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**Article (Published version)  
(Refereed)**

**Original citation:**

Ker-Lindsay, James (2011) *Between “pragmatism” and “constitutionalism”: EU-Russian dynamics and differences during the Kosovo status process*. [Journal of contemporary European research](#), 7 (2). ISSN 1815-347X

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Available in LSE Research Online: November 2011

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# Between “Pragmatism” and “Constitutionalism”: EU-Russian Dynamics and Differences during the Kosovo Status Process

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## Abstract

Kosovo’s unilateral declaration of independence in 2008 has been widely regarded as a failure for international diplomacy in general, and for the European Union (EU) in particular. The narrative that has emerged suggests that, rather than taking charge of the situation, the EU was instead a “victim” of external machinations led by Washington and Moscow. This article challenges this view. It argues that, during the status process, it became clear that in the case of Kosovo there was a tension between the constraints imposed by international law on acts of secession and the requirements for stability on the ground. While Russia insisted on the former, albeit for a range of reasons that went beyond upholding international law, the United States placed emphasis on the latter. For their part, the key members of the EU eventually decided that, after having tried to win Moscow over to their position, they too had to ensure regional security; even if this meant circumventing the United Nations and the Security Council and challenging long-standing legal norms and principles concerning the territorial integrity of states.

## Keywords

Kosovo; Russia; European Union; United States; United Nations

WHEN KOSOVO UNILATERALLY DECLARED INDEPENDENCE IN 2008, IT WAS WIDELY SEEN to represent a failure of international diplomacy. As one leading observer noted, the end result of two years of status talks was a “mess” (Jackson 2007). For many Western observers, the ultimate responsibility for the failure to reach an agreement rested squarely on Moscow (MacShane 2007; Harris 2007; *The Economist* 2007; Joseph 2007; Bugajski and Joseph 2007). It was, or so they argued, Russia’s decision to veto a Security Council resolution authorising Kosovo’s independence that prevented Kosovo from gaining international legitimacy as a fully sovereign and independent state. Within the European Union (EU), opinions differed. Many argued that the burden of blame lay equally with Moscow and Washington. As one noted regional analyst has observed, “the international significance of a debacle that reflects poorly on all participants is [...] very clear: Russia and the United States have combined to humiliate the European Union” (Glenny 2007).<sup>1</sup> Few

<sup>1</sup> As one EU official put it, “Russia has simply decided to stop short of doing anything that would lead to real pressure on Serbia to strike a deal [...] At the same time, Washington’s long-standing pledge to recognise Kosovo’s declaration of independence has always been in the back of the Kosovars’ minds” (*Financial Times* 2007b). This was echoed by Massimo D’Alema, the Italian Foreign Affairs minister. As he explained, Russia and the United States had fed the intransigence of the two sides by taking positions that often appeared to be stronger than those expressed by the parties themselves (*New York Times* 2007b).

observers, however, took the view that the United States was largely responsible. One such voice was Alberto Navarro, the Spanish Minister for Europe. Speaking soon after the declaration of independence, he made little effort to hide his feelings over what had happened: "I'm really frustrated that the future of Kosovo has been decided in Washington and to some extent in Moscow, and not in Europe" (BBC News 2008b).

This article examines the United Nations (UN)-sponsored status process and the events leading up to Kosovo's unilateral declaration of independence. It will seek to show that, while Russia's position was almost certainly driven by a strong degree of self-interest and may possibly have had malign motives, there can be little doubt that its position was in fact in accordance with traditional thinking on the right of secession under international law. So much so that, under other circumstances, there would have been little difference between Moscow's position and that of the EU. In contrast, as will be shown, the United States adopted an approach that circumvented standing principles of international law. Seeking to extricate itself from a situation that had the potential to lead to a new conflict in the Western Balkans – this time aimed at international administrators and peacekeepers – it supported Kosovo's independence, even though this was opposed by Belgrade and was being undertaken without the endorsement of the UN Security Council. Therefore, in the international debate between the legal "constitutionalists" and the political "pragmatists" (*The Independent* 2007), Russia claimed to be the champion of the former position, whilst the United States led the latter camp.

As for the view that the EU was the victim of external machinations, it will be shown that this picture is rather too simplistic. Yes, it was caught between the two positions. However, several key states, such as Britain and France fully agreed with, and actively supported, the US position. As they saw it, any further delay in deciding the status of Kosovo as an independent state could be disastrous. However, many others, while not openly siding with Russia, were distinctly uneasy about the dangers of going against established international principles concerning secession and bypassing the UN Security Council. To this end, several efforts were made by senior EU leaders in the spring and summer of 2007 to try to persuade Moscow to accept Kosovo's statehood – thereby gaining the necessary Security Council resolution to ensure European unity. The problem was that these attempts to gain Moscow's support offered little by way of reasonable rationale or a suitable *quid pro quo*.

Eventually, therefore, the EU simply gave up and focused on forging its own unity in the face of growing US determination to "solve" Kosovo, with or without European support. When faced with a choice between Russia's demand for a strict adherence to international law (albeit done for its own purposes), which ran the risk of prolonging an increasingly unstable and dangerous situation in Kosovo, and Washington's overwhelmingly political approach to the situation, which would ease tension in Kosovo, but would pose a distinct challenge to prevailing international approaches towards secession, most EU leaders – often extremely reluctantly – decided that they had no alternative but to follow the US lead.

### The right of secession in international law

Perhaps not unsurprisingly, states tend to have an innate aversion to acts of secession (Fierstein 2008). Indeed, the principle of the territorial integrity of states is a central tenet of international politics. As one eminent international jurist has put it:

[t]he truth is that international law upholds the territorial integrity of a State. One of the fundamental principles of contemporary international law is that of respect for the sovereignty and territorial integrity of States. This principle entails an obligation

to respect the definition, delineation and territorial integrity of an existing State. According to the principle, a State exercises sovereignty within and over its territorial domain. The principle of respect for territorial integrity is enshrined in the Charter of the United Nations and other international instruments (Koroma 2010 para. 21).

