

2000

To Start A War: NATO's Failure to Pursue the Russia Option During the Kosovo Crisis

Craig M. Scott

Osgoode Hall Law School of York University

Follow this and additional works at: http://digitalcommons.osgoode.yorku.ca/all_papers

Repository Citation

Scott, Craig M., "To Start A War: NATO's Failure to Pursue the Russia Option During the Kosovo Crisis" (2000). *All Papers*. Paper 249.

http://digitalcommons.osgoode.yorku.ca/all_papers/249

This Working Paper is brought to you for free and open access by the Research Papers, Working Papers, Conference Papers at Osgoode Digital Commons. It has been accepted for inclusion in All Papers by an authorized administrator of Osgoode Digital Commons.

WORK-IN-PROGRESS

To Start a War: NATO's Failure to Pursue the Russia Option during the Kosovo Crisis

Craig Scott¹

I. INTRODUCTION

What explains NATO's decision to start an air campaign – a war – against Yugoslavia after the Rambouillet peace process failed to lead to an agreement that would have addressed what was widely perceived as an escalating humanitarian crisis in Kosovo? The present article seeks to approach that question more on the oblique than in the round, namely by asking whether or not a more central role for Russia prior to the start of the war could, and should, have been pursued. While more an opinion essay than a review essay, this article does use as a jump-off point Tim Judah's remarkable behind-the-scenes reconstruction of events leading to war in his just-published *Kosovo: War and Revenge*.² In tandem with interacting with Judah's account and conclusions, an argument will also be

¹ Osgoode Hall Law School of York University, Toronto. cscott@osgoode.yorku.ca This work was written in 2000, the year following the NATO Kosovo intervention. It has not been updated since then beyond cleaning up this and several other footnotes. It is currently intended to be included in an eventual book on the use of force in international law and politics.

² Tim Judah, *Kosovo: War and Revenge* (New Haven: Yale University Press, 2000). Kosovo picks up where Judah left off in his award-winning *The Serbs: History, Myth and the Destruction of Yugoslavia* (New Haven: Yale University Press, 1997). Both books deserve to be treated as contemporary classics. In his coverage of the events in the Balkans in these books and in some five pieces written for the New York Review of Books which form the core of *Kosovo*, Judah bridges the gap between high-quality descriptive journalism and scholarship in the combined disciplines of political studies and history. And he does so not only insightfully but also with narrative prowess.

advanced that the role of super-diplomat Richard Holbrooke could well have been problematic in the signaling game that went awry in the early months of 1999, doing so in relation to the implications of his having published a detailed account of his interactions with Yugoslavian President Slobodan Milosevic in his memoir *To End a War* which dealt with Holbrooke's place in ending the fighting in Bosnia.³ No claim is made that the facts unequivocally support the arguments made herein and it is acknowledged they have, to some extent, a speculative quality, but it is claimed that the arguments are more than plausible – and certainly plausible enough to invite further thought and research by international relations and diplomatic history scholars.

II. STREET CRED: RAMBOUILLET AND RUSSIA

In the last part of *The Serbs*, Judah had noted the rise of a new force in Kosovo in 1995 – the Kosovo Liberation Army or KLA (in Albanian, the Ushtria Clirimtare e Kosoves, or UCK).⁴ The KLA was largely opposed to the conflict-avoiding approach of Rugova and given to armed insurrection. In *Kosovo*, Judah has gone on to piece together in considerable depth the amazing story of how the KLA morphed from being a rag-tag group of Kosovar exiles to being an insurgent movement that assumed a pivotal role in resisting Serb repression. And in deliberately provoking that repression so as to make more likely exactly what did happen: NATO intervention and the cessation of Belgrade-based rule in Kosovo. Judah suggests, plausibly, that the KLA thereby turned out to be "the most successful guerrilla movement in modern history."⁵

Making extensive and liberal use of behind-the-scenes sources and unpublished quotations from key actors, Judah adopts a chronological approach to his account of the fateful web of decisions and miscalculations of all actors other than the KLA (NATO, Clinton, Russia, Milosevic) that led to the descent into war. The key narrative is the West's handling of the process in the French town of Rambouillet in which diplomats herded together both Serbian officials and a fractious group of Kosovars, including Rugova and KLA leader Hashim Thaci, and attempted to

³ Richard Holbrooke, *To End a War* (New York: Random House, 1998).

