



# KOSOVO STATUS CRISIS

## WHY NEGOTIATE

THE ONLY PRACTICAL WAY OUT OF THIS SITUATION ARE THE NEGOTIATIONS WITH A CLEAR SUBJECT MATTER – THE FUTURE STATUS, A CLEAR AIM – A COMPROMISE SOLUTION, AND A CLEAR PROCEDURE – UNBIASED MEDIATION. THE NEGOTIATIONS CONDUCTED BY MARTI AHTISAARI COULD CERTAINLY NOT BE DESCRIBED AS SUCH.

There isn't a politician today in Europe, nor in the world for that matter, who would contest the view that the issue of Kosovo and Metohia is the most difficult one in Europe and among the most complex ones globally. What makes it so difficult are not only the irreconcilable positions of Serbia and the Kosovo Albanians, but also the almost irreconcilable stands of the significant global actors taking part in the resolution of the future status of Kosovo and Metohia.

Juxtaposed to this common stand is the reservation of the bulk of the influential western states regarding the very negotiations between Belgrade and Pristina as being the right approach and method to resolving this difficult issue. As a result, their primary concern is not linked to the readiness and capacity of the negotiation teams to reach the compromise about the future status of Kosovo and Metohia. Rather, it has to do with negotiations as such as a suitable tool to arrive at the mutually acceptable solution.

This attitude/position of the majority of the western countries may come as a surprise but only at the first glance. All those who follow the events around Kosovo and Metohia, even the casual observers, know that ever since the beginning of the negotiations around the future status of the southern Serbian province (say, November 2005) the same countries have firmly maintained that the province should be granted the status of an independent state. However, no official decision about this had ever been reached anywhere nor at any point and it is precisely this tacit agreement that may serve as an indicator of the attitude and activities of these countries in Kosovo and Metohia as well as in matters related to it.

In such circumstances, agreeing to negotiations between Belgrade and Pristina about defining the future status of Kosovo and Metohia, has been a mere formality to the western politicians. In their view, the negotiations could not have changed the inevitable chain of events but could rather help around two things: firstly, they would accomplish the prerequisite of Security Council Resolution 1244 (1999) which stipulates that at one moment the future status of Kosovo and Metohia must be addressed, and secondly, they would have ushered Serbia into this process, again a requirement in the same resolution, as it is still the formal bearer of sovereignty and territorial integrity in Kosovo and Metohia.

As demonstrated, in November 2005 the



perspective of the western countries had been that it was an issue of mere formalities, steps to be carried out more or less routinely, thus bringing the entire task to the self-explanatory finish.

Today, almost two years after the decision in the United Nations to embark on the negotiations about the future status of Kosovo and Metohia, a significantly different position is at hand. The principal indicators of this shift in the situation are as follows:

- In line with its determination to uphold the sovereignty and territorial integrity of the country, Serbia has formulated a comprehensive and unified state policy regarding Kosovo and Metohia, as well as a related platform for negotiations aimed at resolving this issue;

- Proceeding from these, Serbia has been gathering a strong international support, primarily from Russia as a standing member of the Security Council and the Contact Group, from the other relevant countries, such as China, a number of non-standing member states of the Security

with recognition as a state) which would beyond doubt breach the international law; in short, the argument of facts and effect is gradually losing grounds and substance in the regional, European and in global context alike.

The only practical way out of this situation are the negotiations with a clear subject matter – the future status, a clear aim – a compromise solution, and a clear procedure – unbiased mediation. The negotiations conducted by Mr. Ahtisaari could certainly not be described as such. These were not negotiations about the status, their aim was not a compromise solution, and the mediation was anything but unbiased. The new round of negotiations, starting as of September 28th in New York, will be facing an altogether different nature of obstacles – they will be extremely limited in time, with a strong presence of reserve and suspicion as to the (successful) closure. The originators and propagators of this disbelief will again be the same countries, more or less, which had supported Ahtisaari's simulation along with its virtual outcome.

What conclusion can be drawn from all this?

Primarily, that the view that the negotiations are not a viable way to solve a dispute can only be held by those who do not trust international law, and those who do not believe in the law are those who are prone to using force to solve disputes. This type of politics is in the very foundations of the 'reality argument', which we still hear often enough, albeit less frequently. The problem with this argument is not only that it is contrary to the law, but also that it is quite unfair. Some references and indications have been offered here to support this claim. Whatever the case, if the negotiations are not approached with utmost seriousness, the realistic alternative would not be a victory of one 'reality' but a lasting conflict between the two, if not even more realities. Neither the United Nations nor the European Union would have a response to such a scenario, and least of all can a scenario be devised by those western countries which have failed so far to attribute value to the meaning and importance of serious negotiations.

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Council, a number of members states of the European Union, and also from some of the neighbouring countries;

- Within the European Union there is a growing awareness and understanding that without the international legal framework it is impossible to resolve the issue of Kosovo and Metohia, and that the very participation of the EU itself in the future without such a framework is unthinkable;

- In the international framework, and especially within the European Union, the ultimatum-like position of the political representatives of the Kosovo Albanians persisting on the independence of the province is becoming increasingly unacceptable; this is largely aided by the growing awareness of the criminal and mafia-like structure which has spread its influence deeply into the public life of the province;

- These changes in circumstances have rapidly decreased the number of those advocating that the issue should be taken off the agenda by a series of unilateral acts (secession to begin with, followed

# COALITION OF THE WILLING II A NEW BATCH?

INSTEAD OF FINALLY RECOGNIZING THAT THEIR CURRENT KOSOVO POLICY HAS COME TO THE END OF THE ROAD -- AS REFLECTED IN THE CURRENT STALEMATE IN THE UN SECURITY COUNCIL – SOME KEY US STATE DEPARTMENT OFFICIALS ARE NOW FLIRTING WITH A DANGEROUS IDEA OF CRUSHING SERBIAN AND RUSSIAN DISSENT BY CREATING BY 2008 A “ COALITION OF THE WILLING PART 2 ” – AN ALLIANCE OF STATES WHICH WOULD BE WILLING TO RECOGNIZE AN UNLAWFUL UNILATERAL PROCLAMATION OF INDEPENDENCE BY THE KOSOVO ALBANIANS.



