KOSOVO FOCUS

NATO's Intervention in the Federal Republic of Yugoslavia

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Abstract: At the outset of the conflict over Kosovo, the use of armed force by NATO member states has been justified to force the Government of the Federal Republic of Yugoslavia to accept and sign the Rambouillet agreement. Later on, the use of force was justified in order to prevent a major humanitarian catastrophe. But examination of the relevant Security Council resolutions and of the circumstances surrounding the Rambouillet negotiations shed a totally different light on the legal arguments advanced by proponents of NATO's intervention. Modern international law on the use of force by states, as enshrined in the UN Charter, is still at the core of inter-state relations.

1. INTRODUCTION

The intervention of military forces of NATO and some of its members states against the Federal Republic of Yugoslavia from 24 March till 3 June 1999 has been, from the very outset, the object of heated debates amongst international lawyers, politicians, diplomats and top journalists. This is, of course, an encouraging sign because it means that all consider that modern international law (or is the modernity fading away?) is still based upon the fundamental principle enshrined in Article 2, paragraph 4, of the Constitution of the international community, called the Charter of the United Nations, which provides that "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state [...]." This principle is still considered as belonging to *ius cogens* i.e. a "peremptory norm of general international law accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted."[1]

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1. 1969 Vienna Convention on the Law of Treaties, 8 ILM 679 (1969), Art. 53.

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The legal basis of a possible use of force prior to the intervention during the Spring of 1999, has been the object of long debates among member states of NATO and, once the decision to intervene had been taken, the arguments which were ultimately advanced, *viz.* the state of necessity, the United Nations Security Resolution 1199 (1998) and the doctrine of humanitarian intervention, clearly indicate that the states had the intention to act within the law. The international law on the use of force by states still seems to be at the core of interstate relations. The use of force by states must be legally justified, and states will go a long way in using all possible and impossible arguments in order to justify military action. This attitude indicates that the use of force is, basically, contrary to international law, except if justified under Article 51 of the Charter of the United Nations, or under some other rule of exception, such as the authorization by the Security Council under Chapter VII of the same Charter.

If these exceptions to the principle of the non-use of force do not seem to work, states have a tendency to resort to not so novel arguments such as *the right of humanitarian intervention* or to the rule according to which necessity prevails over the law (*Not bricht Recht*). International law would no longer be applicable if there is a state of necessity endangering the very existence of the state or the fundamental principles upon which a modern state is supposed to be based, such as the respect of human rights, democracy and the rule of law. These were some of the arguments advanced by NATO and NATO member states in order to start and justify military operations against the Federal Republic of Yugoslavia. But at the outset of the conflict, the use of armed force has been justified also in order to force the Government of the Federal Republic of Yugoslavia to accept and sign the Rambouillet agreement. Later on, and immediately prior to the launching of the military action, the use of force was justified in order to prevent a major humanitarian catastrophe. This was the beginning also of a major public relations campaign, the purpose of which was to keep the Allies and their public opinion together, while in some quarters serious questions were raised about the legality of the operation. The use of force was and remained also justified in order to defend the basic virtues of respect for human rights, democracy and the rule of law. Therefore the military operations had to be presented as a humanitarian intervention. Summarizing the arguments used in favour of the military intervention, one could state that a) state sovereignty is limited by the human rights doctrine; b) states can no longer use the argument of non-intervention in the internal affairs when it comes to questions of human rights issues; c) that therefore humanitarian intervention is a fully authorized exception to the basic rule of the interdiction of the use of force by states in international relations.

We will examine propositions a) and b) upon their merits and try to interpret the relevant resolutions which the Security Council adopted during the crucial weeks of October and November 1998. Reports by the Secretary-General to the

Security Council and some circumstances surrounding the Rambouillet negotiations may shed some new light on the intervention by NATO in Yugoslavia.

