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Kosovo: NATO and Military Action

On 23 March 1999 NATO Secretary-General Javier Solana delegated responsibility to the Alliance's Supreme Commander, General Wesley Clark, to initiate air strikes against the military capability of the Federal Republic of Yugoslavia. The move followed Belgrade's refusal to accept the peace accords negotiated at Rambouillet in France.

This paper examines the build-up to NATO action, covering developments since October 1998 and detailing the diplomatic efforts to find a comprehensive political settlement. It then considers the diplomatic and military options available to the international community, and examines the legal basis for the use of force.

The detailed historical background to the conflict is covered by Library Research Paper 98/73, *Kosovo*, of 7 July 1998, which includes maps of the region. Developments between July and October 1998, including details of the Holbrooke peace plan, are covered in Research Paper 98/93, *Kosovo: The Diplomatic and Military Options*, of 27 October 1998.

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Summary of main points

On 23 March 1999 NATO Secretary-General Javier Solana delegated responsibility to the Alliance's Supreme Commander, General Wesley Clark, to initiate air strikes against the Federal Republic of Yugoslavia (FRY). The move followed Belgrade's refusal to accept the Contact Group-sponsored peace accords, negotiated at Rambouillet in France. At the time of writing, air strikes had not actually commenced.

Russia argues that political processes have not been exhausted and has voiced its categorical opposition to military action. NATO has cited humanitarian grounds as its legal basis for the proposed military action, although the status of this position in international law is open to dispute. NATO has also cited political objectives for the use of force. These include preventing the conflict from spreading, and applying pressure on Yugoslav President Milosevic to sign up to the Rambouillet accords.

The decision to use force brought to an end months of diplomatic efforts by the international community to find a comprehensive political solution to the conflict in the southern Serbian province of Kosovo.

Negotiations in France, sponsored by the six-nation Contact Group, adjourned on 19 March 1999 without agreement from Belgrade. Although the ethnic Albanian delegation approved the draft accords, the Yugoslav delegation continued to object to key aspects, including the proposed deployment of international peacekeepers to enforce the accords.

On 20 March, as international monitors withdrew from Kosovo, Belgrade launched a major offensive in an apparent attempt to destroy the rebel Kosovo Liberation Army. The UN High Commission for Refugees estimated that the recent fighting had caused around 25,000 people to flee their homes. Since it started in late February 1998, the conflict has cost over 2000 lives and displaced over 300,000 people.

CONTENTS

I	Developments Since October 1998	8
	A. Background	8
	B. The Holbrooke Agreement	8
	C. Deployment of the OSCE Mission	9
	D. Diplomatic Efforts and Cease-fire Violations	9
	E. The Killings at Racak and the Contact Group Ultimatum	11
II	Negotiations at Rambouillet	12
	A. Deadline Extended	12
	B. Talks Adjourned	13
	C. The Main Points of the Draft Interim Agreement	14
	1. Political Aspects	14
	2. Security Aspects	14
	D. Developments on the Ground	15
	E. Talks Resume	15
	F. Talks Adjourned for a Second Time	16
	G. The Withdrawal of the KVM	17
	H. Fighting Escalates	18
	I. Final Diplomatic Initiatives	18
III	NATO's Military Options	21
	A. Available Forces	21
	B. Possible Aims and Objectives	21
	C. Likely Targets	22

D.	Reaction within NATO to Possible Military Action	23
E.	Possible Post-Strike Strategies	24
IV	Questions of International Law	26
A.	General Prohibition on the Use of Force	27
B.	A Right of Humanitarian Intervention?	28
1.	The UN	30
2.	Individual States	31
3.	International Organisations	32
C.	The Threat of the Use of Force	34
V	The Regional Context	36
A.	Federal Republic of Yugoslavia	36
B.	FYR Macedonia	38
C.	Albania	38
D.	Bosnia-Herzegovina	39
VI	Opinion in the United Kingdom	40
A.	The Position of the British Government	40
B.	Other Views in Parliament	40
	Appendix 1: Summary of Draft Interim Agreement for Kosovo	42
	Appendix 2: Yugoslav Forces	47
	Appendix 3: NATO Forces	51

I Developments Since October 1998

A. Background

The conflict in the Serbian province of Kosovo between guerrilla fighters of the separatist Kosovo Liberation Army (KLA) and government forces of the Federal Republic of Yugoslavia (FRY) began in late February 1998. Following a series of advances by KLA forces during June and early July, Belgrade launched a major counter-offensive, forcing back the KLA from several of its key strongholds. The impact of the fighting on the civilian population of Kosovo was severe. Over 250,000 people were displaced by the fighting and tens of thousands of homes were destroyed, raising fears that the onset of winter would lead to a humanitarian disaster in the province.

As the offensive continued during September 1998, international pressure for a cease-fire grew. The UN Security Council called for negotiations between the two sides and demanded that Belgrade reduce its forces in the province. However, disagreements surfaced within the Council over the proposed use of force by NATO to enforce the demands. Russia and China strongly opposed military action, but Western leaders believed the experience of Bosnia demonstrated that Belgrade would comply only if faced with the threat of immediate air strikes.

B. The Holbrooke Agreement

In October 1998 the US special envoy, Richard Holbrooke, travelled to Belgrade for intensive talks with the Yugoslav President, Slobodan Milosevic. On 12 October, as NATO issued an activation order authorising air strikes to begin against the FRY within four days, Mr Holbrooke announced he had an undertaking from Mr Milosevic to withdraw troops from Kosovo or confine them to barracks, while suspending all offensive action. The KLA also declared a cease-fire.

To verify compliance and monitor the cease-fire, two agreements were signed by Belgrade, one with NATO and the other with the Organisation for Security and Co-operation in Europe (OSCE). The agreement with NATO authorised Alliance reconnaissance planes to over-fly the province and verify compliance from the air (under Operation "Eagle Eye"), while the agreement with the OSCE provided for the deployment of a 2000-strong "verification force" to monitor the cease-fire on the ground.

Further talks between Milosevic and NATO commanders yielded an agreement on the required scale of withdrawals by government forces, involving a reduction in Yugoslav Army (VJ) and Serbian Ministry of Interior Police (MUP) troops to their pre-conflict level of around 12,000 and 10,000 respectively.¹

¹ HC Deb 23 March 1999, c162

The Holbrooke agreement also outlined a rough timetable for negotiations on a political settlement to the conflict, leading to internationally supervised elections within nine months. However, the main aim of the agreement was to secure a cease-fire, a reduction of FRY forces and the return of refugees, so as to prevent a humanitarian disaster and create the conditions necessary for negotiations on a comprehensive political settlement.

Under Resolution 1203 of 24 October 1998 the Security Council endorsed the agreements reached with Belgrade, but did not give explicit authorisation for action by NATO forces if the FRY failed to comply with UN demands. Nonetheless, NATO maintained that humanitarian necessity constituted sufficient basis for military action and announced it would keep the activation order for air strikes in place indefinitely, to ensure the compliance of Belgrade.

C. Deployment of the OSCE Mission

The agreement on the OSCE force, known as the Kosovo Verification Mission (KVM), was signed in Belgrade on 16 October 1998 and the following day William Walker, a US diplomat, was appointed as its head. The smaller Kosovo Diplomatic Observer Mission (KDOM), which had been active in the province since June 1998, continued to operate until January 1999, when a progressive hand-over of responsibility to the KVM took place. Serious delays in the provision of qualified personnel hindered the deployment of the KVM and, as a result, by the end of December 1998 only about 600 monitors had arrived in the province. However, by 5 February 1999 numbers had been boosted to 1,125 with the main contingents provided by the United States (164 personnel), Germany (111), the United Kingdom (110), Italy (96), France (88) and the Russian Federation (85).²

D. Diplomatic Efforts and Cease-fire Violations

The first few weeks of November 1998 saw a dramatic improvement in the humanitarian situation in Kosovo, with the Foreign Secretary, Robin Cook, reporting on 23 November that most refugees had returned to settlements with only "some hundreds" still living in the open.³

Attention now turned to the need for a comprehensive political settlement, based on a draft plan drawn up by the six-nation Contact Group.⁴ During November the US envoy to the region, Christopher Hill, launched an intensive diplomatic effort, shuttling between the Serbian and ethnic Albanian sides, in an attempt to flesh out the detail of the plan.

² *OSCE KVM Press Release*, 29 January 1999

³ "Edited Transcript of a Press Conference by the Foreign Secretary Robin Cook", Ljubljana, Slovenia, 23 November 1998, from FCO web site at <http://www.fco.gov.uk>

⁴ The Contact Group of nations consists of the United States, United Kingdom, Germany, Russia, Italy and France

On 6 November Mr Hill met with members of the KLA General Staff to discuss the latest version of the draft plan, prompting the representative of the KLA political directorate, Hashim Thaci, to declare:

... today's meeting is of great importance, since it confirms our view that there cannot be a solid and a politically accepted solution without the participation of the KLA.⁵

In return for involvement in the diplomatic process, the KLA apparently undertook not to widen the conflict to neighbouring FYR Macedonia and to avoid contact with Islamic extremist groups.⁶

Furthermore, the KLA political leadership appeared to soften its demand for immediate independence, stating that it would be willing to accept an interim period for Kosovo as an equal republic to Serbia and Montenegro within the Yugoslav federation.⁷ Such a proposal still remained unacceptable to Belgrade, because republican status would, in theory, grant Kosovo the right to secede from the FRY.

Despite the efforts of Mr Hill, attempts at agreeing a political solution failed to make much headway. Neither side appeared willing to contemplate the necessary compromises, prompting fears among the international community that protracted deadlock in negotiations would make a resumption of full-scale violence in the spring inevitable.

Sporadic fighting and kidnappings continued in the province during November and December 1998 in spite of the cease-fire. On 14 December the VJ troops killed 36 KLA guerrillas transporting weapons into the province from Albania. Six Serbs were shot later the same day, apparently in reprisal.⁸

By 23 December fierce fighting had broken out around the town of Podujevo, 30 kilometers north of Pristina. In response to what was the worst violence since October, the head of the KVM, William Walker, declared the situation was in danger of spiralling out of control, raising fears that the monitors would have to be withdrawn. The then Chairman-in-Office of the OSCE, Polish Foreign Minister Bronislaw Geremek, cautioned on 27 December: "If the bloodshed and violence escalate, the OSCE will have to reconsider the forms of its activity in Kosovo."⁹ The fighting around Podujevo continued for four days before the KVM succeeded in brokering a truce.

⁵ *Reuter Textline*, 12 November 1998

⁶ In any case, such a move would be likely to alienate the Roman Catholics that form approximately one third of Kosovo's ethnic Albanian population, *Scotsman*, 11 November 1998

⁷ *Financial Times*, 30 November 1998

⁸ *Guardian*, 28 December 1998

⁹ *Financial Times*, 28 December 1998

From November Belgrade sent a gradual stream of reinforcements back into Kosovo, in violation of the Holbrooke agreement. By late February 1999 the UK Ministry of Defence estimated that the VJ had between 15,000 and 16,000 troops in Kosovo, and the MUP about 9,000 troops, well in excess of the levels agreed with NATO in October 1998.¹⁰

It was also reported that the KLA was using the cease-fire period to regroup and rearm, in preparation for an anticipated resumption of fighting in the spring.