To this extent, a high threshold has been created for entities seeking recognition as independent and sovereign states. According to the 1933 Montevideo Convention on the Rights and Duties of States, which codified the essential characteristics of statehood, an entity claiming to be a state must fulfil three necessary and minimally sufficient conditions. In the first instance, it must have a defined territory. Secondly, it must have a settled population. Thirdly, it must have some sort of effective administration.<sup>2</sup> However, while the Montevideo Convention sets down the key features of statehood, and thus provides a basic – but non-binding – framework for deciding whether a territory or entity should be recognised as a state, other factors play an important role in the process of recognition. Notably, the process by which a state emerges has also become extremely important. As Fabry notes, ‘since the 1950s, the determining factor in admission of new members into the society of states has been whether an entity has a prior right to independence, rather than whether it is independent’ (Fabry 2010: 12). For instance, territories that may meet the criteria of a state but have been created through acts of aggression are widely considered to be illegitimate, even if not always in practice viewed as illegal. Other factors also play an important role in shaping the decision of a state of whether or not to recognise an entity as a state. In the modern era, and especially since the end of the Second World War, perhaps the most powerful of these is the injunction against recognising states that have come about through unilateral acts of secession from an established and recognised state.

Of course, entities claiming statehood usually emphasise the right of self-determination. However, despite the fact that the principle is explicitly recognised within the UN Charter, and has since then been elucidated in international treaties and agreements – such as the Helsinki Final Act, which has played a seminal part in shaping peace and security in Europe (1975), the Universal Declaration on Human Rights (1948), the Anti-Colonial Declaration (1960), or the Friendly Relations Declaration (1970) – its application has in fact been very limited. Since the end of the Second World War, the notion of self-determination resulting in the creation of new states has been viewed as a right applicable to cases of European decolonisation (Koskenniemi 1994: 241), or else to areas otherwise recognised as being under military occupation. Even then, the principle has been narrowly defined as to be applicable only at the point of decolonisation or military withdrawal. A new state created by an act of decolonisation is, from the very moment of its creation, subject to the very rights of protection that apply to other sovereign states. By contrast, in non-colonial settings, the principle of self-determination has been regarded as subordinate to the principle of territorial integrity. In these cases, self-determination has come to be more generally seen as a right to self-administration and self-governance within an existing state, a right of internal self-determination (Archibugi 2003), rather than a right to create a new state. As Crawford (1997) has stated,

[i]n international practice there is no recognition of a unilateral right to secede based on a majority vote of the population of a sub-division or territory, whether or not that population constitutes one or more “peoples” in the ordinary sense of the word. In international law, self-determination for peoples or groups within an independent state is achieved by participation in the political system of the state, on the basis of respect for its territorial integrity.

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<sup>2</sup> For an analysis of these conditions, see Crawford (2006). At the same time, the Convention included a further qualification that suggested that an entity wishing to claim statehood must be capable of interacting with other states. However, this is not generally considered to be a requirement under international law (Keating 2008).

The collapse of the Soviet Union and the break-up of Yugoslavia did not fundamentally alter the way in which the international community approached the question of secession. In the case of the Soviet Union, the Soviet Socialist Republics were all considered to have an inherent right to statehood as recognised by Russia, the most important of the component states, which also sought independence from the Soviet Union (Saideman 1995). This meant that the three Baltic republics, the three states of the Caucasus and the five Central Asian republics were all recognised as sovereign states alongside Belarus and Ukraine.<sup>3</sup> Yugoslavia proved to be a more difficult example as Serbia, the key republic in the Yugoslav federation, sought to keep the federation united, or at least to ensure that the Serbs living in the other republics retained a link to Serbia (Pavlowitch 68-69). However, the underlying principles guiding recognition nevertheless remained similar. A committee of jurists led by Robert Badinter, the president of the French Constitutional Court, examined the issue and decided that the six republics recognised under the 1974 Yugoslavia constitution – Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia – all had a right to independence. This right did not, however, extend to the national minorities as such – in other words the Serbs, Croats and others as distinct peoples. Nor did it extend to the two autonomous Serbian provinces of Vojvodina and Kosovo, which, under the 1974 Constitution, were accorded many of the rights of the six republics, but did not have a notional right of secession.<sup>4</sup> In this sense, and again, sovereignty was seen to be vested in units within the state that were, even notionally, accorded a right to express a sovereign identity under the terms of the constitution of the state they were seceding from.

Thus the end of the Cold War, while apparently creating challenges to notions of sovereignty and territorial integrity, in actual fact served to reinforce the traditional views on secession.<sup>5</sup> Although there have been increasing calls for the right to self-determination leading to independence to be extended, this has not been accepted by national governments. They continue to remain wedded to traditional respect for the territorial integrity of states – and only break from it under very exceptional circumstances. As Berg (2009: 222) put it, “in short, current legal and normative doctrine forbids *de jure* recognition to those territorial units whose political leadership has been successfully resisted by metropolitan central authorities”.

Even the emergence of new thinking on the limits of state sovereignty – encapsulated within the notion of Responsibility to Protect (R2P) – has so far failed to alter entrenched views on the territorial integrity of states. Despite the fact that some advocate a new norm of remedial secession in cases of gross human rights abuses, this has yet to gain any traction in international law. Certainly, when the matter of Kosovo’s declaration of independence came before the International Court of Justice, and which decided to avoid the underlying question of the right of secession,<sup>6</sup> the judges also decided to avoid the

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<sup>3</sup> Belarus and Ukraine were rather interesting inasmuch as they had formally been members of the UN prior to the break-up of the Soviet Union, and so did not have to apply for membership as such. Instead, they simply informed the UN of a name change. However, this did not mean that they were formally recognised as states by the international community, nor did they have their own diplomatic missions to other states.

<sup>4</sup> See Pellet (1992) for a discussion of the work of the Commission.

<sup>5</sup> As Crawford (1997: 114) has noted, states are still reluctant to recognise new states formed outside of the colonial experience: “[t]his practice has not changed since 1989, despite the emergence during that period of 22 new states. On the contrary, the practice has been powerfully reinforced”.

<sup>6</sup> As the majority opinion stated, “[i]n the present case, the question posed by the General Assembly is clearly formulated. The question is narrow and specific; it asks for the Court’s opinion on whether or not the declaration of independence is in accordance with international law. It does not ask about the legal consequences of that declaration. In particular, it does not ask whether or not Kosovo has achieved statehood. Nor does it ask about the validity or legal effects of the recognition of Kosovo by those States which have recognized it as an independent State [...] Accordingly, the Court does not consider that it is necessary to address such issues as whether or not the declaration has led to the creation of a State or the status of the acts

issue of remedial secession – despite the call by one of their number to address this very question (Simma 2010). In the meantime, a number of scholars who have studied the issue have concluded that, under current international law, there would seem to be no clear right to remedial secession, even if, in practice, it is gaining some relevance (Summers 2010). Moreover, the argument that such a process can be undertaken years after the human rights abuses have ended, and where there is no longer a threat to the community, is questionable (Vidmar 2010). Indeed, even those who support Kosovo's independence appear to argue that remedial secession is not really an applicable approach in this context – instead arguing that a notion of “earned sovereignty”, whereby the conditions laid down by the Montevideo Convention are met, would be more applicable (Boulton and Visoka 2010: 20-21). Moreover, even from a practical perspective, there appear to be grave doubts about trying to establish a clear norm of remedial secession.<sup>7</sup> As will be seen, the degree to which the countries that supported Kosovo's unilateral declaration of independence insisted that it was a wholly *sui generis* case - which therefore cannot be viewed as a precedent -, highlights the extent to which they do not want the case of Kosovo to become established as a model for secession – remedial or otherwise – for other separatist entities. All other things being equal, unilateral secession appears to remain unacceptable under international law and according to the standing norms of international politics.

