinion No. 3 (January 11, 1992), 31 ILM p. 1500 (1992). As explained by one commentator, "The right of nations to self-determination is exercised on the territory of a former colony or on the territory of administrative divisions which correspond to nations living in multinational countries currently falling apart." Marcel G. Kohen, *L'Uti Possidetis Revisité*, in "Revue de Droit International Public," p. 969 (Paris 1993).

C. The Legitimate Basis for the Creation of an Independent Status for Kosovo

The Canadian Supreme Court was recently asked to consider whether Quebec possessed a right of unilateral secession. Although the Court found that that the current circumstances of Quebec did not qualify it for a right of secession, it did find that in some instances a *de facto* secession may occur. In such cases, the Court noted that "the ultimate success of such a secession would be dependent on recognition by the international community, which is likely to consider the legality and legitimacy of secession having regard to, amongst other facts, the conduct of [the parties involved], in determining whether to grant or withhold recognition.[115]

In judging the legitimacy of a plan of intermediate sovereignty for the people of Kosovo, the international community should consider, 1) the legal and factual similarity between Kosovo and the other Republics of the former Yugoslavia that were deemed by the international community to be entitled to international recognition; 2) the precedent established by the international community in recognizing Slovenia, Croatia, Bosnia-Herzegovina and Macedonia; 3) the international status of the former Yugoslavia as a dissolved state; 4) the historical status of Kosovo within the former Yugoslavia; 5) the extent to which the people of Kosovo have been subjected to ethnic aggression; and 6) recent state practice associated with the Hasavyurt Agreement of 1996, and the Northern Ireland Peace Agreement.

1. Legal and Factual Similarity Between Kosovo and the other Republics of the Former Yugoslavia

Like the other republics of the former Yugoslavia, the people of Kosovo possess a history of national unity, which was recognized by the Yugoslav Constitution of 1946 and the Constitution of 1974. Although Kosovo was not granted the same official title as the other republics, its borders were demarcated along historic lines meant to acknowledge the historical unity of the Albanian people of Kosovo, and it was stipulated in the Yugoslav Constitution that these borders could not be changed without approval by the parliament of Kosovo.[116]

Although Kosovo was technically an autonomous province within the Republic of Serbia, it was also constitutionally proclaimed to be an integral part of the Yugoslavia federation.[117] Thus, for instance, the constitution provided that Kosovo was expected to participate in the joint realization of the interests of the federation,[118] and that like the other republics it would be equally responsible for implementing, enforcing, and amending the Yugoslav

[115] Decision of the Supreme Court of Canada, supra, at para. 155.
[116] 1974 Constitution, article 5.
[117] 1974 Constitution, articles 1 and 2.
[118] 1974 Constitution, article 244.

Constitution,[119] as well as the ratification of international agreements and the formulation of Yugoslavian foreign policy.[120] Moreover, Kosovo, like the other republics, was directly represented in the national bodies of the federation, including the federal Parliament, Presidency Cabinet, Federal Court and Federal Constitutional Court.[121]

As an integral constitutional part of the Yugoslavia, Kosovo was also accorded all the rights and privileges of the other republics of the former Yugoslavia, including the rights to: maintain its own constitution, parliament, and judiciary – including a constitutional and supreme court, and to establish its own banking policy, within the framework of the "common currency issue policy."[122] The citizens of other autonomous provinces within the Yugoslavia also possessed the same rights to the protection of ethnic languages, culture and national minority rights as those in the Republics.[123]

Like the other republics, from the late 1980's, Kosovo was systematically denied the ability to exercise these various rights. As noted above, in the late 1980's Slobodan Milosevic assumed power within the Serbian government and illegitimately forced through constitutional amendments which revoked the autonomy of Kosovo and Vojvodina. The Albanian people of Kosovo, as in the other republics, held a referendum, wherein 87 percent of eligible voters participated in the vote, with 99 percent voting in favor of creating a sovereign state. Finally, the people of Kosovo have been subjected to territorial and ethnic aggression by the Serbian regime comparable to that suffered by Croatia and Bosnia, and clearly more severe then that experienced by Slovenia and Macedonia.

Given that Kosovo possessed almost exactly the same rights as the other republics of the former Yugoslavia, and in particular rights to participate in the central government, which have now been revoked without any realistic possibility of being reinstated at any time by the Serbian regime. Kosovo possesses the same legitimacy as those republics in calling for the recognition of its international status such that it may be in a position to adequately protect the human rights of its people.

