

The selection of documents that we are publishing in this issue was made up with the purpose of informing the professional and broader public in more detail about the documents that are determining the present status of Kosovo and which will, to a large extent, determine the future of Kosovo, Serbia and the FR Yugoslavia.

The analysis has shown that the status of Kosovo, viewed as a body of regulations, institutions and actual relations in Kosovo, is a dual one today: *de jure*, Kosovo is a segment of the territory and, accordingly, of the legal order of FR Yugoslavia, and *de facto* Kosovo is the territory under the international civil and military administration. The international governance of Kosovo is based on international legal and political decisions, which excluded Kosovo from the domain of direct application or rather validity of the law of the FR Yugoslavia.

The present situation in Kosovo is, according to all its determinants, a transitory one. It is positive that the solution of the question of the status of Kosovo is to come, and that also means the solution of its relationship with the constitutional and legal order of the Republic of Serbia and the FR Yugoslavia. That is why this selection included the documents that have established the current situation and point to the possibilities of a solution of the Kosovo status issue.

Among the basic factors that have marked in the past decade attempts at resolving the Serbian Albanian conflict relating to Kosovo are the following:

- Inability of the political elites to modernize the society and establish democratic government. These elites reached for ethnic nationalism as a means of their survival.
- Orientation of new nationalist elites towards non-democratic means and pursuance of the policy of excluding the Other, which includes violence, and even ethnocide and war.
- Widely spread the feeling of insecurity among citizens of Kosovo and increasing mistrust in the institutions of the state but also, since 1996, mistrust of Albanians in institutions of the "parallel state".
- A high degree of state and Para police violence and violation of citizens' rights, especially of Albanians.

All this contributed to the Serbian – Albanian conflicts ending in war in Kosovo and in the surroundings of Kosovo.

However, the international community did not show either too big an adroitness when faced with the Yugoslav crisis, including the issue of Kosovo. The first position on the matter was stated in 1992 by the then president of the U.S.A. George Bush in a letter addressed to Milosevic, emphasizing: "In case of conflict in Kosovo caused by Serbia's actions, the U.S.A. will be ready to send the military forces against Serbs in Kosovo and Serbia itself". (*The Guardian*, 29 December 1992). The same warning was repeated by the next US President Clinton in February 1993.

However, these warnings of the American presidents were considerably overshadowed by the general view of the West at that time according to which Milosevic was looked upon both as one of the actors of the conflict but also as a mediator without which the crisis in the territory of former Yugoslavia could not be solved. Such an attitude of the West explains to a certain extent why there were no serious attempts during the Dayton negotiations at considering the Kosovo issue. Only the lifting of the "external wall of sanctions" was linked with Milosevic's

policy towards Kosovo. Admittedly, there are also other, even more fundamental reasons, why the problem of Kosovo could not be taken up then. Above all, because the same principles as in the Serbian – Croatian conflict in Croatia and Serbian – Croatian – Bosniak conflicts in Bosnia & Herzegovina were not applicable in case of Kosovo. The prevailing view was confirmed before by the expert committee of the EU, the so-called Badenter Committee, that minorities were not entitled to self-determination and that the statuses of former provinces could not be assimilated to the status of republics of former Yugoslavia. In addition, the Kosovo issue was not diplomatically, politically or in any other way prepared to be dealt with at the Dayton conference.

After Dayton, there were some developments that raised hopes in negotiable and peaceful solution of the Kosovo problem, and that means also within the Republic of Serbian and the FR Yugoslavia. A series of talks began, above all through the channels of nongovernmental organizations, but also between government representatives from Belgrade and political leaders of Albanians from Kosovo. Even on 2 September 1996, Slobodan Milosevic and Ibrahim Rugova signed an agreement on resumption of education and scientific work in the Albanian language in Kosovo. Even this talk was initiated by a foreign, Italian nongovernmental organization St. Eudigio, which is connected, above all, with the Vatican. However, that agreement has never been enforced. In fact, both parties applied the tactics of obstruction: Milosevic in an attempt at not opening up the issue of the status of Kosovo and at keeping the West from being involved in the Kosovo issue, and Rugova tried to link the education and science issues directly with the questions of the status of Kosovo and to invigorate his influence among the Albanians which already began to weaken due to increasing actions of the KLA. However, non-implementation of the accord reached on the resumption of work of schools and universities, led to an outburst of discontent of Albanian students and intellectuals that additionally questioned Rugova's results of attempts to solve questions nonviolently. As a result, broader room was created for KLA's actions. By failing to implement the agreement, an opportunity was also missed to solve the problem with participation of government bodies of Serbia and the FR Yugoslavia. It will transpire later on that the last chance was so missed to solve the problem without war. Taking into account that Milosevic – Rugova agreement, along with accompanying documents of the groups for the implementation of the agreement are only one of abortive attempts, and that there are no real chances for using them in the future, they were not included in the selection.

Faced with the lack of readiness on the part of domestic actors to solve the question, and with certainty of further destabilization of the southern Balkans, the international community has taken a series of activities relating to the Kosovo crisis.

In September 1997, the Contact Group held a number of talks aimed at reaching a compromise between Belgrade and the Albanian leadership. Since that time, the EU pressure on Milosevic to begin talks with Albanian representatives strengthened. Namely, efforts of the EU countries since April 1996 to extend the recognition of the FRY included also their "constructive approach". That is why they set the establishment of the Kosovo autonomy as a key element for the recognition of the FRY. Late in 1997, the approach is changed and transformed into pressure on official Belgrade. But, violence is spreading in Kosovo, especially armed activities of the KLA. In the end of February 1998, the real war began. This enables direct involvement of the NATO, which first expresses political worry about the escalation of violence and calls upon both parties to stop armed actions. In March 1998, the

Contact Group adopted a program containing ten points of action, which was in the same month redrafted into the UN Security Council Resolution 1160. Anyhow, in 1998 and 1999, the Contact Group activity and its views serve to formulate the policy and decisions of the Security Council of the UN. For that reason, only documents of the UN Security Council are included in the Selection.