⁴ Judah, *The Serbs*, *supra* note 2, at --.

⁵ Judah, *Kosovo*, *supra* note 2, at --.

broker a peace agreement that would restructure Serbia's constitutional order with respect to Kosovo and insert NATO troops to enforce the agreement. Judah makes certain to note the deliciousness of the choice of locale: “By chance, Rambouillet, an otherwise prosperous, suburban town, is home to the French *Bergerie Nationale*, which translates roughly as the National Sheep Pen or Sheep Farm.”⁶

It is the chapter devoted to these Rambouillet negotiations that is the most insightful and valuable contribution to the study of war and diplomacy in *Kosovo*.⁷ The aptly-named chapter, “Agreement for Peace,” is superbly executed. Despite not having been inside the process, Judah reconstructs what happened in engaging detail. This chapter reads like high drama. It is full of colourful characters, a fascinating plotline and fabulous images of desperate diplomatic strategies (such as conference host France's removal of caviar and cognac when the time came for the screws to be tightened). But the chapter is also at the core of Judah's analysis of history on the fly. It is pivotal in grounding his conclusion that NATO leaders felt, at a certain point, that they had virtually no choice but to bomb Serbia. NATO's American-led strategy – threaten force if Serbia did not ‘agree’ to Rambouillet – meant at a certain point that NATO's credibility became as much the issue as securing either peace or justice in Kosovo.

Linked to his assessment of the credibility factors is Judah's view that NATO's intervention is best explained as a modern variant of gunboat diplomacy and not as having been motivated by humanitarian goals – at least not initially.⁸ Under the influence of the United States' legal theory of its wide powers to use military might absent UN Security Council authorization and pushed by the pugnacious leadership of Madeleine Albright and others such as Richard Holbrooke, NATO had slipped into an ultimatum strategy that borrowed from the lessons commonly drawn as to how the war in Bosnia is thought to have ended. That lesson: threaten Milosevic with force and he will climb down if that threat is credible given that he had thrown in the towel so quickly after NATO air raids on Bosnian Serb Army positions had made good on Holbrooke's delivery of the threat to do just that. (Aided, as noted by Judah in *The Serbs*, in no small part by military surges and territorial recoveries by the Croatian and Bosnian national armies, breakthroughs that took advantage of the NATO air raids having hit Bosnian Serb Army fuel dumps and incapacitated its military

⁶ *Ibid.* at --.

⁷ *Ibid.* at --.

⁸ *Ibid.* at --.

communications network.⁹) Yet, at Rambouillet, NATO's threats were to use force unless Serbia 'agreed' to the Rambouillet text on more or less a take-it-or-leave-it basis.¹⁰ Force was not threatened with the more limited goal of having Serbia stop atrocities in Kosovo and come to the negotiating table, as had been the purpose of the NATO threat strategy during the Bosnia war that led to Serbia coming to the Dayton Peace Conference on its own behalf and that of the Bosnian Serbs. In the Kosovo context, when Serbia refused to accede to Rambouillet – to no large extent because it refused to accept a NATO force on its territory – NATO leaders felt the organisation's credibility had been irreversibly engaged.¹¹ Bombing of Serbia was required to maintain credibility, including of course the credibility of future threats made as part of a tactic of gunboat diplomacy that NATO – or states within it – might well wish to employ on other issues and in other areas. When NATO's bombing helped trigger an escalation of Serbia's violence in, and Kosovars' mass exodus from, Kosovo, the motivation for bombing seemed to shift – perhaps conveniently, of course – to a humanitarian one.¹² At the same time, that humanitarian focus was blurred as NATO's concern for its credibility simply shifted to another level: reverse the exodus or lose face.

Intertwined with Judah's Rambouillet narrative, the second most important account in *Kosovo* is of the role that Russia played, quite possibly one of the most fateful examples of the consequences of mixed messages in recent diplomacy. Judah details a fascinating scene in which various NATO foreign ministers met on October 8, 1998, with Russian Foreign Minister Ivanov in a VIP lounge at Heathrow airport.¹³ NATO and Russia tried to get their signals straight in a somewhat surreal setting. As US envoy Holbrooke would later put it, debate raged as "British matrons served tea and biscuits. It was mad."¹⁴ Ivanov insisted that NATO had to choose between a strategy of trying to get UN Security Council's prior authorisation for using force and of going ahead without Security Council approval. If they did the former, Russia would veto any approval. But, if they did the latter, they would be met by nothing worse than official histrionics from Moscow. According to Judah, insiders present at the meeting report that Ivanov told the NATO diplomats that Russia would do

⁹ Judah, *The Serbs*, *supra* note 2, at --.