### Kosovo, 1999-2008

In 1999, following a number of attempts to end the fighting between Serb forces and separatist Albanian guerrillas, NATO launched an air campaign to end the ethnic conflict in Kosovo<sup>8</sup>. Seventy-eight days later, the Serbian Government under Slobodan Milosevic capitulated. Under the terms of UN Security Council Resolution 1244, Kosovo was placed under UN administration pending a final agreement on the province's status. Five years later, despite attempts to introduce democratic reforms (the “Standards before Status” policy<sup>9</sup>), it was clear that the decision on the future of Kosovo could not be delayed much longer. Serious riots, in March 2004, highlighted the growing frustration amongst the majority Kosovo Albanians, who were by now openly calling for full independence and unless they were given some sort of blueprint for independence there was a real danger that international presence could become a target of violence (*Human Rights Watch* 2004)<sup>10</sup>. The following year, the UN Secretary-General commissioned a study into the situation from Kai Eide, a senior Norwegian diplomat. In his report, Eide noted that the situation on the ground was far from ideal, but that there was little to be gained by holding off the status process any longer. As he explained, whatever the outcome of talks between Belgrade and Pristina, it was time for the European Union to be given a greater role in determining the future of Kosovo, as part of the wider process of regional integration (*UN Security Council Document* 2005a).

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of recognition in order to answer the question put by the General Assembly” (International Court of Justice 2010: para.52).

<sup>7</sup> As Boulton and Visoka (2010: 20) note in their analysis of the arguments presented by states supporting Kosovo's declaration of independence, ‘only three other countries explicitly noted human rights abuses, suggesting that this is not that dominant international consideration.’

<sup>8</sup> For a background history of Kosovo, see Malcolm 2002; Vickers 1998.

<sup>9</sup> These were set out as follows: (1) the existence of effective, representative and functioning democratic institutions; (2) enforcement of the rule of law; (3) freedom of movement; (4) sustainable returns of refugees and displaced persons, and respect for the rights of communities; (5) creation of a sound basis for a market economy; (6) fair enforcement of property rights; (7) normalized dialogue with Belgrade; and (8) transformation of the Kosovo Protection Corps (KPC) in line with its mandate.

<sup>10</sup> As two prominent observers noted, “Violence had once again advanced the independence agenda as nothing else in the previous five years had” (King and Mason 2006: 191).

In October 2005, the Security Council authorised the start of formal status talks between the Serbian Government and the Kosovo Albanian leadership (*UN Security Council Document* 2005b; 2005c). Shortly afterwards, the Contact Group – a body made up of Britain, France, Germany, Italy, Russia and the United States – laid down a fundamental set of principles to be followed during the discussions. First and foremost, they agreed that there could not be a return to the situation that existed prior to 1999. Kosovo could never return to direct rule by Belgrade. Likewise, Kosovo could not be partitioned, nor could it unite with any other state (Contact Group 2005). To oversee this process, Kofi Annan, the then Secretary-General of the UN, appointed Martti Ahtisaari, the former president of Finland and an experienced negotiator, to serve as his special envoy (*UN Security Council Document* 2005d). Within weeks, he had established his office in Vienna and travelled to the region to meet with the parties. Moreover, despite the fact that it was meant to be a process of negotiation between the two sides, he had also decided that independence was the only possible outcome – a decision he communicated to the Contact Group as well as to the Serbian Government.<sup>11</sup> Meanwhile, at a meeting in January 2006, the Contact Group decided that in addition to their previous principles, any solution must be acceptable to the people of Kosovo (Contact Group 2006). This served to confirm, at least in Ahtisaari's view, that independence was indeed the inevitable end result of the process,<sup>12</sup> and he lobbied the members of the Contact Group to convey this message to Belgrade.<sup>13</sup>

In February 2006, face-to-face talks between the two sides got underway. Given that the status had already been decided, Ahtisaari decided to focus on the structure of the state. The talks therefore focused on local governance and community rights (Weller 2008). However, little progress was made. The Kosovo Albanians insisted that there could be no negotiations over independence as the final outcome of the process (*Associated Press* 2006a). At the same time, Belgrade was adamant that it would only be willing to accept some form of extensive autonomy for the province (Ahtisaari 2005). With this in mind, the UN team decided to focus more openly on the status question and convened a high-level meeting between the political leaders in July. As expected, this did little to break the deadlock (*Associated Press* 2006b). With little goodwill between the sides, and little hope of reaching an agreement, the Contact Group authorised Ahtisaari to prepare a status proposal (UNOSEK 2006).

Meanwhile, the Serbian Government, in an attempt to secure its position, passed a new constitution affirming Kosovo's place as an integral part of the Serb state. This new constitution was confirmed in a national referendum in October 2006, which in turn paved the way for general elections in January 2007. As a result, Ahtisaari was forced to delay unveiling his proposals to the two sides until the start of February. Notably, the 54 page-document laid out in precise details the structure of a state, but made no specific reference to sovereignty or statehood. Nevertheless, recognising that this was a blueprint for independence, Pristina warmly welcomed the proposals. For its part, Belgrade insisted that it would contest any provisions challenging Serbian sovereignty over the province (*Reuters* 2007a; *Makfax* 2007; *Associated Press* 2007a)<sup>14</sup>. However, it was given little opportunity to do so. Although two rounds of technical discussions took place in Vienna, and concluded with a high level summit between the leaders of the two sides, Ahtisaari's

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<sup>11</sup> Martti Ahtisaari, conversation with the author, September 2008.

<sup>12</sup> Albert Rohan [Ahtisaari's deputy], comments to the author, October 2007.

<sup>13</sup> Specifically, he stated that, "the unconstitutional abolition of Kosovo's authority in 1989, and the ensuing tragic events resulting in the international administration of Kosovo have led to a situation in which a return of Kosovo to Belgrade's rule is not a viable option" (Ahtisaari n.d.).