E. The Killings at Racak and the Contact Group Ultimatum

On 15 January 1999 forty-five ethnic Albanian civilians were killed in the village of Racak. The head of the KVM, William Walker, visited the site and immediately blamed Serbian MUP units for the killings, prompting Belgrade to order his expulsion for allegedly "exceeding his mandate".¹¹ Attempts by the chief prosecutor of the UN war crimes tribunal in The Hague, Louise Arbour, to gain entry to Kosovo to investigate the killings were also blocked by Belgrade.¹² A later report by a Finnish forensic team called the killings at Racak "a crime against humanity", but concluded that it was impossible to pass judgement on who was responsible.

The expulsion order for Mr Walker was subsequently frozen, but international pressure for a political solution continued to mount, culminating on 29 January with a summons from the Contact Group for the two sides to attend peace talks in France within one week.

To encourage both sides to participate, NATO warned that any attempt to boycott or derail negotiations would have serious implications. Belgrade was threatened with NATO air strikes if it sought to block agreement, and the KLA was told the flow of arms would be cut and its funds in Europe frozen if it failed to comply. Both sides agreed to attend the talks.

¹⁰ *Jane's Intelligence Review*, March 1999, p.3

¹¹ *Financial Times*, 19 January 1999

¹² BBC News web site at <http://news.bbc.co.uk> , 17 March 1999

II Negotiations at Rambouillet

The negotiating teams gathered at Rambouillet, outside Paris, on 6 February 1999 for the start of proximity talks, co-chaired by the British and French Foreign Ministers, Robin Cook and Hubert Védrine. The three main international mediators involved were Ambassador Boris Mayorsky of the Russian Federation, Ambassador Wolfgang Petritsch representing the European Union and Ambassador Christopher Hill of the United States. The talks were initially scheduled to last one week with the option of a further week's extension if progress was being made.

During 1998 disunity among the ethnic Albanians had frustrated diplomatic efforts, but this time they agreed to send a joint sixteen-member team, headed by the 29-year old head of the KLA Political Directorate, Hashim Thaci. The team included KLA representatives, the self-declared President of Kosovo, Dr Ibrahim Rugova, members of his political party, the pacifist Democratic League of Kosovo (LDK), and the moderate independent editor, Vetton Surroi. However, the most vocal opponent of a negotiated settlement, veteran dissident Adem Demaçi, refused to participate, thus becoming increasingly isolated.

In contrast the 1995 Bosnian peace talks at Dayton, President Milosevic did not attend the talks at Rambouillet. Instead, the 13-member Serbian delegation was headed by Ratko Markovic, the Serbian Prime Minister and a close ally of Mr Milosevic. The relatively low status of the Serbian representatives raised fears that the delegation lacked sufficient authority to negotiate effectively. Indeed, during the debate in the Serbian parliament on whether to participate in the talks, deputies proscribed all discussion by the delegation of an international force to enforce any agreement. The Yugoslav delegation was subsequently reinforced by the arrival of the Serbian President, Milan Milutinovic.

Although a series of obstacles emerged during the first week of negotiations, including an insistence by the Yugoslav delegation that the ethnic Albanians sign up to a list of basic principles, mediators decided that sufficient progress had been made to justify an extension of a further week. However, attempts to impose a news blackout were hampered by the use of mobile phones by both negotiating teams to leak information to the media.

A. Deadline Extended

A fresh deadline of midday on 20 February was set for agreement to be reached, although it soon became apparent that further time would be needed. As the deadline approached NATO continued the build-up of forces with the deployment of 51 US aircraft, including B-52 bombers and F-117 stealth fighters, and the United Kingdom evacuated non-

essential staff from its embassy in Belgrade and warned all remaining British citizens to leave Yugoslavia.¹³

On 20 February the Contact Group announced a further three-day extension to the deadline, calling for work to be completed by 3pm on 23 February. In a statement the Contact Group ministers declared:

Very substantial progress has been made in reaching agreement on the framework and political chapters of the interim agreement for peace and self-government in Kosovo. At the request of the parties, we believe that this justifies an ultimate effort to finalise as a whole the interim agreement and the proposed arrangements for an international military and civilian presence in Kosovo...¹⁴

Nonetheless, opposition from the Yugoslav delegation to the proposed deployment of a NATO force continued to hinder progress, prompting Foreign Secretary Robin Cook to warn:

We are still a long way from agreement by Belgrade [on the security aspects]. We cannot guarantee they will agree [by the deadline] on Tuesday [23 February].¹⁵

According to press reports, opinions differed on which side was to blame for the failure to reach agreement. The US Secretary of State, Madeleine Albright, said the United States had been "extremely reluctant" to agree to an extension of the deadline and accused the Serbian delegation of "evasion and delay".¹⁶ French Foreign Secretary, Hubert Védrine, also declared that Yugoslav opposition to the security component was delaying progress, saying: "It is still the Yugoslav delegation which refuses to take the decisions which seem indispensable to us."¹⁷ However, an Italian official reportedly admitted: "both sides are equally to blame."¹⁸

B. Talks Adjourned

As the final deadline of 23 February passed without full agreement by either side, it was decided to adjourn the talks until 15 March. Mr Védrine declared that considerable progress had been made, but that further work was needed on the implementation of the agreement:

¹³ *Times*, 20 February 1999

¹⁴ BBC News web site at <http://www.news.bbc.co.uk> , 21 February 1999

¹⁵ *Observer*, 21 February 1999

¹⁶ *ibid*

¹⁷ *ibid*

¹⁸ *Independent*, 22 February 1999

A political framework is now in place, as set out in the Rambouillet accords, and the groundwork has thereby been laid for finalizing the implementation chapters of the agreement¹⁹

Most of the ethnic Albanian delegates were apparently in favour of signing the accord immediately, but Mr Thaci refused, requesting time to consult with the rest of the KLA to gauge opinion at the grass roots level. The ethnic Albanians assured the international mediators that they would sign the agreement when negotiations resumed on 15 March.

C. The Main Points of the Draft Interim Agreement

The draft agreement under discussion at Rambouillet was based heavily on a plan drawn up by the Contact Group in July 1998 and subsequently amended following consultations with both sides during the autumn. The international mediators informed the two sides that only about 20 per cent of the plan would be open to negotiation at Rambouillet.

1. Political Aspects

The agreement envisages a three-year interim period, during which time the province would gain extensive autonomy, but remain within Serbia and the Federal Republic of Yugoslavia. At the end of the interim period an international conference would be convened to determine the mechanism for a final settlement for Kosovo. The ethnic Albanians failed to gain a specific commitment to a referendum on Kosovo's status at the end of the interim period, but received the following reassurance from US Secretary of State, Madeleine Albright:

The word referendum is not in the agreement but we recognise that it is important after the three-year period to consider the voice of the people among other considerations.²⁰

The proposed Constitution for Kosovo calls for the democratic selection of a 120-seat assembly, a president, a prime minister and government, and the establishment of a separate constitutional court.²¹

2. Security Aspects

The agreement stipulates that VJ units would withdraw from the province, apart from a limited force along the borders, and that the KLA would be demilitarised. A local police force would then be established to take over responsibility for law enforcement.

¹⁹ CNN web site at <http://www.cnn.com> , 23 February 1999

²⁰ *Guardian*, 22 February 1999

²¹ For an FCO summary of the Interim Agreement see Appendix 1 (Dep 99/486). The full text of the Agreement is available on line at <http://www.alb-net.com/kcc/interim.htm>

Under Chapter 7 of the Interim Agreement, NATO intends to deploy a military force of up to 30,000 troops, known as KFOR, potentially with a sizeable Russian contingent. France, Italy, Germany and the United Kingdom all indicated a willingness to send troops to Kosovo in the event of an agreement being reached. Washington said it would consider sending between 2,000 and 4,000 troops.²² Russia insisted that any peacekeeping deployment would have to be agreed by the Serbian and Yugoslav leadership, but declared it would be willing to consider participating in an international force if Belgrade approved.²³

The Yugoslav delegation initially expressed strong opposition to the deployment of an international military force, claiming it would infringe the sovereignty of the FRY. On 21 February Serbian President Milan Milutinovic insisted that Belgrade would not accept any international force, arguing that "if the agreement is a good one, why do we need troops to implement it?"²⁴ However, at the conclusion of the talks at Rambouillet, the Yugoslav delegation indicated a softening of its opposition by declaring it was ready to "review the scope and character" of an international force.²⁵

D. Developments on the Ground

The adjournment of the talks led to fears that the diplomatic process would give way to renewed fighting, particularly when it was reported that Belgrade was reinforcing its forces in and around Kosovo, increasing the number of Federal troops in the province to a level higher than at any time during 1998.²⁶ VJ units were also reported to be taking up positions along the main routes that would have been used by the NATO extraction force in the event of a forcible evacuation of the KVM.²⁷

NATO warned both sides to avoid provocative actions that could lead to escalation in the fighting, ahead of the resumption of talks on 15 March, and threatened Belgrade with air strikes if it launched an offensive.²⁸ Meanwhile, the NATO Rapid Reaction Corps, which would provide the backbone of any deployment into Kosovo, began arriving in FYR Macedonia in early March.

E. Talks Resume

On 15 March negotiations resumed in Paris, with the ethnic Albanians assuring the mediators that they intended to sign the Interim Agreement. The Yugoslav delegation

²² *Financial Times*, 4 February 1999. For full details of the NATO ground forces available to enforce any agreement, see Appendix 3.

²³ BBC News web site at <http://news.bbc.co.uk> , 22 February 1999

²⁴ *Guardian*, 22 February 1999

²⁵ *Tanjug news agency*, Belgrade, 23 February 1999

²⁶ *Times*, 1 March 1999

²⁷ *Independent*, 4 March 1999

²⁸ See for example *Guardian*, 27 February 1998

continued to insist on further technical changes to the political aspects of the accords, but met with refusal from the mediators. As a result, the chief negotiator, Mr Hill, declared on 17 March:

Based on the last few days with the Yugoslav side, we would not anticipate any further progress.²⁹

On 18 March Hashim Thaci, Ibrahim Rugova, Vetton Surroi and Rexhep Qosja signed the 82-page "Interim Agreement for Peace and Self-Government in Kosovo" on behalf of the ethnic Albanian delegation. Mr Petritsch and Mr Hill, the mediators from the EU and US respectively, also signed the accords. The Russian mediator, Boris Mayorsky, attended the ceremony, but refused to sign, apparently due to Moscow's objections to the provision in the accords for the NATO peacekeeping force.

The Serbian Prime Minister, Milan Milutinovic, seized on Russia's reservations to denounce the agreement:

The document that the so-called Albanian delegation signed... is, in our opinion, a fake document... It has never been discussed, it has not been agreed on, and it has not been signed in any form by the Contact Group as a whole.³⁰

F. Talks Adjourned for a Second Time

On 19 March the co-chairs of the peace talks, Mr Védrine and Mr Cook, issued the following statement, declaring the adjournment of the talks:

1. The Rambouillet Accords are the only peaceful solution to the Kosovo problem.
2. In Paris, the Kosovo [Albanian] delegation seized this opportunity and, by their signature, have committed themselves to the Accords as a whole.
3. Far from seizing this opportunity, the Yugoslav delegation has tried to unravel the Rambouillet Accords.
4. Therefore, after consultation with our partners in the Contact Group (Germany, Italy, the Russian Federation, the United States, the European Union, the Chairman-in-Office of the OSCE), we consider there is no purpose in extending the talks any further. The negotiations are adjourned. The talks will not resume unless the Serbs express their acceptance of the Accords.