2. SOVEREIGNTY AND HUMAN RIGHTS

A first step in justifying military intervention in the Federal Republic of Yugoslavia is the argument that the sovereignty of states is limited by the obligation to respect human rights. According tot modern international law, the sovereignty of states and, therefore, their exclusive jurisdiction, is limited to the extent that states have committed themselves, either through international treaties or through custom, to a given behaviour in their international relations. As the international obligations are undertaken by states in the exercise of their sovereign rights, they limit the exercise of national sovereignty or of exclusive internal jurisdiction.

Ever since the end of World War II, states have committed themselves to respect basic norms of international law in the field of human rights both in times of peace and in times of armed conflict. The international law of human rights is contained in a variety of international treaties of either a universal or regional character. To the extent that states are bound by those treaties, they can no longer argue that sovereignty prevails over human rights obligations. In other words, a state can no longer invoke or rely upon the principle of national sovereignty as an excuse for not fulfilling the obligations in the field of human rights. The same applies to all international obligations of a state. State sovereignty and its corollary, i.e. the exclusive national jurisdiction, cannot prevail over international obligations.

It has to be emphasized, however, that this is not new. The Permanent International Court of Justice, operating under the system of the League of Nations, already found that the exclusive jurisdiction of states is a flexible concept and its content depends on the development of the international obligations of states. Ever since the adoption of the Universal Declaration of Human Rights in 1948 and of the subsequent other international instruments on human rights, it has been generally accepted that States can no longer invoke exclusive national jurisdiction or internal affairs when it comes to persistent serious and massive violations of human rights. However, it is not because human rights issues do no longer belong to national sovereignty and jurisdiction, and that they have thus become a legitimate international concern, that military intervention is justified as a means of safeguarding and protecting those rights.

2.1. Human rights and non-intervention in the internal affairs of states

The Charter of the United Nations reaffirms in Article 2, paragraph 7, the principle of non-intervention in the internal affairs of states. We have seen above

that matters, such as human rights, which have been made the object of international commitments, no longer belong to the internal affairs of a state or to its exclusive internal jurisdiction. Other states, and, in particular, the states parties to international agreements, have an interest in the respect of these commitments. They are, therefore, entitled to insist upon the fulfillment of the obligations by the other parties. The latter may not argue that this insistence is an intervention in their internal affairs.

During recent decades, international law has developed a variety of means through which states may intervene in order to obtain the respect of international human rights obligations by other states. The Commission on Human Rights of the Economic and Social Council of the United Nations is the political (intergovernmental) body where the human rights performances of member states are scrutinized at the universal level. Various treaties have established Committees of Experts in order to verify the ways and means by which states implement human rights obligations. On many occasions, competent bodies have appointed Special Reporters in order to investigate human right violations in specific countries or specific human rights concerns in all countries. To these control and verification mechanisms at the universal level, one may add judicial control of the implementation of human rights treaties in Europe and amongst the States of the American continent. Within the framework of the Organization of Security and Cooperation in Europe, one encounters again a political scrutiny mechanism.

These procedures of control, verification, implementation are sufficient proof that nowadays the concept of sovereignty and domestic jurisdiction are no longer accepted as excuses or licenses which states can invoke in order to shield their human rights behaviour from outside *interference*. Next to the already mentioned means of scrutiny and control referred to above, states and international organizations use direct diplomatic intervention in order to protect and safeguard human rights in third countries. Sometimes they have recourse to economic measures in order to obtain either respect of human right or redress of human rights violations. Modern international law thus has many tools at its disposal in order to deal with human rights violations, if any, and these mechanisms exclude the use of force. One may recall here what the International Court of Justice said in its judgment of 27 June 1986 in the case concerning *Military and Paramilitary Activities in and against Nicaragua*:

> In any event, while the United States might form its own appraisal of the situation as to the respect of human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect. With regard to the steps actually taken, the protection of human rights, a strictly humanitarian objective, cannot be compatible with the mining of ports, the destruction of oil installations, or again with the training, arming and equipping of the contras. The Court concludes that the argu-