It's no big diplomatic secret that the European integration of the Western Balkans as a whole is to a large extent depending on the pace of integration of Serbia and Croatia, two of the countries which have the largest political and economic clout in the region.

While Croatia's accession plans are largely being met, Serbia is said to be facing a dilemma: Europe or Kosovo. But is this truly the case? This false and imposed choice was intended to put pressure on Serbs, desiring both to join the European Union and to keep at least some formal connections with a region which is inseparable from its national identity.

This dilemma – never formally stated – has accompanied all through its way the so-called Ahtisaari process, which in the last year and a half produced no results and no solution, before being replaced with a new negotiations process, currently being led by the EU, Russia and the US.

Martti Ahtisaari's process was doomed due to its key internal weaknesses: it was one-sided from the start, its outcome was predetermined all along, and it failed at the end to respect the basic principles of international law.

Its practical results are a disappointed Kosovo Albanian community which was given hopes way too high, an angry Serbia which was threatened with forceful disintegration while trying to achieve European integration, a frustrated US which did not see its plan go through, a divided EU which lost quite some of its credibility and a new, stronger Russia in both the Balkans and the international field.

Instead of finally recognizing that their current Kosovo policy has come to the

end of the road -- as reflected in the current stalemate in the UN Security Council – some key US State Department officials are now flirting with a dangerous idea of crushing Serbian and Russian dissent by creating by 2008 a “Coalition of the Willing Part 2” – an alliance of states which would be willing to recognize an unlawful unilateral proclamation of independence by the Kosovo Albanians.

These suggestions indicate that Washington is not ready to conduct honest negotiations, but – much like it did during the failed Ahtisaari process -- to pursue a predetermined independence scenario for the resolution of the Kosovo status.

Such an approach is not only dishonest towards Belgrade and Moscow, but also towards the European Union, which is clearly interested in finding a viable solution. As such, this approach is much more a pressure against the EU, than against Serbia and Russia.

If the US policy in the next few months of talks will be used to form some sort of an “alliance for the independence of Kosovo” instead of brokering a negotiated deal and a creative solution, Wash-

ington must then take responsibility for the likely failure of the talks and the catastrophic consequences which a scenario of a one-sided recognition might provoke in the region, within the EU and the world.

It is difficult to expect any change of positions from Belgrade and Pristina on the status question – at the least for the time being. A possible and realistic change is in the perspective of the international actors. This might involve raising the level of warnings against those who would like to exploit the frustrations. Some US officials in particular must reject the line “independence one way or another”, while EU officials should reinforce their argument for Kosovo's integration in European structures “one status or another”. Both Washington and Brussels should aim to relativise the importance of formal status, particularly in Kosovo itself – where extremely high expectations have led to obsession with statehood instead of the focus on the “morning after”.

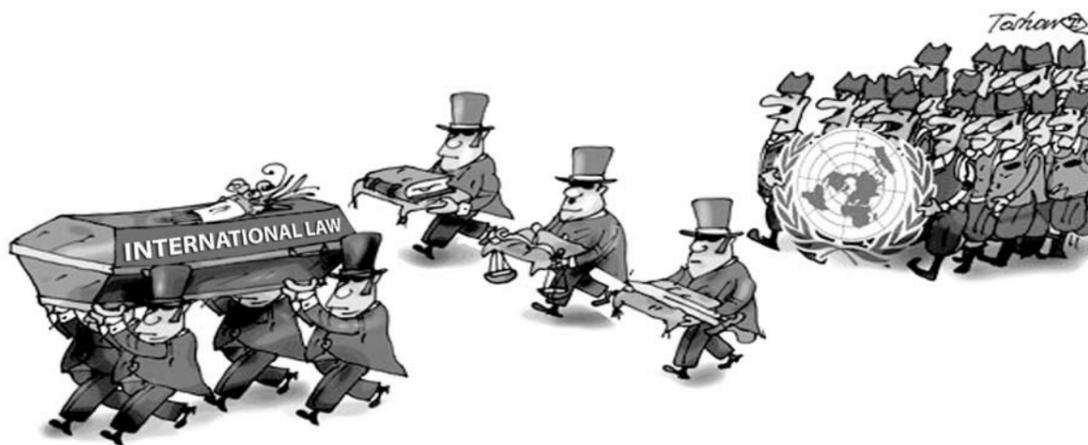
Understandably, the US are irritated with the failure to impose through a “diplomatic blitzkrieg” an independence for the Kosovo Albanians, but

this frustration will only worsen if they decide to push democratic Serbia away from its normal European democratic and integrative processes by supporting the secession of Kosovo.

The EU is well aware that Serbia is the engine behind the European integration of the Western Balkans. If Serbia stops in its European integrations, so will Bosnia-Herzegovina, Montenegro and Macedonia, while the Union will face a new crisis in its own “front yard”. This is why the EU wants to avoid an angry and humiliated Serbia.

If the US strategic goal is to stop European integrations in the Balkans and open up old wounds and new flash-points, it will go through with the recognition of a unilateral declaration of independence by the Kosovo Albanians and pressure on EU states to do the same. Otherwise, it will seek a compromise solution, in collaboration with the EU, Russia and the two parties.

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Tošo Borković

# A NEW BEGINNING FOR KOSOVO



During the last 20 years, the Kosovo conflict has been handled by the international community on the basis of three counterproductive assumptions.

