



## The United Nations and Kosovo's Independence

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Kosovo's unilateral declaration of independence creates an extraordinary risk of instability in the Balkans. It has immediately exacerbated ethnic tensions, invited further border alterations along ethnic or religious lines, provided a potentially inviting base of operations for radical Islamists from outside Europe and has expanded the growing range of issues once again threatening to divide Russia from the West.

However, one issue that has received only peripheral attention is the hypocrisy of those European Union members that have recognized Kosovo's declaration despite the lack of authorization by the United Nations Security Council. Indeed, the declaration is not only unauthorized, but flatly contrary to the controlling U.N. authority on the

subject, Security Council Resolution 1244 of 1999. That resolution states explicitly that the United Nations is "Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act. . . ."

While Resolution 1244 undoubtedly contemplates that Kosovo's status could change, its sponsors intended for that to occur under Security Council auspices, which it did not. Given the near-certainty of a Russian (and perhaps a Chinese) veto if anyone proposed a draft resolution to do so, it will not happen, now or well into the future. Effectively, therefore, the Security Council, having once defined Kosovo's status, now lacks the ability to change it.

Serbia, Russia and some European governments have complained, but their protests have been swept aside. Serbia and Russia argue that splitting apart a U.N. member government without its consent will set a precedent for future such actions under "international law," which neither they nor many other governments would like to see. At a minimum, they argue, by acting outside the Security Council, and in fact in violation of a valid council resolution, those states recognizing Kosovo's independence and sovereignty are weakening the council and the U.N. generally.

For the United States, acting outside the Security Council is nothing new. Indeed, NATO conducted its 1999 military campaign against Serbia, and that led ultimately to Resolution 1244, without Security Council authorization. At that time, Europe's NATO members fully approved the decision to bomb Serbia into submission, conveniently ignoring the absence of Security Council action. U.N. Secretary General Kofi Annan, however, roundly criticized the decision, saying, "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." Annan later said actions such as NATO's constituted threats to the "very core of the international security system. . . . Only the Charter provides a universally legal basis for the use of force."

The real issue, however, is the contrast between what has just been done regarding Kosovo's declara-

tion, and the extensive criticism in Europe for the United States decision to overthrow the Iraqi regime of Saddam Hussein in 2003. Although many European governments, including the Italian government of then-Prime Minister Silvio Berlusconi, supported the international coalition that eliminated Saddam's threat to international peace and security, many others, notably Russia, France and Germany, vigorously opposed the operation. They argued vociferously that the absence of an express Security Council resolution authorizing the use of force to overthrow the Iraqi regime meant that the U.S.-led military action was illegitimate.

The United States, by contrast, contended that the coalition's military campaign was fully legitimate for many reasons, at a minimum because Saddam's repeated violations of the 1991 cease-fire provisions embodied in Resolution 687 authorized the resumption of military hostilities. Faced with the likelihood of a French veto (and possibly also Russian and Chinese vetoes) over Iraq, the United States relied on the implicit authority of Resolution 687, and on its inherent right to individual and collective self-defense, guaranteed by Article 51 of the U.N. Charter.

However one views the U.S.-led overthrow of Saddam, or NATO's 1999 air campaign against Serbia, or the current recognition of Kosovo's unilateral declaration (including by the current government of Italy), one theme ties all three of these decisions together. All were taken wit-

hout express Security Council authorization. Indeed, as explained above, recognition of Kosovo's declaration is "worse" from that perspective, since recognition effectively violates Resolution 1244's reaffirmation of Serbian sovereignty over the territory.

This commonality is significant not, as Serbia and Russia assert, namely that recognizing Kosovo violates "international law." Instead, what is really significant is the unwillingness of many in Europe to appreciate that what they are doing in Kosovo today (and did in the 1999 air war) is precisely what they roundly criticized the United States for doing in Iraq in 2003.

Criticizing American policy in Iraq may reflect a legitimate difference in policy. What is not legitimate is to criticize the lack of Security Council

authorization for overthrowing Saddam, unless those Europeans are willing to concede that in Kosovo, Europe is simply following in America's footsteps.

In short, the question of Kosovo, today as in 1999, cannot be resolved satisfactorily to major European powers by Security Council decisions. While I personally disagree with recognizing Kosovo at the present time because of its risks for stability in the Balkans, I do not question the propriety of EU members so acting. It is neither surprising nor illegitimate that, in light of the existing political reality, European countries did what they needed to do outside of the Security Council. All that I and many other Americans ask is that, in the future, Europeans not criticize the United States when we do exactly the same thing.

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