> ment derived from the preservation of human rights in Nicaragua cannot afford a legal justification for the conduct of the United States [...].[2]

This is in line with the Court's finding in the *Corfu Channel* case in 1949[3] and with a resolution adopted in 1989 by the *Institut de droit international* on the protection of human rights and the principle of non-intervention in internal affairs of states.[4]

It also has to be emphasized that the task of supervising the respect for and implementation of international humanitarian law, as codified in the 1949 Geneva Conventions and their Additional Protocols of 1977[5], has been assigned essentially to the International Committee of the Red Cross. Furthermore, and in the light of major flagrant instances of violations of these rules, the international community has set up two international tribunals for crimes against humanity committed in the former Yugoslavia[6] and in Rwanda.[7] The jurisdiction of the former has been extended to events in Kosovo. An International Convention on

2. Military and Paramilitary Activities in and Against Nicaragua (Nicaragua *v.* United States of America), Merits, Judgment of 27 June 1986, 1986 ICJ Rep. 14, para. 268).
3. Corfu Channel case (United Kingdom *v.* Albania), Merits, Judgment of 9 April 1949, 1949 ICJ Rep. 35: "The Court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defect in international organization, find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here; for, from the nature of things, it would be reserved for the most powerful States, and might easily lead to perverting the administration of justice itself."
4. This resolution was adopted in 1989 at the Session of Santiago de Compostella. *See* Institut de Droit international, *Resolution on The Protection of Human Rights and the Principle of Non-Intervention in Internal Affairs of States, in* Annuaire de l'Institut de droit international, Vol. 63-II, at 343. Art. 2, para. 2 reads: "[...] States, acting individually or collectively, are entitled to take diplomatic, economic and other measures towards any other State which has violated the obligation set forth in Article 1, provided such measures are permitted under international law and do not involve the use of armed force in violation of the Charter of the United Nations."
5. 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 75 UNTS 31 (1950); 1949 Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 74 UNTS 85 (1950); 1949 Geneva Convention Relative to the Treatment of Prisoners of War, 75 UNTS 135 (1950); and 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75 UNTS 287 (1950); and the 1977 Additional Protocols to the 1949 Geneva Conventions, Relating to the Protection of Victims of International Armed Conflict, of 8 June 1977, 16 ILM (1977), at 1391 (Additional Protocol I), and Relating to the Protection of Victims of Non-International Armed Conflicts, 16 ILM (1977), at 1442 (Additional Protocol II).
6. International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia, UN Doc. S/25704, annex (1993), reproduced in 32 ILM 1159 (1993).
7. International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994, UN Doc. S/RES/955 (1994).

the establishment of an International Criminal Court has been adopted in July 1998, and is now submitted to states for ratification.[8]

2.2. Internal armed conflict and non-intervention in the internal affairs

As a rule, internal armed conflicts, civil wars and civil strife, although they may be of concern to the international community, are "matters which are essentially within the domestic jurisdiction" of states. Recent practice has shown, however, that the international community has decided to intervene because and when these situations developed into a threat to international peace and security either through the massive flux of refugees, or because the danger of an overspill into the security of states. The intervention of foreign states in an internal armed conflict and the flagrant violations of humanitarian law, did likewise take those conflicts out of the sphere of national jurisdiction. The Security Council resolutions and actions in former Yugoslavia, Rwanda, Somalia, Haiti and Albania are typical examples of internal conflicts. As for Kosovo, there is no doubt that there was (and probably still is) an internal armed conflict. Clashes in Kosovo between the Serbian security forces and the Kosovo Liberation Army (KLA or UçK) led to the displacement of civilian population in Kosovo. The escalation of the conflict also seriously affected the neighbouring states, either through a flux of refugees, or through border violations and cross-border shelling. The fighting and its escalation resulted in egregious humanitarian abuses in Kosovo. This was the situation when the Security Council met on 23 September 1998, and adopted Resolution 1199 (1998)[9] which has been invoked as justifying the unilateral military intervention by NATO forces at the end of March 1999.

