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## **Does Kosovo's Status Matter? On the International Management of Statehood\*\***

**Abstract:** The paper addresses three separate questions: the consequence of policies to manage the Kosovo question since September 1991; current alternatives and prospects in the definition of status, and recommendations for a policy of post-status transition. The current Proposal for a Kosovo Status Settlement is based on a set of compromises that could make the situation even more uncertain and make a solution difficult to reach. The article argues that there is a deep and inescapable tension in the most recent steps on status which needs to be recognized to escape the new stalemate that is being created.

In May 2005, UN Secretary-General Kofi Annan appointed Kai Eide, Norway's Ambassador at the time to NATO, as Special Envoy to prepare a "comprehensive review of the situation in Kosovo [...] to assess whether the conditions are in place to enter into a political process designed to determine Kosovo's future status, in accordance with Security Council resolution 1244 (1999)".<sup>1</sup> Annan presented Eide's report to the Security Council on 7 October and accepted its recommendation that the political process to determine Kosovo's future status begin immediately. Within a month, a new Special Envoy of the

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\*\* An earlier version of this article was presented to the Harriman Institute and East Central European Center Seminar Series on "Limited Sovereignty and Soft Borders in Southeast Europe and the Former Soviet States" at Columbia University, New York, March 22, 2007; a very brief synopsis, »The Kosovo Quandary: on the International Management of Statehood«, can be found on the electronic newsletter of FRIDE, no. 22 (March–April 2007), at <<http://www.fride.org/eng/File/ViewLinkFile.aspx?FileId=1371>>.

<sup>1</sup> »Letter dated 7 October 2005 from the Secretary-General addressed to the President of the Security Council« (Annex »Report on a Comprehensive Review of the Situation in Kosovo, presented by Mr. Kai EIDE, Special Envoy of the Secretary-General«), UN document S/2005/635, available at <<http://www.unosek.org/docref/KaiEidereport.pdf>>. Eide received his terms of reference 13 June 2005.

Secretary-General had been approved by the Security Council, former President of Finland, Martti Ahtisaari, and was on his way to Belgrade, Prishtina, Tirana, Podgorica, and Skopje<sup>2</sup> with his deputy, senior Austrian diplomat Albert Rohan, to begin what has become known as "the status process".

All three men had extensive diplomatic experience in the Yugoslav conflicts. To cite only the main public posts, beginning in 1993, Ahtisaari was first chair of the working group of the International Conference on Former Yugoslavia (ICFY) for Bosnia and Herzegovina until he returned to Finland to win its presidency (1994-2000), he remained active in the Balkans as a member (and chair 2000-2005) of the Board of the International Crisis Group, the most influential international analysis and advocacy NGO in high politics on the Balkans,<sup>3</sup> and was called by the Contact Group for the western Balkans to work with Russian and US representatives (Viktor Chernomyrdin and Strobe Talbott) to persuade Slobodan Milošević to concede defeat and withdraw Yugoslav (i.e., Serbian) security forces from Kosovo during the 1999 NATO bombing campaign. Eide began at the start of 1994 through 1995 as deputy to the ICFY co-chair for the UN, Thorwald Stoltenberg, based at UNPROFOR headquarters in Zagreb where he had nearly full responsibility for negotiations between the Croatian government and *Krajina* Serbs, was Special Representative of the Secretary-General for UNMiBH, the UN mission in Bosnia the period of the Dayton peace process, in 1997-98, and as Norwegian ambassador to the OSCE in Vienna 1998-2002 was frequently involved in special missions to the Balkans, particularly Kosovo. Albert Rohan was his country's chief Balkan expert in 1990-95 as director of the department for Central, East, and Southeast Europe of the foreign ministry, a period when Austria was as influential or more than any other country on the initial break-up of Yugoslavia, and then its Secretary-General (chief of the Austrian diplomatic corps) from 1996 to 2001.

After 15 rounds of direct talks between the Serbian and Kosovo negotiating teams in Vienna, 26 expert missions to the two capitals, and one meeting of the countries' leaders in Vienna in 2006, Ahtisaari presented a draft Comprehensive Proposal for a Kosovo Status Settlement to the parties on February 2, 2007, then proceeded with further negotiations culminating in a high-level meeting on March 10, at which he announced a dead end: "the parties' respec-

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<sup>2</sup> The capitals, respectively, of Serbia, Kosovo, Albania, Montenegro, and Macedonia.