<sup>14</sup> In the days that followed, Çeku also defended the plan provisions for the Kosovo Serbs and other minorities (*Southeast European Times* 2007). But evidently not wanting to appear to keen to accept all the proposed terms while further talks were on the agenda, over the next few days he expressed his concern that elements of the proposals were too restrictive (*Reuters* 2007b).

team was adamant that any changes to the proposal could only be minor (*B92* 2007b). It therefore came as little surprise when the UN envoy announced at the end of the meeting that hopes for a negotiated solution had come to an end, and that compromise between the two sides was impossible (*Reuters* 2007c; *B92* 2007a).

Shortly afterwards, at the start of March 2007 Ahtisaari presented his finalised package to the UN Secretary-General, who forwarded it on to the Security Council (*UN Security Council Document* 2007a). As expected, the UN Envoy had indeed proposed a form of supervised independence for Kosovo. Despite support for the proposals by London, Washington, Paris and Berlin, and the hope that a UN resolution could be relatively quickly passed endorsing the plan for statehood, it soon became clear that there was a greater degree of concern about the proposals within the Security Council than had been expected. In addition to Russia, which led the criticisms of the Ahtisaari plan on the grounds that it had not secured the support of Belgrade and Pristina (*Associated Press* 2007b), many other members of the Council appeared to have serious reservations about the idea of sanctioning statehood for Kosovo against the wishes of the Serbian Government. To this end, the Council accepted a Russian proposal for a fact-finding mission to Brussels, Serbian and Kosovo (*Associated Press* 2007c; *Associated Press* 2007d; *Radio Free Europe/ Radio Liberty* 2007; *United Press International* 2007a). This provided the fifteen permanent representatives had a chance to learn at first hand about the situation in the province and the proposals that had been put forward (*UN Security Council Document* 2007b).

Meanwhile, the United States was becoming increasingly clear in its intentions. During a speech at the Council on Foreign Relations, in Washington, Nicholas Burns, the US Undersecretary of State, who was taking the lead on Kosovo, insisted that the White House would, "support a declaration of independence by the people of Kosovo" (*Associated Press* 2007e), and that the US Administration had told Russian officials that independence was "inevitable" (Burns 2007). Perhaps most importantly, Secretary of State, announced that the United States would even be prepared to recognise Kosovo without a UN Security Council resolution (US Department of State 2007).

Soon afterwards, in mid-May, the United States and Germany presented a draft resolution to the Security Council proposing that Kosovo be awarded supervised independence in accordance with the Ahtisaari proposals. Russia immediately objected on the grounds that it would not accept an imposed solution. Direct talks between Presidents Bush and Putin on the issue during the G8 summit in Germany failed to bridge the differences. In late July, it was announced that efforts to try to pass a resolution had been shelved for the meantime. Instead, it had been agreed that a further period of talks would be held between the two sides. This would be overseen by a Troika of leading diplomats from Russia, the United States and the European Union. However, right from the start, there were no real expectations that the two sides would be willing to reach an agreement. Any incentive on the part of the Kosovo Albanians to compromise had effectively ended when President Bush announced, during a trip to Tirana, that the United States supported independence. Nevertheless, the Troika explored a range of potential options, including forms of autonomy (Serbia presented a number of ideas, including suggestions modelled on Hong Kong's relationship with China and on the Åland Islands in Finland) and partition (Government of Serbia 2007)<sup>15</sup>. Efforts by Wolfgang Ischinger, the EU representative on the Troika, to introduce some form of status neutral model, which was essentially based on the relationship between East and West Germany during the Cold War, and which would focus

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<sup>15</sup> It was pointed out that the Åland Islands, a group of islands with 27,000 inhabitants, were a Swedish-speaking autonomous province of Finland that had not only been demilitarised, and its inhabitants exempt from conscription in Finland, but also been granted the right to its own flag, raise taxes and customs, issue its own postage stamps, administer its own police force, and retain full language and cultural rights.



on establishing working relations between Kosovo and Serbia, was also rejected by both sides. For the Kosovo Albanians it fell short of full independence, whereas the Serbian government viewed it as independence by another name.

Under these circumstances it came as little surprise when after the last round of discussions, held in Austria on 26–28 November, the Troika was forced to concede defeat. Delivering their report to the UN Secretary-General on 7 December 2007 (*UN Security Council Document 2007c*), the Troika announced that their four month effort to broker an agreement, which had resulted in six face-to-face meetings between the two sides, had failed to deliver a breakthrough. As they noted, the two sides had failed to bridge their differences over the fundamental notion of sovereignty. As expected, a Security Council meeting held on 19 December to discuss the report failed to produce a last-minute compromise. After two years of effort, hopes of reaching a negotiated agreement were now over.

### Apparent international acceptance for independence

In large part, the “mess” that was created was a result of misperceptions and misunderstandings. At the start of the process, most observers felt that independence was the logical outcome and the prevailing view was that all the members of the Contact Group were willing to endorse Kosovo’s statehood. Certainly, this path was favoured by the United States. As far back as 1999, it was clear that there were many within the US administration who strongly favoured an independent Kosovo. However, while support for independence was deeply ingrained within certain State Department circles, this does not completely explain the situation. Necessity also drove the decision. In the first instance, this necessity was driven by the need to end the US military commitment in the Western Balkans. With ongoing operations in Iraq and Afghanistan, US decision makers needed to reduce their military commitments in other locations as much as, and as soon as, possible. Tied to this was the danger that, unless resolved quickly, Kosovo could again descend into violence. As the frustrations of the Kosovo Albanians grew, the danger that they could vent their anger at international forces and administrators grew substantially. If this were to turn to open conflict, this could create a potentially troubling and embarrassing situation. How would it be possible to explain to a domestic audience at home that the people who had been “liberated” by the NATO were now turning on those same liberators? It was far easier to be able to declare victory and depart. However, given that the Kosovo Albanians would resist any attempt to reintegrate Kosovo back into Serbia, even under a high degree of autonomy, the only feasible exit strategy became independence. As a result, from a very early stage in the process US officials made it clear to their EU counterparts that the United States was intent on recognising independence. Europe could either agree, or live with the consequences<sup>16</sup>.

Amongst the four EU members within the Group, Britain and France were equally certain that the only possible outcome of the process would be some sort of independence. Indeed, the French Government was the first to state this to Belgrade, in December 2005 (*TV Pink 2005*). Following on from this, a senior British official – John Sawers, the Political Director of the Foreign Office – became the first to state it openly, in February 2006 (*Reuters 2006a*). For their part, the German and Italian Governments were rather more circumspect about the situation. While Berlin also saw the logic of independence it was rather more careful in how it expressed its view. For example, the German Ambassador in Serbia sought to distance his government from the British comments. Independence was not a foregone conclusion (*Tanjug 2006b*). As for the Italian Government, it had

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<sup>16</sup> Diplomat from an EU member state, comments to the author, 2007.

traditionally had the strongest relations of the four with Belgrade and appeared to want to maintain a diplomatic silence over the outcome of the process.