2.2.1. The Security Council Resolutions 1199 (1998) and 1203 (1998)

In Resolution 1199 (1998) of 23 September 1998, the Council affirms, first of all, that the deterioration of the situation in Kosovo, Federal Republic of Yugoslavia, constitutes a threat to peace and security in the region. This is a clear reference to Chapter VII of the Charter of the United Nations. Therefore, the situation in Kosovo at that time, was no longer a matter of domestic jurisdiction of the Federal Republic of Yugoslavia.

However, the Serbian security forces and the Yugoslav Army are not the only parties to be blamed for the deterioration of the situation. The Security Council condemns "all acts of violence by any party as well as terrorism in pursuit of political goals by any group or individual, and all external support for

8. The Rome Statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998, UN Doc. A/CONF.183/9 (1998).
9. UN Doc. S/RES/1199 (1998).

such activities in Kosovo, including the supply of arms and training for terrorist activities in Kosovo [...]." The Council thus admits that the fighting in Kosovo is between the Serbian security forces and the Yugoslav Army, on the one hand, and terrorists on the other hand. It is noteworthy that the Council does not condemn the use of force but only "the excessive and indiscriminate use of force" by Serbian security and the Yugoslav Army. It also demands *inter alia* that the Federal Republic of Yugoslavia "(a) cease all action by the security forces affecting the *civilian* population and order the withdrawal of security units used for *civilian* repression."

Thus security forces and units may continue their action and repression against those engaged in "terrorist activities". Furthermore, the Serbian security forces are requested to withdraw when their actions are used for civilian repression, but not when engaged in repressing "terrorist activities". Nothing further is said about the withdrawal of the Yugoslav Army.

In operative paragraph 16 of this resolution, the Security Council:

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

Sometimes, this specific paragraph is invoked in order to justify the military action undertaken by NATO in 1999. Although there is, in my opinion, no doubt that the language of this paragraph indicates that the demands in both resolutions have a mandatory character, the language of paragraph 16 clearly does not offer the conclusion that unilateral force would be justified should Yugoslavia not heed the requirements of both resolutions. Resolution 1199 (1998) did not add any measures (sanctions) than those already imposed by Resolution 1160 (1998).[10] As to action and additional measures under Chapter VII of the Charter of the United Nations, the Security Council decided that it would consider these measures should Yugoslavia fail to take concrete measures. Yugoslavia's failure to implement both resolutions would therefore render necessary a consideration by the Council on whether or not to take further action pursuant to Chapter VII. Nothing in paragraph 16 can be interpreted as authorizing member states of the United Nations, acting individually or collectively, to take all necessary measures in order to force Yugoslavia to implement these resolutions. This specific language, which has been used in previous instances by the Security Council (Iraq, Bosnia, Somalia, Rwanda, Haiti, Albania) is absent in Resolution 1199 (1998). The authorization to use force is an exception to the basic principle enshrined in Article 2, paragraph 4, of the Charter and cannot be presumed.

After the adoption of Resolution 1199 (1998), the United States representative at the Security Council stated that "planning at the North Atlantic Treaty

10. UN Doc. S/RES/1160 (1998).

Organization (NATO) for military operations if those efforts did not succeed was nearing completion." It is amazing that NATO on 23 September 1998, had nearly completed the planning of military operations if the implementations of Resolution 1199 – adopted the same day! – failed. This explicit threat to use force has no basis in Resolution 1199 (1998) or in the Charter of the United Nations, which is the Constitution of the international community, duly ratified by the United States, and, therefore, part of the law of the land. It may be noted in passing that this is also the legal situation in all member states of the United Nations.