2. The Precedent Established by the International Community in Recognizing Slovenia, Croatia, Bosnia-Herzegovina and Macedonia

The state practice of the international community relating to the dissolution of the former Yugoslavia and the recognition of Slovenia, Croatia, Bosnia-Herzegovina and Macedonia sets a precedent for the creation of a process

[119] 1974 Constitution, articles 276-79, 398-403.
[120] 1974 Constitution, article 271.
[121] 1974 Constitution, articles 291, 292, 369-70, 375-381.
[122] 1974 Constitution, article 260.
[123] 1974 Constitution, articles 245-47.

for establishing an international status for Kosovo, conditioned on the respect for the territorial integrity of Macedonia and Albania, the commitment to reject political or territorial association with Albania, the commitment to protect the minority rights of the Kosovo Serbians, and the holding of a referendum to confirm the wishes of the people of Kosovo for sovereignty.

On December 16, 1991, the Foreign Ministers of the European Community met in Brussels and issued a Declaration on Yugoslavia,[124] in which the European Community and its member states agreed to recognize the independence of all the Yugoslav Republics fulfilling conditions set out in the European Community "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union".[125] The Declaration provided for the Republics that wished to do so to make applications for recognition as independent states to an Arbitration Commission established within the framework of the Yugoslav Peace Conference. Each applicant was required to commit itself, prior to recognition, "to adopt constitutional and political guarantees ensuring that it has no territorial claims towards a neighboring Community State and that it will conduct no hostile propaganda activities versus a neighboring Community State, including the use of a denomination which implies territorial claims."[126]

The European Community's Guidelines on recognition confirmed the attachment of the European Community and its member states to the principles of the Helsinki Final Act, including "in particular the principle of self-determination."[127] The European Community states affirmed "their readiness to recognize, subject to the normal standards of international practice and the political realities in each case, those new states which, following the historical changes in the region, have constituted themselves on a democratic basis, have accepted the appropriate international obligations and committed themselves in good faith to the peace process and to negotiations."[128] In particular, the Guidelines required new states to accept the provisions of the United Nations Charter, the Helsinki Final Act and the Charter of Paris, to guarantee the rights of ethnic and national groups and minorities, to respect "the inviolability of all frontiers which can only be changed by peaceful means and by common agreement," and to agree to resolve territorial and other disputes by arbitration.

In Opinions No. 4, 5, 6 and 7 the Arbitration Commission considered requests by Slovenia, Croatia, Bosnia-Herzegovina and Macedonia for recognition of the international statehood of these entities under the European Community Guidelines. The Arbitration Commission's opinions, and the European Community's actions based upon those opinions, established a useful precedent for creating an international status for

[124] Declaration on Yugoslavia, 31 ILM p. 1485 (1992).
[125] Guidelines on the Recognition of New States, 31 ILM p. 1486 (1992).
[126] Id.
[127] Id.
[128] Id.

Kosovo, and for defining the nature of intermediate sovereignty in terms relating to respect for human rights, acceptance of international obligations, and the like.

In Opinion No. 4 concerning the application of Bosnia-Herzegovina, the Arbitration Commission established the precedent for holding a referendum to confirm the wishes of the population for international status explaining that although the various constitutional processes had been followed in the request to the European Community for recognition, the absence of a referendum on the subject meant that "the will of the peoples of Bosnia-Herzegovina to constitute [the republic] as a sovereign and independent State cannot be held to have been fully established."[129] The Bosnian government then held a referendum from March 29 to April 1, 1992, pursuant to which the Bosnians expressed their desire for independence and was recognized by the European Union on April 7, 1998 and on April 8th by the United States.

In Opinion No. 5, concerning the application of Croatia, the Arbitration Commission confirmed the need to ensure the protection of minority rights by holding that the Croatian Constitutional Act of December 4, 1991 did not fully incorporate all the minority rights protections required by the European Community. In response, the Croatian government supplemented its Constitutional Act in the form of a letter by the President of the Republic of Croatia, wherein the President confirmed Croatia's commitment to protect the rights of minorities.[130] Croatia was subsequently recognized by the European Community on January 15, 1992 and by the United States on April 8, 1992.