¹⁰ Judah, *Kosovo*, *supra* note 2, at --.

¹¹ *Ibid.* at --.

¹² *Ibid.* at --.

¹³ *Ibid.* at --.

¹⁴ *Ibid.* at --.

nothing more than "make a lot of noise."¹⁵ Not surprisingly, NATO strategists read this is an apparent green light to NATO to use force without going to the UN. But, meanwhile, Judah reports that sources in Belgrade claim that Russia had also given a green light of sorts to Milosevic by leading him to believe that Russia would provide Serbia with anti-aircraft systems that would make any air campaign a risky venture for NATO.¹⁶ *If* these accounts are both true, then Russia's cooperative role with both sides had pernicious results. Two greens do not make a red.

Eventually, two months into NATO's bombing, Russian President Yeltsin felt uncomfortable under domestic pressure from Russian nationalists and his military, each sector angered by Russia's apparent marginalisation and weakness in the whole affair. He decided that Russia had to cooperate with NATO to find a way to end the war quickly. This was accomplished in the form of an intriguing partnership of the White House's Strobe Talbot, Finnish President Martti Ahtisaari, and former Russian Premier Viktor Chernomyrdin.¹⁷ This trio worked long into many nights to craft a common strategy that came to include two differences from Rambouillet: that the military force that would oversee Kosovo would have to be under UN auspices and some Russian troops would have to be part of that force along with NATO troops. Ahtisaari and Chernomyrdin then delivered a non-negotiable message, Ahtisaari being assigned the hard-cop role of telling Milosevic that bombing would intensify and would target Serbia's civil infrastructure (such as the telephone system) if he did not agree.¹⁸ Milosevic saw no choice but to climb down and accept defeat now that Russia was clearly not going to go to bat for Serbia, far less for him. NATO and Russian troops entered Kosovo after Serb forces withdrew and 'peace' was secured.

Judah's brilliant and painstaking reconstruction of events in *Kosovo* is not free of problems. On key issues, Judah does not seem to have dug deeply enough into matters that are very important. In particular, two absences stand out: the issue of whether signals from the Bosnia crisis over NATO's limited capacity to stay the course affected Milosevic's willingness to have Serbia take a hit from NATO; and the question of whether a Russian military role in implementing Rambouillet was seriously considered at the time of Rambouillet or whether the Heathrow meeting had made that an 'unnecessary' consideration. To the extent these issues are touched upon by Judah, one is frustrated by the circumspection, indeed obliqueness, with which Judah mentions key theories – such as the

¹⁵ *Ibid.* at --.

¹⁶ *Ibid.* at --.

¹⁷ *Ibid.* at --.

¹⁸ *Ibid.* at --.

alleged Russian promise to provide air-defence systems to Serbia – without offering his view on the strength of the theory or even a comment on the general credibility of the Belgrade-based sources of this information.

III. TO START A WAR...?

At this stage of the account, one might wonder, not so parenthetically, whether most everyone in the corridors of NATO's Brussels headquarters had a copy of Richard Holbrooke's memoir *To End a War* shoved in their briefcases.¹⁹ Holbrooke had been the diplomatic kingpin behind getting Dayton to happen and then, once the peace talks were under way, knocking heads to secure the necessary signatures on the war-ending agreement. When the Kosovo crisis broke, Holbrooke was in retirement (at least, temporary retirement) from government, but was promptly recruited to come back as the key emissary between NATO and Milosevic.²⁰ A favourite plot device of many an adventure story is called to mind: 'Richard, we know you're out of this game, but we need you back – no one else can do it'