²⁹ Press Conference with Contact Group Negotiators (Ambassadors Hill, Petritsch & Mayorsky), 17 March 1999 from USIA web site <http://www.usia.gov/regional/eur/balkans/kosovo>

³⁰ BBC web site at <http://news.bbc.co.uk>, 19 March 1999

5. We will immediately engage in consultations with our partners and allies to be ready to act. We will be in contact with the Secretary General of NATO. We ask the Chairman-in-Office of the OSCE to take all appropriate measures for the safety of the KVM. The Contact Group will remain seized of the issue.

6. We solemnly warn the authorities in Belgrade against any military offensive on the ground and any impediment to the freedom of movement and of action of the KVM, which would contravene their commitments. Such violations would have the gravest consequences.³¹

However, the Russian mediator, Boris Mayorsky, was less inclined to blame Belgrade, arguing instead that perhaps the mediators were at fault for failing to find an outcome acceptable to both sides.³²

G. The Withdrawal of the KVM

In light of the apparent failure of the peace talks, the OSCE Chairman-in-Office, Norwegian Foreign Minister Knut Vollebaek, announced on 19 March 1999 that the KVM mission was to be withdrawn from Kosovo:

The OSCE Mission has made an important contribution to stability in Kosovo under very difficult conditions. But as OSCE Chairman-in-Office, responsible for the safety of approximately 1400 verifiers from many different countries in Kosovo, I have no other choice in the present situation than to withdraw the OSCE personnel.³³

Although the agreement establishing the KVM bound Belgrade to guarantee the safety and security of the monitors, it was feared that, in the event of NATO air strikes, FRY forces might seek to detain KVM members and use them as human shields. Indeed, it was reported in early March that VJ units were establishing roadblocks on the main routes into Kosovo from FYR Macedonia with the apparent intention of disrupting any withdrawal. To counter such an eventuality, NATO had established an 1800-strong extraction force in FYR Macedonia, although, in the event, the withdrawal of the monitors proceeded smoothly.

One possible reason for Belgrade's decision not to interfere with the withdrawal of the OSCE monitors was the presence within the KVM of a sizeable Russian contingent. Any attempt to detain KVM members would have run the risk of antagonising Moscow, which has been generally supportive of Belgrade's position and a prominent critic of NATO's threats to launch air strikes.

³¹ *USIS Washington File*, 19 March 1999

³² CNN web site at <http://www.cnn.com>, 19 March 1999

³³ *OSCE PR*, 19 March 1999

H. Fighting Escalates

On 20 March, as the OSCE monitors withdrew, Federal forces launched a major offensive against KLA-held areas, pushing north from the town of Glogovac and south and east from Srbica in the central Drenica region. According to estimates from the UN High Commission for Refugees, the offensive caused around 25,000 people to flee their homes. Fighting was also reported to have spread to Pristina, the capital of Kosovo, which in the past has remained relatively insulated from the conflict. Gunfire was reported in the suburbs and several cafés were hit by bomb attacks.³⁴

Analysts believe President Milosevic may be attempting to carry out his threat to US envoy Holbrooke to wipe out the KLA within a week, although NATO officials doubt that this is achievable. Nonetheless, news of the offensive prompted the KLA leadership to call immediately on NATO to carry out its threat of air strikes, recognising that their forces were not in a position to withstand a full-scale assault by MUP and VJ units.

International observers expressed fears that the withdrawal of international monitors would remove all restraints from Federal forces, leading to further atrocities against civilians and instances of ethnic cleansing. As of 23 March 1999 it was estimated that there were approximately 16,000 MUP troops and 20,000 VJ troops in Kosovo, with a further 8,000 army reinforcements available on the provincial border.³⁵

I. Final Diplomatic Initiatives

NATO has made clear that it holds the FRY solely responsible for the failure to reach a comprehensive political agreement to the conflict. As President Clinton declared on 19 March: "Now only President Milosevic stands in the way of peace."

Alliance leaders maintain that the international community is faced with a stark choice. Either it can allow full-scale fighting to resume, with the danger of more civilian massacres and a renewed refugee crisis in the coming autumn, or it can use air power in an attempt to pressurise President Milosevic and degrade his ability to wage war.

On 19 March President Clinton justified the need for action in the following terms:

We must also understand our stake in peace in the Balkans, and in Kosovo. This is a humanitarian crisis, but it is much more. This is a conflict with no natural boundaries. It threatens our national interests. If it continues, it will push refugees across borders, and draw in neighboring countries. It will undermine the credibility of NATO, on which stability in Europe and our own credibility depend. It will likely reignite the historical animosities, including those that can embrace Albania, Macedonia, Greece, even Turkey. These divisions still have the

³⁴ "Kosovo refugees flee Serbs", BBC News web site at <http://news.bbc.co.uk> , 22 March 1999

³⁵ HC Deb 23 March 1999, c162

potential to make the next century a truly violent one for that part of the world that straddles Europe, Asia and the Middle East.³⁶

I do not believe that we ought to have to have thousands more people slaughtered and buried in open soccer fields before we do something.³⁷

He warned that military action carried risks, but declared that the risks of inaction were greater still:

Unquestionably, there are risks in military action, if that becomes necessary. U.S. and other NATO pilots will be in harm's way. The Serbs have a strong air defense system. But we must weigh those risks against the risks of inaction. If we don't act, the war will spread. If it spreads, we will not be able to contain it without far greater risk and cost. I believe the real challenge of our foreign policy today is to deal with problems before they do permanent harm to our vital interests. That is what we must do in Kosovo.³⁸

Russia and China continued to voice their opposition to air strikes. The Russian Prime Minister, Yevgeny Primakov, cancelled his planned visit to Washington and declared the proposed NATO strikes to be "against good sense. We are firmly against this."³⁹ The Russian Foreign Minister warned that strikes could provoke a wider war in the Balkans:

If a fire burns in Kosovo, and it follows into Macedonia and Albania and Bosnia-Herzegovina, then another large war in the Balkans would be ignited.⁴⁰

On 21 March the US Secretary of State, Madeleine Albright, announced that Richard Holbrooke was travelling to Belgrade to deliver the following message to President Milosevic:

Ambassador Holbrooke will emphasize to President Milosevic that NATO air strikes against the FRY are being prepared. He will make clear that Milosevic faces a stark choice: to halt aggression against the Kosovar Albanians and accept an interim settlement with a NATO-led implementation force or bear the full responsibility for the consequences of NATO military action.⁴¹

However, after several hours of talks in Belgrade on the 22 and 23 March, Mr Holbrooke conceded that he had been unable to persuade Mr Milosevic to comply with NATO's

³⁶ Press conference by the President of the United States, March 19, 1999 from the USIA web site at <http://www.usia.gov>

³⁷ *ibid*

³⁸ Press conference by the President of the United States, March 19, 1999 from the USIA web site at <http://www.usia.gov>

³⁹ CNN web site at <http://www.cnn.com> , 23 March 1999

⁴⁰ *Financial Times*, 24 March 1999

⁴¹ *USIS Washington File*, 22 March 1999

demands. After briefing Alliance members in Brussels, he informed the NATO Secretary-General, Javier Solana that:

The process now is handed both symbolically and formally back to you. It's Nato's issue.⁴²

Mr Solana then announced that he had instructed the NATO Supreme Commander, General Wesley Clark, "to initiate air operations against the Federal Republic of Yugoslavia", although he gave no indication when the strikes would begin.⁴³

Earlier on 23 March the Yugoslav Prime Minister, Momir Bulatovic, declared a state of emergency, calling for a mass mobilisation of reserves and placing the Yugoslav armed forces on a high state of alert.⁴⁴

⁴² "Nato poised to strike", BBC News web site at <http://news.bbc.co.uk> , 23 March 1999

⁴³ *Reuters*, 23 March 1999

⁴⁴ "Nato poised to strike", BBC News web site at <http://www.news.bbc.co.uk> , 23 March 1999

III NATO's Military Options

A. Available Forces

If NATO air strikes against Yugoslavia do take place, then they will come under the auspices of Operation "Determined Force" (see Appendix 3). This is the NATO force initially assembled to implement air strikes against targets on the territory of the Federal Republic of Yugoslavia in October 1998. As of 23 March, thirteen NATO countries had pledged aircraft to the operation, with the exception of Greece, Iceland, Luxembourg and the new member states (Czech Republic, Hungary and Poland). The UK contribution comes under the title Operation "Deliberate Forge" and currently consists of eight Harrier GR7s of 3(F) Squadron based at Gioia del Colle, Italy, and one TriStar tanker support based at Ancona, Italy.

The force has been strengthened over the past month. On 18 February, US Secretary of State for Defence, William Cohen, signed an order sending an extra fifty aircraft to Europe for possible air strikes against Serbia should the peace talks fail. The new deployment comprised twelve Air Force F-117 stealth fighter-bombers, ten Navy EA-6B electronic warfare planes and twenty-nine refuelling planes. Since February, eight US B-52 bombers, capable of carrying cruise missiles, have been present at RAF Fairford in Gloucestershire. Currently some 350 to 400 NATO warplanes are on standby in Europe. The total number of US aircraft involved is around 200.⁴⁵

On 22 March 1999, NATO Supreme Commander Wesley Clark said:

We have some 400 aircraft. We have a number of naval vessels. We have plans that have been developed over months, weeks and refined days and hours ago. The crews are ready. The equipment is ready. We know what Serb capabilities are. We know what Serb vulnerabilities are. And if required, we will strike in a swift and severe fashion.⁴⁶

B. Possible Aims and Objectives

NATO's strategy was outlined to the House on 23 March 1999 by Prime Minister Tony Blair thus:

NATO action would be in the form of air strikes. It will involve many NATO countries. It has the full support of NATO.

It will have as its minimum objective to curb continued Serbian repression in Kosovo in order to avert a humanitarian disaster. It would therefore target the military capability of the Serb dictatorship. To avoid such action, Milosevic must

⁴⁵ BBC web site <http://news.bbc.co.uk>

⁴⁶ Press Statement NATO HQ, 22 March 1999, *USIS Washington File* at <http://www.usia>

do what he promised to do last October. End the repression; withdraw his troops to barracks; get them down to the levels agreed; and withdraw from Kosovo the tanks, heavy artillery and other weapons he brought into Kosovo early last year.

He must agree to the proposals set out in the Rambouillet Accords, including a NATO led ground force.⁴⁷

C. Likely Targets

In a press release on the situation in Kosovo issued on 22 March 1999, the North Atlantic Council, NATO's policy making body, gave full authority to NATO Secretary-General, Javier Solana, to authorise air strikes against the military capability of the Federal Republic of Yugoslavia when necessary:

In response to Belgrade's continued intransigence and repression, the Secretary General of NATO, to whom the North Atlantic Council had delegated on 30 January the authority to decide on air operations, is completing his consultations with the Allies to this end.

In view of the evolution of the situation on the ground in Kosovo, the North Atlantic Council has also authorised today the Secretary General to decide, subject to further consultations, on a broader range of air operations if necessary.⁴⁸

This authorisation broadens the range of bombing targets available to Alliance forces beyond the originally conceived narrow band of air defence sites, and reflects concern in NATO at the speed of the current Yugoslav offensive in Kosovo. Indeed, NATO Secretary-General, Javier Solana, has emphasised that military action might be broad in scope and not confined to targets in Kosovo itself. A phased air campaign would hit fixed Yugoslav army installations, missile sites, command centres and supply dumps.⁴⁹

The Supreme Allied Commander Europe (SACEUR), US General Wesley Clark, would have overall control over the timing of the air attacks. If cruise missile attacks are followed by bombing raids by Alliance aircraft then the likely chain of command, if it follows that agreed previously for Operation "Determined Force", will have General Clark delegating authority for the implementation of the air strikes to the Commander in Chief of Allied Forces Southern Europe (CINCSOUTH), based in Naples. CINCSOUTH would delegate control of the operation to the Commander, Allied Air Forces Southern Europe (COMAIRSOUTH), also based in Naples. Operational conduct of day-to-day missions would be delegated to the Commander 5th Allied Tactical Air Force, at Vicenza, Italy.

