

necessarily to the satisfaction of all stakeholders. The international community should re-examine these problems seriously, standardizing the principles and minimum conditions to be met before any state should recognize the sovereignty claims of a separatist movement. Such a standardization would have the merit of providing a firm basis for early and realistic calculations of the material advantages and disadvantages of separatist projects.

The problems of Kosovo were less often discussed in the conference than the conflicts that had resulted in warfare in Slovenia, Croatia, and Bosnia-Herzegovina. However, Kosovo actually illustrates the necessity of establishing basic principles of international law. There, as in all other separatist conflicts, there is a clash between the irreconcilable claims of ethnic groups (Albanians, Serbs, Montenegrins and possibly others) for ownership of the same land, with each group arguing in terms of a different rationale. The Albanians have a strong and obvious basis for asserting their rights, since through normal migration and demographic changes they gradually became the majority of Kosovo's population. The Serbians and Montenegrins, on the other hand, once were the predominant population there — and indeed, Kosovo is the symbolic heartland of the medieval kingdom of Serbia. It remains so, just as Palestine remained the ancestral homeland of the Jews throughout the diaspora. For that reason, few Serbs today would accept the outcome of a democratic plebiscite in Kosovo, which would show that the Albanian majority wants to secede.¹² An "illegal" plebiscite was in fact held, and from many Albanians' point of view they have already seceded from Serbia. Most Serbs and Montenegrins, as well as the Serbian and Montenegrin governments ignore this issue.

¹²Strong separatism is relatively new for Albanians in Kosovo. Until 1988, when Milosevic dissolved the provincial governments in Kosovo and Vojvodina, the government of Kosovo had been led predominantly by Albanians, who were not secessionists. The aspiration had not been to quit Yugoslavia, but rather to be elevated to the status of an independent province. Such a change would have weakened the position of Serbs and was therefore not permitted by Tito or his immediate successors, so as to balance ethnic claims. However, the compromise solution had been to permit Albanians to dominate the independent provincial government. Dissolving that government was a major element in Milosevic's rise to power, and it resulted in the rise of separatist sentiment in Kosovo.

As the international lawyer Lea Brilmayer has noted,¹³ the right to secede is at bottom a dispute over land claims and should be adjudicated on those terms. She illustrates the point by comparing refugees to separatists, noting that almost all states allow their discontented citizens to emigrate as refugees, whereas they do not permit such citizens to secede. In other words, groups are free to leave, but not to take their land with them. To detach part of the territory, they must show that their rights have been violated and that their group had once rightfully owned the land, which was taken from them illegally and unjustly.¹⁴

The international law of secession needs to be clarified, and the most pragmatic approach to that issue may be to specify the basis on which territory may be properly claimed. Presumably the current population distribution should count as one important factor, and a group's ancestral ties to the land might properly count as another factor. The conditions under which the population transfer took place may be a third crucial factor. It should make a difference, for example, whether the former inhabitants had been expelled or their numbers reduced through genocide and the government's importation of other groups, rather than through a normal history of migration, fertility, or mortality.¹⁵ A record of human rights violations by a government or a rival ethnic group may also count as an important factor to be considered when adjudicating a separatist group's land claims.

¹³Lea Brilmayer, "Secession and Self-Determination: A Territorial Interpretation," *Yale Journal of International Law* Vol. 16, 1991, pp. 177-200.

¹⁴This was argued by the Bosnian Serbs, when Karadzic claimed that they can prove their ownership of about 64 percent of Bosnia-Herzegovina's territory, which appears to be the reason why the Bosnian Serb army held onto about that much of Bosnia-Herzegovina until the last months of the war.

¹⁵Voting alone cannot answer such disputes. For example, Tibetans' claim on their original homeland would perhaps be strengthened by showing that the Chinese conquerors brought in large numbers of Han Chinese to replace the Tibetans who fled. The Tamils in Sri Lanka and the Chechens in the Transcaucasus were reduced to minorities within their traditional homelands as a result of forced migrations. The Baltic peoples experienced the same thing, and in addition were fraudulently deprived of their political autonomy by the infamous Molotov-Ribbentrop pact that deceptively showed that they had voluntarily joined the Soviet Union.