In Opinion No. 6, concerning the application of Macedonia, the Arbitration Commission reaffirmed the priority of the principle of territorial integrity, by noting that Macedonia had committed itself to adopting "constitutional and political guarantees ensuring it has no territorial claims towards [Greece] and that it will conduct no hostile propaganda activities versus it."[131] As the Macedonian Minister of Foreign Affairs had expressly declared that Macedonia would refrain from any hostile propaganda, and as the Assembly of the Republic of Macedonia had amended its Constitution so that it was clear it had no territorial claims on any neighboring states, the Arbitration Commission found that Macedonia satisfied all the tests and was entitled to recognition. Notably, the Commission also found that "the use of the name Macedonia cannot imply any territorial claim against another State."[132] After a period of dialogue between the European Community member states and Macedonia, wherein the member states sought to confirm the commitments

[129] Conference on Yugoslavia, Arbitration Commission, Opinion No. 4, 31 ILM p. 1500 (January 11, 1992).
[130] Conference on Yugoslavia, Arbitration Commission, Opinion No. 5, 31 ILM p. 1503 (January 11, 1992).
[131] Conference on Yugoslavia, Arbitration Commission, Opinion No. 6, 31 ILM p. 1506 (January 11, 1992).
[132] Id.

of Macedonia, all the European Community states, except Greece, extended recognition to Macedonia.

To ensure that the creation of an international status for Kosovo contributes to stability in the Balkan region, the international community may properly rely upon the precedent established by the Arbitration Commission to structure a status of intermediate sovereignty, whereby it can ensure that Kosovo is able to protect the rights of its people, without unduly compromising the goal of regional stability.

3. The Minimization of Concerns Relating to the Territorial Integrity of the Sub-State Entity of Serbia

As noted above, the right to self-determination must be balanced with the concern for the preservation of the territorial integrity of an internationally recognized state. In the case of Kosovo, the concern that the creation of an international status for Kosovo would contravene the international community's interest in preserving the territorial integrity of Serbia is diminished
by the fact that Serbia is not itself a state and thereby is not expressly entitled to a right of territorial integrity. In addition, Kosovo has never been legitimately incorporated into Serbia, rather, it was incorporated into the state of Yugoslavia, which has since dissolved. Moreover, the self-proclaimed Federal Republic of Yugoslavia, which purports to exercise territorial jurisdiction over Kosovo, has not been recognized as a state by the international community.

a. Serbia's Status as a Sub-State Entity

Under international law, only a state is entitled to the right of territorial integrity. Sub-state entities are accorded no such right. From the time Kosovo became associated with the Kingdom of Serbs, Croats and Slovenes in 1918, and subsequently with Yugoslavia in 1929, Serbia did not exist as a state, but rather existed as a political entity within a state. Most important, from 1946 Serbia was considered a republic of Yugoslavia and did not possess any attributes of statehood. Even after the dissolution of the Yugoslavia in 1992, Serbia did not become, or even claim to be, a state. Rather, Serbia joined with Montenegro in an attempt to create the FRY, which Serbia claimed was entitled to the rights and privileges of a state.

The creation of an international status for Kosovo may thus not be considered to infringe upon the territorial integrity of Serbia, as Serbia possesses no such right. The concern for territorial integrity relates only to the state of Yugoslavia, which has dissolved, and possibly to the self-

proclaimed FRY, which as discussed below, has not been recognized by the international community.

b. The Historical Status of Kosovo within the former Yugoslavia

The concern for territorial integrity is further vitiated by the fact that Kosovo has never been legitimately incorporated within the political boundaries of Serbia. When Serbia occupied Kosovo between November 1912 and November 1915, prior to the creation of the Kingdom of Serbs, Croats and Slovenes, Kosovo did not become legally part of Serbia, since the Serbian constitution of 1908, which was in force in 1912, declared that no change could be made to the borders of Serbia without the agreement of a special, enlarged Grand National Assembly. No such assembly was ever convened to ratify the annexation of Kosovo.[133]

Moreover, according to international law, territory conquered by one state from another becomes legally a part of the victorious state when the transfer is formally agreed to by the two belligerents in a treaty after the war. After the Balkan war two such treaties were drafted, the Treaty of London in 1913, and the treaty of Istanbul in 1914, but neither treaty was ratified by Serbia. Kosovo could thus be considered no more a legitimate part of Serbia in 1912-15 than it was a part of Austria-Hungary or Germany or Bulgaria (the later occupying powers) in 1915-18.[134] It is also noteworthy that the Serbian government never passed any legislation to provide the Kosovo Albanians with Serbian citizenship; the Kosovo Albanians gained a new citizenship for the first time only when they were made citizens of the Yugoslav state in 1928.