One, it was believed that it could be dealt with as a special case and in isolation from the rest of former Yugoslavia, Europe and larger world order issues.

Two, it was seen as a political power issue rather than a case for professional conflict-resolution.

Three, there was a belief that deficient conflict analysis and the lack of mediation could be covered up by NATO's 'peacemaking' bombings in 1999.

The US, EU, NATO, UN and OSCE would do well to finally recognize - and even better publicly admit - that they have come to the end of the road with these three assumptions, as reflected in the current stalemate in the UN Security Council. Proposals for 'supervised independence' by former Finnish president Marti Ahtisaari have been blocked by a threat of a Russian veto.

Both the Albanians and the Serbs today feel humiliated, victimized and cheated by the mismanagement of the international players.

Washington is frustrated by its failure to get through a speedy imposition of Kosovo's independence, Moscow is determined not to allow this imposition as a breach of international law and Brussels is spending more time managing its internal cohesion than creatively thinking about how to get out of the impasse.

Fall 2007 is therefore the time for a new

beginning in Kosovo. Any continuation on the basis of the three aforementioned assumptions could cause serious trouble in Kosovo and elsewhere in the world.

What is urgently needed now is impartial, professional mediation by countries, civil society and individuals who have no other mandate but to help the parties solve their conflict.

A conflict has found a sustainable solution when the parties have investigated all creative future options and worked their way towards a future arrangement that they can accept voluntarily and are therefore committed to implement on the ground.

The mediation process and mediators must be considered impartial and neutral by all parties. They will need a quite large team of professional expertise in the area, in conflict analysis, mediation, reconciliation and forgiveness - all competences much more important than being a career diplomat or, say, a former president.

The UN, the EU, the OSCE and other organizations should provide security and finance the process which may well take more than a year. During that period, none of the parties should explore and negotiate solutions with a pistol in their backs or a time-bomb on the tracks.

There must be enough time, parties and space for a new process to succeed.

There must be enough time, because hurrying the process is detrimental to the quality of the process: in the Vienna talks, rounds were held at increasingly shorter intervals as pressure to conclude the process increased.

There must be enough participants, since room must be given to arguments, needs and interests on all sides. The future of Kosovo will influence the whole region and, thus, there are many participants to give a stake in the solution. Also, it is no longer feasible that only governments try to make peace; democratic peace is about providing for civil society to state its concerns and contribute its creativity. While diplomats can leave, citizens must stay and live with the result of the peace-making process.

While certain ideas from the Ahtisaari process can be kept as a basis for a solution, Belgrade's proposals must not be automatically rejected as underdeveloped and unrealistic.

On the other hand, Belgrade must further mobilize its proposals and present them as a real incentive to Pristina as well as a constructive alternative for the international community.

There must be enough space, because a solution must be created within a viable framework. The overwhelming majority of international actors insist on the legality and legitimacy of a UN Security Council resolution as well as on the norms of the UN Charter; Kosovo should not be an exception from all other similar cases.

It has been made very clear that ignoring the territorial integrity of Serbia will not be accepted in the world's top body.

As a result and as a starting point, it should therefore be accepted that international law must be respected and that a space for solution can be found between the territorial integrity of a state and the right of a majority to rule itself.

However, if the parties can find a way to an independent Kosovo that is acceptable to Serbia, its citizens and those of Kosovo, then no one should oppose that.

In fact, independence versus integration are typical power issues. To now introduce a conflict-resolution perspective would imply two new foci: what is this conflict about and, consequently, how can Kosovo, Serbia and neighbouring countries develop in such a way that future life in Kosovo will be good for those living there?

At the end of the day, the formal status of the province is much less important than the quality of people's everyday life.

Neither independence nor re-integration can in and of itself be a guarantee for a good life for all. For both sides these positions have been mantras for too long.

What all people in the region want, need and have a right to are things such as good schools and health care, freedom of movement, gender balance, good economic opportunities, employment, social security etc. And above all, they need to make peace, stop hating and go for reconciliation with their neighbours.

Without these, no status solution will succeed or last for long.

Politicians need to use these as a starting point to the process, ending with the question: What status should Kosovo have in order to best fulfill these needs for all in the region? Such an approach of substance and human need rather than formality and law would engage citizens in a new democratic way.

The solutions found to these life quality goals would compel the parties to enter into an overall agreement voluntarily and with serious commitment to also implement them.

It will certainly not be easy. But in contrast to the now failed power policy with conflict-mismanagement, this type of principled conflict-handling holds a hope for peace - conflict-resolution, peace-making and building with genuine human reconciliation.

By Jan Oberg and Aleksandar Mitić

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# CHRONOLOGY OF AHTISAARI'S FAILURE: FROM LONDON'S HIGH HOPES TO NEW YORK'S REALITY CHECK

The three key Kosovo status talks principles of the Contact Group set in London in January 2006 (no return to the pre-1999 situation, no partition, no joining of neighboring states) were criticized for streamlining the process towards the independence-like solution. If pre-1999 autonomy was rejected because of the Milosevic times, why wasn't the pre-1989 (pre-Milosevic) autonomy referred to as possibility? Why was partition of Kosovo outlawed, while partition of Serbia was not? Why mention a ban to the joining of neighboring states when it only made sense in the case of secession of Kosovo from Serbia?

Nevertheless, the three principles still allowed enough space for a negotiated solution in order for Russia, a member of the Contact Group, to go along with the process, despite president Vladimir Putin clearly stating from the start Moscow's resolve to agree only on universal solutions.

Unfortunately, some US and UK officials interpreted Moscow's lack of public objections at this stage a sign of tacit approval for a process with a predetermined outcome of independence.