⁴⁷ HC Deb 23 March 1999, c162-3

⁴⁸ NATO Press Release 22 March 1999, *USIS Washington File* at <http://www.usia>

⁴⁹ Press Statement NATO HQ, 22 March 1999, *USIS Washington File* at <http://www.usia>

All indications suggest that the first wave of air strikes would involve Tomahawk cruise missiles, fired from aircraft, principally B-52s, and naval vessels in the Adriatic. Currently the US Navy has four surface ships and two attack submarines armed with Tomahawks. The Secretary of State for Defence, George Robertson, informed the House of Commons on 22 March 1999 that:

The Government have decided to make HMS Splendid - the Royal Navy's first submarine to be equipped with Tomahawk cruise missiles - available for operations in connection with the Kosovo crisis.⁵⁰

During any future air campaign the first asset to be targeted would probably be Yugoslavia's considerable air defence capability. Yugoslav forces have a range of Soviet-built SA-6, SA-3 and SA-2 missiles as well as shoulder-fired missiles launched from Man Portable Air Defence Systems (Manpads). The Yugoslav Army also possesses around 2000 anti-aircraft guns. According to the Pentagon, Yugoslavia has a, "robust, highly integrated, well-equipped air defence system operated by well trained people."⁵¹

The threat to Alliance aircraft from Yugoslavia's air defences is generally regarded as being considerably greater than that posed in Bosnia in 1995 or the dangers faced by UK and US aircrews over Iraq. The potential for overcast weather conditions and the presence of difficult-to-target Manpad systems makes the environment particularly hazardous. Moreover, the air defence systems have reportedly been upgraded recently by Russian technology.⁵²

Operation "Eagle Eye", NATO's air surveillance mission, originally established to support OSCE monitors in Kosovo, will continue, possibly in support of air strikes.⁵³

D. Reaction within NATO to Possible Military Action

Support for the use of air strikes against the FRY appears to be remaining fairly solid among the NATO member states.

The French Prime Minister, Lionel Jospin, told the National Assembly on 23 March:

If it appears that all means of convincing the authorities in Belgrade to cease their acts of repression and to accept the Rambouillet agreements - their political aspects and their military aspects - have been exhausted, France is determined to play its full part in the military action, which will have become inevitable, and

⁵⁰ HC Deb 22 March 1999, c3

⁵¹ *Financial Times*, 22 March 1999

⁵² *Sunday Times*, 21 March 1999

⁵³ Further details on Operation "Eagle Eye" are included in Appendix C

that will involve French forces, as well as European forces and not exclusively, my fellow deputies, American forces.⁵⁴

The German Defence Minister, Rudolf Scharping, said following a cabinet meeting on 22 March that Germany was prepared to offer Tornado aircraft immediately if Yugoslavia continued to reject the Rambouillet accords.⁵⁵

The Spanish Defence Minister, Eduardo Serra, announced on 22 March that Spain would contribute four combat aircraft, a tanker plane and a troop transporter in the event of NATO deciding to launch air strikes.⁵⁶

Italy has in the past expressed considerable concern at the situation in Albania and possible repercussions for that country if NATO military action is undertaken in Kosovo. During a meeting with NATO Secretary-General Javier Solana in Rome on 25th January 1999, Italian Prime Minister Massimo D'Alema said that air strikes on Serbia, unaccompanied by the deployment of ground troops in Kosovo, would leave ethnic Albanians there vulnerable to retaliation. He added that Italy feared an influx of refugees from the region.⁵⁷ However, Italian President Oscar Luigi Scalfaro, while still calling for a peaceful solution, stated on 23 March: "When a government has made a commitment, if it has made a commitment globally, it must stand by that commitment..."⁵⁸

The only evidence of a dissenting view within NATO ranks has come from Greece, a traditional ally of Serbia. George Papandreou, the Greek Foreign Minister, has said that Greek forces would not participate in any bombing campaign.⁵⁹

E. Possible Post-Strike Strategies

The current NATO strategy is based upon the assumption that an intensive NATO air campaign would eventually force President Milosevic to comply with the demands of the international community and accept the Rambouillet accords.

Some critics argue, though, that air strikes will in fact resolve nothing and that the Alliance has no strategy on how to proceed if air strikes fail to persuade President Milosevic to back down. It is argued that the experience with Iraq demonstrates that air strikes alone, unaccompanied by intervention on the ground, have a slim chance of achieving the desired result. Indeed, there were fears among some observers that bombing might actually exacerbate the conflict by removing all constraints from Belgrade.

⁵⁴ *France 3 TV, BBC Summary of World Broadcasts*, 23 March 1999

⁵⁵ *Financial Times*, 23 March 1999

⁵⁶ *El Mundo, BBC Summary of World Broadcasts*, 23 March 1999

⁵⁷ ANSA news agency database, *BBC Summary of World Broadcasts*, 25 January 1999

⁵⁸ *Rai TV, Teletext, BBC Summary of World Broadcasts*, 23 March 1999

⁵⁹ *Financial Times*, 23 March 1999

Some commentators, including the Liberal Democrat leader, Paddy Ashdown, have called for NATO ground troops to be used to impose a settlement and create an international protectorate. It is possible that, should air strikes fail to halt Belgrade's offensive, pressure for such a move would increase.⁶⁰

NATO insists that a forcible intervention with ground forces is not under consideration. There is also little support for this in either Washington or London, as Mr Blair made clear on 23 March 1999:

...there is a difficulty with committing ground troops in order to fight our way in: no one should underestimate the sheer scale of what is involved in the action. We would be talking about 100,000 ground troops, and possibly even more. ⁶¹

Any forcible intervention would probably meet with strong opposition not only from the Russian government, which insists that any international force entering Kosovo must do so with the agreement of both protagonists, but also from Yugoslav forces, potentially leading to high casualty rates among NATO forces.

⁶⁰ *Guardian*, 1 March 1999

⁶¹ HC Deb 23 March 1999, c166

IV Questions of International Law

In October 1998 NATO leaders cited humanitarian concerns in support of their threat to use force against the military capabilities of the FRY. Mr Cook said that

a key concern that drove forward our efforts over the past month was the serious risk to the homeless refugees hiding on the hillsides of Kosovo. Our most immediate concern was to enable those refugees to return to sheltered settlements before winter.⁶²

He also argued that President Milosevic would not have committed himself to full compliance with Security Council Resolution 1199 "if the diplomatic efforts backed by the contact group had not also been backed by the credible threat of military action by NATO."⁶³

The most relevant Security Council Resolution at that time, Resolution 1199, did not give explicit authorisation for the use of force, merely stating that the Security Council

decides, should the concrete measures demanded in this resolution and resolution 1160 (1998) not be taken, to consider further action and additional measures to maintain or restore peace and stability in the region.

Objections from Russia and China obstructed efforts to obtain an unambiguous mandate for the use of force in the form of a further Security Council Resolution.

However, Mr Solana questioned whether UN authorisation were needed:

there may be a moment in which it is necessary to act for humanitarian reasons, when a UN Security Council Resolution will not be necessary or will not be even appropriate because the UN Charter does not contemplate humanitarian acts.⁶⁴

In his statement to the House on 23 March 1999, the Prime Minister gave three main reasons for the possible use of force in this case. It was "primarily to avert what would otherwise be a humanitarian disaster in Kosovo," but also because "instability and civil war in one part of the Balkans inevitably spills over into the whole of it, and affects the rest of Europe too." Finally, following the "promise" that "we would not tolerate the brutal suppression of the civilian population,"

to walk away now would not merely destroy NATO's credibility, more importantly it would be a breach of faith with thousands of innocent civilians, whose only desire is to live in peace and who took us at our word.⁶⁵

⁶² HC Deb 19 October 1998, c953.

⁶³ Loc cit.

⁶⁴ *Financial Times*, 9 October 1998.

These are not all strictly legal points: they indicate also a wider political and moral context, but insofar as the legal position is concerned, they reinforce the emphasis placed by NATO on the humanitarian concern. There is also a hint at a possible claim of collective self-defence, on the basis that events in Kosovo could pose a threat to the security of NATO member states.

A. General Prohibition on the Use of Force

The UN Charter prohibits the threat or use of force in most circumstances. Article 2(4) states that

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

The prohibition has its origins prior to the adoption of the Charter and could be regarded as a wider point of customary international law.⁶⁵ The Charter codifies the prohibition, but also provides for certain circumstances in which force may be used legally. For instance, Article 42 provides that the Security Council may authorise the use of force "to maintain or restore international peace and security," while Article 51 recognises the right of self-defence.

It has sometimes been argued that the prohibition in Article 2(4) on the use of force "in any other manner inconsistent with the purposes of the United Nations" implies that the threat or use of force in a manner **consistent** with those purposes would be legal. However, this is not a position that is universally accepted.

The purposes are set out in Article 1 of the Charter. They include "solving international problems of an economic, social, cultural, or humanitarian character." There is dispute in international law as to whether an humanitarian right of intervention exists and whether force may be threatened or used in support of this. Article 1 calls for "international cooperation," not the use of force, in solving these problems, as it does "in promoting and encouraging respect for human rights and for fundamental freedoms."

To complicate the matter further, there is the question of whether a right of humanitarian intervention exists for the UN, for other international organisations or for individual states. Before moving to this question some initial points on the general debate over humanitarian intervention may be made.

⁶⁵ HC Deb 23 March 1999, c161

⁶⁶ "Customary international law" is a phrase which can be confusing to those more familiar with domestic law. International law has many "sources", and one of these is the practice of states when broadly accepted by other states and international organisations. This comprises an important part of "customary international law."

B. A Right of Humanitarian Intervention?

Intervention in international legal terms is not identical to the threat or use of force (for instance, intervention could include sanctions, or the violation of air space in order to deliver aid), but the two are closely related and force would normally amount to a form of intervention in any case.⁶⁷

Greenwood summarises the situation up to the early 1990s thus:

some prominent international lawyers argued the case for humanitarian intervention on the ground that such intervention was designed to uphold one of the principles on which the United Nations Charter was based, namely the protection of human rights. Most of the literature, however, concluded that, even if a right of humanitarian intervention had existed prior to 1945, it had not survived the adoption of the Charter.⁶⁸

However this is a developing area of international law. The Allied actions in northern and southern Iraq after the Gulf War seemed to represent the assertion of a limited right to abrogate state sovereignty for humanitarian reasons.

Sir Robert Jennings and Sir Arthur Watts, in their edition of *Oppenheim's International Law*, take account of these actions and give a more permissive view of humanitarian intervention than that summarised by Greenwood. However, they set out a number of considerations which would be taken into account in determining the legality of such an act, which could only occur in "extreme and very particular circumstances." They conclude that

it would have to be peaceful action (which need not exclude it being carried out by military personnel) in a compelling emergency, where the transgression upon a state's territory is demonstrably outweighed by overwhelming and immediate considerations of humanity and has the general support of the international community.⁶⁹

Having summarised the views held by other lawyers in the past, Greenwood also argues that events in the early and mid 1990s have changed the position. After looking at the case studies of Iraq, Liberia, Somalia and the former Yugoslavia he concludes that

⁶⁷ Force might be used in another state other than as a form of intervention if, for instance, it were done at the request of that state.