Thus, while Kosovo did at some time become legally part of the Yugoslav state, it never legitimately became wholly subsumed within the political entity know as Serbia. Rather, Kosovo became a part of Yugoslavia. And discussed above, the more recent changes to the Yugoslav Constitution adversely impacting the status of Kosovo cannot be considered legitimate. The attainment of international status by Kosovo thus in no way runs counter to what amounts to the illegitimate claims of Serbia to exercise territorial jurisdiction over Kosovo.

c. The International Status of the Former Yugoslavia as a Dissolved State

The legal basis for the creation of an international status for Kosovo is further enhanced by the fact that Yugoslavia has been dissolved and no longer possesses any status as a state. As Yugoslavia no longer exists,

[133] Malcolm, supra p. 265-66.
[134] Id.

the creation of an international status for Kosovo is irrelevant with regard to the territorial integrity of Yugoslavia. Moreover, when Yugoslavia was dissolved, the political and legal ties binding the various political entities making up Yugoslavia also dissolved, thus permitting those entities to legitimately seek their own international status.

As discussed above, the European Community's Arbitration Commission was called upon to rule on a number of matters relating to the crisis in the former Yugoslavia. In fact the first opinion required of the Arbitration Commission related to the question of whether by the end of 1991 the Yugoslavia had ceased to exist. Applying what it termed the "principles of public international law," the Arbitration Commission looked to classic international law definitions of statehood in determining the continuing status of the SFRY. In particular, the Arbitration Commission considered the requirement that a state is "a community which consists of a territory and a population subject to an organized political authority."[135] In the Arbitration Commission's view, "the existence or disappearance of the State is a question of fact" and "the effects of recognition by other States are purely declaratory."[136]

Applying this definition, the Arbitration Commission then considered the declarations of independence and referenda held in Slovenia, Croatia, Macedonia and Bosnia and Herzegovina and the fact that "the composition and workings of the essential organs of the Federation . . . no longer meet the criteria of participation and representativeness inherent in a federal State." As a consequence, the Arbitration Commission concluded that "the Socialist Federal Republic of Yugoslavia is in the process of dissolution."[137] The Arbitration Commission subsequently determined in Opinion No. 8, issued on July 4, 1992, that "the process of dissolution of the SFRY referred to in Opinion No. 1 of November 29, 1991 is now complete and that the SFRY no longer exists."[138]

d. The Non-Recognition of the self-proclaimed Federal Republic of Yugoslavia

Responding to the dissolution of Yugoslavia, in April 1992, the National Assembly of the Republic of Serbia and the Assembly of the Republic of Montenegro adopted a declaration asserting their intention to preserve the "common state of Yugoslavia." The declaration also proclaimed a "Federal Republic of Yugoslavia, continuing the state, and the international legal and political personality of the Socialist Federal Republic of Yugoslavia."[139] As Serbia and Montenegro considered themselves to be perpetuating the international legal personality of the

[135] Conference on Yugoslavia, Arbitration Commission, Opinion No. 1, 31 ILM p. 1493 (January 11, 1992).
[136] Id.
[137] Id.
[138] Conference on Yugoslavia, Arbitration Commission, Opinion No. 8 (July 4, 1992).
[139] Declaration on the Formation of the Federal Republic of Yugoslavia (April 27, 1992).

former Yugoslavia, they did not seek international recognition as a new state.

In considering how to respond Serbia and Montenegro's claim of perpetuating the legal personality of the former Yugoslavia, the European Community requested an opinion from the Arbitration Commission. In Opinion No. 10, the Arbitration Commission found that the self-proclaimed FRY did not continue the international legal personality of the former Yugoslavia, and that if it desired to attain recognition by the European Community, it would have to meet the criteria established in the December 16, 1991 Guidelines."[140] None of the European Community members, except Greece, have recognized the self-proclaimed Federal Republic of Yugoslavia as a state. The United States has also followed the opinion of the Arbitration Commission and has declared that Serbia and Montenegro do not continue the international legal personality of the former Yugoslavia.[141] Moreover, the United Nations Security Council and General Assembly have determined that the FRY does not continue the legal personality of the former Yugoslavia and may not assume its seat in the United Nations, rather it must apply anew for membership.[142] To date, the FRY has not applied for membership in the UN.