While the United States, Britain and France were explicit regarding its intentions towards Kosovo, the Russian government appeared to be sending out rather more equivocal signals as to its own position. Nevertheless, the general expectation prior to the start of the status talks was that, while the Russian government might have misgivings about granting independence to Kosovo, it would soon drop its objections (Bugajski and Joseph 2007). While this view may appear with the benefit of hindsight to be naïve or misguided, it appeared to many observers to be perfectly justified at the time. After all, at the very start of the status process, Moscow had agreed with the other five members of the Contact Group on a joint statement noting that any settlement must be acceptable to the people of Kosovo – a note that Ahtisaari took to mean support for independence, which was the only acceptable solution in the view of the Kosovo Albanians. Similarly, it must be remembered that the Russian Government also agreed to allow Ahtisaari to draw up a status proposal, even though Russian officials must have known full well what his eventual suggestions would entail given that Ahtisaari had, from the very outset of the process, made it more than clear to the Contact Group that he saw independence as the only possible outcome of the process. Therefore, just as the United States had come out strongly in support of independence, the Russian government appeared to be quietly signalling its acceptance of that independence. Under these circumstances, it appeared likely that the status process would be a relatively straightforward process.

### Understanding Russia's position

The problem for European decision makers was that they had in fact misread Russia's position from the outset. Upon closer examination, it was wrong to assume that Russia would simply endorse the case for independence. For a start, at every stage in the process, Moscow insisted that any settlement must be acceptable to both sides. Russia would certainly be willing to accept independence – but only if Belgrade did.<sup>17</sup> Secondly, it was absolutely insistent that the talks should not be subject to specific timetables. Likewise, while the UN Envoy was authorised to draw up proposals as a basis for a settlement, Ahtisaari was never given *carte blanche* to present a comprehensive plan – let alone present a proposal that he would then insist was not open to significant amendment. To this extent, it can in fact be argued that, at best, Western decision makers misunderstood the Russian position (Abramowitz 2008). At worst, they deliberately chose to ignore the warning signs. Indeed, even after Putin's tough warning over Kosovo in early 2007, there still appeared to be a general belief that Russia would not block the process. Certainly, no efforts were made to plan for the possibility that Moscow was serious about its position (Holbrooke 2007).

This failure to judge Russia's intentions on Kosovo appears to be the result of several factors. First of all, there appears to have been a degree of anti-Russian prejudice at play. Indeed, it was telling that many observers fell back on typical stereotypes to explain Moscow's behaviour. For example, some commentators put Moscow's decision to adopt a tough approach on Kosovo down to its wish to stand up to the West and reassert itself on the world stage (*The Washington Post* 2006; Abramowitz 2008). To be sure, under Vladimir Putin, Russia sought to reassert its regional and international authority and the discussions over Kosovo took place against a backdrop of growing tensions between Russia and the West. However, this argument is weakened by the fact that the US approach towards Kosovo was also criticised by many liberal pro-Western Russians. For example, in an article

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<sup>17</sup> As several senior ministers pointed out at various points in the process, Russia would not be more Serbian than the Serbs (*New York Times* 2007a; *The Independent* 2008).

published in the Russian press, Mikhail Gorbachev called Kosovo a “dangerous precedent” that would be capable of “detonating” conflicts elsewhere in the world. And like many other Russians, he was also scathing of the decision by the EU and NATO to pursue a settlement outside of the UN Security Council. As he stated,

[t]his is an unprecedented step, without foundation in political, never mind moral terms [...] For the first time in history, two organizations are trying to assume responsibility for the future of a country – Serbia – which is not a member of either of them [...] By destroying the international law and replacing it with poorly disguised tyranny, the proponents of this approach have certainly miscalculated the outcome of their actions (*United Press International* 2007b).

Another argument was that Moscow may also have been trying to exact some sort of revenge on the United States and NATO for the events of 1999 (*Council on Foreign Relations* 2008; Traynor 2007; *Reuters* 2008). Again, this could be true. 1999 was certainly a humiliation. But it may have been less about extracting revenge than about letting those countries that had created the problem find their own solution to the quagmire they had made for themselves. Having been sidelined in 1999, Moscow may well have believed that it was now under no obligation to provide political cover for NATO as it now sought to extricate itself from the political and legal mess it had created (*International Crisis Group* 2007).

While such explanations may well have played a part in Russia’s thinking, Moscow’s behaviour can perhaps be better explained by other factors. First of all, the US and EU decision makers failed to consider the impact of Kosovo on Russian public opinion and the ways in which this shaped Moscow’s reaction. The Russian Government also harboured concerns about the impact of allowing Kosovo to be granted independence. In the first instance, there was the issue of Slavic solidarity. Many in Russia felt a natural affinity with the Serbs and resented the way in which they had been treated in 1999. But this was in fact a rather secondary concern. Far more importantly, the question of Kosovo touched on the key question of the South Caucasus. If Moscow accepted US demands for Kosovo’s independence, there would be an expectation that it would be able to secure independence for South Ossetia and Abkhazia as the necessary quid pro quo. It was simply not possible for the public to accept that Russia should confirm Kosovo’s statehood without payback. For some reason, this was never taken seriously – even though US officials, even at the highest level, were warned about the depth of Russian public sentiment on the Kosovo issue.<sup>18</sup>

Secondly, and crucially, there was a general underestimation of the seriousness with which Kosovo was held in Russian domestic circles as a matter of international law. Western policy makers failed to appreciate the fact that Russia harboured serious and legitimate concerns about the consequences of recognising an independent Kosovo against the will of the Serbian Government. For a start, such a move would be unprecedented in modern international affairs. Having been recognised as Serbian territory under UN Security Council Resolution 1244, and as shown at the start of this article, any attempt to end Belgrade’s rule over the territory without Serbian consent would necessarily undermine international law. As one senior British diplomat noted, many in the West did not understand that when it comes to matters of international law, and the authority of the UN, Moscow is not in fact a rogue actor. If anything, it is an arch-conservative.<sup>19</sup> Certainly, on the question of Kosovo’s statehood, Russia’s views were far closer to the prevailing

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<sup>18</sup> For example, meeting with representatives from a number of Russian NGOs during a visit to Moscow in May 2007, Condoleezza Rice, the US Secretary of State, was explicitly warned not to underestimate the depth of Russian feelings on Kosovo (*Deutsche Presse-Agentur* 2007a).

