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**No, Kosovo is not on the St. Lawrence**

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Kosovo's unilateral declaration of independence on Feb. 17 has provoked a spate of articles and comments relating it to Canada — in particular, to a hypothetical act of that kind by Quebec.

The knee-jerk reaction of the Parti Québécois, the Bloc Québécois and their supporters is that any such declaration by any entity anywhere, followed by some countries' recognition, is a precedent for an enacting of unilateral secession by a vote of the National Assembly of Quebec.

That is nonsense unsupported by international law.

Daniel Turp, the PQ's international relations critic, said in a CBC-TV interview: "A people decides to become a country and other countries recognize that fact. And in this case what is special is that Serbia is against [the] independence of one of its component parts, and the United States, France [and] other countries ignore this objection.



A young girl protests the independence of either Kosovo or Quebec at a rally in Vancouver recently. (*Lyle Stafford/For The Globe and Mail*)

"So if one day Quebec decides to become a country and Canada objects . . . we'll remind other countries that an objection of a state should not have precedence over the will of the people."

Instead of likening Quebec to Kosovo, Mr. Turp ought to have looked at how Montenegro, another part of the former Yugoslavia, became independent in 2006 — with some real influence from Canadian experience.

Canada has wisely chosen to wait and think before recognizing Kosovo, because there are good arguments on both sides.

But whatever Ottawa decides, no such recognition would be a precedent that could be used for the independence of Quebec.

Quebec separatists do themselves a grave disservice in drawing any analogy between Quebec and Kosovo.

The ethnic conflicts in the Balkans go back a thousand years, and the way Yugoslavia broke up is like nothing that Canada has ever known.

In the mid-1990s, Serbian forces massacred several thousand ethnic Albanian Muslim Kosovars.

NATO — with Canada's full support — intervened to stop the ethnic cleansing, bombed Belgrade, sent troops, including Canadians, to Kosovo, expelled the Serbian army from that province and removed the Serbian authorities.

Slobodan Milosevic, the former Serbian president, was jailed and sent for trial as a war criminal in The Hague before the International Criminal Court.

For the past nine years, Kosovo has been governed as a United Nations protectorate, while 90 per cent of the people enthusiastically supported their elected officials in their drive for independence.

Independence was declared in accordance with a plan prepared under UN auspices by the former Finnish president, Martti Ahtisaari.

In contrast, no Canadian death squads have massacred thousands of Quebeckers. Nor has NATO bombed Ottawa after a declaration of war on Canada. NATO troops have not occupied Quebec for nine years, nor has its government been under UN control for almost a decade.

And ninety per cent of Quebeckers have not supported a government dedicated to achieving independence after years of violence and subjugation.

### **YES MEANS YES AND NO MEANS NO**

In the absence of such improbable circumstances, the only way for a Canadian province to secede and achieve its independence is in accordance with Canadian constitutional law and international law.

I was involved as an adviser to Jean Chrétien, when he was the minister of justice at the time of the first Quebec referendum in 1980, and when he was the prime minister at the time of the 1995 referendum.

In both cases, the Quebec government asked deliberately ambiguous questions in order to get a "yes" majority for separation.

After the fact, Canadians learned that the PQ government of Jacques Parizeau was prepared in 1995, if they won by even the narrowest majority on an unclear question, to declare independence unilaterally, if necessary, and then seek international recognition of the new country of Quebec.

Both times, Quebeckers voted "no," on unclear questions.

After the close result in 1995, Mr. Chrétien decided to settle, once and for all, whether either a unilateral declaration of independence or a possible "yes" to an ambiguous question would be legitimate, as well as the margin of victory that would be required to break up a country. His government posed these issues to the Supreme Court of Canada in what is known as the Secession Reference.

In 1998, the Supreme Court held that international law recognizes that "a people" has a right to secede under the principle of self-determination, but only if that people has been governed as part of a colonial empire, has been subjugated, dominated or exploited, or denied any real exercise of political rights within the existing state's framework.

Otherwise, the court said, that "people" may work for independence, but a government that represents the whole population in its territory, in a non-discriminatory way, has the right to maintain that territory as a whole. It said that Quebecers are not a colonial or oppressed people, and have not been denied meaningful access to political activity.

The court concluded that neither the legislature nor the government of Quebec has a right under international law to carry out secession from Canada unilaterally.

The Supreme Court also held that a province can only separate in accordance with Canadian constitutional law and that negotiations on the terms of separation can begin only after a referendum with a clear question and a clear majority in favour of secession.

In 2000, Parliament passed the Clarity Act, which laid down those requirements as preconditions for any such negotiations.

## **MONTENEGRO DID IT RIGHT**

In fact, much to the dismay of Quebec separatists, the Clarity Act and the Secession Reference have had international ramifications of major significance.

There is now one important international precedent, which I mentioned earlier, to determine the legitimacy of a secession from Serbia. It is directly relevant to Canada as a result of the Secession Reference and the Clarity Act.

But it is not Kosovo.

In 2006, the Republic of Montenegro, in accordance with the constitution of Serbia-Montenegro, decided to hold a referendum on independence from Serbia.

Before the referendum could be held, the European Union cited both the Clarity Act and the Supreme Court's Secession Reference decision, in setting as minimum requirements a clear question and a majority of at least 55 per cent, as conditions for the international community's recognition of a new state after the referendum.

Only after both these conditions were met, was the new state recognized.

While the recognition of Kosovo by Canada today would not have any future implications for the status of Quebec, there are good arguments that it may still be premature for Canada to do so, until some difficult issues for the future stability of the international community are resolved.

Many countries around the world with very different histories and political regimes from Canada's are made up of countless diverse ethnic, religious and linguistic groups, who, like the Serbs and the Kosovar ethnic Albanians, have quarrelled on and off for centuries.

There are, as a result, many small and not so small separatist movements, associated sometimes with terrorism and sporadic violence, in many countries in Africa and Asia, and particularly in many of the new ones formed after the dissolution of the Soviet Union.

So it is not surprising — and indeed understandable — that Russia, China and other countries, concerned about their own internal affairs and stability, and about the stability of their neighbours and their regions, have objected to the recognition of Kosovo, fearing that it might open the floodgates to many more secessions with all the instability that can accompany them.

## **PARTITIONING**

Furthermore, the possibility of a partition — a word that is anathema to Quebec separatists — of a new state of Kosovo itself is very real. One secession can very easily lead to another.

There are Kosovar districts with ethnic Serb majorities in the north of Kosovo, which, with the encouragement of the Serbian government, have formed a movement to reunite with Serbia. They reasonably ask why the ethnic Albanians in Kosovo should be able to separate from Serbia, if they cannot separate in turn from Kosovo.

On the other hand, there is a powerful argument that the special circumstances of Kosovo over the past decade fundamentally distinguish its case from those of other potential secessions promoted by other ethnic minorities. As a result, much of the European Union, many Muslim countries, the United States and others have decided to recognize the independence of Kosovo as legitimate.

The stark memories of the atrocities committed in the 1990s in Kosovo are such that any reconciliation with Serbia in the near future is highly unlikely.

In these particular circumstances, especially the history of ethnic cleansing, and combined with the fact that we were active participants in the NATO mission, Canada would be justified in according recognition to Kosovo.

On balance, we should do so.

*Eddie Goldenberg was chief of staff in 2003 and senior policy adviser from 1993 to 2003 to former prime minister Jean Chrétien*