

INDEPENDENCE, INTERVENTION AND GREAT POWER PATRONAGE: KOSOVO, GEORGIA AND THE CONTEMPORARY SELF-DETERMINATION PENUMBRA

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Introduction

2008 was an eventful year for those concerned with the issue of self-determination. On the 17th February the Assembly of Kosovo approved a declaration of independence in a bid to become the seventh state to emerge from the defunct Socialist Federal Republic of Yugoslavia (SFRY).¹ This declaration was rejected by Serbia which continues to claim sovereignty over the region. On 26th August Russian President Dmitry Medvedev announced Russia's formal recognition of the independence of South Ossetia and Abkhazia, both regions within the independent state of Georgia. Like Serbia, Georgia rejected the independence claims of both regions.

This article contends that despite the increased currency of self-determination in contemporary international political debate the issue remains highly ambiguous and problematic. Neither of the 2008 cases clarified the self-determination penumbra, and consequently the issue remains the preserve of political expediency rather than objective legal doctrine.

This article begins by examining the case of Kosovo. Kosovo's transition from oppression to independence has been one of the key international issues of the post-Cold War era. The 2008 declaration of independence was heralded by many but also prompted the expression of great concern that such a 'precedent' could spark a chain-reaction of secession across the world leading to instability and violence. It is argued here that both reactions to the declaration of independence are misinformed; first the path to independence for Kosovo was highly contingent on a unique constellation of factors, particularly the support of Western states. Had the Kosovars not successfully courted the support of the key Western states then Kosovo would likely remain a constituent province within Serbia. The nature of Kosovo's 'independence' is itself conditional and power in the 'state' continues to be exercised, in crucial respects, by foreign politicians and bureaucrats. Kosovo does not, therefore, constitute a plucky tale of emancipation and the

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¹ The other six being Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia.

achievement of self-determination. The dependence on Western powers has obvious implications for the sovereignty of Kosovo but also has troubling implications for similar situations around the world; the lesson of Kosovo would appear to be that people desirous of independence must orchestrate their own oppression and concomitantly cultivate obsequious relations with powerful Western states.

Second, independence for Kosovo has done little to clarify the very ambiguous legal process of recognition and constitutes a unique constellation of factors which militate against emulation. Fears that Kosovo would have a domino effect are thus misplaced to the extent that states, such as Spain, Russia and China, which currently harbour disgruntled minorities, are highly unlikely to ever have to counter Western support for the secession of one of these regions.

There are strong parallels between the two situations in Kosovo and Georgia; in both cases the host state strongly rejects the independence claims, the international community is deeply divided on each issue and both situations involve regions seeking to secede from states which were themselves created when socialist federations fragmented. This article concludes by arguing, however, that, accepting these superficial similarities, there are important factors which differentiate each situation.

I. Violence and Intervention

The history of the Balkans is notoriously fraught and contested. Many lazily attributed the violence which erupted in the 1990s to 'ancient ethnic hatreds'.² Yet while past grievances certainly played a negative role in the dissolution of the SRFY they were far from the exclusive or primary factor.³ The SRFY's formal fragmentation began with Slovenia's decision to leave in 1990 and subsequent declaration of independence on 25th June 1991. While over 60 soldiers were killed in the ensuing ten-day conflict the secession of Slovenia was, in the context of the carnage which followed in Croatia and Bosnia, remarkably peaceful and orderly. Slovenia's high ethnic homogeneity and the lack of any lingering border disputes facilitated its transition to independence. The ethnic constellation within Bosnia, however, once a source of pride, caused a bloody struggle for power with both Croatia and Serbia seeking to carve up the region.

Concerted and coordinated calls for independence in Kosovo had been made as early as 1981 when a province-wide protest culminated in a crack-down. In 1989 Kosovo's autonomy within Serbia was repealed as was that of the other previously 'autonomous province' Voldvodina. The Kosovo Assembly met illegally and declared independence though this was ignored by Belgrade

² R. Kaplan, *Balkan Ghosts: A Journey Through History*, New York: St Martins Press 1993.

³ M. Mazower, *The Balkans*, London: Phoenix 2003, pp. 14-15.

and the wider world. From 1990 to 1995 an uneasy peace reigned in Kosovo with the Kosovo Albanian majority administering a 'phantom state' while Serbs continued to adhere to rule from Belgrade.