A false sense of urgency ("violence might erupt each day now if they don't get what they want") combined with the lack of argumentation (the Kosovo "sui generis" mantra) greatly damaged any serious discussion on the status.

The negotiation rounds were held at increasingly shorter intervals and Russia started grudging more publicly.

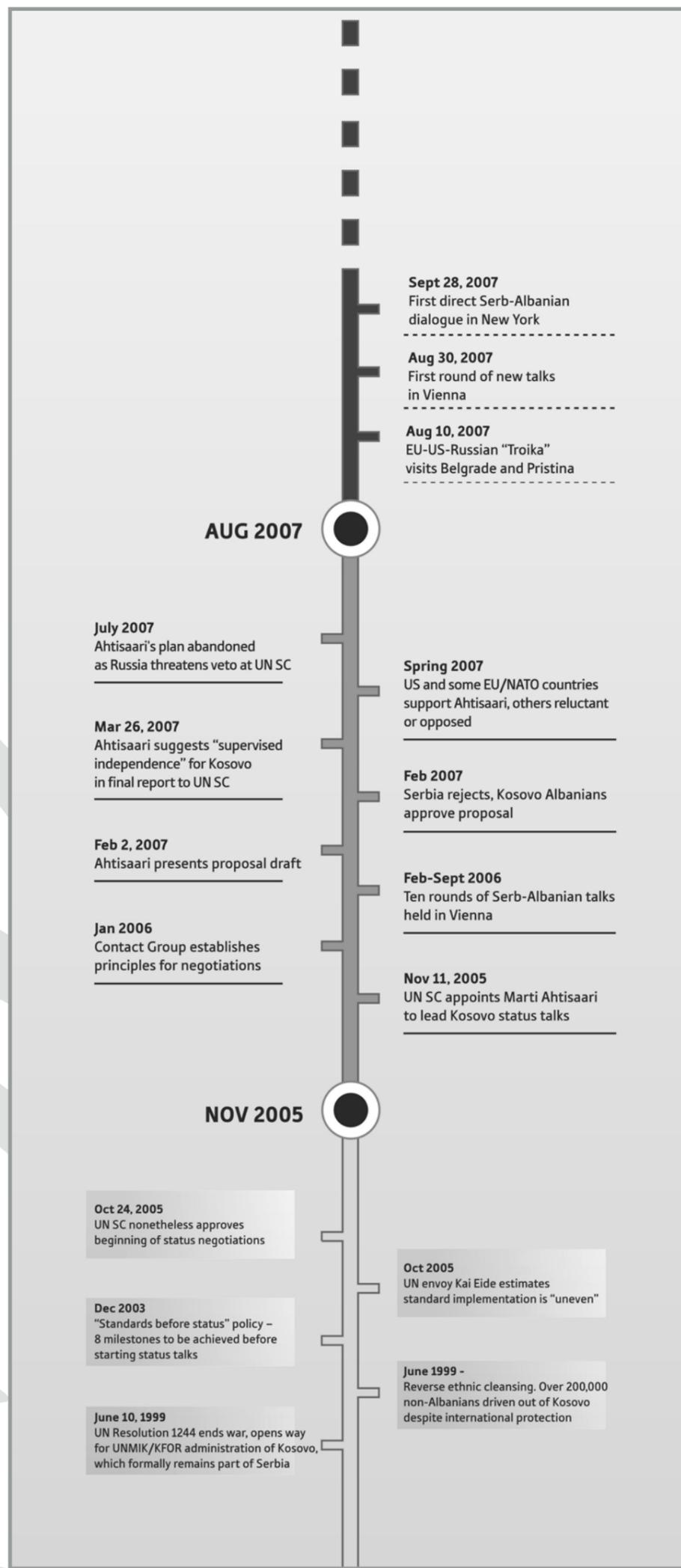
The EU member states, which had been putting the key status discussions under the red carpet by preparing for their status-neutral ESDP mission, had their first serious discussion on the consequences of the status only at the Luxembourg meeting of foreign ministers in October 2006 – when clear divisions within the EU erupted.

Greece, Spain, Romania, Cyprus and Slovakia emerged as the most reluctant bloc within the EU vis-à-vis the expected Ahtisaari outcome, while Russia stepped up its opposition to any outcome which would not be acceptable to both sides.

The leaking of the core proposals of the Ahtisaari plan made sure there were no surprises in either Belgrade in Pristina when the Finn finally presented his proposals in February 2007. Serbia's parliament rejected them, while the Kosovo assembly supported the plan.

NATO immediately followed with its support – despite the reluctance of some member countries – while the situation was more complex at the other end of Brussels, in the EU.

Put under intense pressure to accept the Ahtisaari plan in the name of European CFSP unity, Madrid, Bucharest, Nicosia, Athens and Bratislava adopted a "reserve defense post": they grudgingly said 'yes' to the Ahtisaari process but conditioned it by the absolute necessity to have a UN Security Council resolution. This ran contrary to the US expectations, which opposed a scenario under



which the Security Council's resolution would be a "must" and started flirting with the idea of unilateral recognition outside the UN framework.

Spring 2007 was thus used for several diplomatic initiatives linked to Kosovo: an attempt by some US officials to create "a diplomatic blitzkrieg", an intense pressure on the opponents of the Ahtisaari plan within the EU and the preparation for the UN SC process through pressure on Russia and Serbia.

At the end of March, US officials arrived to Brussels to proclaim openly their support for the independence of Kosovo and create a transatlantic front, but the informal meeting of EU ministers of foreign affairs in Bremen showed again the dissonance among European countries when it came to create a common EU position at the UN Security Council. The US-led speedy independence effort was dealt a serious blow.

Despite these divisions and Russian warnings, the Contact Group "quintet" (Western members) pushed for the Ahtisaari plan as the basis for a draft resolution in Security Council.