<sup>3</sup> See, for example, their report of analysis and recommendations to all relevant parties on Kosovo's status issued in time for the Vienna negotiations: International Crisis Group, *Kosovo: the Challenge of Transition*, Europe Report No. 170, 17 February 2006, available at <[http://www.crisisgroup.org/library/documents/europe/balkans/170\\_kosovo\\_\\_the\\_challenge\\_of\\_transition.pdf](http://www.crisisgroup.org/library/documents/europe/balkans/170_kosovo__the_challenge_of_transition.pdf)>.

tive positions on Kosovo's status do not contain any common ground to achieve such an agreement. No amount of additional negotiation rounds will change that. It is my firm conclusion that the potential of negotiations is exhausted."<sup>4</sup> The task of deciding the next steps would thus be taken by the UN Security Council upon receipt four days later of Ahtisaari's final proposal. If the leaderships cannot compromise, commentary had long insisted, a solution would have to be imposed.

### The International Management of Statehood

Why is there no common ground between the parties? Why does Kosovo's legal status matter so much? The assessment that only an imposed solution can settle the question contains two misconceptions of the label "status" and its association with the word "sovereignty", one academic, one more common to the public debate. The academic literature has been arguing for several decades that sovereignty has lost its meaning, that it is an increasingly thin reed in the face of transnational actors and alliances, globalization and its interdependencies, regional trade associations and security arrangements, powerful international agents of neo-liberal economic policy, and global networks of illicit trafficking and organized crime. Sovereignty is always limited, compromised, and shared. In post-colonial states, it is even "quasi"<sup>5</sup> – a legal façade that never reflected the conditions of the Montevideo Convention or more recent expectations of domestic governance – while for one of its primary theorists in this period, Stephen Krasner, sovereignty is "organized hypocrisy"<sup>6</sup> – an international norm that never provided protection against external intervention from its beginnings in 1648 and that, like all international norms, always fails in a fight with interest and power. Thus, if the parties are negotiating in good faith, they should have little trouble finding a compromise for Kosovo's sovereign status. It doesn't matter very much.

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<sup>4</sup> »Press Conference by UN Special Envoy Martti Ahtisaari Following the High Level Meeting Held in Vienna«, 10 March 2007, press release of the transcript, available at <<http://www.unosek.org/unosek/en/pressconf.html>>; [http://www.unosek.org/pressrelease/2007-03-10-Press\\_Conference\\_by\\_UN\\_Special\\_Envoy\\_Martti\\_Ahtisaari\\_following\\_the\\_High\\_Level\\_meeting\\_held\\_in\\_Vienna.doc](http://www.unosek.org/pressrelease/2007-03-10-Press_Conference_by_UN_Special_Envoy_Martti_Ahtisaari_following_the_High_Level_meeting_held_in_Vienna.doc)>.

<sup>5</sup> Robert JACKSON, »Quasi-States, Dual Regimes, and Neo-Classical Theory: International Jurisprudence and the Third World«, in: *International Organization*, 41 (1987) 4, pp. 519–549.

<sup>6</sup> Stephen D. KRASNER, *Sovereignty: Organized Hypocrisy*, Princeton, NJ: Princeton University Press, 1999.

The second misconception is that the decision that the Security Council will make on Kosovo can be final, whether it takes the form of an imposed settlement that includes an immediate recommendation to the General Assembly that Kosovo be recognized as a member state of the United Nations or a recommendation in recognition of a *fait accompli* of other states' individual recognition of a declaration of sovereignty by the Kosovo leadership (the two current possibilities). The decision on Kosovo, rather, is only one step in a long process that international actors began to manage in 1991 and will not end in 2007. As Eide's report to the Secretary-General in October 2005 signaled, the report should "lead to [...] the opening of [...] a future status process".

It is this international management of Kosovo's statehood, in fact, that simultaneously requires a black-and-white conception of sovereignty – the creation of sovereign partners who can be held accountable for the responsibilities of sovereignty within clear, defined borders – while actually treating Kosovo's sovereignty as a process. In this, Kosovo belongs to the universe of countries moving from war to peace with international assistance and the concept of a failed state.<sup>7</sup> To answer the question, "does Kosovo's status matter?" this paper will suggest, therefore, that it comprises at least three separate questions: (1) what has been the consequence of policies to manage the Kosovo question since September 1991; is there an element of path dependency that has closed off options or defined the current alternatives and prospects in the definition of status? (2) why is this step to define status occurring now? What is the purpose of status and the strategy for achieving that objective of the international actors who chose to take it? and (3) is this final, or are there next steps? Is there a policy of post-status transition, or can one be recommended?

