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Doc. 8394
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Crisis in Kosovo and the situation in the Federal Republic of Yugoslavia

Opinion[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Cevdet AKÇALI, Turkey

A. CONCLUSIONS OF THE COMMITTEE

1. The Committee on Legal Affairs and Human Rightslargely supports the draft recommendation submitted by the Political Affairs Committee, to which it proposes the following amendments.

B. Amendments

Amendment A (to the draft recommendation)

Replace paragraph 9 of the draft recommendation by the following text:

> *"The Assembly considers that lasting peace can only be obtained by democratic reforms, the functioning of a democratic political system, the rule of law and the protection of human rights, including the rights of persons belonging to national minorities, which are also prerequisites for the integration of the Federal Republic of Yugoslavia into the European family."*

Amendment B (to the draft recommendation)

At the beginning of paragraph 15 of the draft recommendation, add a new sub-paragraph as follows:

> *"Return the request for Council of Europe membership by the FRY submitted by its Minster of Foreign Affairs on 18 March 1998."*

Explanation:

The Assembly already indicated this possibility in its Recommendation 1397 (1999).

Amendment C (to the draft recommendation)

In paragraph 15.vii of the draft recommendation, replace the words "in order to help that country overcome the difficulties it is facing due to the conflict in Kosovo" by "as a matter of solidarity with this member State".

Amendment D (to the draft recommendation)

In paragraphs 2 and 4 of the draft recommendation, add the word "proposed" before "Rambouillet Interim Agreement".

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It also proposes the following **order**:

> *"The Assembly, with reference to its Recommendation … (1999) on the crisis in Kosovo and the situation in the Federal Republic of Yugoslavia, instructs its Committee on Legal Affairs and Human Rights to continue studying, in close cooperation with the Political Affairs Committee, the human rights situation in Kosovo and all legal aspects of the crisis."*

C. EXPLANATORY MEMORANDUM by Mr Akçali, Rapporteur

1. Introduction

1. Europe is facing one of its most serious crises since the Second World War. Jurists, in fact, have even less reason to rejoice. For when guns start to shoot, law has ceased to play its role, in fact it has failed to do so. Yet, even in wartime and in war-like situations, (international) law imposes strict rules which should be applied by the parties in the conflict. Generally speaking, in every civilised community the use of force is only permitted within certain legal limits. For those who feel that (international) law is to be respected whenever possible the present situation is very worrying.

2. The General Assembly of the United Nations, in the course of 1998, adopted a number of resolutions[2]. Although they condemned to a large extent the acts perpetrated in Kosovo, they did not contain any means of pressure to bring to bear upon the Federal Republic of Yugoslavia in case of non-respect of these resolutions. As a result, no firm action by the United Nations was decided upon.

3. On the other hand, "ethnic cleansing" and repression in Kosovo became more and more alarming and the situation of the Albanians gradually deteriorated. As Rapporteur of the Committee on Legal Affairs and Human Rights I had already on previous occasions been able to warn the Committee of the explosive situation and it now appears that the picture I drew on those occasions was not over-pessimistic.

4. Given the situation in the United Nations, this world organisation could not play the role it had played in other conflicts. It must be said here that, strictly speaking, the crisis in Kosovo could be considered as an internal conflict for which the United Nations is not competent, but the international ramifications of this conflict are such that the opposite theory, which says that the conflict has become of an international nature, is also justified.

5. However, when it appeared that the United Nations was paralysed, a contact group of nations, including Russia and the United States, tried to get the parties around the conference table. They partly succeeded and the parties met at Rambouillet Castle near Paris in France. Yet the "interim agreement for peace and self-government in Kosovo" can hardly be considered an "agreement" as the representatives of the Federal Republic of Yugoslavia and of the Republic of Serbia refused to sign it. In the end, the interim agreement was only signed, on 18 March 1999, by the representatives of the Kosovo Albanians. In its Resolution 1182 (1999), adopted by the Standing Committee on 30 March 1999, the Assembly "regrets that, due to the intransigent policy of the leadership of the FRY and the inability of the United Nations Security Council to reach a unanimous decision, military action had to be taken by NATO to prevent a human tragedy in Kosovo". In the same resolution, the Assembly "calls on the Contact Group to intensify its diplomatic efforts to bring the Yugoslav authorities to sign and implement the Rambouillet Interim Agreement, and to put an end to the sufferings inevitably resulting from the NATO military action". As soon as the Yugoslav authorities are prepared to do so the air strikes will cease. We all hope that this will happen soon. The interim agreement is briefly summarised in Chapter B below.

2. Proposed interim agreement for peace and self-government in Kosovo (Rambouillet Interim Agreement)[3]

6. This document contains the international peace plan, for giving wide-ranging autonomy, though not full independence, to Kosovo. The representatives of the Albanians signed, but the delegation of the Yugoslav Republic refused to do so as the substantive changes which it had proposed had been accepted neither by the ethnic Albanians nor by the members of the International Contact Group.

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2. Resolutions 1160 (1998), 1199 (1998) and 1203 (1998), reproduced in the addendum to this report.
3. For another summary of this agreement, see Doc 8371. The agreement (English only) can be obtained from the Secretariat on request.