In 1995 the Dayton Peace Accords were signed to end the conflict in Bosnia and create wider stability in the Balkans. The lack of any provision relating to Kosovo in the Accords is widely regarded as having enflamed the Kosovar Albanians.⁴ Article 1 of the Accords in fact recognized the territorial integrity of all parties to the agreement, thereby recognizing Yugoslavia's authority over Kosovo. The Kosovar Albanians were dismayed that their policy of peaceful civil disobedience had been ignored and the Accords effectively sounded the death knell for the pacifist politics pursued by the Kosovo Albanians up to that point. The Kosovo Liberation Army (KLA) exploited the widespread dissatisfaction and began to step up its armed campaign. There followed an escalating cycle of retaliatory violence between the KLA and the Federal Republic of Yugoslavia's (FRY) police and military resulting in hundreds of deaths, hundreds of thousands of internally displaced persons and refugees leaving Kosovo for Albanian and Macedonia.

While the Kosovo Albanians rejected Belgrade's authority and despised Milosevic's regime the violent tactics of the KLA were initially unpopular amongst the Kosovar Albanians who overwhelmingly supported the pacifism of Ibrahim Rugova and his party the Democratic League of Kosovo. The rise in support for the KLA, especially after 1995, derived from the growth in frustration within the broader ethnic Albanian population at the lack of tangible results from Rugova's tactics. Despite winning international praise for extolling pacifism while violence raged in other parts of the Balkans, Rugova's strategy had paradoxically led external observers to conclude that the situation in Kosovo was a low priority.⁵

Certain key provisions of the Dayton Accords respects, such as the constitutional arrangements for Bosnia and the recognition afforded to Republic Srbska, legitimized ethnic identity as a unit of political order and recognized ethnic territories. Additionally the consolidation of Bosnia's independence and Croatia's authority in Eastern Slavonia suggested that external intervention was a viable means of achieving territorial and political gain. External support in these cases was a consequence, however, of conflicts sufficiently violent to attract international media attention. Passive political struggle lost its appeal in the light of these lessons from Dayton. Dugi Gorami, a Kosovo Albanian diplomat, outlined the logic behind the KLA's strategy; "(...) there was this foreign diplomat who once told me "Look unless you pass the quota of five thousand deaths you'll never have

⁴ C. Hedges, 'Kosovo's Next Masters', *Foreign Affairs*, 1994-78, p. 31.

⁵ M. Weller, *The Crisis in Kosovo 1989-1999: International Documents and Analysis*, Cambridge: Documents and Analysis Publishing 1999, p. 29.

anybody permanently present in Kosovo from the foreign diplomacy”⁶. International attention was contingent on mass tragedy and the KLA, not illogically, decided to create one.

Thereafter, according to James Gow, the KLA adopted a strategy of “...armed engagement designed to provoke atrocities”⁷ which would generate international attention, force the international community to condemn the Milošević regime and ultimately intervene on the side of the Kosovar Albanians. By the autumn of 1998 Kosovo was at the top of the international agenda with Security Council Resolution 1199 describing the situation as a threat to peace and stability under Chapter VII of the Charter of the United Nations (UN Charter).

The international attention focused on Kosovo in 1998 stands in stark contrast to that which had gone before. Given that Kosovo’s explosive potentiality was so widely accepted it is paradoxical that it never received the attention that its reputation should have commanded. Whereas Macedonia was the subject of concerted and ultimately successful international efforts at conflict prevention from 1993 to 1999, Kosovo was ignored. Marc Weller writes,

“International action taken in response to the Kosovo crises was hesitant and in some respects schizophrenic. On the one hand there was universal agreement that Kosovo constituted the real ‘powder keg’ of the Balkans. On the other hand this realisation seemed to be transformed into a hope that the situation would go away if ignored for a sufficiently long time.”⁸

Alex Bellamy suggests three reasons why Kosovo was so marginalised in the various international diplomatic processes.⁹ First, prior to 1998 there was not an alarming level of violence in Kosovo. While allegations of oppression were made by NGOs such as Amnesty, Save the Children, Oxfam, and particularly by Tadeusz Mazowiecki, the UN’s Special Rapporteur on human rights in the former Yugoslavia, it seems that the only statistics that would prompt an international response were those relating to deaths and these did not become significant until 1998. The second reason was that it was felt that to engage with the secessionists in Kosovo would have sparked a similar cry for secession from the Serbs in Croatia and Bosnia and further destabilize the region. The final reason is that those seeking independence were not in control of the territory that they sought independence for. Had

⁶ Quoted in A. Kuperman, ‘Suicidal Rebellions and the Moral Hazard of Humanitarian Intervention’, in: T. Crawford & A. Kuperman (eds.), *Gambling on Humanitarian Intervention*, London: Routledge 2006, p. 12.