This article will argue that (1) the current stalemate of UN SCR 1244 is a result of the way the external parties have chosen to manage the question from the start, (2) there is a deep and inescapable tension in the most recent steps on status which needs to be recognized to escape the new stalemate that is being created, and (3) a useful way to think about that escape is to borrow from the literature on the political economy of transition (most developed in the transitions taking place in the former communist-party ruled states of Eastern Europe and the Soviet Union). As for the primary current concern (particularly in the Security Council) about the legal precedent of granting

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<sup>7</sup> Paragraph 86 of Eide's report states: "The international community must do the utmost to ensure that whatever the status becomes, it does not become a 'failed' status" and then, "Entering the future status process does not mean entering the last stage, but the next stage of the international presence." EIDE, »Report on a Comprehensive Review«, UN document S/2005/635, Annex (above fn. 1), p. 16.

Kosovo sovereignty, the battle of precedent was lost in 1991 and international law and norms have evolved along with this process, irreversibly I would argue. But like the norm on sovereignty itself, an emerging norm on secession and related violations of the sovereignty norm depend on interpretation and enforcement by the relevant international actors to a specific case. The balance of power driving the status process in Kosovo will not be repeated elsewhere – whether in the Caucasus, northern Cyprus and Sri Lanka, Spain, Israel, Somalia, or even contemporary Bosnia-Herzegovina. Global power relations are situation-specific and time-specific. Indeed, the Kosovo process itself has protected the operative international rules of sovereignty, but to the detriment of alternatives in Kosovo itself.

### **Sovereignty as process**

The widely accepted explanation for moving after more than six years of UN transitional administration over Kosovo (UNMIK) to settle its international status, despite equally wide agreement that conditions for sovereignty do not exist within the province, was the shock of an explosion of Albanian violence against minority Serbs in March 2004. Two causes were agreed for the rampage (organized, it was later concluded) as well as the ongoing lower-level violence both within and between Kosovo's communities since June 1999 and a continuing, general political instability: (1) growing frustration and impatience among Kosovo Albanians with the international community for failing to solve their status (by which they meant, grant them independence) and (2) failure of the UN transitional administration and the NATO-led military forces (KFOR) to foresee, prevent, and manage the violent events. Although the status question had not yet been resolved because of deep disagreements within the European Union (EU) and the Security Council about Kosovo's right to independence – SCR 1244 "reaffirm[ed] the sovereignty and territorial integrity of the Federal Republic of Yugoslavia"<sup>8</sup> over the province, and there is no international right to secession,<sup>9</sup> but many individual states (especially the United States) were adamant supporters of the Albanians' right to govern themselves and justification for that right in the repressive policies of the Milošević regime in 1989–1999 – the violence now revived their common inter-

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<sup>8</sup> *United Nations Security Council Resolution 1244 (1999)*. Adopted by the Security Council at its 4011<sup>th</sup> meeting on 10 June 1999, S/RES/1244 (1999), available at <<http://www.unmikonline.org/misc/N9917289.pdf>>.

<sup>9</sup> One could cite many sources for this; one example is Rosalyn HIGGINS, »The new United Nations and former Yugoslavia«, in: *International Affairs*, 69 (1993) 3, pp. 465–483.

est in regional stability. Thus, if uncertainty over status threatened communal violence and regional stability, then a resolution of Kosovo's legal status would end that threat and restore peace and security to the Balkans and wider Europe.

The decision to move toward resolution was an admission of a second international failure – the UN policy begun in 2003 called "Standards before Status". A list of "109 action points, six thematic working groups, and quarterly line-by-line evaluations"<sup>10</sup> that would demonstrate the readiness of Kosovo's political leadership and institutions of self-government for sovereignty had not been met by a long shot, Eide's report admitted. This policy, however, had replaced a previous failure, the expectations of UN SCR 1244 that the 77-day NATO bombing campaign, NATO's agreement with the Yugoslav security forces to leave the province altogether on 10 June 1999, and the UN transitional administration to make credible its grant of extensive autonomy, with the right to a referendum in three years (the Rambouillet principles), would stabilize the region. And the NATO bombing campaign that began 24 March 1999 was itself also a response to failure, the Rambouillet peace conference hosted jointly by Britain and France but convened to discuss and agree to an American drafted peace proposal the first three weeks of February 1999 and its brief resumption on March 18.<sup>11</sup>