<sup>19</sup> Retired senior British diplomat, comments to the author, November 2006.

international opinion on the legality of the matter than those of the United States (*The Independent* 2007).

### The European Union's position

Within weeks of the unveiling of the finalised version of the Ahtisaari proposals, the depth of division within the European Union was obvious. This was first highlighted at a meeting of EU foreign ministers in Bremen, at the end of March 2007, which failed to produce a joint position on the proposals (*EU Observer* 2007). The problem was that, under normal circumstances, one would have expected the European Union as a whole to have taken the same position as Russia. After all, in other comparable situations of ethnic conflict where one group had sought to declare independence – such as Cyprus, South Ossetia, Abkhazia and Transdniestra – it had adhered to the prevailing norms on secession and had strongly favoured reconciliation within existing borders. Indeed, the seriousness of this principle is rather confirmed by the fact that European (and US) officials have repeatedly sought to portray Kosovo as a “unique case” precisely in order to ensure that its effects are not felt elsewhere. Moreover, it is worth highlighting that even in the case of Kosovo, for several years after 1999 many European officials – including diplomats in Britain, the strongest EU supporter of independence – still wished to pursue some sort of autonomy arrangement for the province, rather than statehood (Ker-Lindsay 2009).

By the time the status talks started, however, autonomy within Serbia was already no longer a feasible option – if, indeed, it really ever had been.<sup>20</sup> To try to deny Kosovo statehood at this stage would have almost certainly led to catastrophic circumstances. Even by the end of 2006, UNMIK (UN Interim Administration Mission in Kosovo) was facing growing opposition and threats of violence (*UN News Service* 2006; *South East European Times* 2006)<sup>21</sup>. They wanted independence. As one former senior UN official put it, “Initially, [Kosovo Albanians] had welcomed UNMIK as a replacement for Serb rule, and as what seemed like a stepping stone to that independence. With no progress on status, however, many Kosovo Albanians began to see UNMIK as an obstacle instead” (Harland 2010). Moreover, if the situation continued for much longer it would be more than likely that the Kosovo Albanians would simply decide to declare independence unilaterally – a repeated threat by Kosovo Albanian leaders (*Adnkronos International* 2006). Once this happened, any attempt by UNMIK to continue administering Kosovo would be all but impossible. Indeed, its authority was already declining precipitously.

The problem was that if the Kosovo Albanians did decide to pursue independence unilaterally, Kosovo would be almost wholly incapable of governing itself. After all, earlier attempts to introduce democratic standards prior to status talks had failed despite the presence of such a large UN mission. More to the point, there was a distinct possibility that the minorities in Kosovo, particularly the Serbian community, would be put in grave danger without formal outside supervision. In view of this, the only way in which to avert this catastrophe was for the European Union to take over some of the functions of governance and try to succeed where UNMIK had failed so badly. However, it was obvious that this would only be possible if the Kosovo Albanian population saw this new mission as being there by the consent of their own authorities. In other words, with the population agitating for the end of international administration, the only way in which the European

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<sup>20</sup> As one leading Kosovo Albanian political figure stated, the Kosovo Albanian leadership always saw NATO's intervention in 1999 as a prelude for independence. “[They] understood that Serbia cannot just get out, and the process of independence for Kosovo cannot be initiated without the presence of NATO, the EU, and the OSCE. A Western protectorate, and later independence through a referendum, is the national strategy of the Albanians of Kosovo” (Shala 2000: 187).

<sup>21</sup> At the same time, the Albanian National Army (ANA), which the UN termed a terrorist group, was increasing its activities in the west of Kosovo (*Reuters* 2006b).

Union could hope to control the situation was by agreeing to Kosovo's independence, and then putting in place a mission with the explicit consent of the government of Kosovo.

Thus the European Union found itself with a serious dilemma. On the one hand, if it chose to take the side of Washington, and bypass the Security Council altogether, it would clearly raise serious concerns about international law. On the other hand, if it chose to align with Russia it risked destabilising the situation on the ground, which could lead to a rebellion against the UN and NATO and leave a dangerous vacuum in the Western Balkans. For some countries, it was an easy choice to make. Throughout the discussions, Britain and France were firmly supportive of Washington's position. They too believed that there was no alternative to independence – even if that meant supporting a declaration of independence that was made without the authorisation of the UN Security Council. As one EU official later explained, "The cake has been baked because the Americans have promised Kosovo independence. And if Washington recognizes Kosovo and European nations do not follow, it will be a disaster" (*International Herald Tribune* 2008).

In contrast, a number of smaller states were adamantly opposed to any move to recognise Kosovo unless sanctioned by the UN Security Council. These included Spain, as well as a number of smaller states that feared the precedent of endorsing a unilateral act of secession that appeared to violate international law. Importantly, between the two camps lay a third group of states that tended towards the constitutionalist position, but could be swayed by pragmatists if it could be shown that all attempts to reach a consensual position between the two sides, or gain Security Council endorsement, had failed. The most important member of this group was Germany. Although Berlin had voiced support for the Ahtisaari proposals, it was nevertheless worried about the legality of recognising Kosovo's independence without the explicit authorisation of the UN.<sup>22</sup>

The depth of the problem facing the European Union was highlighted during the Brussels leg of the UN fact finding mission, in April 2007. Meeting with EU officials, the ambassadors were told that a united European position on the question of independence would require a Security Council resolution (*UN Security Council Document* 2007; *Associated Press* 2007f). As Bernard Kouchner, the French foreign minister, who had also served as a UN Special Representative in Kosovo, noted, the question of Kosovo's status was as one of the most difficult problems ever encountered by the EU (*Associated Press* 2007g). Another put it more succinctly, EU policy on Kosovo was a "chaotic mess"<sup>23</sup>.

### EU-Russian engagement

Realising that the hopes of an agreement between Belgrade and Pristina were minimal, and fearing the divisions that would emerge within its own ranks if a Security Council resolution was not passed endorsing independence, senior EU leaders, rather than try to engage with the sides, instead attempted to secure Russian support for the Ahtisaari proposals for independence. For example, as early as February 2007, when the proposals had only just been unveiled, the EU sought to allay Russian concerns that a status decision on Kosovo might set a precedent elsewhere. Benita Ferrero-Waldner, the EU commissioner for external affairs, tried to reassure Moscow that any decision on Kosovo would not have a wider effect on Russia's autonomous regions (*Interfax* 2007a; *The Washington Times* 2007). It was evidently not enough. Speaking days later, at the 43rd Munich Conference on Security Policy, Putin issued a sharp rebuke to the West over a number of issues, including Kosovo. Arguing that it was in the interests of the US and the EU that international law was upheld, he insisted that a settlement must be reached between the sides and openly

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<sup>22</sup> Wolfgang Ischinger [the EU representative on the Troika], interview with the author, December 2008.