On 24 October 1998, the Security Council adopted Resolution 1203[11] in which it welcomed and endorsed the Agreements between the Federal Republic of Yugoslavia and the Organization for Security and Cooperation in Europe establishing the verification mission in Kosovo, on the one hand, and NATO on the other hand, providing for the establishment of an air verification mission over Kosovo. These agreements have to be seen in the light of the overall requirements of the previous resolutions concerning the peaceful resolution of the Kosovo problem, which would include an enhanced status for Kosovo, a substantial greater degree of autonomy, and meaningful self-determination. The resolution also calls for the full implementation of the commitments of the Federal Republic of Yugoslavia contained in the so-called Milosević-Holbrooke accord of 14 October 1998 concerning the completion of negotiations on a framework for a political settlement by 2 November 1998. It is important to note, however, that, in the preambular part of Resolution 1203, the Security Council reaffirms "that under the Charter of the United Nations, primary responsibility for the maintenance of international peace and security is conferred on the Security Council." This reference is not contained in the previous resolutions 1160 and 1199, and should probably be understood as a criticism of the already emerging trend in NATO to proceed to a unilateral military action.

At the time of the adoption of Resolution 1203 (1998), there seems to be some hope for a political settlement of the crisis in Kosovo, and there was no reason for the Council to consider further action or measures as announced a month earlier in Resolution 1199. Both the OSCE and the NATO verification missions were important tools in reducing the tensions and the spiral of violence. A thorough reading of Resolution 1203 indicates, however, that by that time, there were still "acts of violence [...] as well of terrorism." The Security Council in operative paragraph 10

> *Insists* that the Kosovo Albanian leadership condemn all terrorist actions,
>
> *demands that such actions cease immediately* and emphasizes that all elements in the Kosovo Albanian community should pursue their goals by peaceful means only.

11. UN Doc. S/RES/1203 (1998).

It is important to compare the text of this paragraph to paragraph 6 of Resolution 1199, adopted a month earlier, which reads:

> 6. *Insists* that the Kosovo Albanian leadership condemn all terrorist action, and emphasizes that all elements of the Kosovo Albanian community should pursue their goals by peaceful means only.

The difference between the two texts is striking. At the end of October 1998, the Security Council suddenly refers to terrorist actions (in plural) and *demands* that these actions cease immediately. The addressee of this demand, which is an injunction under Chapter VII of the United Nations Charter, is vaguely formulated as "the Kosovo Albanian community." It means, however, that those elements of this community which, according to the Security Council, perform acts of terrorism. What is meant here is clearly the Kosovo Liberation Army or UçK. In other words, it is clear that the Resolutions 1160, 1199 and 1203 contain binding obligations for all parties to the Kosovo conflict. In order to understand what happened following the adoption of Resolution 1203, one has to study the Report of the Secretary General.[12]

2.2.2. The findings of the UN Secretary-General and others by mid-November 1998

Subsequent to the adoption of the above mentioned resolutions by the Security Council, the authorities of the Federal Republic of Yugoslavia did proceed to the gradual withdrawal of the Army and security police units from Kosovo. But as this withdrawal proceeded, units of the Kosovo Liberation Army occupied the vacated areas. This is what the Secretary-General reported on this question to the Security Council in his Report of 12 November 1998:

> 13. Recent attacks by Kosovo Albanian paramilitary units have indicated their readiness, capability and intention to actively pursue the advantage gained by the partial withdrawal of the police and military formations [...]
>
> 14. The army and police presence in Kosovo has been significantly reduced since early October [...]
>
> 15. Kosovo Albanian paramilitary units are asserting their own authority to supplant that of the Serbian police in areas from which the police have withdrawn [...]
>
> 16. [...] The presence of Kosovo Albanian units is reportedly on the increase in several areas, and they appear to be responsible for some of the reported violations, including attacks on civilians [...]

12. Report of the Secretary-General Prepared Pursuant to Resolutions 1160 (1998), 1199 (1998) and 1203 (1998) of the Security Council, UN Doc. S/1998/1068 of 12 November 1998.