That initiative began with a threat issued by NATO in June 1998, the result of collaboration among NATO Secretary-General Javier Solana, Supreme Allied Commander for Europe, General Wesley Clark, and US Ambassador to NATO, Alexander Vershbow, to Serbian president Slobodan Milošević, to give credibility to the shuttle diplomacy of US Ambassador to Macedonia, Christopher Hill, between Belgrade and Prishtina, and Contact Group efforts to respond to the mounting insurgency by the Kosovo Liberation Army through targeted assassinations of police in Kosovo and neighboring Macedonia and skirmishes in villages to provoke retaliation by the Yugoslav security forces. The KLA were first labeled terrorists because the decision taken in September 1991 by the European Community peace conference (the Carrington Conference named for its chair, Lord Peter Carrington) and its Hague peace proposal was that Albanians should have special status (including territorial autonomy) in Serbia and that no border could be changed by force. The approach of

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<sup>10</sup> ICG, *Kosovo: the Challenge of Transition* (above fn. 3), p. 3.

<sup>11</sup> A useful, concise summary of the events leading up to Rambouillet and the NATO operation is provided by Paul HEINBECKER, »Kosovo«, in: David M. MALONE (ed.), *The UN Security Council: From the Cold War to the 21<sup>st</sup> Century*, Boulder/London: Lynne Rienner and the International Peace Academy, 2004, pp. 537–550.

the International Conference on Former Yugoslavia (ICFY) that succeeded it in August 1992, in its working group on national minorities to address the Albanian question as one of cultural and political rights, but not statehood, was now also seen to have failed because, as Kosovo Albanians charged, it allowed the US and its EU partners to ignore the Kosovo question at the Dayton talks for Bosnia, with the effect of undercutting Ibrahim Rugova's non-violent approach to independence in favor of the militants. Between June 1998 and October 1998, when Western capitals (especially Washington) quietly encouraged the Yugoslav authorities to try counterinsurgency against the KLA, the resulting violence turned international public opinion against Belgrade and a looming humanitarian crisis that led Richard Holbrooke to negotiate a ceasefire with Milošević in October which did not last. The momentum toward NATO's war in support of Kosovo Albanians was increasingly attributed, however, to the failure to learn from the Bosnian case. KLA violence was now an understandable reaction to international neglect and delay while international policy under US leadership was atoning for its mistakes toward Bosnia-Herzegovina in 1991–1992 and the lessons drawn in 1995. Western powers must act to *prevent* violence in Kosovo; as articulated by the US (specifically Secretary of State Madeleine Albright and her envoy, Ambassador Richard Holbrooke) and UK Prime Minister Tony Blair, two principles dictated: "never again" and no diplomacy is effective without the threat of force.

Although the NATO operation against Serbia was defined in terms of Albanian human rights and legitimated as humanitarian intervention – the key elements of the new international consensus on the responsibility to protect (by governments of their citizens and in their failure to do so, by the international community),<sup>12</sup> despite the refusal of the Security Council to authorize force in this case – the result of this diplomatic process between 1991 and UN SCR 1244 in June 1999 was to cement the definition of the conflict as competing national rights to govern a single territory, Serb and Albanian. The logical conclusion of the Yugoslav military withdrawal from the territory and the international transitional administration was eventual Kosovo sovereignty, a conclusion reinforced by the outcome of the same approach to Croatia in 1991–1992 and to Bosnia and Herzegovina. Nonetheless, the only way to achieve this outcome within the realm of international law and Security-Council authorization was through consent of the parties.

In contrast to the Bosnian template on which western diplomacy was increasingly based, however, repeated diplomatic negotiations between Bel-

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<sup>12</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, Ottawa: International Development Research Centre, 2001, available at <<http://www.iciss.ca/pdf/Commission-Report.pdf>>.

grade and Prishtina had failed for almost a decade to find a constitutional compromise. While the recent history of the conflict beginning with the student demands for a separate republic in the riots of 1981 and the conflict over the extent of the province's autonomy within Serbia in the context of the federal constitutional reforms of 1988–89 were that of constitutional jurisdiction, they presumed the framework of shared, layered sovereignties which Yugoslavia's constitutional order represented. The parallel system of governance in Kosovo during the 1990s was only a holding action awaiting changed circumstances. Thus, the international community in 2006 had created a new dilemma: the only solution to the problem was a negotiated settlement between the two parties which it recognized already as legitimate partners, but no agreement between them was possible outside that former constitutional framework. Most commentators saw the solution to be an emerging European framework – the promise of eventual European Union membership and the many forms of cross-border cooperation through the Council of Europe for local and regional authorities, the European Outline Convention on Trans-frontier cooperation (the Madrid Convention), and the Southeast European Cooperation Process created by the Stability Pact for Southeastern Europe and part of the EU's regional conditionality for the western Balkans.<sup>13</sup> However, that new framework requires legal clarity on sovereignty.