⁷ J. Gow, *The Serbian Project and its Adversaries: A Strategy of War Crimes*, Montreal: McGill-Queens University Press, 2003, p. 256.

⁸ Weller 1999, *supra* note 5, p. 33.

⁹ A. Bellamy, *Kosovo and International Society*, Hampshire: Palgrave Macmillan 2002, pp. 24-26.

the Kosovars been in positions of political, judicial and military power in Kosovo, as the Croats and Slovenes were, then the international community may have countenanced the separation.

Ultimately the KLA's strategy worked and NATO intervened. However, this strategy was clearly responsible for the deaths of many civilians who, it is reasonable to conclude, would not have died had the KLA not wished to provoke a humanitarian intervention. Hashim Thaci, leader of the KLA, admitted: "We knew full well that any armed action we undertook would trigger a ruthless retaliation by Serbs against our people (...). We knew we were endangering civilian lives, too, a great number of civilian lives".¹⁰ Indeed, the initiation of the intervention by NATO caused a counter-action by the Yugoslav military against the KLA and contributed to the refugee flows which became the emotive image of NATO's campaign.

There is no guarantee, however, that external actors will always feel compelled to act. Alan Kuperman's analysis of this phenomenon finds,

“(...) in the post-Cold War era, a main source of such optimistic miscalculation has been the expectation by subordinate groups that the ‘international community’ will intervene to protect them on humanitarian grounds if their challenge to authority provokes retaliatory violence.”¹¹

The fate of the Kurds who rebelled against Saddam Hussein in 1991 is sadly illustrative of what can happen when the rebel group's faith in external actors proves mistaken. More recently the rebellion launched by in Darfur in 2003 would appear to have been an instance where similar logic catalyzed a humanitarian crisis.

II. Your Freedom (On Our Terms)

NATO's intervention was greeted very favourably by the Kosovo Albanians. NATO personnel were greeted as liberators in Pristina and many streets were renamed in honour of President Clinton and Prime Minister Blair. In the immediate aftermath of the intervention a round of counter-ethnic cleansing forced over half the population of Serbs to leave Kosovo despite the presence of over 40.000 foreign troops. Given the new ethnic demography and the fact that NATO had intervened on the side of the secessionists it would seem to have been logical to declare Kosovo to be an independent state-in-waiting as was the case with East Timor following the Australian led-intervention in September 1999. It was acknowledged by the international community that East Timor was never again to be under the jurisdiction of the Indonesia and, while the international administration of East Timor at times appeared to over-step its power and demonstrate an unwillingness to

¹⁰ Kuperman 2006, *supra* note 6, p. 12.

¹¹ *Idem*, p. 57

relinquish its competencies,¹² power was eventually devolved to the East Timorese. The case of Kosovo was significantly more complicated.

Security Council Resolution 1244, signed in the wake of NATO's intervention to establish the UN Mission in Kosovo (UNMIK), recognised the territorial integrity of the Federal Republic of Yugoslavia (FRY) the successor to the SFRY. This in itself was clearly problematic and appeared to foreclose independence. Additionally, while the resolution acknowledged the temporary nature of UNMIK's tenure the mission continued for much longer than the one year originally proposed.