⁶⁸ "Is there a right of humanitarian intervention?" C Greenwood, *The World Today*, February 1993, pp34-5.

⁶⁹ *Oppenheim's International Law*, 9th ed, 1992, p443, fn18.

it is no longer tenable to assert that whenever a government massacres its own people or a state collapses into anarchy international law forbids military intervention altogether.⁷⁰

He too, however, stresses the narrow scope for military intervention.

Shaw is more cautious, staying closer to Greenwood's outline of the position prior to 1991. He argues that the right of humanitarian intervention "is difficult to reconcile today with article 2(4) of the Charter," and that "practice is also in general unfavourable to the concept." However, he goes on:

it is not inconceivable that in some situations the international community might refrain from adopting a condemnatory stand where large numbers of lives have been saved in circumstances of gross oppression by a state of its citizens due to an outside intervention. In addition, it is possible that such a right might evolve in cases of extreme humanitarian need.⁷¹

Roberts and Kingsbury define humanitarian intervention as

military intervention in a state, without the approval of its authorities, and with the purpose of preventing widespread suffering or death among the inhabitants.⁷²

They also stress the restricted nature of any right which might arise to undertake this kind of intervention. They suggest that

such legal justification as could be furnished for the US-led Operation Provide Comfort [assisting displaced Kurds in northern Iraq] ... lay in a view of customary law or in a very broad interpretation of the mandate in resolution 678 of November 1990 'to restore international peace and security in the area.' The operation has to be seen partly in the special context of post-war actions by victors in the territory of defeated adversaries. Further, there were elements of Iraqi consent in the subsequent presence of UN guards in northern Iraq.⁷³

For the British Government, Baroness Symons addressed the issue in a Lords Written Answer. She noted circumstances in which force might be used by NATO on a basis which is clear in law, and then added:

cases have also arisen when, in the light of all the circumstances, a limited use of force was justifiable in support of the purposes laid down by the Security Council but without the Council's express authorisation when that was the only means to

⁷⁰ Op cit, p40.

⁷¹ *International Law*, 4th ed, M Shaw, 1997, pp802-3.

⁷² "Introduction: The UN's Roles in International Society since 1945," A Roberts & B Kingsbury, in *United Nations, Divided World*, 2nd ed, ed A Roberts & B Kingsbury, 1993, p35.

⁷³ *Ibid*, pp35-6.

avert an immediate and overwhelming humanitarian catastrophe. Such cases would in the nature of things be exceptional and would depend on an objective assessment of the factual circumstances at the time and on the terms of relevant decisions of the Security Council bearing on the situation in question.⁷⁴

Two permanent members of the UN Security Council with their own sensitivities, Russia and China, have shown great reluctance to endorse a general right of humanitarian intervention.

On the specific case of Kosovo, Russian Prime Minister Yevgeny Primakov told a press briefing on 22 March 1999:

I don't want the situation to go beyond the boundary line because this will have a huge and destabilizing impact on the situation not only in Yugoslavia as such, in Kosovo, in Europe in general and on a global scale as well. We are categorically against the use of force in Yugoslavia. We believe that political means of influencing the situation are far from being exhausted.⁷⁵

This reads more as a political than legal point, and might be considered to leave open the option of using force if "political means of influencing the situation" were exhausted.

The Chinese Foreign Minister, Tang Jiaxuan, said on 9 October 1998:

military action against Yugoslavia will not only violate the UN Charter and other universally acknowledged norms of international law, but will also do nothing to help resolve the issue; it may even give rise to serious consequences.⁷⁶

1. The UN

As far as the UN (or states acting under its authority) is concerned, Greenwood argues that

the idea that the United Nations may use its powers under the Charter to intervene in a state on humanitarian grounds now seems far more firmly established.⁷⁷

The Security Council has still found it necessary to determine under Chapter VII of the UN Charter that a threat exists to international peace and security before it has authorised such intervention without the consent of the state concerned and with the use of force. This happened with the Unified Task Force (UNITAF) in Somalia, which was authorised by the Security Council and carried out by states led by the USA. Security Council Resolution 794 stated that the Council,

⁷⁴ HL Deb 17 December 1998, c178w.

⁷⁵ Russian Public TV, *BBC Summary of World Broadcasts*, 22 March 1999.

⁷⁶ *BBC Summary of World Broadcasts*, 12 October 1998.

⁷⁷ *Ibid*, p39.

acting under Chapter VII of the Charter of the United Nations, authorises the Secretary-General and Member States cooperating to implement the offer referred to ... above to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia.⁷⁸

2. Individual States

The right of states acting individually to use force to intervene on humanitarian grounds seems at best to be very limited. Humanitarian intervention obviously raises problems of definition, of determining when a case of extreme humanitarian need exists, and these are perhaps more pertinent when the right is claimed by individual states. The reluctance to accept this right has tended to be on the basis that it might be abused in order to abrogate the independence and sovereign equality of other states.⁷⁹

In the past some states have claimed a right of humanitarian intervention, but they have not always rested their case for the use of force solely on this basis: usually it has been cited as an additional explanation of a use of force in self-defence which exceeds the normal bounds of that concept.

Thus India's intervention in East Pakistan/Bangladesh in 1971 was cited as humanitarian in purpose, but was also described as self-defence, although it went further than would normally be justified on that basis. Tanzania's overthrow of Idi Amin in Uganda in 1979 is often regarded as an example of an intervention to prevent further abuses by his regime, but it followed an attack by Uganda on Tanzania, and President Nyerere resisted the idea that it was his responsibility to effect changes in the government of his neighbour. Vietnam argued in the Security Council that its intervention against Pol Pot in Kampuchea, also in 1979, was prompted by the border dispute between the two countries, although it clearly served the humane purpose of removing a murderous regime.⁸⁰ In the cases of Bangladesh and Kampuchea respectively, India and Vietnam also claimed to be acting in support of the right of self-determination.⁸¹

The position after 1991 has tended to differ insofar as the states taking action have either operated under the express authority of the UN Security Council, or have been able to present their actions as furthering the Security Council's aims as expressed in relevant resolutions. Hence, in the example of Operation "Provide Comfort" in northern Iraq, the Security Council in its Resolution 688

⁷⁸ It is worth noting that there was no government in Somalia, so its consent could neither be given nor withheld.

⁷⁹ *Oppenheim's*, p447.

⁸⁰ Greenwood, *op cit*, p35; *Oppenheim's International Law*, 9th ed, 1992, p442, fn18, &p445, fn30.

⁸¹ Vietnam regarded Pol Pot as acting on behalf of China, and held that the forces opposing him therefore constituted a national liberation movement.

insists that Iraq allow immediate access by international humanitarian organisations to all those in need of assistance in all parts of Iraq

and

appeals to all Member States ... to contribute to these humanitarian relief efforts,

even though it does not authorise the use of force and avoids citing the authority of Chapter VII explicitly.

Following their discussion of Operation "Provide Comfort", Roberts and Kingsbury conclude:

there seems little prospect of the majority of states formally agreeing to any new general doctrine of humanitarian intervention. Indeed, there remains a very strong commitment among many states to the principle of non-intervention. What has occurred is a subtly developing practice in special circumstances, and in which some degree of authority from the Security Council has a significant part.⁸²

3. International Organisations

The situation for international organisations other than the UN is a little different.

Collective action has been taken by such organisations within their areas of competence,⁸³ and has not always been condemned as illegal.⁸⁴ However, it is likely that this relates in part to the sense in which an international organisation has competence in areas in which its member states **consent** to it having competence. It is unlikely, for instance, that a group of states could set up an international organisation claiming the right to use force in order to intervene against other states which are not members, since those states cannot have consented to such an organisation having competence in matters which affect them. The basis for NATO's right to use force has always been that of collective self-defence.

In the literature a fairly permissive view is given in *Oppenheim's International Law*:

while prohibition of intervention is a limitation upon states acting in their individual capacity, it does not properly apply to remedial or preventive action undertaken by or on behalf of the organs of international society.⁸⁵

⁸² Op cit, p36.

⁸³ For instance, the Organisation of African Unity sent a peacekeeping force to Chad in 1981, the Organisation of Eastern Caribbean States was involved with the USA in its action in Grenada in 1983, and the Economic Community of West African States was heavily involved in Liberia throughout the early 1990s.

⁸⁴ *Oppenheim's*, p449.

⁸⁵ *Ibid*, p447.

However, the examples given to support this view relate to actions by or under the authority of the UN, or to pre-1945 treaty law between states in the Americas, where particular political circumstances might be felt to apply.

The UN Charter includes provision for "regional arrangements or agencies" to play a role in maintaining international peace and security. Chapter VIII of the Charter provides for these arrangements, but states that

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

An obvious recent comparison with the threatened NATO action in the FRY is the involvement of the Economic Community of West African States (ECOWAS) in Liberia.⁸⁶ In 1990 ECOWAS deployed a Monitoring Group (ECOMOG) to play a role in the civil war in Liberia. It was described as a peacekeeping force, but it undertook extensive military action. ECOMOG gained the consent of Liberia's President, but he was killed soon after and his Government was replaced through a process in which ECOMOG was heavily involved. While ECOMOG could have operated under a mandate from the Security Council as a "regional arrangement" under Chapter VIII of the UN Charter, it did not have explicit authorisation in the form of a Security Council Resolution when it was deployed. Greenwood suggests that "the intervention seems to involve the assertion of some kind of right of humanitarian intervention."⁸⁷ One important contrast with the threatened NATO intervention in the FRY is that Liberia was a member of ECOWAS.

In his statement on 23 March 1999 Mr Blair argued:

if Kosovo was left to the mercy of Serbian repression, there is not merely a risk, but the probability of re-igniting unrest in Albania, of a destabilised Macedonia, of almost certain knock-on effects in Bosnia, and of further tension between Greece and Turkey. Strategic interests for the whole of Europe are at stake. We cannot contemplate, on the doorstep of the EU, a disintegration into chaos and disorder.⁸⁸

These considerations tell in the direction of a claim of collective self-defence as a basis for military action by NATO in the FRY, although this has not as yet been cited explicitly. There are a number of separate legal considerations pertaining to the right of self-defence, which is recognised in Article 51 of the UN Charter.

⁸⁶ Its more recent involvement in Sierra Leone has been undertaken with the consent of the Government there.

⁸⁷ Op cit, p37.

⁸⁸ HC Deb 23 March 1999, c161

C. The Threat of the Use of Force

If the use of force to support an humanitarian intervention has a complicated status in international law, the same is likely to apply to the threat of such a use of force. Article 2(4) of the UN Charter refers to "the threat or use of force" and prohibits both, subject to the provisos outlined in section A above (self-defence or action under the authority of the UN is allowed, etc). It would therefore seem necessary that NATO should have a legal ground unprejudiced by Article 2(4) for its existing threats as well as for any military action which may actually occur.

In October 1998 the basis of the humanitarian concern, and hence the threat to use force, was the plight of the displaced Kosovars. As the Balkan winter nears its end this element might be felt to be less pressing. Nevertheless, the killings at Racak and the record of FRY forces in Bosnia could be cited by NATO as grounds for continuing humanitarian concern.