Three consequences follow from this international approach to Kosovo's statehood thus far. As the academic literature on path dependency would predict, the outcome was largely shaped by the critical juncture of international decisions in 1991 – EU recognition of Slovene statehood and the Slovene framing adopted by the EU Arbitration (Badinter) Commission that Yugoslavia was "in the process of dissolution".<sup>14</sup> Second, at each stage of the resulting path, alternatives to Kosovo's independence became ever less likely. The constraints were not those of imagination and knowledge, but those created by the balance of power driving that initial framing and the mechanisms by which the EU, US, and UN chose to manage it. For example, the formula which the Serbian negotiating team brought to Vienna in February 2006 and which was formalized in the new Serbian constitution adopted by referendum in December 2006 – "more than autonomy, less than independence" (in

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<sup>13</sup> See the discussion in Judy BATT, *The question of Serbia*, Chaillot Paper no. 81, Paris: Institute for Security Studies, August 2005, pp. 42, 48; available at <<http://www.iss-eu.org/chaillot/chai81.pdf>>.

<sup>14</sup> The literature on Kosovo tends to emphasize the "Christmas warning" by President George Bush to Serbian President Milošević that the US would act in defense of Kosovo Albanians, but that commitment had to be renewed by President Clinton, who could have changed policy, and it occurred after the framework for shared sovereignty, Yugoslavia, had disappeared.

fact a restatement of UN SCR 1244) – has real examples in the Åland Islands arrangement in Finland negotiated by the League of Nations, the relation of Hong Kong to China since the end of British rule, or that of Greenland to Denmark.<sup>15</sup> Instead, the Ahtisaari proposal chooses a compromise that grants to Albanians their demand for independence and to Serbia, protection of its interests through a series of constitutional provisions within Kosovo – such as decentralization that gives Serb-majority municipalities extensive autonomy, and protection of Serbian religious sites and cultural monuments in Kosovo. The terms set in 1991 have not changed; only the players have changed places – Serbs now have special status and cultural rights within Kosovo instead of Kosovars having special status and cultural rights in Serbia.

Third, although the stated goal of the status process was regional stability, the bilateral form of negotiations do not allow for explicit crafting of regional arrangements. Consultations in regional capitals occurred, but the solution here, too, is to hope that emerging European frameworks in the Council of Europe and the EU will counteract any future threats from a sovereign Kosovo toward neighbors while explicitly committing future Kosovo governments to the following formula in its constitution: "Kosovo will have no territorial claims against and will not seek union with another State or part of any State."<sup>16</sup> The Kosovo Protection Corps, an unsuccessful attempt to replace the Kosovo Liberation Army with a civilian protection and emergency force, will be disbanded within one year of the settlement, but the functions of a new Kosovo Security Force, to be limited to 2,500 active members and 800 reserves "without heavy weapons", are left unclear.<sup>17</sup>

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<sup>15</sup> On the Åland Islands as a model for the Balkans, see *Autonomy – An Alternative to Secession? A Seminar on the Åland Islands as an Example for Peaceful Governance*. Seminar held at the United Nations, in New York, March 15, 2001, Helsinki: Ministry for Foreign Affairs, 2001; the other examples come from Thomas FLEINER, director of the Institute on Federalism in Fribourg and currently advisor to the Belgrade negotiating team, in an interview with Valérie de GRAFFENRIED, »Mieux vaut dix ans de négociations qu' un jour de guerre civile au Kosovo«, in: *Le Temps*, 3 February 2007.

<sup>16</sup> »Letter dated 26 march 2007 from the Secretary-General addressed to the President of the Security Council«, Addendum »Comprehensive Proposal for the Kosovo Status Settlement«, UN Document S/2007/168/Add.1, available at <<http://www.unosek.org/unosek/en/statusproposal.html>>, <[http://www.unosek.org/docref/Comprehensive\\_proposal-english.pdf](http://www.unosek.org/docref/Comprehensive_proposal-english.pdf)>; Fact Sheets, »Constitutional Provisions«, 2 February 2007 version, available at <<http://www.unosek.org/unosek/en/statusproposal.html>> <<http://www.unosek.org/docref/020707Constitutional%20Provisions-F.doc>>

<sup>17</sup> »Comprehensive Proposal«, Fact Sheets, »Security Sector«, available at <<http://www.unosek.org/unosek/en/statusproposal.html>>; <<http://www.unosek.org/docref/020707Security-F.doc>>.