Unprecedented power was vested in UNMIK and the Special Representative (SRSG) in particular.¹³ UNMIK's extensive competencies were legitimised on the basis that the situation in Kosovo was so ominous that external administration was a necessity but also by the fact that this was a transitional phase; UNMIK aimed to dissolve itself and hence rescind these extensive competencies. By 2003, however, the SRSG had "(...) powers far beyond the necessary means to support the institutions of self-government".¹⁴

In December 2003 UNMIK committed itself to overseeing the achievement of eight standards before resolving the issue of Kosovo's final status a policy which became known as 'Standards before Status'.¹⁵ The policy came to be described within Kosovo as 'standards to prevent status' and "generated increasing frustration among all communities, hindering the attainment of a viable peace".¹⁶

Anger amongst the Kosovo Albanians exploded in March 2004 with province-wide riots. Both UNMIK and NATO personnel were targeted by the rioters who blamed them for stifling the path to independence.¹⁷ Whether the ethnic violence was caused by lingering 'ancient ethnic hatreds' or by UNMIK's own institutionalisation of ethnicity within the new political

¹² J. Chopra, 'Building State Failure in East Timor', in: A. Hehir & N. Robinson (eds.), *State-Building: Theory and Practice*, London: Routledge, 2007.

¹³ A. Hehir, 'Determining Kosovo's Final Status: The Viability of Ongoing Administration', *Civil Wars*, 2007- 3, pp. 245-6.

¹⁴ L. M. Sobjerg, 'The Kosovo Experiment', in: T. B. Knudsen & C. B. Laustsen (eds.), *Kosovo Between War and Peace*, London: Routledge 2006, p. 67.

¹⁵ The eight standards are outlined in UNMIK press release PR/1078, 'Standards for Kosovo', 10 Dec. 2003. Available at: www.unmikonline.org/press/2003/pressr/pr1078.pdf, [Accessed December 2008].

¹⁶ J. Covey, M.J. Dziedzic & L. Hawley, *The Quest for Viable Peace*, Washington DC: United States Institute of Peace Press 2005, p. 121.

¹⁷ For more information see United Nations, 'March Violence in Kosovo "Huge Setback" to Stabilisation, Reconciliation, Under-Secretary-General for Peacekeeping tells Security Council', United Nations Press Release, SC/8056, 13 April, 2004. Available at: www.un.org/News/Press/docs/2004/sc8056.doc.htm, [Accessed December 2008].

system is debatable but it was clear that the ambiguity surrounding Kosovo's future was a source of significant disquiet.¹⁸

The need for clarity regarding Kosovo's future, and even the need to clarify the process by which this future would be determined, was initially rejected by some such as the Independent International Commission on Kosovo who argued:

“It might be better to leave questions about the future in limbo, since a constructive ambiguity about the political future of the province might make it easier for all sides to overcome their reluctance to work together.”¹⁹

This logic proved flawed with neither the Kosovo Albanian or Serb communities finding solace in this ‘constructive ambiguity’. In its 2005 report the International Commission on the Balkans, in addition to asserting “the international community has clearly failed in its attempts to provide security and development to [Kosovo]”, stressed the need for action on the substantive issue of status noting, “the demand for sovereignty has not diminished; on the contrary it has increased in the past year. UNMIK is perceived by the local population as corrupt and indecisive”.²⁰ While pursuing the ‘Standards before Status’ policy UNMIK became mired in political stasis as it worked on a policy that was having little tangible effect other than increasing disquiet in Kosovo.

The planned evolutionary progression from the achievement of standards to the determination of status was re-evaluated in light of the March riots. A new approach was presented by Kai Eide to the UN Security Council on 24 October 2005 contained in the ‘Comprehensive Review of the Situation in Kosovo’. Eide's report identified the ‘Standards before Status’ policy as having contributed to “a period of political stagnation and widespread frustration”.²¹ While the goal of achieving the standards was not abandoned the delay that full implementation necessarily caused was cited as reason for a new policy direction. Yet, while the Eide argued for the substitution of the ‘Standards before Status’ policy in favour of progressing to focus specifically on Kosovo's status, it did not suggest that the international oversight inherent in the standards process be amended in favour of local control. Eide's prescriptions in fact proposed an extended mandate for international oversight, albeit in a less direct form, with, as the process's final goal, a status for Kosovo that falls short of full sovereignty. The Report noted, “[e]ntering

¹⁸ For an analysis of each perspective see, A. Hehir, ‘Autonomous Province Building: Identification Theory and the Failure of UNMIK’, *International Peacekeeping*, 2006-2.

¹⁹ Independent International Commission on Kosovo, *Kosovo Report*, Oxford: Oxford University Press, 2000, p.261.