What is the significance of Holbrooke's diplomatic return to the Balkans for the path war took over Kosovo? In *To End a War*, Holbrooke does not hold back on detailing his role in executing the ultimatum strategy in the Bosnia context. He candidly reveals, seemingly revels in revealing, how close run a thing it was that the US was able to browbeat other NATO governments into taking the decision to bomb Bosnian Serb positions in response to Milosevic's initial failure to capitulate.²¹ A whole book could be written on the ethics and (ir)responsibility of memoirs of this kind by still-active high-level diplomats. But, in the present context, it suffices to wonder whether not only NATO diplomats but also Slobodan Milosevic also kept a copy of Holbrooke's book close at hand, with passages underlined where Holbrooke revealed how near to a bluff had been the final ultimatum to Milosevic that had preceded the NATO air raids on Bosnian Serb military emplacements. Several years after these raids had brought him to the Dayton table, Milosevic was again interacting with his Bosnia nemesis-cum-negotiating-partner and may well have been counting on a similar inertia and level of discomfort on the part of NATO governments. As Judah would suggest in *Kosovo*, Milosevic indeed seems to have calculated that a fragile NATO consensus on bombing Serbia because of Serbia's mounting violence in Kosovo would produce pinprick assaults,

¹⁹ Holbrooke, *To End a War*, supra note 3, at --.

²⁰ Judah, *Kosovo*, supra note 2, at --.

²¹ Holbrooke, *To End a War*, supra note 3, at --.

then a fracturing of solidarity and finally a cessation of bombing – with Milosevic emerging not only intact but a shrewd hero in the eyes of the average Serbian.²² However, he does not at all probe how the lessons Milosevic drew from the pre-existing Milosevic-Holbrooke relationship may have been affected by Holbrooke’s candid public record in *To End a War* of how his threat at the time of the Bosnia crisis had been a near-bluff.

The argument, it should be emphasized, is not that Judah ignores the Holbrooke-Milosevic diplomatic dance during the Kosovo crisis. Far from it. Judah places considerable emphasis on Holbrooke’s account of how Milosevic *did* believe NATO threats this time precisely because NATO had delivered on the threats during the Bosnia war.²³ Indeed, Judah gives Chapter 8 the title “You Will Bomb Us,” a reference to what Holbrooke reports during an August 1999 BBC interview Milosevic to have said to Holbrooke on March 22, 1999, after Holbrooke had told him: “You understand what will happen when I leave here today if you don’t change your position, if you don’t agree to negotiate and accept Rambouillet as the basis of the negotiation?”²⁴ Even after Holbrooke had emphasized that that the bombing would be “swift, severe, and sustained” (a punchy alliteration he had worked out in advance with US military brass), Milosevic is said to have replied: “No more engagement, no more negotiations, I understand that, you will bomb us. You are a great and powerful country,” – one can note how he did not speak of NATO as a great and powerful alliance – “there is nothing we can do about it.”²⁵ So, while Judah does surmise that Milosevic had indeed believed bombing would come but not that it would be too serious or lasting, he does not explore the possible sub-text stemming from what Milosevic may well have known, directly or indirectly, from Holbrooke’s *To End a War*. Words: “You will bomb us.” Thoughts: *But I have read your memoir. It cannot last. NATO does not have the will or the guts to stick it out.*

²² Judah, *Kosovo*, *supra* note 2, at --.

²³ *Ibid.* at --.

²⁴ *Ibid.* at --. Notice these words – “negotiate and accept Rambouillet as the basis” – is a far cry from the reality of NATO insisting on accepting the Rambouillet ‘agreement’ as opposed to negotiating the Rambouillet draft agreement, thereby putting the NATO cart before the Yugoslav horse.

²⁵ *Ibid.* at --.

IV. THE RUSSIA OPTION²⁶

Judah concludes that the reason war occurred was simple and yet another example of states' and their diplomats' capacity to create self-perpetuating dynamics that allow the plunge into war to take on a life of its own. In Judah's view, "*They all just got it wrong.*"²⁷ Without gainsaying this emphatic conclusion (correct as it is in its generality), the reader interested in evaluative appraisal of the Kosovo crisis will derive little assistance from Judah's resolute and more or less consistent avoidance of a discussion of what could or should have been done differently to have avoided the devastation that swept over Kosovo and Serbia in the wake of the Rambouillet failure. A certain normative agnosticism prevails, keeping *Kosovo* almost entirely at the level of explanation, rather than critique. This is not to take away from Judah's accomplishment, indeed one that successfully blends journalism with scholarship. As already indicated, Judah does yeoman service by revealing details of Russia's role that were generally unknown at the time by anyone other than close insiders. Yet, one is left with a sense of too much attention having been paid by Judah to the Heathrow meeting, with the implicit conclusion being that Russia had surreptitiously thrown its hat into NATO's ring. Indeed, Judah's discussion of the Rambouillet negotiations does offer some insight into how speaking for Russia is not as simple as Foreign Minister Ivanov speaking off the record to diplomatic peers over tea and scones. Other strains of, and actors in, Russian politics did not suddenly go away, and there remained a strong sense that "Russia" did not agree that this was somehow NATO's baby.²⁸ Russia continued to want a role reflective of both its perceived interests and its need for a level of prestige, but NATO complacency after Heathrow seemed to make a Russian role not so much a non-option as (a perceived) unnecessary one. It was not that Russia could not have been more central to the Rambouillet process, but rather that it was uncritically assumed that it need not be.