In his final *Observations and Recommendations*, the Secretary-General had the following to say about the above mentioned situations:

> 48. While welcoming reports of the withdrawal of Government forces in Kosovo to agreed levels, I urge all the parties concerned to honour their commitments and to comply fully with the Security Council resolutions. In this regard, reports of the return of Kosovo Albanian paramilitary units to positions vacated by Government forces and particularly by their continued attacks against security forces and civilians are disturbing [...]

This information by the Secretary-General of the United Nations on the withdrawal of Yugoslav and Serb units is confirmed in the Letter dated 27 October 1998 from the Secretary-General of NATO addressed to Secretary-General Kofi Annan where we read that "NATO aerial surveillance assets and the Kosovo Diplomatic Observer Mission have confirmed that Federal Republic of Yugoslavia and Serb security forces have withdrawn in substantial numbers toward pre-March levels." The same is confirmed in remarks made on the same day by Secretary of State Albright in Washington D.C. Nothing is said about the movements by KLA or UçK.

In light of this information, and, in particular, of the continuous activities of the Kosovo Albanian paramilitary units in violation of the demands by the Security Council, it is difficult to see why the Federal Republic of Yugoslavia should be blamed for reacting as it did when strengthening its military presence and its police units in order to defend itself against "terrorist activities". This escalation led to new diplomatic initiatives in order to find a peaceful solution of the Kosovo crisis. A diplomatic conference was convened at Rambouillet (France) under the joint chairmanship of the French and British Ministers of Foreign Affairs, and a draft agreement was eventually submitted, but the Government of the F.R. of Yugoslavia refused to sign this treaty. A renewed attempt to reach an agreement in Paris failed, and the NATO Secretary-General Solana thereupon activated the order to launch a military attack against the F.R. of Yugoslavia. The preparation of this military action had already been agreed upon in August 1998, and used as the big stick, i.e. as a threat to use force during the different phases of the crisis in the latter part of 1998 and the beginning of 1999. Forcing a state to sign a treaty by threatening to use force deserves some comments from the point of view of international law, and in particular, the law of treaties.

2.3. The bumpy road to Rambouillet

From an analysis of the facts and statements preceding and following NATO's military intervention on 24 March, it is clear that the threat to use force and its actual use were aimed at forcing the Federal Republic of Yugoslavia to accept the interim political settlement reached during the negotiations at Rambouillet Castle between 6 and 23 February 1999.

However, one week before the start of the Rambouillet conference, on 30 January 1999, the NATO Atlantic Council issued a statement on Final Warning on Kosovo which was echoed in a Statement to the Press by NATO Secretary-General, Javier Solana, and in a statement on the same day by United States Secretary-of State Albright. The Atlantic Council authorized its Secretary-General to initiate air strikes against targets on Yugoslav territory if both parties do not respond the same day to the demands of the Contact Group. These demands were labeled 'non-negotiable'.[13] These three statements are undoubtedly clear and unveiled threats to use force in case the parties did not accept the settlement, *viz.* the Rambouillet Draft. The public at large had not been informed of the provisions of the draft agreement until after the military intervention against the Federal Republic of Yugoslavia had started. The text was then made available on the website of *Le Monde Diplomatique*.[14]

One understands now better the main objections of the Yugoslav Government against the Rambouillet Draft, and the reasons why the KLA-UçK accepted its provisions. The objections of the Yugoslav Government were twofold. First, it could not accept that the KFOR commander would be the final authority in theater regarding the interpretation of the provisions concerning the implementation and role of the KFOR, and that his determinations were binding on all Parties. The same powers and authority were given to the Chief of the Implementation Mission. Second, in dealing with the status of the multi-national implementation force, the provisions of Appendix B of Chapter VII are particularly vexatory in the light of the commitment of the international community to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia, as recalled in the preambular part of the Rambouillet Draft.[15] Article 8 of Appendix 8 is drafted as follows:

> NATO personnel shall enjoy, together with their vehicles, vessels, aircraft and equipment, free and unrestricted passage and unimpeded access throughout the FRY including associated airspace and territorial waters [...].