As the former Yugoslavia has dissolved and the self-proclaimed Federal Republic of Yugoslavia does not continue its international legal personality, and as the self-proclaimed Federal Republic of Yugoslavia has not been recognized as a state in its own right, Kosovo's legitimate attainment international status will in no way infringe upon the international principle of respect for territorial integrity.

4. The Extent to Which the People of Kosovo have been Subjected to Ethnic Aggression

As noted above, the fact that the people of Kosovo have been subjected to ethnic aggression by the Serbian regime, which definitively and unilaterally revoked all rights the Kosovons held under the Yugoslav constitution, provides legal support for the claim that the people of Kosovo have been denied their right of self-determination and have thus met a precondition for attaining international status. In addition, the behavior of both parties should be considered in determining the legitimacy of the claims for international status.[143]

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[140] Conference on Yugoslavia, Arbitration Commission, Opinion No. 10 (July 4, 1992).
[141] Testimony of US Department of State Principle Deputy Assistant Secretary of State for European Affairs before the Senate Foreign Relations Committee, Sub-committee on European Affairs (June 11, 1992).
[142] UN Security Council Resolution 777, General Assembly Resolution 47/1.
[143] Decision of the Supreme Court of Canada, supra, at para. 155.

Whereas the people of Kosovo have long advocated a peaceful solution to the situation in Kosovo, the Serbian regime has engaged in an escalating program of terror, starting with the institution of a near-apartheid regime and suppression of basic rights by state instruments, including the police, and advancing to a systematic military invasion accompanied by indiscriminate killings, the massive destruction of civilian property, and the intentional displacement of the civilian population leading to a foreseeable humanitarian disaster.

In response to the growing repression by the Serbian regime, some civilians in Kosovo formed the Kosovo Liberation Army, which initially engaged in retaliatory acts and alleged acts of terrorism. These acts could not be condoned, and accordingly the people of Kosovo, through their shadow government, rejected these actions and continued to call for a non-violent resolution of the crisis. When the Serbian regime mounted its military offensive, many civilians took up arms in order to defend their families and their villages. These elements of the Kosovo population were entitled to engage in these actions under their right of self-defense. It would be necessary, however, for the purpose of establishing intermediate sovereignty to evolve these elements into an effective police force and/or army subject to political control. In keeping with this objective, the Kosovo government has recently created an institution referred to as the Armed Forces of the Republic of Kosovo in an effort to regularize the Kosovo Albanians engaged in armed resistance.

5. Recent State Practice Supporting the Provision of Intermediate Sovereignty for Entities in Transition to an International Status

The Russian/Chechen Hasavyurt Agreement of 1996 concerning the status of Chechnia, and the Northern Ireland Peace Agreement concerning the status of Northern Ireland serve as precedents for either the provision of intermediate sovereignty to an entity in transition to an international status, or for the right of a people to determine their own political status. In particular, the Hasavyurt agreement provides for the assumption of a number of international rights and privileges during a period of transition, similar to those which should be accorded Kosovo in the next three to five years, and the Northern Ireland Peace Agreement provides that the people of Northern Ireland, by majority vote may determine whether their entity should remain a part of the United Kingdom, or whether it may separate from the United Kingdom and become a part of Ireland.

More specifically, the Hasavyurt Agreement, which successfully brought an end to the military conflict between Russia and Chechnia establishes a precedent for an interim arrangement providing immediate *de facto*, and contemplated eventual *de jure*, limits on the ability of a parent state to

exercise sovereignty over a sub-state entity.[144] At the same time, the Hasavyurt Agreement points up the negative consequences of failing to clearly articulate the principles governing an interim arrangement as well as the detailed nature of the long term objective of the agreement, and any specific requirements for acceptance into the international community.