Hopes were apparently high that the media reports quoting "anonymous diplomats" and analysts' predictions would be right and that Moscow would back down at the very last moment.

But, the reality check-up started at the German Baltic seaside resort of Heilegendamm in early June, where Putin clearly told his G8 summit colleagues that Moscow would veto an Ahtisaari-based UN Security Council resolution.

Freshly-elected French president Nicolas Sarkozy was first to tell the world at the summit about the necessity to hold further talks.

It took several weeks and five unsuccessful UN Security Council drafts for all to realize that the Ahtisaari process would not end up with its backing by a Security Council resolution.

Moscow stood firmly with its three "nyet": no to the annulment of UN SC resolution 1244 (calling for human rights protection and Serbia's territorial integrity and sovereignty over Kosovo), no to a prejudged outcome and no to artificial deadlines.

The US was frustrated by the outcome and started to openly call for "independence one way or another", with or without the UN SC resolution – a scary scenario indeed for the unity of the EU.

Security Council members China, South Africa and Indonesia – all three worried about the impacts of a Kosovo precedent on the issues of territorial integrity – expressed relief at the outcome.

On August 10, 2007, following the appointment of a EU-US-Russian "troika", a new, distinctive process began with shuttle diplomacy between Belgrade and Pristina.

*This chronology is part of the cd-rom "Kosovo 2007: The Fast-Track to Europe" (www.kosovocompromise.com).*

# LESSONS FROM VIENNA

THERE ARE IMPORTANT LESSONS TO BE LEARNED FROM THE VIENNA PROCESS IF THE NEW TALKS, UNDER THE AUSPICES OF THE CONTACT GROUP, ARE TO BE SUCCESSFUL.



Although it is reasonable to expect that the talks cannot go on forever, there should be no artificial deadlines, and no hurrying of the process due to external pressures.

The talks should be allowed to run their course and reach a natural conclusion of their own. In Vienna, rounds of talks were held at increasingly shorter intervals as pressure to conclude the process intensified.

This did not allow for sufficient developments - which may have brought the two sides closer together - to occur in the intervening period, and consequently Martti Ahtisaari and his colleagues came to the conclusion that an agreement between Belgrade and Pristina was not possible.

Despite this belief, Ahtisaari and his team became increasingly concerned that the non-negotiated solution they had been asked to draft by the Contact Group would be rejected by Belgrade. The Contact Group may have realised that it would be difficult to impose such a solution upon the parties, but a quick end to the process took priority.

More options should be put on the table and pre-determined solutions avoided, as this will be a disincentive to the parties and discourage them from engaging in serious negotiations. The previous talks were hampered by a lack of available options, leaving Ahtisaari no alternative other than to lead the parties down a dead-end road towards the independence stalemate.

Whilst it is necessary to observe Contact Group guidelines, the range of options should be extended and diversified, as it is

vital that the freedom of the parties is not curtailed if they are to be given the maximum chance of finding a mutually acceptable solution.

Although Ahtisaari perhaps did his best to try to resolve the Kosovo status issue in difficult circumstances under intense pressure, it is now necessary to adopt a different approach. Perhaps as a starting point it should be accepted that international law must imperatively be respected and that a solution should be found within this context. This would not exclude the possibility of Kosovo becoming independent, if a form acceptable to both sides could be identified. Equally, it should also be accepted that Albanians are the majority in Kosovo and have the right to rule themselves. A return to Belgrade's rule therefore is not an option, but this would not exclude the possibility of Kosovo remaining within Serbia if the right level of autonomy could be found.

It is not just the mediators who must change tactics, but the sides themselves as well. Both went into the Vienna process with firmly entrenched positions, and came out with their positions unchanged.

If the talks are to be successful, both sides should accept that concessions must be made if their proposals are to become more acceptable to the other side, and thus move the parties closer towards agreement. It is in this context that a one-sided approach should be avoided, as all parties should accept that there are two sides to this process, both of which deserve equal consideration.

In what areas could compromises be made? Firstly, Belgrade could offer Kosovo a special status, which would allow it to become more than just a province and have a state identity of its own. A state identity could even allow Kosovo to have its own emblem and flag. The Serbian government's idea to relinquish some elements of sovereignty and allow Kosovo access to the World Bank and International Monetary Fund, with some representation abroad, are good compromises, as only by increasing the level of autonomy and areas of competence, would Albanians be able to feel that they had sufficient control of Kosovo to be free of Belgrade's rule, even if it did remain a part of Serbia.

The level of autonomy could be further increased by being brought into line with that which Kosovo enjoyed under the 1974 Constitution.

Although actual membership of international financial institutions is reserved for sovereign states, Kosovo could nevertheless have access to the funding - as this is quite different from actual membership. It could also become a member of international organisations for which sovereign statehood is not a requirement.

Kosovo could be represented abroad by its president and prime minister, who could co-operate with, and establish relations with states, provinces, regional and international organisations. They could also enter into regional and international agreements, providing of course, if the sovereignty of Serbia is to be maintained, they did not infringe

upon "core" elements of sovereignty (foreign policy, monetary policy and defence).

Pristina could make concessions by being more open to options other than a full or supervised independence - perhaps a high level of autonomy able to achieve the same result, but within Serbian borders could be considered. If there is to be actual independence, then some form that could possibly be acceptable to Belgrade should be found. Just as there are many forms of autonomy, there are also several forms of independence - and many options in between.

It appears that some lessons have already been learned.

Now that an imposed solution has proved to be a non-starter, the Contact Group is doing the very thing that should have been done in Vienna by giving the parties more scope and more time.

The new mediators have even stated that they are open to any solution if both parties can agree. With a balanced view and an open mind, and a willingness to be flexible and compromising, perhaps a successful outcome will be achieved.