### **The Consequences of Bosnianization**

The second misconception of the concept status was that it could be final. While an international boundary between Serbian and Kosovar sovereignty has now been drawn, it has to be imposed. Because it is not only unacceptable to Serbia but violates international conventions on the conditions for recognition, a new phase of international management now begins: "supervised sovereignty". Only sovereign status will resolve the uncertainties that underlie the current violence and regional instability, but sovereign status alone will not work. Kosovar behavior does not provide the credible commitment necessary to lasting peace settlements.

This contradiction would seem to build a deep tension into the status decision, including its predictable implications for domestic politics in Kosovo and its neighbors that would deprive the status decision of its de-radicalizing effect (for example, that Kosovars will continue to chafe at international dictate, giving renewed opportunity to Albanian nationalists). Three aspects of the status process suggest why international calculations appear unconcerned about this contradiction. The justification being given for supervision, first, is not the capacity and credibility of future Kosovo governments but the failure of UNMIK. Now the European Union will take over responsibility, as in Bosnia beginning in 1996 but also in successive phases in Bosnia for more than 11 years since then. Defenders of UNMIK will add that the fatal flaw in the UN transitional administration will have been removed, that it had no defined political objective and, for starters, could not therefore plan. Now the goal is clear. Second, supervision appears to solve the Montevideo and Security-Council difficulty, for it admits that domestic conditions are not fully "mature" (Eide), and it does so by treating the Ahtisaari proposal like that of Dayton – a peace agreement that had to be imposed on the Serbs<sup>18</sup> and that belongs to a now quite conventional pattern of international intervention in the domestic jurisdiction of a sovereign state, that of peacebuilding in which international agents assist in the implementation of a peace agreement, the transition from war to peace. Albanian signatures are thus sufficient to provide consent and counter Russian concern.

Overriding, however, is the third, that the real objective of this push to resolve the status question now is not a result, as stated publicly, of the violence of March 2004, but the economic crisis predicted during 2004 for 2005 and

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<sup>18</sup> In fact, the ceasefire and the subsequent Dayton accord both had to be imposed on all three parties, each for different reasons, though this is not the currently accepted wisdom.

thereafter.<sup>19</sup> Without a clear resolution of Kosovo's status, the finance for economic growth and for public expenditures is limited to donor grants, remittances, and customs revenues, all of which were on a rapid decline.<sup>20</sup> Continuing uncertainty on Kosovo's status prevents definitive clarification of property rights and resolution of the multiple claims based in the former complex system of socialist property rights, and it prevents membership in the international financial institutions which is the precondition of foreign borrowing. Status now aims to resolve the economic crisis with foreign finance – through membership in the international financial institutions (IMF, World Bank, and others) and a decision on what portion of Serbia's international debt is Kosovo's responsibility (according to principles already established for the succession of former Yugoslavia's debt among the republics), access to official credits and international capital markets, and the foreign direct investment that is currently waiting for clear, guaranteed property rights. Moreover, according to this policy, economic growth is the better solution to the real causes of the violence: the 35 to 50 percent unemployment, depending on source, 37 percent of the population below the poverty line, and insufficient fiscal resources to provide adequate education (50 percent of the Kosovo population is under the age of 25), health care, and social welfare (income support goes to only 10 percent of the population, and only 54 percent of those eligible under tight, minimalist requirements) for the transition still to come.<sup>21</sup> Just as with Bosnia, the decision of the Peace Implementation Council (PIC) to move ex-

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<sup>19</sup> At his press conference on March 10, 2007, following the High Level meeting in Vienna, Ahtisaari's introductory statement admitted as much: "I want to emphasize that every time I speak of the importance of the status settlement, I emphasize the economic facts. Because without clear decision on the status we will not get the economy improving like it should, because the unemployment at the moment in Kosovo is totally at an unacceptable level. And no one dares to invest in a country the status of which is unsure." Available at <<http://www.unosek.org/unosek/en/pressconf.html>>, <[http://www.unosek.org/pressrelease/2007-03-10-press\\_Conference\\_by\\_UN\\_Special\\_Envoy\\_Martti\\_Ahtisaari\\_following\\_the\\_High\\_Level\\_meeting\\_held\\_in\\_Vienna.doc](http://www.unosek.org/pressrelease/2007-03-10-press_Conference_by_UN_Special_Envoy_Martti_Ahtisaari_following_the_High_Level_meeting_held_in_Vienna.doc)>.