To ensure stability in Chechnia, the Hasavyurt Agreement provides for a joint commission of Russians and Chechens that oversaw the gradual withdrawal of Russian troops from Chechnia, and for elections to be held under the auspices of the Organization for Security and Cooperation in Europe. Unfortunately, the Agreement did not, include additional provisions indicating the process by which sovereign powers would be allocated to Chechnia. Concerning a final status, the Agreement provided simply that an "agreement on the basics of mutual relations between the Russian Federation and the Chechen Republic, defined in accordance with universally recognized principles and norms of international law, must be reached by December 31, 2001."[145]

In furtherance of the principles of the Hasavyurt Agreement, on May 12, 1997, Russia and Chechnia concluded a "Treaty on Peace and the Principles of Mutual Relations between the Russian Federation and the Chechen Republic," pursuant to which the parties renounced the use of force and the threat of the use of force to resolve disputes and agreed to construct their relations in accordance with generally-recognized principles and norms of international law. The Russians and the Chechens also signed two agreements relating to economic cooperation, specifically with respect to the restoration of the transit pipeline for oil from Azerbaijan to Russia, and the regularization of banking and customs procedures. Notably, these agreements may serve as a useful model for defining the nature of the international status proposed for Kosovo, and as a means for normalizing the relationship between a Kosovo possessing intermediate sovereignty and the self-proclaimed Federal Republic of Yugoslavia.

The failure of the Hasavyurt Agreement to adequately envision a final solution to the conflict has created a situation of great uncertainty, and has led Chechnia to attempt to establish *de facto* an international status on its own initiative by, for instance, attempting to issue its own passports, taking up or applying for membership in certain international organizations, and seeking diplomatic relations with neighboring states. As these activities are not explicitly provided for in the Hasavyurt Agreement, it has created a certain degree of tension between Russia and Chechnia, making the possibility of a final resolution of Chechnia's status all the more tenuous.[146]

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[144] The Agreement is officially referred to as "Principles for Determining the Bases of Mutual Relations between the Russian Federation and the Chechen Republic."

[145] For a more detailed analysis of the agreement, see Edward Walker, *No Peace, No War in Caucasus: Secessionist Conflicts in Chechnya, Abkhazia and Nagorno-Karabakh* (last modified March 11, 1998), http://socrates.harvard.edu/BCSIA.

[146] See, Walker, supra.

In the case of Kosovo, it would thus be fruitful to spell out in detail the nature of the relationship between Kosovo and the self-proclaimed Federal Republic of Yugoslavia after the expiration of the interim arrangements, and to articulate the conditions of Kosovo's attainment of international status, such as Kosovo's commitment not to politically or territorially associate with Albania and to respect the territorial integrity of Macedonia.

The Northern Ireland Peace Agreement serves as a precedent for the right of a people to determine their own political status by providing that upon a majority vote of the population, the territory of Northern Ireland may separate from the United Kingdom and become part of Ireland.[147] The Accords further provide that in the interim, the residents of Northern Ireland shall be able to exercise significant political control over matters of local concern,[148] and that the parties to the agreement shall establish a series of bilateral councils to discus matters and coordinate activities relating to the self-determination of the people of Northern Ireland.[149] The Agreement also provides for the institution of a number of legal instruments designed to protect the human, economic, social and cultural rights of the people of Northern Ireland.[150]

V. Conclusion

The solution to the Kosovo crisis lies in permitting the people of Kosovo to exercise their inherent right of self-determination, including the right to collectively determine their political fate and to be free from the systematic denial of their most basic human rights. As the self-proclaimed FRY has been unwilling to permit the free exercise of the Kosovo Albanians' right of self-determination, Kosovo is now entitled to create its own international status, separate from that of the FRY.

To ensure the smooth transition to an international status, the parties to the conflict should adopt a 3-5 year interim transition period, after which the Kosovo Albanians may confirm by referendum their desire for Kosovo to have an international status. As an entity with international status, Kosovo will be bound by international law to ensure that the rights of the Kosovo Serbian minority are fully respected, that it does not infringe upon the territorial integrity of Macedonia and that it does not pursue political or territorial association with Albania.

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[147] Northern Ireland Peace Agreement, Constitutional Issues, article 1 (i).
[148] Northern Ireland Peace Agreement, Democratic Institutions in Northern Ireland, articles 1–29.
[149] Northern Ireland Peace Agreement, North South Ministerial Council, articles 1-19, British-Irish Council, articles 1-12, British-Irish Intergovernmental Conference, articles 1-9.
[150] Northern Ireland Peace Agreement, Rights, Safeguards and Equality of Opportunity, articles 1-13.

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