These and similar provisions which are also contained in the draft, may be standard provisions in Status of Forces Agreements for United Nations Peacekeeping Operations or between members of a military alliance such as NATO. But is KFOR a peacekeeping operation? If it is, then it ought to be based upon the consent of all parties, including the Federal Republic of Yugoslavia. The Government of the FRY refused to accept the provisions of the Rambouillet draft agreement, and NATO, as announced in its decision of 30 January 1999, tried to force FRY to accept the draft by threatening to use force and to bomb Yugosla-

13. M. Weller, The Crisis in Kosovo 1989-1999, International Documents & Analysis, Vol. 1, at 416-417 (1999).
14. The full text is available in the collection of documents edited by Weller, *id.*, at 453-469.
15. *Id.*, at 453, doc. 30.

via. The threat and use of force in international relations is outlawed by Article 2, paragraph 4 of the Charter of the United Nations. It is obvious, therefore, that results obtained in violation of this principle are null and void. The Vienna Convention on the Law of Treaties confirms this finding in Article 52, which runs as follows:

> A treaty is void if its conclusions have been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.

3. CONCLUSIONS

International law does note allow the use of force by states in order to safeguard the respect of human rights in another state. International law clearly condemns the threat and the use of force in order to compel a state to accept a treaty obligation. If the Security Council determines that the situation within a state is a threat to peace and security, it does not necessarily mean that the state is excluded from taking measures in order to deal with the internal situation. Action against terrorist elements, but not against the civilian population, seems to be accepted, provided international humanitarian law is respected. The military intervention by some NATO countries against the Federal Republic of Yugoslavia, whatever the legal arguments or excuses which have been adduced, cannot be justified under international law.[16]

16. *See* the various statements by the UN Secretary General, Kofi Annan in the Hague on 18 May 1999, commemorating the centennial of the First Hague Peace Conference – "Unless the Security Council is restored to its pre-eminent position as the sole source of legitimacy on the use of force, we are on a dangerous path to anarchy" – in his Annual Report to the General Assembly, 1999, para. 66 – "Earlier this year, the Security Council was precluded from intervening in the Kosovo crisis by profound disagreements between Council members over whether such an intervention was legitimate. Differences within the Council reflected the lack of consensus in the wider international community. Defenders of traditional interpretations of international law stressed the inviolability of State sovereignty; others stressed the moral imperative to act forcefully in the face of gross violations of human rights. The moral rights and wrongs of this complex and contentious issue will be the subject of debate for years to come, but what is clear is that enforcement actions without Security Council authorization threaten the very core of the international security system founded on the Charter of the United Nations. Only the Charter provides a universally accepted legal basis for the use of force" – and in the oral presentation of this Report at the opening meeting of the General Assembly on 20 September 1999, Press Release, SG/SM/7136, GA/9596, 20 September 1999 – "To those for whom the Kosovo action heralded a new era when States or groups of States can take military action outside the established mechanisms for enforcing international law, one might ask: Is there not a danger that such interventions undermining the imperfect, yet resilient, security system created after the Second World War, and offsetting dangerous precedents for future interventions without a clear criterion to decide who might invoke these precedents, and in what circumstances?" See also the address to the Plenary Session of the General Assembly of the United Nations, 26 October 1999, by Judge S.H. Schwebel, President of the International Court of Justice, presenting the Report of the ICJ: "As the Court enters the first century of the third millennium, it stands for international law, not international

lawlessness; for the peaceful settlement of international disputes in conformity with international law, not the will of the more powerful party; for international organization, not for international anarchy or for a State sovereignty which purports to be above the law; it stands for human rights, rights that can be effectively realized only within functioning systems of law, local, national, and international."

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