The impression has also been given that the use of force is being threatened as a means of encouraging acceptance of a peace settlement. Mr Cook has argued that "the objective of [military] action, and of the threat of such action, is to try to secure the compliance of Belgrade" with the Contact Group's demands.⁸⁹

NATO might argue that the peace settlement, including the presence of its troops in Kosovo to oversee the peace, is essential to resist a future humanitarian crisis, or indeed to resist a future threat to international peace and security, and that it would therefore be acceptable under its reading of international law to threaten force in order to promote the peace settlement.

Mr Cook echoed this view:

we are clear that we have legal authority for action to prevent humanitarian catastrophe and we are all deeply worried that we shall be looking at just such a catastrophe unless we are able to get a political settlement under way.⁹⁰

Baroness Symons expanded on the point in a debate in the Lords on 14 December 1998, and said that

the people of Kosovo remain at risk of the humanitarian crisis returning as long as there is no lasting political settlement.⁹¹

However, in answer to a question from Mr Key as to the legal basis for the possible use of force in the FRY, Mr Lloyd stated that

⁸⁹ HC Deb 16 February 1999, c721.

⁹⁰ HC Deb 1 February 1999, c605.

⁹¹ HL Deb 14 December 1998, c1221.

the legal basis for any military action against the Federal Republic of Yugoslavia would need to be considered in the light of the circumstances at the time. Any military action by British forces would have to be lawful under international law.⁹²

This does not in itself provide a basis for the **threat** of using force. On a critical reading it could be held to undermine the threat, since a logical implication is that the "circumstances at the time" might not be supportive of using force. It might also be read as implying that force might be used on a different basis than that on which it has so far been threatened. A more generous reading would suggest that the answer merely states the obvious point that as the situation on the ground develops a legal position today might become an irrelevance tomorrow.

States seek from time to time to assert their scope for action independent of the UN, and they do so by reference to customary international law. When Foreign Secretary, Douglas Hurd remarked on the establishment of the "no-fly zone" over the south of Iraq that,

we operate under international law. Not every action that a British Government or an American Government or a French Government takes has to be underwritten by a specific provision in a UN resolution provided we comply with international law. International law recognises extreme humanitarian need ... We are on strong legal as well as humanitarian ground in setting up this 'no-fly zone.'⁹³

One of the bases for customary international law is the practice of states when accepted by the international community.

⁹² HC Deb 3 February 1999, c689w.

⁹³ Interview on BBC Radio 4 *Today* programme, 19 August 1991, cited in Greenwood, op cit, p36.

V The Regional Context

The current crisis may have repercussions not only for Serbia and the Federal Republic of Yugoslavia as a whole, but also for other key countries in the region.

A. Federal Republic of Yugoslavia

The regime of Yugoslav President Slobodan Milosevic has come under increasing strain in recent years, and his domestic popularity has steadily eroded following the loss of Serb areas in Bosnia and Croatia in 1995. His position was further weakened during 1997 when the opposition coalition, "Zajedno" (Together), gained control of a number of major cities in local elections. The economy has been badly affected by international sanctions and the cost of supporting the conflict in Kosovo, forcing Mr Milosevic to seize the assets of a number of private banks and companies.⁹⁴

The principal aim for Mr Milosevic appears to be to ensure the survival of his regime and to this end he has sought to increase his popularity by playing on the place held by Kosovo in Serbian national mythology. In so doing, he has outflanked his political opponents, who have little choice but to support the war. He has also succeeded in co-opting potential rivals into the Government, including the ultra-nationalist, Vojislav Seselj, and a former leader within the "Zajedno" coalition, Vuk Draskovic.

However, the issue of Kosovo represents perhaps the greatest challenge to the regime of Mr Milosevic. Some commentators are of the view that the Yugoslav President is a political pragmatist, who realises an international force in Kosovo is inevitable, but that he is seeking how to justify such a concession to the Serbian population. Paradoxically, he may calculate that air strikes would strengthen his position and deflect domestic anger away from the failings of the regime, enabling him to blame NATO for the "surrender of Kosovo". Indeed, as the Political Committee of the WEU Assembly noted:

...there is no guarantee that air strikes would weaken his position in Serbia. On the contrary, they would most probably produce the opposite effect by provoking a wave of nationalism which would unite most Serbs, whether they like President Milosevic or not, against the foreign aggressor.⁹⁵

A former member of Mr Milosevic's inner circle holds a similar view, arguing that the regime in Belgrade may crumble if the Yugoslav President makes concessions to the West without a fight:

⁹⁴ *Financial Times*, 22 March 1999

⁹⁵ "WEU and Crisis Management in the Balkans", Report submitted on behalf of the WEU Political Committee, 9 November 1998, from WEU web site at <http://www.weu.int/assembly/eng/reports/e-1627.htm>

For Milosevic, it's like a poker game. He wants NATO to bomb some military targets in Kosovo and then he will sign a peace deal. He must have some story for internal use to explain why he accepts the unacceptable. He will say I tried to save my people.⁹⁶

On the other hand, Mr Milosevic is no doubt aware that a concerted series of air strikes could terminally undermine his rule and provoke an internal coup. Although the leadership of the Yugoslav military has expressed repeatedly its willingness to defend the FRY against NATO attacks, the attitude of the average soldier is harder to ascertain. Although receiving substantial payment for fighting against the poorly equipped KLA may be an attractive proposition, some conscripts may have a different attitude if faced with well-armed Alliance forces.

Another factor in the equation is the status of the Yugoslav federation. Relations between Montenegro and the Serbian and Federal authorities continued to deteriorate during early 1999 with the pro-western President of Montenegro, Milo Djukanovic, locked in a power struggle with Yugoslav President Milosevic. Mr Djukanovic is seeking to break out of the international isolation imposed on the FRY by distancing himself from Mr Milosevic. Montenegro has angered Belgrade by re-opening border crossings with Croatia and offering to act as a staging post for any NATO peacekeeping deployment into Kosovo.

In early February a trade war appeared to be developing between the two Yugoslav republics after Serbia blocked Montenegrin trucks attempting to transport bananas across the border. Serbia claimed Montenegro was failing to pay Federal Yugoslav customs duties on imports, and accused President Djukanovic of seeking to secede from the Yugoslav Federation.⁹⁷

The Montenegrin leadership supports the Rambouillet peace accords, but believes that Belgrade should be offered some form of incentive to sign up, such as re-admittance to the OSCE and UN.⁹⁸ President Djukanovic is also cautious about NATO's threatened use of force, saying on 26 February:

I believe that the bombing of the FRY would strengthen the regime of Mr Milosevic. For this reason, I have always maintained that instead of air strikes we should persist with political talks, to find a solution which would bring about long-term political stability in Kosovo.⁹⁹

Montenegro has pledged not to allow its territory to be used in a possible military confrontation with NATO, which would, in turn, have implications for the operational capability of Yugoslav forces. President Djukanovic has apparently received assurances

⁹⁶ *Financial Times*, 22 March 1999

⁹⁷ *Financial Times*, 16 February 1999

⁹⁸ *BBC Summary of World Broadcasts*, 19 March 1999

⁹⁹ *BBC Summary of World Broadcasts*, 26 February 1999

from the Alliance that it would not target Montenegro.¹⁰⁰ Foreign Secretary Robin Cook told the House of Commons on 24 February 1998:

I have assured President Djukanovic of the full support of Britain and the west for his measures to achieve a more open market economy and society within Montenegro -- measures that we supported financially during the British presidency of the European Union. I have also assured him that our quarrel is with Belgrade and that we shall do all that we can to ensure that our actions in respect of Belgrade are not applied in relation to Montenegro. He has been a valuable and supportive critic of Belgrade's role in so many of the actions that have led to the present crisis in Kosovo and elsewhere. I very much hope that we shall be able to support him whenever possible.¹⁰¹

B. FYR Macedonia

Fears that the conflict in Kosovo would spill over into neighbouring FYR Macedonia have so far proved unfounded, partly due to the KLA's undertaking not to foment unrest among the sizeable Albanian minority in the republic.

The future of the UN Preventative Deployment Force in FYR Macedonia (UNPREDEP) remains in doubt, following a decision by the Chinese Government to veto the renewal of force's mandate in the UN Security Council. China is concerned over increasing trade and political links between FYR Macedonia with Taiwan. However, the presence of substantial NATO forces on its territory has calmed fears in Skopje that the country's security could be at risk if the UN force withdraws.

C. Albania

The political situation in Albania remains fragile, with large areas of Albania, especially in the poor north-east region of Tropoja, remaining outside the control of Prime Minister Pandeli Majko's Government, which came to power following the resignation of Fatos Nano in September 1998.

At the moment, the Government is seeking to balance the conflicting demands of the West to prevent the supply of weapons to the KLA with domestic pressure not to abandon the Kosovar Albanians to their fate. The dilemma could become increasingly acute if Belgrade continues its March offensive, forcing a fresh wave of refugees across the border. The main opposition leader and former President, Sali Berisha, controls much of northern Albania and commentators warn that he may try to mobilise disaffected refugees against the Government.¹⁰²

¹⁰⁰ *BBC Summary of World Broadcasts*, 13 March 1999

¹⁰¹ HC Deb 24 February 1999, c411-412

¹⁰² "Analysis: Albania's dilemma", BBC news web site at <http://news.bbc.co.uk>, 5 February 1999

D. Bosnia-Herzegovina

In recent months tension has increased in Bosnia between the leadership of the Bosnian Serb entity, the Republika Srpska (RS), and the chief international representative, Carlos Westendorp. On 5 March 1999 Mr Westendorp utilised his extensive powers to dismiss the hard-line President of the RS, Nikola Poplasen, for blocking the return of refugees. The dismissal, coupled with the subsequent decision of an international arbitration panel to declare the strategically vital town of Brcko a self-governing "neutral district", prompted a wave of protest from the Bosnian Serbs. UN vehicles and the offices of several international organisations were attacked, raising fears that violence could again be on the increase.

Some commentators believe, though, that the protests will have little lasting impact and argue that caution will prevail. Indeed, the moderate acting Prime Minister of RS, Milorad Dodik, who resigned after the arbitration decision, has remained in his post and reasserted his willingness to co-operate with Mr Westendorp and the international community.¹⁰³

Nonetheless, fears that NATO forces in Bosnia might be targeted by Serb hard-liners in reprisal for NATO air strikes against the FRY prompted the following warning from Prime Minister Tony Blair:

Any attack by Serbian forces against NATO personnel engaged in peace-keeping missions elsewhere in the region would be completely unjustified and would be met with a swift and severe response in self-defence.¹⁰⁴

¹⁰³ *Economist*, 13 March 1999

¹⁰⁴ HC Deb 23 March 1999, c163

VI Opinion in the United Kingdom

A. The Position of the British Government

The United Kingdom has played a prominent role in international efforts to find a diplomatic solution to the Kosovo conflict. The Foreign Secretary, Robin Cook, acted as co-chair alongside his French counterpart, Hubert Védrine, during the Contact Group sponsored talks in France of February and March. British units are currently deployed in FYR Macedonia as part of the NATO Extraction Force (EX-FOR) and as part of the planned NATO peacekeeping operation (K-FOR).

Furthermore, the British Government has indicated its willingness to use air power if necessary to enforce the demands of the international community, stressing that it is unwilling to permit a situation similar to Bosnia to re-occur. The Prime Minister, Tony Blair, has outlined what he perceived to be the main flaws in Western policy during the Bosnian conflict:

NATO was slow to become engaged in the Balkan wars of the 1990s. We tried to bring peace to Bosnia through the UN and with political good offices, but without the willingness to use force which we now know was necessary. Our troops, under the auspices of the UN, did a good job at great risk, to deliver relief. But they could only deal with the symptoms of the problem. It was NATO that brought serious force to bear and gave the desperately needed muscle to end the war. Since Dayton, NATO has underpinned the peace and created the conditions in which Bosnia can rebuild.