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# KOSOVO - A UNIQUE CASE OF ARBITRARINESS

KEY INTERNATIONAL ACTORS HAVE USED A NUMBER OF ARGUMENTS IN ORDER TO ADVANCE THE INDEPENDENCE OF KOSOVO AND METOHIA (KOSOVO FOR SHORT) AS AN ACCEPTABLE SOLUTION. SINCE EACH ARGUMENT ENCOUNTERED PROBLEMS OF INCOHERENCE AND INCONSISTENCY FROM THE STANDPOINT OF INTERNATIONAL LAW, THE LOGICAL OUTCOME WAS IN THE END TO DECLARE KOSOVO A "UNIQUE CASE" TO WHICH EXISTING NORMS OF INTERNATIONAL LAW CANNOT BE APPLIED.

Let us briefly summarize the arguments preceding the declaration of "uniqueness". One of the first arguments launched was that independence is an "inevitable" outcome due to moral reasons.

Serbia lost the right to govern the province because the regime of Slobodan Milosevic grossly violated the human rights of the Albanian minority. Besides ignoring that fact that the Milosevic era has ended, and extending the punishment to the very political forces that ousted him, the moral argument suggests that the breadth of Serbian repression was of unprecedented magnitude and therefore the permanent suspension of Serbian sovereignty over Kosovo is a rightful outcome. If moral principles are to be taken seriously then they have to be applied consistently- to all internal conflicts where the rights of a minority, or ethnic groups have been grossly violated.

This is not done, sovereignty is not suspended, and borders are not redrawn even in cases where the repression and number of victims are incomparably greater than in Kosovo.

Furthermore, if we look at the human rights situation of Serbs living in Kosovo after the NATO bombing, then we face a dismal record of systematic and drastic violations of their rights by the Kosovo Albanians.

In other words, the credibility of the moral argument is dismantled by the policy of the Albanians themselves. They have lost the moral right to become independent.

Another argument in favor of independent Kosovo, is the democratic one, according to which it is necessary to respect the will of the Albanians in Kosovo, that is, extend the right to self-determination to minorities.

If in the name of redefining democracy and international law this argument were to be credible it would also require that the declared will of other ethnic communities has to be respected as well.

For instance, the will of Serbs in parts of Kosovo or Bosnia where they are a majority, or the will of the citizens in Abkhazia, Southern Ossetia, Transdniestria, etc. But the international actors contest the extension of this right to others, reserving it only for the Albanians in Kosovo. By doing so, they inevitably empty the argument of its democratic content.

An additional argument that is often launched plays on the factor of fear. If the status of Kosovo is not urgently resolved violence and regional destabilization will ensue.

This is a weak argument because US, NATO and EU have all the instruments to preempt and prevent any such violence.

However, instead of making this a clear non-option, they use the threat of violence as an additional pressure, calculating that the Serbs are exhausted by all the defeats and incapable of counter threats. The constructed urgency is clearly a cynical simulation if one has in mind the unresolved conflicts that have dangerously troubled the world for decades (Middle East, Kashmir, etc.) or ongoing conflicts that are taking a tragic toll in human lives (Darfur, for example).

It is unclear why would an "unresolved status", in a situation where the human rights of Albanians are currently not being violated, attain the status of regional/global crisis that needs to be urgently resolved even by breaking the international law, while such urgency is missing in relation to ongoing violent conflicts elsewhere. Flirting with violence and in its name enforcing a zero-sum outcome, arbitrarily implementing the international law cannot prevent destabilization. The logic of such argument gives legitimacy to violence as a means of creating new states on the territory of existing ones. Once such an example is set, the consequences will be difficult to control without coercive means.

Another argument that has appeared attempts to convince Serbia that if it renounces Kosovo, i.e. "constructively cooperates", it would finally prove that it chose a European future instead of the Balkan past. This argument misrepresents the European experiences and goals.

First, one of the achievements of the European integration processes is the reconciliation between hostile nations. How can these capacities be celebrated, and at the same time the idea of irreconcilable enemies who cannot live in a common state, but can become credible members of EU be accepted.

Instead of accepting hostilities and mistrust as permanent features of Serb-Albanian relations, consistent European spirit would reconcile, negotiate, compromise, and devise innovative formulas of integration. Second, disintegration, creation of weak and dysfunctional states is in total contrast to the European integrative processes, and thus cannot be but in some form disruptive for the European project.

If Serbia is a prospective member of EU, then it would be logical that in the resolution of its problems, the principles of the community that it will be become a member of, will be applied.

Therefore, it is a paradoxical demand that in order to prove its European orientation, Serbia is required to accept non-European principles and non-European solutions for an essentially a European problem.

In order to transcend the inconsistencies of previous arguments, the solution was found in proclaiming Kosovo a "unique" case that demands specific answers inapplicable to other conflicts. This argument should have secured the legitimacy of independent Kosovo as a solution, at the same time it should have served to delegitimize the aspirations of other ethnic groups in the region and broader to secession.

An independent Kosovo will not set a precedent, cause global disruption, we are told, because it will be a case on its own.

Such a status will be secured by not recognizing the right to self-determination in the case of other minorities by the global powers. In other words, who will have the right to create a new state, a reinterpreted right to self-determination and who will be deprived of it, depends only on the arbitrary will/support of the USA and EU.

Kosovo is not a unique case by any standards. The number of victims (around 6.000), the transitional authority and presence of KFOR are not signs of uniqueness.

The UN has in various forms and differing duration set up transitional authorities, without turning them into permanent suspensions of sovereignty (for instance, in East Slavonia).

Such an idea in the case of Kosovo is even more problematic having in mind the illegal NATO bombing that preceded it.

If Kosovo becomes independent this will confirm that the NATO bombing was in no way carried out to protect human rights, but to violently change the borders of a sovereign state.