²⁰ International Commission on the Balkans, *The Balkans in Europe's Future*, 2005. Available at: <http://www.balkan-commission.org/activities/Report.pdf>, [Accessed December 2008], pp. 19-20

²¹ Kai Eide, ‘A Comprehensive Review of the Situation in Kosovo’, UN Security Council Report S/2005/635, 7th October 2005, p. 2.

the future status process does not mean entering the last stage, but the next stage of the international presence”.²² This next stage “will require constant and determined efforts, stretching into and beyond the process of defining the future status of Kosovo”.²³ The process was certainly altered but the fundamental components - international administration and the achievement of standards - remained. The Report advocated a reconfigured international administration, proposing that UNMIK would transfer competencies to the EU, but local ownership was not considered a viable option. The Report acknowledges “[t]he government [in Kosovo] has now elaborated its own programme for capacity-building, in an effort to take greater ownership of this process”. It subsequently added, however, “[n]evertheless, an emerging sense of local ownership will not reduce the need for international support. Capacity building will require a longer-term perspective”.²⁴ Essentially the Report advocated a phased pullout, though no timetable for international disengagement was offered, while arguing for ongoing direct, as opposed to ‘remote’, international control.

In October 2005 the UN Security Council appointed Martti Ahtisaari as head of the UN Office of the Special Envoy for Kosovo, to start a political process to determine Kosovo’s future status. The proposal produced by Ahtisaari in February 2007 constituted the manifestation of the Eide recommendations. The proposal increased the powers devolved to the Kosovo institutions but did not provide for the removal of ultimate international oversight and authority. UNMIK is to be replaced by a tripartite ‘international presence’; NATO is retained as the basic guarantor of security; a new European Security and Defence Policy Mission is established with the remit to,

“(…) assist Kosovo in the development of efficient, fair and representative police, judicial, customs and penal institutions, and have the authority to assume other responsibilities to ensure the maintenance and promotion of the rule of law, public order and security.”²⁵

The third, and perhaps most controversial, element of the international presence is the International Civilian Representative (ICR) who will also serve as the European Union Special Representative. The ICR is chosen by the International Steering Group (ISG) itself comprised of ‘key international stakeholders’. The ICR will be supported in its duties by the International Civilian Office. The ICR “(…) will have specific powers to allow him/her to take the actions necessary to oversee and ensure successful implementation of the Settlement” and may “(…) correct or annul decisions by Kosovo public authorities that he/she determines to be inconsistent with the letter or

²² *Idem*, p. 5.

²³ *Idem*, p. 8.

²⁴ *Idem* p. 10.

²⁵ Comprehensive Proposal for the Kosovo Status Settlement (2007) ‘Executive Summary’. Available at: <http://www.unosek.org/pressrelease/2007-01-16%20EXECUTIVE%20SUMMARY.doc>, [Accessed December 2008].

spirit of the Settlement”.²⁶ The mandate of the ICR is indefinite and can only be terminated by the ISG if it feels the settlement has been implemented. The ISG will conduct its first progress review after two years. Precisely what happens if the ISG determines that the settlement has been implemented is nowhere outlined in the proposals and the status of Kosovo after this implementation is thus unclear.

III. Continuity or Change?

Given the details of the preceding section is difficult to see the declaration made by Hashim Thaci as constituting either the spark that will ignite a global chain reaction of secession or the self-determination of Kosovo. The consequences of Kosovo’s declaration are, in practical terms, likely to be largely unique to Kosovo while the ‘independence’ bestowed on Kosovo does not conform to traditional understandings of either self-determination or sovereignty and constitutes a new form of external control.

In terms of Kosovo as a precedent it is clear that the key factor in the achievement of Kosovo’s ‘independence’ was its relationship with the West. There are numerous minority groups across the global that demand independence; the vast majority are ignored not because their claims are invalid but rather because it is politically expedient to overlook these claims.

The four criteria of statehood are outlined in Article 1 of the Montevideo Convention (1933) which states,

“[t]he state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.”