But, in the end as we have seen, NATO insisted at Rambouillet on the insertion of a NATO force as part of any agreement, Serbia balked, and we ended up with zero-sum folly. The 'deal' Ahtissari brought to Milosevic after Yeltsin had delegated Chernomyrdin to work with NATO to end the war had significant participatory elements for Russia, raising of course the query of many an observer after the Serbian capitulation: could this not have been finessed as a solution at

²⁶ A distilled version of this section has been published in an in-house publication of the University of Toronto Faculty of Law: "Kosovo, the Russia Option and Chechnya" in (Fall/Winter 2000-01) *Nexus* 53-55.

²⁷ *Ibid.* at --.

²⁸ *Ibid.* at --.

Rambouillet itself, and all the bloodshed and destruction thereby avoided? Here, though, it is significant that Judah's account *does* change the commonly-assumed picture of the outside observer at the time that the West was completely ignoring Russia. We can now see how much fault Russia itself bears for a more Russia-inclusive strategy not having been pursued at Rambouillet. But the predominant factor still appears to be Western hubris and over-easy gravitation to sword-rattling as a strategy simply because a more or less economically-beholden-to-the-West Russia had been cornered on one occasion in the form of one person, Ivanov, in a Heathrow lounge. It is to the failure of all sides to pursue a "Russia option" that the rest of this essay now turns.



Recall that it was in early March of 1999 that the Rambouillet "agreement" structuring an interim autonomy regime for Kosovo showed early signs of becoming a dead letter. Notably, Yugoslavia seemed willing to live with a short-term solution of robust regional autonomy for Kosovo, but was adamant it would not agree to NATO troops on its soil to oversee and enforce the deal. However, news reports have Belgrade saying that Serbia would accept a substitution of Russian (and Belarussian) troops for NATO troops, albeit adding the troublesome condition that Yugoslavia must be admitted into these two states' military alliance.²⁹ Judah fails to discuss this dimension, and one can only assume he saw it as pure verbiage that made no impact on the Rambouillet actors. But, were it not for Heathrowitis, Serbia's move, whether or not initially a disingenuous ploy, could well have triggered a need to re-think a Russian role.

In contrast to diplomatic complacency, it cannot be said that efforts were not made from outside the interstate realm to have a Russia option looked at seriously and pursued. By their nature, behind-the-scenes efforts in the diplomatic realm are not known to the present author, and, as yet, no book appears to have been written – at least, in English -- by a diplomatic insider to Russia's handling of the Kosovo crisis. Behind the scenes after the initial Rambouillet breakdown (the ultimatum period before the final Holbrooke warning on March 22), there were academics from the fields of international relations and law -- as well as representatives of at least one leading international humanitarian organisation -- who were crafting careful submissions to various NATO capitols, to at least one Russian ambassador in those capitols, and to the Office of the UN Secretary-General.³⁰ (On the latter score, the plea was for Kofi Annan to put his neck on the line to try to broker a Russian role.) Yet, there is little evidence that Western powers took the Russia option

²⁹ [Cit. To Globe and Mail]

³⁰ This includes efforts by the present author. As to the role of humanitarian NGOs, publication of efforts known to the author may compromise those organisations' future role and is thus not further specified here.

seriously, let alone pursued it with any vigour, and Judah's analysis provides no affirmative counter-evidence that the option was considered post-Heathrow. One can only speculate that some last-minute missions to Moscow by several NATO-country politicians, such as Canada's Secretary of State for Foreign Affairs Lloyd Axworthy, may have been pursuing this line – and it is entirely possible that such efforts fell on ears as deaf in Moscow as in the chamber of the North Atlantic Council in Brussels. Here, to reiterate, the argument is not that Russia was blameless in helping construct its own marginalisation.