In Kosovo, we will not repeat those early mistakes in Bosnia. We will not allow war to devastate a part of our continent, bringing untold death, suffering and homelessness.¹⁰⁵

B. Other Views in Parliament

The Leader of the Opposition, William Hague, has declared his party's support for the proposed air strikes by NATO, saying on 23 March:

...I express the Opposition's wholehearted support for the British forces who might have to take part in the NATO action.¹⁰⁶

However, he added that:

Although we support the use of ground troops to implement a diplomatic settlement, we shall not support their use to fight for a settlement.¹⁰⁷

¹⁰⁵ "Speech by the Prime Minister, Tony Blair, NATO 50th Anniversary Conference", Royal United Services Institute, London, Monday 8 March 1999 from FCO web site at <http://www.fco.gov.uk>

¹⁰⁶ HC Deb 23 March 1999, c163

For the Liberal Democrats, Menzies Campbell also declared his support, but warned of the potential risks of military action:

None of us should underestimate the risk of casualties on either side. If air strikes prove to be necessary, those who advocate them and those who support them - as I do - might have to live with some extremely painful consequences.¹⁰⁸

Some Members, including Tony Benn and Tam Dalyell, have expressed opposition to the proposed use of force by NATO against Belgrade, believing it to be in contravention of international law. Tony Benn said on 23 March:

An ultimatum has been announced amounting to an all-out air war and possibly a ground war against a member state of the United Nations which under article 51, has the right to self-defence. By doing so, the British Government and other NATO Governments are defying the charter, to which we are committed and breaking international law.

Mr Blair responded by saying that Belgrade was in breach of "every part" of UN Security Council Resolutions 1199 and 1203 and restating his belief that NATO had to act to avert a humanitarian disaster.¹⁰⁹

¹⁰⁷ Ibid, c163

¹⁰⁸ Ibid, c165

¹⁰⁹ Ibid, c169

Appendix 1: Summary of Draft Interim Agreement for Kosovo

Deposited Paper Dep 99/486

(NB this summary has been drafted by the FCO for Information only and has no official status)

The final draft Interim Agreement for Peace and Self-Government in Kosovo was transmitted to the Delegation of the FRY/Serbia and the Delegation of Kosovo on 23 February. In response, the FRY/Serbia Delegation emphasised that major progress had been achieved in defining a political solution on substantial self-government for Kosovo while respecting the sovereignty and territorial integrity of the FRY. The Kosovar Delegation said that it could sign the Agreement in two weeks after consultation with the Kosovar people and political and military institutions.

The draft Agreement consists of a preamble, an introductory section entitled "Framework", and eight chapters. The draft Agreement includes a new Constitution for Kosovo providing for self-government, but without prejudice to the sovereignty and territorial integrity of the FRY.

There are to be democratic elections, and detailed provision is made for civilian and military implementation. A comprehensive assessment of the Agreement is to take place after three years, at an international meeting.

Preamble and Framework

1. These parts of the final draft set out some basic principles of the Interim Agreement. The preamble recalls the "principles/basic elements" adopted by the Contact Group at its Ministerial meeting in London on 29 January, which were the starting point for the Rambouillet meeting; recalls the commitment of the international community to the sovereignty and territorial integrity of the FRY; and recognises the need for democratic self-government in Kosovo and the protection of the human rights of all persons there, as well as the rights of the members of all national communities in Kosovo.

2. The Framework requires all authorities in Kosovo fully to respect human rights, democracy, and the equality of citizens and national communities. It further provides for confidence-building measures, including an immediate cease-fire; the return of all refugees and all displaced persons to their homes; unimpeded access for international assistance; the release of persons detained in connection with the conflict; and full compliance with the requirements of UN Security Council resolutions concerning the International Criminal Tribunal for the Former Yugoslavia.

Chapter 1: Constitution of Kosovo

3. The proposed Constitution of Kosovo provides for democratic self-government. The Federal authorities retain competence in specific areas (including defence, foreign policy, and Federal taxation); and the Republic of Serbia likewise has certain specific competencies (for example, to offer social services at the request of persons in Kosovo; and as regards elections to the National Assembly of Serbia).

4. Kosovo is to have an Assembly, consisting of 120 Members (80 directly elected, plus 40 elected by the members of national communities, including the Serb and Albanian national communities). The Assembly has extensive law-making, budgetary and taxation powers. Decisions are to be taken by a majority of Members present and voting. A special procedure protects the vital interests of each national community: laws or decisions that adversely affect such vital interests are suspended with regard to the national community concerned until mediation/arbitration procedures have been completed.

5. Kosovo will have a President, to represent Kosovo, who will propose candidates for Prime Minister and judicial office. The Government of Kosovo will consist of a Prime Minister and Ministers approved by the Assembly.

6. Kosovo will have its own Constitutional Court, Supreme Court and other courts. The Constitutional Court is to have a majority of judges selected from a list drawn up by the President of the European Court of Human Rights. It will have extensive jurisdiction over constitutional matters and as regards complaints of violations of human rights and fundamental freedoms. Provision is made for persons to opt to have civil disputes adjudicated by other courts in the FRY (applying the law applicable in Kosovo). There are special procedures to give reassurance in criminal cases.

7. The rights and freedoms set forth in the European Convention on Human Rights and its Protocols will apply directly in Kosovo, and will have priority over all other law. The national communities in Kosovo and their members are to have additional rights to protect their national, cultural, religious and linguistic identities. These include the right for schooling in their own language and in their national cultural and history; the right to operate religious institutions; and the right to have local names (towns, streets etc) in their own language.

8. Provision is made for extensive powers to vest in the existing communes (local governments).

9. Citizens in Kosovo will continue to have the right to participate in the election of members of the Federal Assembly and the National Assembly of Serbia.

Chapter 2: Police and Civil Public Security

10. This Chapter provides for the police and all other law enforcement agencies in Kosovo to observe internationally recognised standards of human rights and due process,

and in particular requires them not to discriminate on any ground. The OSCE Implementation Mission is to monitor law enforcement agencies and has authority to issue binding directives to them.

11. Provision is made for communal police units to have primary responsibility for law enforcement in Kosovo. A Criminal Justice Administration is to be established to supervise, and it necessary give binding directives to, communal police. This Administration will itself be subject to any directions given by the Chief of the Implementation Mission. Detailed provision is made concerning the uniforms and equipment of communal police. A Police Academy is to be established.

12. Kosovo and Communal Criminal Justice Commissions will be established, as forums for cooperation, coordination and dispute resolution.

13. The Special Police (NW) will be drawn down as the communal police are established.

14. Serbian Border Police and FRY Customs Officers will continue to have authority at international border crossings, subject to strict requirements.

Chapter 3: Conduct and Supervision of Elections

15. This Chapter requires the Parties to ensure that conditions exist for free and fair elections, and for the OSCE to put in place an elections programme for Kosovo and to supervise the elections provided for in the Interim Agreement. An Election Commission is established, with a President, appointed by the OSCE, who has final authority to take decisions.

Chapter 4: Economic Issues

16. This Chapter sets out the relationship between the FRY and Kosovo in the economic field, in particular as regards the collection of taxes and customs duties. It provides for free movement of persons, goods, services and capital to Kosovo, including from international sources.

17. Provision is made for the reallocation of property and resources in line with the new distribution of powers and responsibilities, and for a Commission to resolve all disputes on such matters.

Chapter 4A: Humanitarian Assistance. Reconstruction and Economic Development

18. Chapter 4A sets out the basic principles for international assistance to Kosovo, which will be provided without discrimination between national communities. The European Commission will organise an international donors' conference within one month of entry into force of the Agreement. With the exception of humanitarian aid, international assistance will be subject to full compliance with the Agreement and other conditionalities.

Chapter 5: Civilian Implementation

19. The OSCE, in cooperation with the European Union, will establish an Implementation Mission in Kosovo, replacing the existing Kosovo Verification Mission. The Chief of the Implementation Mission is to supervise and direct implementation of the civilian aspects of the Interim Agreement (including policing). He will have final authority to interpret the Agreement in this regard, and his determinations are binding.

20. A Joint Commission will be established to serve as the central mechanism for monitoring and coordinating civil implementation. Elections are to be held within nine months of the entry into force of the Agreement.

Chapter 6: Ombudsman

21. The Ombudsman (who will not be from the former Yugoslavia) is to be elected by the Assembly of Kosovo from a List of candidates prepared by the President of the European Court of Human Rights. Pending his election, the Chief of the Implementation Mission will designate an interim Ombudsman.

22. The Ombudsman will have jurisdiction to consider violations of human rights and fundamental freedoms in Kosovo, as well as violations of the rights of members of national communities.

Chapter 7: Military Implementation

23. This Chapter provides for a NATO-led military Implementation Force in Kosovo. The UN Security Council will be invited to pass a Chapter VII resolution endorsing and adopting the arrangements set forth in the chapter. Detailed provision is made for the powers and status of the Force.

24. The Chapter contains detailed provision for the cessation of hostilities, and the redeployment, withdrawal or demilitarisation of all forces in Kosovo (Yugoslav Army, Yugoslav Border Guard Forces, Yugoslav Air and Air Defence Forces, Special Police (MUP), and "Other Forces", including the Kosovo Liberation Army -UCK).

25. Detailed provision is made for the control of air movements, for prisoner release and for the establishment of a Joint Military Commission to resolve difficulties.

26. The Commander of the Implementation Force is the final authority regarding interpretation of the Chapter, and his determinations are binding.

Chapter 8: Amendment, Comprehensive Assessment, and Final Clauses

27. Amendments to the Agreement may be adopted by agreement of all the Parties (except as regards the Constitution of Kosovo, for which separate provision is made in the Constitution).

28. Three years after entry of force of the Agreement, an international meeting is to be convened to determine the mechanism for a final settlement for Kosovo (on the basis of the will of the people, the opinions of relevant authorities, each Party's efforts regarding implementation, and the Helsinki Final Act) and to undertake a comprehensive assessment of the implementation of the Agreement and to consider proposals by any Party for additional measures.

29. The Agreement is to enter into force upon signature.

Appendix 2: Yugoslav Forces

Yugoslav Forces High Command

Chief of the Yugoslav Army (VJ) General Staff - Lt Col Gen Ojdanic

Chief of Air and Air Defence Forces - Lt Col Gen Smiljanic

Commander of Navy - Vice Adm Zec

Chief of Intelligence and Security - Col Gen Dimitrijevic

Commander VJ 1st Army (Belgrade) - Lt Col Gen Trajkovic

Commander VJ 2nd Army (Podgorica) - Lt Col Gen Martinovic

Commander VJ 3rd Army (Nis) - Lt Col Gen Pavkovic

Overall Numbers

Army strength: 90,000 (37,000 conscripts) and possibly 150,000 reservists.

Naval strength: 7,5000.

Air Force strength: 15,000.

Main Bases

1st Army: Belgrade, Novi Sad, Sombor, Kraljevo, Pancevo, Pozarevac, Kragujevac, Sremska Mitrovica, Sabac, Valjevo.

2nd Army: Podgorica, Uzice, Niksic, Danilovgrad, Raska, Novi Pazar, Cacak, Kremna.