The fourth criterion refers to recognition; clearly state X can only enter into inter-state relations with state Y if state Y recognises X as a state. Non-recognition does not preclude some international interaction; many states, for example, have some diplomatic relations with Palestine without recognising it as a state. The problem is that the fourth criterion is highly subjective and largely dependant on political factors rather than legal guidelines. One may look, for example, at Taiwan; it has a clearly defined border and a permanent population as well as its own currency, army and a democratically-elected government. Yet it is not a state simply because China continues to claim jurisdiction and few states are prepared to anger the Chinese government over this issue. Andorra, however, the sixth smallest state in the world, is no more than a picturesque tax haven. It has no army, has never had a national currency, and has a constitutional arrangement

²⁶ Comprehensive Proposal for the Kosovo Status Settlement (2007) ‘The International Presence’. Available at: <http://www.unosek.org/pressrelease/2007-01-16%20Fact%20Sheet%20ICR-ESDP.doc> [Accessed December 2008].

which formally bestows power on France and Spain. Yet, it is a state by virtue of the fact that other states recognise it as such. While the Prime Minister of Andorra is recognised as the representative of one of the world's states the millions of Kurds, Chechens, Tibetans, Taiwanese and Palestinians go without such privilege.

Recognition is therefore a highly problematic aspect of international law.²⁷ In many respects international law is consciously blind to the actual conditions within states focusing only on the legal status as determined by the community of states. A state is a state so long as it is deemed to be a state by the community of states. Despite over a decade of lawlessness and the internal fragmentation of authority Somalia continues to be recognised as a state when it has clearly lost any internal cohesion. As Peter Malanczuk notes,

“[t]here is no rule of international law which forbids secession from an existing state; nor is there any rule which forbids the mother state from crushing the secessionary movements if it can. Whatever the outcome of the struggle, it will be accepted as legal in the eyes of international law.”²⁸

International law is not concerned with the ideology prevalent within a state, the nature of the political institutions within a state or whether the population recognises the legitimacy of the government. In the vast majority of cases this is not problematic but clearly for those eager to achieve international statehood the subjective process of recognition is hugely problematic.

To date some 52 states have recognised Kosovo as a state. The Security Council is split with the US, UK and France recognising Kosovo and Russia and China opposed. The EU itself does not have a unified position with 22 out of the 29 states recognising Kosovo. This disunity, even within the EU, is testimony to the fact that deciding whether to recognise a state is arbitrary and dependant on quite subjective factors. It has regularly been asserted that Russia, China, Spain, Israel and others with disgruntled minorities are unwilling to recognise Kosovo because they fear it will set a precedent that will catalyse their own fragmentation. It is difficult to accept this logic. Is it plausible that if Russia recognised Chechnya's independence would move a step closer? Certainly the Chechens would cry hypocrisy and demand similar treatment but it is unlikely that Russia would be particularly concerned by these calls. States have often demonstrated the capacity to act selectively on this issue; the UK fought the First World War to 'protect the liberty of small nations' while simultaneously crushing a national uprising in Ireland in 1916. More recently Russia recognised East Timor without fear that the Chechens would seek to emulate this precedent. The more accurate explanation for Russia's policy is surely that Russia has strong cultural links

²⁷ A. Cassese, *International Law*, Oxford: Oxford University Press 2005, p. 73.

²⁸ P. Malanczuk, *Akehurst's Modern Introduction to International Law*, London: Routledge 2006, p. 78.

with Serbia; recognising Kosovo would go against a history of cordial relations and generate intense domestic uproar. Perhaps even more importantly Russia is keen to project an image of power in Eastern Europe and is therefore reluctant to be seen to be endorsing Western 'expansionism'. Kosovo's path to independence depended on the enormous political support afforded to the separatists from the West in the 1997-1999 period which eventually culminated in military action by NATO. It is highly unlikely that such political pressure would ever be applied against Moscow while a NATO intervention on behalf of the Chechens is inconceivable.