7. The preamble and the first articles of the treaty grant to the population of Kosovo the enjoyment, without discrimination, of all fundamental rights and freedoms. It also provides for the right to democratic self-government, while respecting the sovereignty and territorial integrity of the Federal Republic of Yugoslavia. It provides for a number of confidence-building measures and international cooperation through the different international institutions. Subsequently, the treaty is divided into seven different chapters, the first of which constitutes a constitution for Kosovo.

8. This constitution provides for the creation of an Assembly with 80 members directly elected and 40 other members elected by the members of qualifying national communities. The Assembly would elect the President and a Prime Minister for Kosovo.

9. For the judiciary, the constitution gives certain guarantees that all national communities are represented in it. There would be communal courts, district courts, a constitutional court and a supreme court. Each of the national communities would have the right to elect institutions to administer its own affairs. They would have power to protect their national, cultural and religious identities and have responsibilities over education and health.

10. A police force of no more than 3,000 law-enforcement officers would be set up with exclusive law enforcement authority, which would be the only police presence in Kosovo with the exception of the border police. In fact, it would be up to the Yugoslav Republic to guard the international frontiers of Kosovo, but these frontier guards would not be allowed to exceed 1,500 persons. It would be up to OSCE to supervise the implementation of the security regulations.

11. OSCE should also oversee the elections which would have to take place within nine months of the agreement coming into force.

12. All authorities in Kosovo would have the obligation to ensure internationally recognised human rights and fundamental freedoms. In fact, the rights and freedoms set forth in the European Convention on Human Rights would apply directly in Kosovo. Other internationally recognised human rights instruments would also apply provided they were enacted into law by the Kosovo Assembly. These rights and freedoms would have priority over all other law. An ombudsman nominated by the European Court of Human Rights would monitor the rights of national communities.

13. For the implementation of the treaty, the parties would invite NATO to constitute and lead a military force to help ensure compliance, subsequent to a resolution to be adopted by the United Nations endorsing this force which would be known as KFOR. The KFOR would have complete and unimpeded freedom of movement by ground, air and water into and throughout Kosovo.

14. The treaty would also foresee rapid demilitarisation. Thus all Yugoslav army and Ministry of the Interior police (MUP) units in Kosovo would have five days to deploy to approved areas. Within 90 days, 50% of army personnel and equipment would have to be withdrawn to other locations in Serbia and within 180 days all soldiers would have to leave Kosovo. MUP numbers would be gradually reduced and the force would have to be completely withdrawn within a year.

15. On the other hand, the Kosovo Liberation Army would have to store all prohibited weapons in registered storage sites within 30 days of the treaty entering into effect. Finally, at the end of the interim period of three years an international conference would be convened to determine a mechanism for a final settlement for Kosovo which would take into account, among other things, the will of the people and the opinions of the relevant authorities.

3. Conclusions

16. One has to take into consideration that, since the beginning of events in 1991, three million people have been displaced in the territory of the former Yugoslavia and that some 200,000 people have been killed. Most of those killed have been assassinated in a most brutal way by Serbian police and Serbian militia. The horror of the 5,000 men massacred in Srebrenica a few kilometres from UN peacekeeping troops – obliged to keep idle – is still fresh in our minds. What the Serbs did in Bosnia and Herzegovina they have started to do in Kosovo. Their acts are known and may still be more gruesome than one knows at present because all information coming from Kosovo is strictly censured by the Serbian authorities. But projects for "ethnic cleansing" of the region have been leaked and there are reports of women raped, men being driven away in lorries never to be heard of again, villages burnt and hundreds of thousands of people forced to flee, etc. The "ethnic cleansing" by the Serbs, which had been the scourge of Bosnia and Herzegovina, had already started in Kosovo and only a military intervention could stop a further human tragedy.

17. Under these circumstances, the military action undertaken by NATO is the only one appropriate. In the meantime, we should do everything we can to ensure that international law is being respected as far as possible, whether it concerns the rules of war or the Geneva Convention of 1949 for the protection of the civilian population or any of the other international legal instruments which might be considered applicable. In respect of the military intervention one must observe, however, that its effectiveness is reduced by the fact that it is to be directed to military objectives only and that civilian lives should be respected. The aim of saving one people, ie the Albanians of Kosovo, may not lead to the destruction of another people. The war is against a criminal and authoritarian regime, but the Serbian people should not be sacrificed.

18. Finally, this report should end with the remark – which would normally be unnecessary – that human rights and fundamental freedoms are universal and must be respected under all circumstances. It is the mission of the Council of Europe to ensure that this is not forgotten – even in time of war.

Reporting committee: Political Affairs Committee

Committee for opinion: Committee on Legal Affairs and Human Rights

Reference to committee: Doc 7553, 7734, 7986, Res 1146 (1998), Ref 2082, 2154, 2158, 2251, 2303, 2355 and 2370 (requests for urgent procedures), Rec 1400

Opinion approved by the committee on 27 April 1999

Secretaries to the committee: Mr Plate, Ms Coin and Ms Kleinsorge