<sup>23</sup> Wolfgang Ischinger, interview with the author, December 2008.

criticised Washington for attempting to impose a Kosovo settlement against Belgrade's wishes, arguing that this would set a precedent for conflicts elsewhere. In a particularly notable turn of phrase, he argued that no one had the right to play "Lord God" and make decisions for other nations (*Interfax* 2007b).

Thereafter, a number of further efforts were made to persuade Moscow to change its mind. It refused each time. For example, pressure was put on Moscow at an extremely acrimonious meeting in the southern Russian town of Samara, in May 2007. In response, Sergey Lavrov, the Russian Foreign Minister, warned against trying to impose a solution from outside; arguing that anyone who believed that Kosovo could be solved by the EU, the US and Russia was obviously burdened by "colonial instincts". He also reiterated that if Kosovo were to become independent it would inevitably become a precedent, regardless of whether or not anyone wanted it to be one (*BBC News* 2007; *B92* 2007c). Thereafter, another attempt to win Russian support, during a tense meeting of G8 foreign ministers in Potsdam, a week prior to the G8 summit, also failed. When Frank-Walter Steinmeier, the German Foreign Minister, appealed to Russia to give up its objection to Kosovo's independence, Lavrov again refused, asking why other, longer-standing issues, such as the Western Sahara and Palestine, were not being dealt with first (*International Herald Tribune* 2007; *Reuters* 2007d).

The strength of Russian feeling on the issue was further emphasised to European leaders when Putin travelled to Austria and Luxembourg and delivered a further warning against any moves to grant Kosovo statehood (*Deutsche Presse-Agentur* 2007b). He also reiterated his opposition to imposed independence at the G8 summit meeting, where Kosovo was discussed over lunch. It was at this point that the new French president, Nicolas Sarkozy, switched tack and tried to win Moscow over. However, it was done in a ham-fisted manner. Calling upon Russia to accept the "unavoidable prospect" of independence, he proposed that a resolution be delayed for six months to allow for further talks to take place. If, after that, no agreement had been reached, the Ahtisaari plan would be implemented. With no chance that the Kosovo Albanians would support anything but independence, especially given such strong US support, this initiative was little more than an attempt to placate Moscow with what would obviously be little more than a façade of dialogue between Belgrade and Pristina. While the call for new talks was certainly welcome, Moscow was unwilling to accept that independence would be the inevitable outcome of the process. Speaking at the end of the summit, Putin again stressed that no final decision on the status of Kosovo without Serbia's agreement and warned that attempting to do so would set a precedent (*Austrian Associated Press* 2007; *Reuters* 2007e; *Reuters* 2007f; *Agence France-Presse* 2007a; *Financial Times* 2007a).

On balance, therefore, it was hardly surprising that these efforts met with little success. The comment that Kosovo would have no effect on Russian regions was a particularly ham-fisted effort. By even raising the issue of the regions, it rather suggested that the EU considered that there were potential cases of secession that could appeal to the Kosovo precedent. Likewise, the use of the *sui generis* argument was problematic and showed just how little the EU was able to grasp the delicacy of the situation in Russia. Had Russia decided to accept this line of argument, it would be read as caving in to US and EU demands on Kosovo without securing anything at all in return on South Ossetia and Abkhazia, while at the same time severely undermining Moscow's claim to being a champion of international law and state sovereignty. Indeed, this line of argumentation may in fact have served to make matters worse inasmuch as it effectively ensured that it would close the door to Russia to extend the same principle to the South Caucasus.

Thereafter, by August 2007, when the Troika started its work, it appeared as if the European Union simply gave up trying to persuade Moscow to change its position. While the decision to form the Troika may have appeared to be a genuine attempt to reach a compromise between the sides, it was undermined by the obvious intention of the US to recognise Kosovo regardless – as evidenced by Bush’s comments in Albania. It was therefore doomed before it began. However, it did serve another, equally important purpose inasmuch as it was also designed to win over the group of states that saw the pragmatic argument for independence, but were concerned about the legal issues. It was designed to achieve European unity as much as to try to find a solution between Belgrade and Pristina.<sup>24</sup> By showing that any agreement between the sides was utterly impossible, and that Russia was simply obstructing independent, the hope was that this would persuade them to accept Kosovo’s statehood without explicit UN Security Council authorisation. In this regard, the Troika mission provided the cover necessary to this middle group of states to make a political decision, despite concerns over the legality of this decision. On this score, the Troika was successful. As was noted, at the start of the summer, the EU had been hopelessly divided. By the end of the process, most of the EU states that had harboured earlier reservations, most importantly Germany, had been persuaded that there was no other choice but to support independence (*B92* 2007d; *Agence France-Presse* 2007b)<sup>25</sup>. By now, Russia’s position had become all but irrelevant in amongst the EU states on the Contact Group.

## Conclusion

In 2008, Kosovo unilaterally declared independence from Serbia. Within days it had been recognised by the United States and a number of the larger members of the European Union. In the months that followed, many others followed suit. However, five EU members – Cyprus, Greece, Romania, Slovakia and Spain – have steadfastly refused to recognise Kosovo; as have Russia, China and the large majority of UN members. According to the standard narrative that has emerged in EU circles, the unilateral declaration of independence was widely viewed as a major defeat for European diplomacy. Having been recognised as the key actor shaping the future of the Western Balkans, the Union had singularly failed to provide leadership on the issue and fell victim to Russian and American machinations. However, while there has been a tendency to apportion blame equally to Washington and Moscow for this state of affairs, on closer examination a more complex picture emerges.

Certainly, a large degree of responsibility lies with the United States. As several senior US officials stated on the eve of the declaration of independence, “While some European countries, notably members of the EU, may feel themselves obligated to join us in recognizing Kosovo’s independence, a number of those countries would do so reluctantly because of Washington’s inflexibility and insistence” (Bolton, Eagleburger and Rodman 2008). Partly out of ideology and partly out of necessity, the United States saw no alternative to independence,<sup>26</sup> and pursued this option. But it is wrong to believe that

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<sup>24</sup> Wolfgang Ischinger, interview with the author, December 2008.

<sup>25</sup> As officials explained, while this decision might not be strictly according to the letter of Resolution 1244, it would nevertheless be taken in the spirit of the resolution, which envisaged an eventual decision on Kosovo’s status. This was later explicitly elucidated in the document placing an EU mission in Kosovo, which stated that, “Acting to implement the final status outcome in such a situation is more compatible with the intentions of 1244 than continuing to work to block any outcome in a situation where everyone agrees that the status quo is unsustainable” (*BBC News* 2008a).