In the event, NATO continued both to insist that its troops were a bottom-line part of the Rambouillet “agreement” and to promise military strikes if Yugoslavia (Serbia) did not “agree.” After Serbia refused to sign on these terms at Rambouillet, Serbian armed forces accelerated their military “campaign” in Kosovo, upping the ante. NATO responded by making good on its threats and launching a massive air campaign. The ferocity of Serbia's assault (or reports of it) in Kosovo escalated and the bombing of Belgrade and much of the rest of Serbia intensified. Eventually, after months of NATO bombing while refugee outflows and atrocities continued throughout Kosovo, the above-noted Russian diplomacy played a central role in orchestrating the terms of withdrawal of Yugoslav forces and the insertion of a UN force side by side with a transitional NATO presence. Russian troops were also made part of the UN mission set up by the Security Council. After a face-saving dash to beat NATO to Kosovo's Pristina airport,³¹ they settled into a largely professional and co-operative relationship with the other UN mission countries and with NATO – according to the laudatory comments of UK General Jackson in an interview with Spain's *El Pais* paper at the time of his departure as military head of the Kosovo mission in October 1999.³²

With the above sequence of events in mind, let us now consider the NATO decision not to negotiate the shape of a Rambouillet military force and to start bombing when Serbia refused to sign at Rambouillet. Two important members of the UN other than Russia – China and India – reacted with outrage. (Here, I am assuming that neither China's nor India's reaction was on par with one interpretation of Russia's reaction, that is, Heathroweque – staged.) Is it naïve to pay attention to these polemics? Can such outrage be readily dismissed as either legalistic or as the self-serving stance of states with their own Kosovos to worry about? Such responses would be far too glib, for the NATO intervention was *not only* about protection of civilians. It was about the complicated business of coercive restructuring of a state's constitutional order.

Consider the legal state of affairs at the time all this was going on. Without the overriding

³¹ Judah, *Kosovo*, *supra* note 2 at --.

³² [Cit to *El Pais*]

authority of the Security Council to endorse Rambouillet under Chapter VII of the UN Charter, “agreement” could not be imposed by outside states absent two signatures – at least, not without a wholesale rejigging of the international legal order around a general recognition of the hegemonic discretion to use force to advance (subjectively-assessed) world order values.³³ (Whether such a theory has *since* insinuated itself, or is insinuating itself, as a legal fact is a question beyond the scope of this review.³⁴) Nor could the legality of a document with two signatures on the page be easily assumed; even were Serbia to have joined the Kosovars in formally “consenting” to it, it is a commonplace of international treaty law that a treaty coerced by force or the threat of force is no treaty at all, and this principle can surely apply no less to coercing a state into an agreement with non-state actors.³⁵

Would the Russia option have been inimical to the combined objectives of peace and justice in Kosovo? Had a Security Council-centred process brokered a substitution of a Russia-led mission for the contemplated NATO deployment, there was a very realistic prospect that Russia would have taken great care to act with a firm sense of its larger responsibilities. Whatever its Machiavellian role in the lead-up to the Rwanda crisis, France operated relatively evenhandedly when authorised (belatedly) to go into Rwanda; the US managed to keep excessive self-interest under control when authorised to go into Haiti. This is not to say that mixed motivations and the prior role of each state in these countries did not render their subsequent ‘humanitarian’ policing role profoundly hypocritical.³⁶ The only point in offering these kinds of examples is to suggest that Russia would, in all likelihood, have felt pressure to act with similar circumspection had it either led a UN mission or been a major participant alongside troops from outside the region, such as from Brazil or India. To have engaged Russia in such a way would have put Russian prestige on the line and offered the tangible benefits of deepened support from, and future partnership with, the West. The incentives for faithful performance of a UN mandate would likely have weighed more heavily than any interest in a sacrificial siding with Serb violence. This is especially likely given Judah’s revelations about just how uncommitted official Russia was to Slav solidarity (as opposed to primordial nationalistic sentiment of some elements within the political spectrum and the military, and of course many an

³³ [Cit to Ch VII, UN Charter, and then to no-treaty-by-coercion provisions of Vienna Convention on the Law of Treaties]

³⁴ See, however, recent articles appearing on this question, notably:

³⁵ Articles ---, Vienna Convention on the Law of Treaties, *supra* note 32.