In June 1998, the EU resumes sanctions against Serbia and FR Yugoslavia, the NATO begins initial planning of military actions, and the European Council meeting in Cardiff also issues threats. However, clashes in Kosovo gain in intensity: KLA expands the territory under its control, and the Army of Yugoslavia (YA) and police of the Republic of Serbia lead, in August, a massive and strong counteroffensive. The threat of the international community of applying the force to end conflicts in Kosovo became in this period an essential element of the "diplomatic" process. On top of this, the international community believed that it was the force that mollified Milosevic during the crisis in Bosnia and that it would have the same effect in case of Kosovo.

The UN SC Resolution 1199 prepared the ground for the Special Representative of the US President for the Balkans Richard Holbrook whose "diplomatic mission" was strengthened by the NATO military threat, and even an "activating order" was issued. After an accord between Milosevic and Holbrook, which, but the two of them, has not been seen so far by anybody or the public was informed of the content of their talks, Milosevic gives in and accepts the international supervision: OSCE Observers' Mission in Kosovo and the NATO air surveillance over a part of the FRY territory. Taking into consideration that documents that followed this accord established the first international civil and military presence in Kosovo and in the FR Yugoslavia, which will be only intensified and extended later on, these documents are included in the Selection.

In November 1998, OSCE observers arrive but also the American ambassador from Macedonia Christopher Hill arrives.

The Kosovo Verification Mission (KVM) was formally established on 25 October 1998. However, it developed slowly and was not able to prevent further violence. It turned out that the agreement Milosevic – Holbrook postponed the NATO military intervention.

In his intensive "shuttle" diplomacy, Hill produces a number of versions of possible political agreement. Hill's "papers" are the only public trace of efforts of the international community to mediate between government in Belgrade and Albanian leaders. That was later on systematized and supplemented into a draft document that was discussed in February 1999 in Rambouillet, and subsequently in March 1999, in Paris, signed by international mediators and Albanian negotiators. For that reason, Hill's working papers were not included in the Selection but only the Rambouillet document.

The majority of experts, participants in the Rambouillet negotiation, and observers agree in their judgment that Hill's proposals had no bearing whatsoever on the failure of negotiations. Or rather, it may be concluded that the offered text of the agreement in Rambouillet was a good basis on which reasonable politicians could put the finishing touches and sign it. After all, this document was later on recognized, under the UN SC Resolution 1244, as a basis for the establishment of a democratic system, legislation and institutions in Kosovo. That is the main reason why the Rambouillet Agreement was included in the Selection.

Naturally, both negotiating parties were displeased with proposals of the Rambouillet Conference: as distinct from the end of 1998, it was more difficult now for Milosevic to accept the NATO forces; the Albanians were dissatisfied with missing of a provision on the referendum of citizens of Kosovo on independence of Kosovo. What was in fact offered by the U.S.A. was a referendum on the implementation of the Rambouillet agreement should it be approved.

Throughout the negotiations, the military annex was on the agenda but for various reasons it was not discussed. It was, finally, only read up and listened to. The majority of analysts agrees that it is NATO to be blamed for having many provisions of the military annex such that they could not be accepted by the delegation from Serbia, and for NATO having such a strong need that Albanians should sign the Rambouillet documents for at least two reasons:

- first, because in case of a positive outcome, the signed agreement by them was needed,
- second, because in case of Milosevic's refusal, it would be very difficult to justify and carry out the NATO intervention unless Albanians accepted the offered agreement.

The basic weakness of the Rambouillet attempt is that it came late to be able to start a series of negotiations. In addition, the very nature of the conflict which was the conflict over the control of territory, and which already was in the phase of armed clashes, could not be solved without the international community siding with Belgrade, and that meant with dictatorship of Slobodan Milosevic, in defense of the territorial integrity of the FR Yugoslavia, or to side with Albanians in suppressing military and police actions of government against the KLA, which was not possible to be done without the violation of the international law.

Since broad armed conflicts developed in the territory of Kosovo, the NATO decides to launch a military intervention against the FRY, which began on 24 April 1999 and lasted for 78 days. The end of armed clashes was also the end of the regime of control of Kosovo established by Milosevic. It was also *de facto* the end of the exercise of power in the territory of Kosovo by government bodies of the Republic of Serbia and FR Yugoslavia. In June 1999, with the establishment of UNMIK, run by the Special Representative of the UN Secretary - General, «new reality» has been established in Kosovo. The basis of the «new reality» is contained in the UN SC Resolution 1244, i. e. in an international political and legal act.

The actual situation in Kosovo, upon the completion of the NATO intervention, is as follows: the UN is responsible for public security, legality and order, the judiciary and public administration; the OSCE for elections, civil society, development and regulations of local media, political parties, political training and human rights; UNHCR is in charge of the control of humanitarian assistance, and the EU supervises all donor activities and is responsible for housing, schools, health and economic development. Representatives of local Serbs were invited to join the authorities as they were established but not representatives of the Republic of Serbia and the FR Yugoslavia.

Late in 2000, with the fall of Milosevic's dictatorship in very Serbia and the FR Yugoslavia, a new important element of the "new reality" has come about: establishment of the new government in Serbia and FR Yugoslavia that shows readiness and willingness to cooperate with the international community, including the UNMIK. This cooperation will have to observe the legal framework that has been established by the documents included in this Selection.

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