Kosovo is not a unique case except by the efforts made to present it as such, and the consequences this "enforced" uniqueness may produce - the destruction of the foundations of the international legal order.

Thus, an independent Kosovo cannot but be a dangerous precedent, opening a new chapter of violent redrawing of state borders and posing a fateful question: international legal order is being destroyed, what is evolving in its place?

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## APHORISMS

*I am ready to die for what I believe in, but thank God, I don't believe in anything anymore.*

\*

*Stop thinking only about your past. Look at what we're doing to you today!*

\*

*We are pleased that you will once again become our traditional friends.*

\*

*We never take responsibility for our acts. We are not a terrorist organization.*

\*

*We are calling on the spirit to return inside the lamp. His freedom of movement will be guaranteed.*

*Aleksandar Baljak  
full-time aphorist*

\*

*You will have full freedom of speech.*

*That will somewhat restrict your freedom of movement.*

\*

*The longer the war, the closer we are to peace.*

*Slobodan Simić  
psychiatrist*

\*

*The conflict could not have been avoided.*

*You were fighting for peace, we were fighting against war.*

*Ilija Marković  
economist*

\*

*Let's return to the negotiating table.*

*What are you drinking?*

*Andjelko Erdeljanin  
satirical writer*

\*

*Reincarnation would allow for the other side to be heard.*

*Milan Beštić  
sales consultant*

\*

*The verdict surprised everybody. Especially the judge.*

*Vladan Sokić  
legal expert*

\*

*The truth will emerge, sooner or later.*

*Like every drowned corpse.*

*Dragan Rajičić  
gas-station worker*

\*

*After all the political confrontation it is time to return to normal life.*

*War.*

*Momčilo Mihajlović  
copyshop clerk*

# SERBIA'S POSSIBLE RESPONSES

A unilateral independence of Kosovo would normally oblige other countries not to recognize such an illegal act. But since there is no worldwide regulatory body which has the authority or mechanism to assert such measures, there are no practical guarantees that international law would be enforced.

This is why Serbia would have the legal right to a wide diapason of possible reactions, from retorsion to reprisals, in the case of a unilateral declaration of independence of Kosovo and its recognition by other states.

Serbia has already underlined that any possible act of unilateral declaration of independence by Kosovo would be considered illegal and null. This means that for Serbia, not a single act brought by the "authorities" in Kosovo would be valid. In such a scenario, the state of Serbia would have the obligation to take adequate measures against states which would potentially recognize Kosovo. These can be divided in two categories: (A) measures of retorsion, and (B) and measures of reprisals.

## A) Measures of retorsion

Measures of retorsion represent unilateral measures which a state can undertake and which in themselves do not represent a breach of international law. The state undertakes them as an answer to an unfriendly act from another state. Most commonly, it involves the change of status or break up in diplomatic relations. Also, it can lead to a disruption in commercial relations – primary or secondary boycott – as well as in the free circulation of people and capital. In the Kosovo case, this option opens many retaliatory possibilities since it would be related to a specific relationship in the triangle Serbia-Kosovo-foreign countries. The concrete situations are as follows: Serbia by definition

would not recognize personal and travel documents issued by organs of an "independent state" in Kosovo, nor would it recognize car plates issued by these authorities. As a result, no one from the territory of Kosovo could enter or cross Serbia unless he is in possession of documents which Serbia considers as valid. Serbia could go a step further and forbid entry on its territory to any foreign citizen who has visited Kosovo and who has in its documents the seal of a state which Serbia considers as non-existent. The most radical move would be to forbid entry to Serbia to all citizens from countries which would recognize the independence of Kosovo.

The same parallel can be made in the field of commerce. Serbia could decide on the breakup of commercial relations with states which would have recognized the independence of Kosovo or forbid work in Serbia to those firms which are also doing business in Kosovo.

The question of legality of such reactions, in a situation where Serbia is legally bound by previous international obligations (free circulation of people, goods or capital, for example) and the question of the overall usefulness of these actions can be answered through an analysis of the possible measures of reprisals that Serbia can undertake.

## B) Measures of reprisals

As opposed to measures of retorsion, reprisals can represent a breach of international law per se, but this breach is justified as it represents an answer to an earlier violation of international law. This means that Serbia could undertake all those aforementioned measures even if they were in contradiction with earlier bilateral or multilateral conventions that the country had signed.

In terms of the second question – that of the utility – it is perfectly clear that Serbia itself would be losing in the case of interruption of commercial ties with states which would recognize the independence of Kosovo or if it forbid to citizens of those countries the entry into Serbia. There is neither any benefit from cutting diplomatic links with these countries, nor even from lowering them down. On the other side, a certain reaction or threat of reaction through a forbidding for all companies which are doing business in Kosovo to do business in Serbia as well (same goes for the forbidding of entry into Serbia for all foreign citizens who had visited Kosovo) could have some effects. It could be a direct pressure against the illegitimate government in Pristina and indirectly against all countries which intend to recognize it.

But none of this would actually reverse the situation on the ground -- and this is where we come to the core of the problem. The meaning and goal of the counter-measures would be to overturn the violations of international law and bring them back to legal ground. The problem is the following: the recognition of a self-proclaimed new state by another state creates a legal relationship between the newly-recognized state and the state which issues recognition. As such, the act of recognition is in principle non-revocable. State A which recognizes state B cannot revoke its recognition because it becomes limited by international principles which exist among subjects of international public law. That is why the aforementioned countermeasures can hardly be efficient.

The only remaining possibility to revoke the recognition would be to change the situation on the ground, i.e. military reaction. Does Serbia have the

right to an armed response to a unilateral declaration of independence of Kosovo? Is this its only possible counter-reaction?!