³⁶ Nor to ignore how deployment, especially of French troops in Rwanda, may have pursued simultaneous agendas of stopping violence and supporting French political allies in the conflict.

average citizen).³⁷ Judah's account goes further in noting how those in the Russian foreign policy apparatus were not just uncommitted to Serbia but also found Milosevic a profoundly odious politician to be in bed with.³⁸

Had the scene shifted from NATO's Brussels to the UN's New York, Milosevic need not have been given everything he was demanding. First of all, there could have been no question of allowing Yugoslavia to join Russia and Belarus in military alliance. Secondly, any UN force would had to have had a Russia-led quality without being exclusively Russian and Belarussian. The UN mission would need a critical mass of non-NATO troops from such nations as Brazil or India and possibly from certain regional states not members of NATO (such as Ireland and Sweden). Finally, given the state of Russia's finances, funding would have been a major stumbling block, such that NATO states would have had to agree to fund at least Russia's component of the UN operation.

A number of mutually supportive results might possibly thereby have been achieved.

- Systemic concerns about the rule of law and the future authority of the Security Council would have been treated as being as important as the credibility of NATO.
- Milosevic would have had a way to save face, *but*, if he had refused to accept a version of his own counter-proposal, Russia and China would have been more likely to have been persuaded to support a UN-based defence of Kosovo (even if only by abstaining on a Security Council vote to authorise NATO intervention).
- It would have taken seriously the desirability of engaging Russia rather than treating Russia as the sick man of Eurasia to be ignored or bought off.
- The spirit of compromise between Russia and NATO could have had some symbolic effects, however small, for the engagement of the Yugoslavian communities under Rambouillet.

It is now late summer of 2000. Kosovo has, by many accounts, disappeared from the radar screen of European states in terms of being a financial priority. As for news coverage, the most we get is sporadic coverage of the anti-Serb campaign of vengeful violence and purifying displacement

³⁷ Judah, Kosovo, *supra* note 2 at --.

³⁸ *Ibid.*

that has been occurring in the new Kosovo – a campaign that NATO and the UN have not prevented.³⁹ More attention is paid to soap-opera like coverage of the state of affairs in Serbia proper, with a near-total focus on one man and whether he will stay in power.

Meanwhile, in Kosovo, Russian troops have not broken out of the professional and co-operative mode noted in October 1999 by General Jackson.⁴⁰ They have not sided in any active way with the remaining Serb civilian population of Kosovo. Back in Russia, of course, the leadership, notably President Putin, seem to have become characters straight out of *Dr. Strangelove* with their senseless and brutal conduct in Chechnya. The Russian lamb in Kosovo co-exists with the rogue bear in Chechnya. There seems little reason to suppose that this bifurcated approach would not also have been the case had Russia in fact ended up leading a Rambouillet/UN mission. Indeed, it is more than arguable that Russia would have had to comport itself as a model of responsibility in Kosovo in order to present its account of the conflict in Chechnya as that of a reasonable actor not given to unnecessary use of military force.

We should also keep in mind that, if the counterfactual of a Russia-led mission in Kosovo had happened, the massive NATO bombing campaign of Serbia also would not have taken place. And if that bombing had not taken place, Russians would not now be reacting with disbelief and ire to Western condemnation of the Chechnya campaign which they see (with whatever lack of nuance) as little more than the mirror image of the policy of the West in Kosovo. Had Kosovo been handled differently—not just by NATO states but also by Russia itself -- Russia would have been engaged as the West's partner on the international stage, and, as such, would now be more susceptible to entreaties to act humanely in Chechnya. Russian domestic politics would also have been deprived of two handy discourses (that of double standards and that of nationalistic paranoia) which unworthy politicians are adept at using in order to rally the support of their home audiences.

³⁹ On occasion, renewed interest is generated by decisions and reports with respect to whether NATO military officials and government leaders bear any legal responsibility for alleged breaches of international humanitarian law (this being quite apart from the legality of the intervention itself, which, it is fair to say, is not a central concern in international discourse). See, e.g., the reports of Amnesty International and Human Rights Watch, -----; and the decision of the new Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, -----, who has declined to investigate any further the criminal law culpability of NATO decisionmakers.

⁴⁰ [refer back to earlier *El Pais* footnote]