<sup>20</sup> Foreign assistance fell from 45 percent of GDP in 2001 to 35 percent in 2002, 28 percent in 2003, 22 percent in 2004, and 20 percent in 2005, that is, it had halved between 2001 and the end of 2004, and continued to fall in 2005. Public expenditures already fell by half between 2000 and 2003 (my gratitude to Graciana del Castillo for these data, taken from the IMF *Aide-memoire*, July 14–25, 2005).

<sup>21</sup> »Executive Summary«, in: *Public Expenditure and Institutional Review for Kosovo, 2006*, The World Bank Report No. 32624-XK, Vol. I, September 19, 2006, pp. IX–XVIII, available at <[http://siteresources.worldbank.org/INTKOSOVO/Projects%20and%20Operations/21136793/PEIR\\_Volume\\_1.pdf](http://siteresources.worldbank.org/INTKOSOVO/Projects%20and%20Operations/21136793/PEIR_Volume_1.pdf)>. See also EIDE, »Report on a Comprehensive Review«, UN document S/2005/635, Annex (above fn. 1), paragraphs 20–21, pp. 4–5.

plicity to what it called "state-building" in May 2000 was, in content, a neo-liberal economic reform.

To assess whether this next phase will succeed where previous steps did not or whether its approach is only building in yet another phase, we can, therefore, look to the lessons of Bosnia for the combined strategy of EU supervision and finance-led economic development. Summarizing a vast literature, the Bosnian peace process is considered a success for one outcome only, that war has not resumed. Otherwise, analysis focuses on three characteristics of the Bosnian peace process in particular, all negative.

First, the military deployment originally planned for one year entered its twelfth year in December 2006, although the troop numbers have been reduced progressively and substantially. The same prolongation applies to the civilian mission, although the numbers have not been reduced and the planned transfer by June 2006 of executive responsibility to the Bosnian government, called "ownership" in the peace literature, was delayed indefinitely again in the winter of 2007 when the High Representative for the EU-led civilian mission was dismissed for not being sufficiently assertive. What critics have labeled a "European *Raj*"<sup>22</sup> has shown poor results in local capacity-building, spending most of its attention and funds on building the capacity of the international staff of the mission, such that Bosnians themselves express deep concern about the lack of skills and infrastructure in Bosnia to assume full responsibility for the functions performed for more than a decade by the three international executive agencies, the Office of the High Representative (OHR), Organization for Security and Cooperation in Europe (OSCE), and Stabilization Force (SFOR).

Second, constitutional quarrels over the relation between the powers of the central government and those of the entities, cantons, and municipalities have grown over the decade, in part externally driven but sufficient to keep nationalist rhetoric, politicians, parties, and agendas dominant electorally. A primary motive for these outsiders' reform demands is the unsustainable bureaucratic molasses and fiscal extravagance of the layers upon layers of government and duplication that resulted from the Dayton accord effort to accommodate national rights to self-governance in one, "multi-ethnic"<sup>23</sup> terri-

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<sup>22</sup> Gerald KNAUS/Felix MARTIN, »Travails of the European Raj: Lessons from Bosnia and Herzegovina«, in: *Journal of Democracy*, 14 (July 2003) 3, pp. 60–74.

<sup>23</sup> I place the word multi-ethnic in quotation marks to signal that this is the word used by outsiders, including their documents and rulings on Bosnia, but makes little sense in Bosnia where the rights to self-governance and their respective political proponents are national, not ethnic. Efforts to encourage and even force individual Bosnian citizens to cooperate across these national lines – what might be properly labeled "multi-ethnic" – can succeed in many ways native to the country,

tory. Critics also argue that the insistence on early elections gave the war-time political parties an initial advantage that subsequent parties could never overcome, while the continuing external pressure to reverse the war-time gains given constitutional recognition at Dayton keeps the focus on national competition. The pressure to create a single, "multi-ethnic" army out of the three wartime armies took ten years, until formal signatures in the summer of 2005, while efforts to create a "multi-ethnic" police force faced repeated setbacks over twelve years.

Third, development has not occurred because the simultaneous emphasis by the architects of Bosnian economic policy, the IMF, World Bank, U.S. Treasury, and EU, on standard neo-liberal prescriptions and aid conditions and on regional security never aimed at development in the first place.<sup>24</sup> Surveys consistently reveal that 80 percent of the economically vibrant population would leave the country on the first opportunity, for economic reasons. The informal economy, illegal economic activity, and organized crime have grown substantially since the end of the war, not declined.