Serbia would not use force against any state which would eventually illegally recognize the independence of Kosovo but it would "maintain order" on its own territory. However, in theory and practice things could get more complicated. Countries which would recognize the independence of Kosovo would consider it an aggression of Serbia against a newly-recognized country. The more countries recognize Kosovo and the later a possible Serbian reaction, the easier such a position could be held. In any case, Serbia would need to fast change the de facto situation in the field to Serbian benefit. In other words, Serbia would need to assure the respect of international law by itself.

Given the political signals from Belgrade, such a radical option is highly unlikely, but one thing is sure: dozens of other states in the world would easily face the same predicament, having no legal means to prevent secessionist movements on their territory should those be recognized by third parties. The whole system of national integrity would gradually fall apart, due to either local interests, quid pro quo measures or geopolitical superpower tactics. Let us hope, for the sake of worldwide peace and stability, that the vicious circle of unilateral recognitions will not be opened, in Kosovo nor anywhere else.

*Miloš Jovanović is research associate at the Institute of International Politics and Economy in Belgrade.*

## ARE SERBS REALLY INDIFFERENT ABOUT KOSOVO?

Kosovo is Serbia's "cancer", its "impediment to European integration", its "mythical obsession": clichés about the Serbs' "irrational link" to Kosovo abound and pop up as often as it is needed to discourage Serbs from taking part in the fate of their southern province.

Some of these have indeed found their way in the minds of a part of the Serbian population tired of past hardships and hoping for a better life.

But those seeking to find a realistic, long-lasting solution to the Kosovo status should analyze more seriously the true relationship between Serbs and their province instead of falling prey to the aforementioned stereotypes and superficial results of opinion polls which show that everyday life problems precede Kosovo on the priority list.

True, indifference inside the Serbian society occurs as a phenomenon, especially in the second part of the 20th century.

This is a consequence of the numerous catastrophes and national tragedies Serbia has had to cope with.

The circumstances in which Serbian people have lived and survived in the last few decades have imprinted an indelible mark of tragedy and injustice: striving for national-religious consciousness while being subdued by repressive methods of communism, the tragic collapse of Yugoslavia, the equally tragic destiny of Serbian entities and communities outside of Serbia, war crimes, exodus, NATO bombings, Hague tribunal proceedings, Montenegrin independence – and now, above all, the issue of Kosovo.

Thus, the Serbs' national consciousness is such an emotionally painful issue that everyday life and material existence appear to be of primary importance at first glance.

The polls cannot however undermine the high importance that the fate of Kosovo has in the eyes of the Serbs.

They can also often indirectly show the importance of Kosovo in Serbia's political interest.

The results of the public opinion research poll carried out by the Centre for Free Election and Democracy in June 2007, showed the following re-

sults: to the question of "Which countries should Serbia rely on when dealing with foreign affairs?", 34% of respondents answered in favour of Russia, 32% had been for the EU, and 5% for the USA. It is clear that the daily news about the policies of Russia and the USA towards Kosovo critically influenced the results, i.e. Russian policies advocate a solution based upon a reached agreement between the Serbian and Albanian sides, whereas American policies support independence.

Apart from polls – which through their different methodologies can provide various, sometimes contradictory interpretations – one should not forget other factors which have recently showed popular Serb interest in Kosovo's fate:

- In March 2004, during the three-day massive violence against the Kosovo Serb community, dozens of thousands of Serbs took the streets to demonstrate.

- In October 2006, more than three million Serbian citizens voted in favor of the new constitution, which main feature was related to the autonomy of Kosovo within Serbia's borders.

- In January 2007, some 3,7 million people, or 94% of voters placed their ballots for the parties which have expressed clear and unequivocal support for Serbia's position on Kosovo.

Thus, the Serbs' interest in Kosovo cannot simply be quantified by polls. But even if it was, one would not need to look further away than the polls among Kosovo Albanians themselves for an equally confusing answer.

According to Shkelzen Maliqi, a leading Albanian political analyst in Pristina, "the question of independence is not a priority for the majority of citizens [of Kosovo]. Unemployment and poverty are the biggest problems for the Albanians, although independence still rates highly."

*Petar Petković is research associate at the Institute of International Politics and Economics in Belgrade.*

# RESET & COMPROMISE

Last year, our “Kosovo 2006: The Making of a Compromise” cd-rom had a clear goal - to present in concise multimedia format the crucial background to the Kosovo conflict and open up a real, constructive debate at a time when independence was deemed “the only available option”.

It took 5,000 carefully targeted cd-rom copies, hundreds of media articles in over 20 languages, 50,000+ web site visits and, let’s be realistic, five unsuccessful independence resolution drafts in the UN Security Council, to refocus the status negotiations and put them back on the right track.

This fall, the new “Kosovo 2007: The Fast-Track to Europe” cd-rom and website provide further insight into the new negotiations process, once again using stylish design and clear presentation.

The site’s main features are the original news digests and high-profile analyses updated daily at 10am Brussels time, as well as the unique Kosovo Compromise Charts section, a series of graphs covering key aspects of the negotiations process: the

diverging Serb and Albanian points of view, the failures and lessons of the Vienna talks, the local and geopolitical power balance interests, the independence vs autonomy pros and cons, the hypothetical post-status daily life issues and Belgrade-Pristina institutional relations, the who-gets-what in a true compromise solution and the responses to Euro-integration requirements that such a solution would yield.

And should you feel intimidated by the quantity of useful information, you can always save it all with one mouse click and indulge in our amusing quotes, aphorisms and caricatures sections.

To subscribe to our mailing list or to order free copies of the CD-ROM, please contact [info@kosovocompromise.com](mailto:info@kosovocompromise.com). Both 2006 and 2007 cd-roms are also available online through [www.kosovocompromise.com](http://www.kosovocompromise.com)

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