Second, it is clear that Kosovo's independence is limited. Hashim Thaci, the Prime Minister of Kosovo, himself stated before the declaration that the Kosovars would not take any unilateral action noting "Kosovo will do nothing without Washington and Brussels".²⁹ The powers vested in the ICR and the presence of some 2,000 EU troops undermines the sovereignty of the new state and it is clear that Kosovo's independence is very much a 'guided' one. There are, therefore, strong parallels between Kosovo and Bosnia; while Bosnia has been formally recognised as a state since 1992 it has arguably never enjoyed what Hedley Bull described as internal sovereignty - the capacity to run its own political system without external interference.³⁰ Between 1992 and 1995 Croatia and Serbia respectively occupied and administered areas within the country while since the Dayton Accords in 1995 the 'state' has been administered by the High Representative. In terms of international law the fact that Bosnia is clearly not independent, given that power formally resides with external actors, does not impact on the status of Bosnia as a state. Many states have formal constitutional arrangements which grant power to external actors while others informally depend heavily on other states. Yet as Malanczuk notes, "(...) although sometimes amounting to little more than legal fiction, the vast majority of states are considered to be 'independent'".³¹ This fictional independence may be acceptable to certain states but one must wonder if the present power hierarchy in Kosovo will be sufficiently attractive to persuade those Kosovar Albanian militants who waged a war of independence against Milosevic and later turned their anger against UNMIK, to accept a prolonged period of administration. It is undoubtedly far less than they called for in 1989, 1999 or 2004.³² As Hannum argues, "the role of NATO [and the UN] in Kosovo seems to be to prevent Albanians from achieving independence and to prevent Yugoslavia [sic] from

²⁹ MSNBC, 'Ex-rebel becomes Kosovo's Prime Minister', World News, January 9, 2008. Available at; <http://www.msnbc.msn.com/id/22575375/> [Accessed December 2008].

³⁰ H. Bull, *The Anarchical Society: A Study of Order in World Politics*, Hampshire: Palgrave 2002, p. 8.

³¹ Malanczuk 2006, *supra* note 28, p. 79.

³² 1989 was the year the unofficial Kosovo assembly declared independence. 1999 was the year in which NATO and the KLA drove the Yugoslav forces from Kosovo and in March 2004 ethnic Albanians orchestrated a province-wide riot calling for outright independence.

controlling its own territory: it does not seem likely that such a 'lose-lose' scenario will stand the test of time."³³

Conclusion: Two, Three, Many Georgias?

This article has argued that Kosovo's declaration of independence does not constitute a precedent given the unique coincidence of factors which brought it about. That is not to say that it has not had an influence on events since. The manner in which Russia justified its intervention in South Ossetia in August 2008 had obvious parallels with NATO's intervention in Kosovo, at least in terms of the way the intervention was presented. Russia claimed to be reluctantly acting to halt a humanitarian crisis. Prime Minister Vladimir Putin described the plight of the Russians in South Ossetia as "a dramatic tragedy" and spoke of the Georgian policy as comprising "elements of genocide".³⁴ The attempt was clearly made to portray the intervention as humanitarian analogous to NATO's intervention in Kosovo nine years earlier. Clearly the parallels between Kosovo and Georgia have limits not least as the citizens of South Ossetia the Russian army ostensibly intervened to rescue were themselves ethnic Russians. Additionally the scale of the humanitarian crisis in South Ossetia was nowhere near as grave as that in Kosovo in 1998/1999 and, perhaps most importantly, Russia's capacity to influence international opinion is far less than that of the NATO powers.

Therefore, the conflict in Georgia in 2008 gives us some indication of the likely impact NATO's intervention in Kosovo will have on future cases where secessionists seek independence. While many such groups may well cite Kosovo as an example this is unlikely to have any real effect. The assertion that ones quest for independence is 'just like Kosovo's' is likely to be met with something akin to 'so what?', as it is unlikely that any state opposed to the fragmentation of its territory will be swayed by nationalists citing precedent. Rather, what the situation in Georgia suggests is that whenever great powers intervene in such cases they will seek to portray themselves as the liberators rescuing the oppressed regardless of how inaccurate these claims are.

The reality may well be, therefore, that Kosovo will act as a precedent but not in the way people imagined. Rather than constituting a means by which subordinate groups can now justify their independence claims - and thereby constituting a source of emancipation - 'Kosovo' may well become an analogy used by the powerful to justify interventions against weaker opponents - thereby constituting a means of subjection.

³³ H. Hannum, "Territorial Autonomy: Permanent Solution or Step Toward Secession?", in: A. Wimmer et al. (eds.), *Facing Ethnic Conflicts*, Lanham, MD: Rowman & Littlefield 2004, p. 278.

³⁴ 'Putin Accuses Georgia of Genocide', *Russia Today*, August 10th 2008. Available at: <http://www.russiatoday.com/news/news/28744> [Accessed December 2008].

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