IX. Deferring a Substantive Settlement while Agreeing to a Settlement Mechanism

When autonomy or federalisation is not acceptable to one side and secession is not on the cards for the other, the option of deferral of the issue comes to the fore. This allows both sides to retain their legal positions. In the meantime, they may enter into negotiations on a substantive settlement or establish an agreed interim phase of autonomous administration until final settlement negotiations can take place. For instance, under international pressure, Lithuania suspended the application of its declaration concerning independence to facilitate negotiations on an agreed divorce.\textsuperscript{209} Similarly, under the Brioni Agreement, Croatia and Slovenia were meant to suspend the application of their declarations of independence a few days after they had been made. This suspension for a period of three months was meant to “enable negotiations on the future of Yugoslavia”.\textsuperscript{210} The brief outline settlements for South Ossetia of 1996 and for Abkhasia of 1993–1994 were also meant to provide space for a more detailed settlement while freezing the situation on the ground through a ceasefire. However, the inability to constrain the parties to negotiate seriously after agreeing to suspend their positions has led in this instance, and in the case of Transdniestria, to the establishment of the term ‘frozen conflicts’ within the diplomatic vocabulary. Accordingly, this option bears the risk of enhancing the position of the party which benefits from the \textit{status quo}. Indeed, as the latest events in Abkhasia and South Ossetia have shown, this may extend to an attempted consolidation of \textit{de facto} independence over time.

\textsuperscript{209} Cf. B. Olcott, “The Soviet Dis(Union)?”, 82 \textit{Foreign Policy} (Spring 1991), at 127.

\textsuperscript{210} Brioni Accord, reproduced in S. Trifunovska, \textit{Yugoslavia through Documents: From its Creation to its Dissolution}, Dordrecht: Martinus Nijhoff (1994), at 311; in fact, the Brioni Accord is less specific, referring only to the absence of unilateral action, but has been taken by the participants to imply such a three-month delay, e.g., Decision of the SFRY Presidency, 12 July 1991, in \textit{ibid}, at 316.
Nevertheless, deferment of the self-determination issue to another time and mechanism can be more than a formalised way of ignoring the problem. For, in agreeing to address the issue in the future lies a recognition that there is an issue to be addressed – this may include an acknowledgement that the case, at least potentially, may indeed be one of self-determination. In other words, this technique does not resolve the self-determination issue, but it recognises that there is an issue that needs resolving. For instance, the Brioni Agreement was adopted at a time when it was far from certain that the unilateral declarations of independence of Croatia and Slovenia would attract international support. However, it contained a reference to the right of peoples to self-determination, albeit balanced by a reference to “the relevant norms of international law, including those relating to territorial integrity of states”.\(^\text{211}\)

Deferral of the issue was introduced into the Rambouillet settlement of 1999.\(^\text{212}\) Kosovo was willing to agree to an autonomy settlement only if it was clear that it would merely apply during an interim period. Following upon that period of three years, Kosovo insisted, there would need to be a referendum on independence.\(^\text{213}\) The agreement which resulted from talks conducted at Rambouillet and Paris confirmed “the commitment of the international community to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia”.\(^\text{214}\) While the settlement was presented as an interim agreement, it was in fact virtually permanent, as its duration was not formally limited and changes


\(^{212}\) Another view would be to classify this case as one of secession denied, given the strong references to the continued territorial integrity of the Federal Republic of Yugoslavia in both the Rambouillet Agreement and UN Security Council Resolution 1244 (1999). However, in view of the provisions invoked here, it was felt more appropriate to list the case under this heading.