<sup>26</sup> A case can be constructed that there was in fact an alternative. Leaving aside the obvious desire of certain key officials to support an independent Kosovo and in doing so punish Serbia, the necessity argument is open to challenge. For a start, there was already a realisation in international circles that Kosovo would increasingly become a European issue in the future. The European Union was already taking the lead role in the NATO KFOR mission. It was also poised to take over many of the UNMIK administrative responsibilities. To this extent,

Europe was simply an innocent bystander caught up in a resurgent Cold War, as some have suggested. From the very start, a number of key actors openly sided with the United States on the question of independence. Indeed, Britain and France took a far more forthright position far earlier than Washington. In other words, the failure to achieve European unity over the question of Kosovo was not as a result of the agenda having been hijacked by Washington, but by the fact that several EU members had also taken a position in favour of independence without having sought to engage in a full and open debate on the issue with their European partners. Of course, the argument can be made that this debate was felt to be unnecessary at the start of the status process, when there appeared to be an international consensus in favour of independence. However, as was shown, there was never any solid evidence to support the view that Russia was in fact willing to acquiesce on the question of statehood.

By the time the extent and depth of Russia's opposition to independence without Serbia's permission was understood, it was too late to change course. Washington was openly set on statehood and had publicly made it clear that it would recognise Kosovo even without UN support. At this point, EU leaders sought to try to persuade Moscow – rather than Washington – to change its mind, even though the Russian position on the question of mutually agreed secession was far closer to what would usually have been expected to be the EU position. However, little incentive was offered to Moscow to change its mind. EU leaders appeared to have no understanding of the dynamics at play within Russia, and showed little desire to acknowledge Russia's concerns about the wider effects of the Kosovo precedent. Relatively quickly, therefore, the key EU states appeared to abandon efforts to try to reach a compromise, instead focusing their efforts on providing the degree of political cover needed to secure the support of the middle group of EU states that could be persuaded to support Kosovo's independence without Security Council authorisation. Viewed retrospectively, this does in fact appear to be the main purpose of the much-vaunted Troika process.

In view of these circumstances, the Russian position certainly does not seem to be as obstructive and malicious regarding Kosovo as some observers have argued subsequently. As has been shown, it was the United States, acting with the support of key EU states, which eventually forced the EU to abandon constitutionalism – and not Russia. In fact, Russia was always far more in line with prevailing international norms regarding secession. (Importantly, this argument has not been undermined by the International Court of Justice's opinion on the legality of Kosovo's declaration of independence, delivered in July 2010. Although it argues that a declaration as a mere statement is not contrary to international law, the judges deliberately and clearly insisted that their majority opinion did not judge whether the act of secession was in fact legal (International Court of Justice 2010)<sup>27</sup>.) Indeed, had it not been the case that the United States and key EU members

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US engagement with Kosovo was already declining significantly. To be sure, the Kosovo Albanians wanted independence. However, there are good reasons to argue that had the United States stood firm and made it clear that this was not an option, at least at this stage, and that any attempt to press ahead with a unilateral declaration of independence, or destabilise the situation, would be met with united international condemnation it is likely that the Kosovo Albanians could have been persuaded to take a more moderate approach and discuss other options, such as full autonomy. It would not have been easy, but had US officials taken a firm line, the situation may well have been manageable. But they did not. Instead, they chose to adopt a position that they knew was, at best, highly controversial in terms of international law and sought to force the EU to follow suit.

<sup>27</sup> As the judges stated, in paragraph 52, "In the present case, the question posed by the General Assembly is clearly formulated. The question is narrow and specific; it asks for the Court's opinion on whether or not the declaration of independence is in accordance with international law. It does not ask about the legal consequences of that declaration. In particular, it does not ask whether or not Kosovo has achieved statehood. Nor does it ask about the validity or legal effects of the recognition of Kosovo by those States which have recognized it as an independent State [...] Accordingly, the Court does not consider that it is necessary to



pushed too hard for independence, and forced most of the rest of the European Union to take sides so openly, it is highly likely that the EU as a whole would have continued to look for some sort of solution that fell short of full independence, as has originally been hoped in the aftermath of the 1999 NATO campaign. Instead, when it was clear that this was unacceptable to Kosovo Albanians and would almost certainly lead to violence against international officials, the majority of EU members were left having to try to support the rather specious argument that Kosovo represented a “unique case” in international politics – an argument that carried very little weight on the wider international stage – in order to create the conditions whereby it could try to stabilise the situation after the unilateral declaration of independence.

Of course, it would be wrong to argue that Russia bore no responsibility for the situation that arose. Like the United States, its position was driven by more than a little self-interest. Had the west been willing to do a deal that linked Kosovo’s fate with that of South Ossetia and Abkhazia, it seems more than likely that Russia’s seemingly principled stance would have disappeared quickly. Be that as it may, it can be clearly shown that the EU’s disunity was not the result of Russia’s “constitutionalism”. If anything, the EU was instead a “victim” of the “pragmatism” of the United States and several of its own members. Moreover, notwithstanding the fact that Moscow’s claim to the higher moral and legal ground were wholly undermined by its subsequent decision to recognise the unilateral declarations by South Ossetia and Abkhazia,<sup>28</sup> the fact remains that throughout the period under examination in this piece, Moscow’s position was far more in line with the international legal norms than the line taken by the United States. Had it not been for the dire situation on the ground, a situation that had the potential to directly affect key EU members as well as the United States, it is highly likely that Kosovo’s unilateral declaration of independence would have found little support in EU circles given that it so clearly went against long standing international legal principles and norms.

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address such issues as whether or not the declaration has led to the creation of a State or the status of the acts of recognition in order to answer the question put by the General”.

<sup>28</sup> But even here, the Russian Government continued to take a legalistic approach – albeit with a twist. In justifying its decision to recognise the two territories, Moscow adopted the very Anglo-Saxon concept of legal precedent. As Dmitry Medvedev, the Russian President, stated during a press conference with President Sarkozy: “You were right in asking if the Ossetians and Abkhazians can and want to live within Georgia. This is a question for them to ask of themselves and it is they who will give their own clear answer. It is not for Russia or any other country to answer this question for them. This is something that must take place in strict accordance with international law. Though, over these last years international law has given us numerous very complicated cases of peoples exercising their right to self-determination and the emergence of new states on the map. Just look at the example of Kosovo” (The Kremlin 2008).

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