3rd Army: Nis, Pristina, Krusevac, Prokuplje, Kursumlija, Leskovac, Vranje, Pirot.

Yugoslav Army in Kosovo

52 (Pristina) Corps. HQ Pristina. Subordinate to the VJ 3rd Army.

Role: Protect the territorial integrity of the Federal Republic of Yugoslavia; protect key installations, force protection of deployed troops and equipment and keep the internal lines of communication open.

Locations: Pristina, Pec, Prizren, Kosovska Mitrovica, Urosevac, Djakovica, Gnjilane. Currently deployed on operations in Kosovo.

Total Strength: Approximately 15-16,000, with some reinforcements from other VJ formations outside Kosovo.

Serbian Ministry of Interior Police (MUP) in Kosovo

Role: Internal security as well as all the other police related tasks. The MUP has two sub-organisations, the SAJ (specialist anti-terrorist police) and the PJP (combat police forces).

Locations: Largely co-located with the VJ in their barracks. They man all the checkpoints on the main roads.

Numbers: Vary according to operational need. Peaked at approximately 13,000, fallen to about 9,000 now. Peace time strength approximately 6,000.

Key Equipment

Yugoslav Army:

Main Battle Tanks

Type	Number
M-84	239
T-72	65
T-55	785
T-34	181

M-84 tank. An updated copy of the Russian T-72. An effective vehicle but rarely seen in Kosovo in any numbers.

T-55 tank. An old Russian tank that is the mainstay of the VJ armoured forces. Late 1940's design but still reliable.

Armoured Vehicles

Type	Number
M-80	568
M-60P	169
BOV VP M-86	68

M-80 Armoured Fighting Vehicle (AFV). A copy of the Russian BMP-1 AFV.

BOV-M APC. A wheeled reconnaissance vehicle.

Anti-Aircraft Guns: 1,850

BOV-3. Self-propelled Anti-Aircraft Gun (SPAAG). A BOV-M chassis with a triple mounted 20mm cannon in a turret. Used in the ground role to good effect.

PRAGA. An armoured truck with a twin-mounted 30mm cannon. An SPAAG that has been used to great effect against houses and infantry.

Yugoslav Air Force

Type	Number
MiG-29	15
MiG-21	65
J-22 <i>Orao</i>	30
<i>Galeb</i>	50
G4 <i>Super Galeb</i>	10
Armed Helicopters - <i>Gazelle</i>	48

MiG-29 Fulcrum. A relatively modern Russian fighter. The most modern aircraft in the Yugoslav inventory.

MiG-21 Fishbed. A 1960s designed air defence fighter. Old, but still capable. The Air Force has about 70 of these aircraft.

J-22 Orao. An indigenously designed fighter, ground attack aircraft. Slow and relatively unmanoeuvrable.

G-4 Super Galeb. Advanced trainer, similar to the British Aerospace Hawk.

Air Defence Missiles

There are eight surface-to-air missile battalions at eight sites.

Type	Number
SA-2	24
SA-3	16
SA-6	60

Strategic Systems. SA-2, 3 and SA-6 surface-to-air missiles (SAMs). The first two are old, but have a high ceiling. The latter is a very effective medium level missile. It has already been used in anger in Bosnia and was the weapon responsible for shooting down USAF Capt Scott O'Grady's F-16 in 1995.

Tactical Systems. SA-9 and 13. Essentially the same missile; the first is mounted on a wheeled chassis, the second on a tracked chassis. Both capable.

Man portable systems. SA-7, 16 and 18. These are single-shot shoulder launched missiles similar to the US Stinger and the UK Blowpipe/Javelin. The SA-16s and 18s are the latest and most capable.

Navy

Vessel	Number
Submarines	4
Frigates	4
Patrol Craft	34
Mine Warfare	16
Amphibious	20

Command and Control

Command is exercised by the President (Milosevic) who is the chairman of the Supreme Defence Council.

Command is delegated to Lt Col Gen Ojdanic who is the Chief of the VJ General Staff. All forces are subordinate to him.

Orders are then cascaded to the Army Commanders, the Navy and the Air/Air Defence forces and then down to the Corps and the Brigade Commanders.

The MUP is commanded by the Interior Minister, who also controls the State Security Directorates, which in turn have their own specialists.

In Kosovo the work of the Army and the MUP is co-ordinated. A clear chain of command goes from Pristina via Nis to Belgrade.

Command, Control and Communications links are modern and have built-in redundancy. They are protected and have multiple alternative communications nodes.

Sources:

British Ministry of Defence web site at <http://www.mod.uk>

US Department of Defense web site at <http://www.defenselink.mil>

The Military Balance 1997/1998, International Institute for Strategic Studies

Appendix 3: NATO Forces

Air Forces:

Total 350 - 400 Aircraft

United States: 250 Aircraft

Key aircraft include:

Aircraft Type	Number
F15E - <i>Strike Eagles</i>	20
F16CGs/CJ	40
A10 - <i>Thunderbolts</i>	10
F117 - <i>Stealth Fighters</i>	12
B52	8
B2 - <i>Stealth Bomber</i>	2
EA-6B(electronic warfare)	10

United Kingdom:

Aircraft Type	Number
Harrier GR7	8
TriStar Tankers	2

France:

Aircraft Type	Number
Mirage	10

Other Countries have pledged the following

Country	Aircraft Type
Belgium	F-16
Canada	CF-18
Denmark	F-16
Germany	Tornado
Italy	Tornado
Netherlands	F-16, KC-10
Norway	F-16, C-130
Portugal	F-16
Spain	EF-18, KC-130
Turkey	F-16

Naval Forces:**United States:**

Vessel Type	Number
Guided Missile Destroyer	3 -, <i>USS Gonzales,</i>
Guided Missile Cruiser	1 - <i>USS Philippine Sea</i>
Anti-Submarine Destroyer	2 - <i>USS Thorn USS Nicholson</i>
Attack Submarines	2 - <i>US Norfolk, US Miami</i>

United Kingdom:

Vessel Type	Number
Frigate	1 - <i>HMS Iron Duke</i>
Attack Submarine	1 - <i>HMS Splendid</i>

Land Forces:**Allied Command Europe Rapid Reaction Corps (ARRC)**

Since 6 March 1999, elements of the ARRC, commanded by British General Mike Jackson, have begun deploying in Macedonia.¹¹⁰ They will form a NATO command and control element to co-ordinate NATO forces already present. According to NATO the force will:

Provide a single NATO Commander for coordination and control of national land forces deploying in FYROM (Former Yugoslav Republic of Macedonia). Additionally, this organisation establishes a single commander to allocate infrastructure, coordinate training facilities, and assist liaison with the FYROM Government.¹¹¹

¹¹⁰ The ARRC is the land component of NATO's Rapid Reaction Forces under the permanent operational command of the Supreme Allied Commander Europe (SACEUR). It is multinational and comprises staff, assigned military formations and representatives from 14 contributing nations. It is trained, prepared and ready to deploy within days anywhere as directed by SACEUR to undertake combined joint military operations ranging from Peace Support Operations (PSO) to High Intensity Warfare. As the Framework Nation, the UK provides the infrastructure, administrative support, communications and 60% of the staff.

¹¹¹ *Atlantic News*, 10 March 1999

NATO Extraction Force (EXFOR) - Operation "Determined Guarantor"

1800 personnel (estimate).

Operation "Determined Guarantor", totalling around 1800 personnel, is led by France and is composed of company-sized mechanised infantry groups from the UK, France, Germany and Italy with helicopter support from France (eight Pumas and four Gazelles), Italy (four A129 Mangustas and two AB412 helicopters) and the Netherlands (three CH-47D Chinooks). Germany is providing 16 CL-289 reconnaissance drones.

The UK contribution to "Determined Guarantor" currently consists of 390 personnel from the 1st Battalion King's Own Royal Border Regiment with 14 Warrior Armoured Vehicles. They are supported by about 250 Royal Engineers, signals specialists and members of the Royal Logistic Corps.

The national troop contributions are as follows:

Country	Personnel
France	700
UK	390
Germany	200-250
Italy	150
Netherlands	150
Greece	40

Turkey - a small contingent of Turkish soldiers provides security for the snatch squad HQ, which is to be at Kumanovo in northern Macedonia. About 800 UN peacekeeping troops are already stationed there.

The current status of this mission is uncertain following the withdrawal of OSCE monitors from Kosovo on 20 March.

NATO Kosovo Enforcement Force (KFOR)

9000 personnel

According to General Klaus Naumann, the outgoing Chairman of NATO's Military Committee, the Kosovo "Enforcement Force" (KFOR) now numbers around 9000 troops.¹¹² NATO has estimated that at least 26,000 troops will be needed to police any peace agreement in Kosovo.

¹¹² *Atlantic News*, 12 March 1999

UK Contribution

The UK contribution (code named Operation "Agricola") currently numbers some 3,020 personnel with a total contribution set at around 8,000. The current force consists of: 4 Armoured Brigade HQ and a battlegroup formed principally from the King's Royal Hussars, the Irish Guards, 4 Regiment Royal Artillery and the HQ element of 4 Armoured Brigade.¹¹³

On 11 February 1999, the Secretary of State for Defence, George Robertson, made a statement to the House detailing the initial UK contribution to a potential NATO force to police any future peace agreement on Kosovo. He emphasised the need for any effective military force to be prepared well in advance and detailed the forces that were to be sent to the region:

For this reason, the Government have decided today to send to the region at the beginning of next week the vehicles and other heavy equipment of the units that would form the leading elements of any deployment. They will include Challenger tanks and Warrior armoured vehicles and artillery. The units principally involved are the Kings Royal Hussars, the Irish Guards and 4 Regiment Royal Artillery, with a tactical headquarters drawn from 4 Armoured Brigade. Other units will also be providing equipment. Loading of the Royal Fleet Auxiliary ships *Sea Centurion* and *Sea Crusader* will begin on Monday.¹¹⁴

The detailed itinerary of the equipment shipped on the *Sea Centurion* and *Sea Crusader* comprised: fourteen Challenger main battle tanks, six AS90 self-propelled guns, 27 Warrior armoured infantry vehicles, eight Scimitars, 30 light armoured and support vehicles, nearly 30 Royal Engineer and REME specialist vehicles and four armoured ambulances.¹¹⁵

Kosovo Air Verification Mission - Operation "Eagle Eye"

Eagle Eye is the result of the NATO-Kosovo Verification Mission Agreement, signed in Belgrade on 15 October 1998, and under which the Federal Republic of Yugoslavia agrees to the establishment of an air surveillance system, comprised of NATO non-combatant reconnaissance aircraft and unmanned aerial vehicles (UAVs). A NATO "activation order" dated 30 October 1998 marked the official launch of this high-tech verification mission.

¹¹³ MOD Web site at <http://www.mod.uk>

¹¹⁴ HC Deb 11 February 1999, c565

¹¹⁵ *Soldier*, March 1999

NATO's member states are involved in Operation "Eagle Eye" through the provision of air and ground crews, or through the manning force required to operate headquarters, the Kosovo Verification Coordination Centre at Kumanovo, the Combined Air Operation Centre and liaison cells. The operation consists of around 150 staff from 14 nations using information from satellites, manned reconnaissance aircraft and UAVs.

The UK contribution to the operation is a Canberra PR9 reconnaissance aircraft, based at Gioia del Colle, Italy.

Sources:

British Ministry of Defence web site at <http://www.mod.uk>

US Department of Defense web site at <http://www.defenselink.mil>

The Military Balance 1997/1998, International Institute for Strategic Studies