Some will argue that the intended role of the EU in supervising implementation of the status settlement for Kosovo will be different – "between Dayton and Ohrid" in the words of former Yugoslav foreign minister Goran Svilanović.<sup>25</sup> The EU role in Macedonia has been far less intrusive than in Bosnia and, current assessments argue, the Ohrid Framework far more successful than Dayton. Moreover, Ohrid's constitutional accommodations to national rights are far closer to the Kosovo settlement. Neither create a federal state but guarantee national rights at the level of public employment and cultural rights (individuals), parliamentary voting (a double-majority procedure and reserved seats), and decentralization (municipalities). Against this picture, however, is the extent to which UNMIK has already, through its raft of regulations and policy decisions, like OHR, shaped Kosovo's governmental institutions and economic policies for the future. What evidence is there from the

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such as at the workplace (see for instance Paula PICKERING, »Generating Social Capital for Bridging Ethnic Divisions in the Balkans«, in: *Ethnic and Racial Studies*, 29 (January 2006) 1, pp. 79–103) and in youth groups (the case of Mostar, for example, is discussed by Steve GILLARD, »Winning the Peace: Youth, Identity and Peacebuilding in Bosnia and Herzegovina«, in: *International Peacekeeping*, 8 (Spring 2001) 1, pp. 77–98). But this is quite distinct from the issue of national rights.

<sup>24</sup> See Vladimir GLIGOROV, »The West and the Economic Stabilisation of the Western Balkans«, in: Erich REITER/Predrag JUREKOVIĆ (eds.), *Zur Problematik der Stabilisierung des Westbalkans*, Wien: Landesverteidigungsakademie (LVAK) und Büro für Sicherheitspolitik, 2000 (=Studien und Berichte zur Sicherheitspolitik 5/2000), pp. 133–158.

<sup>25</sup> Quoted by BATT, *The question of Serbia* (above fn. 13), p. 48.

proposed settlement and the experience of the UN and EU in Kosovo since 1999 to predict the outcome?

### **The International Role in Domestic Governance**

The proposed Kosovo settlement specifies the following:<sup>26</sup>

- An "international presence" consisting of
  - (1) an International Civilian Representative (ICR), appointed by an International Steering Group (ISG), who will "be the final authority in Kosovo regarding the civilian aspects of the Settlement" and "will have ultimate supervisory authority" over its implementation, including "the authority to annul decisions or laws adopted by Kosovo authorities and sanction or remove public officials whose actions are determined by the ICR to be inconsistent with the letter or spirit of the Settlement";
  - (2) a European Security and Defense Policy (ESDP) mission to "monitor, mentor and advise on all areas related to the rule of law", including "authority to assume other responsibilities to ensure the maintenance and promotion of the rule of law, public order and security", such as "to ensure that specific sensitive crimes are properly investigated, prosecuted, and adjudicated, including, where appropriate, by independent international prosecutors and judges";
  - (3) a NATO-led International Military Presence (IMP) to "provide a safe and secure environment throughout Kosovo [...] until such time as [Kosovo's] institutions are capable of assuming the full-range of security responsibilities";
  - (4) continuing OSCE presence to monitor implementation;
  - (5) an undefined term for the mandate of the ICR "until the ISG determines that Kosovo has implemented the terms of the Settlement".
- Key elements which a new constitution must contain and the approval of a new constitution and implementing legislation by the Kosovo Assembly "in consultation with the ICR".
- Provisions of the Settlement for new municipalities for non-majority (Serb

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<sup>26</sup> The following, including the direct quotations, is taken from the Executive Summary and nine Fact Sheets of the original, February 2, 2007, »Comprehensive Proposal for the Kosovo Status Settlement« (above fn. 16), provided by the office of the United Nations Special Envoy on its website <[www.unosek.org/unosek/en/statusproposal.html](http://www.unosek.org/unosek/en/statusproposal.html)>. The Ahtisaari proposal has not yet been finalized and adopted at the time of this writing.

and other) communities "may be reviewed and revised as necessary by the ICR after a census is conducted".

- "International oversight" of the Kosovo security sector (the prescribed Kosovo Police Force [KPF], Kosovo Security Force [KSF], Kosovo Security Council, and a domestic security agency).
- The formal recruitment and selection process for the KSF will be "developed jointly by Kosovo and the International Military Presence".
- "The International Community will develop a Demobilization and Reintegration process for the KPC [Kosovo Protection Corps] retirees."
- The IMP will "provide security for the nine major Serbian religious and historic sites until a decision is made to transfer this responsibility" to the KPF.
- "An Implementation Monitoring Council (IMC) with local and international participation will be established to monitor and facilitate implementation of the Settlement relating to the protection of the Serbian religious and cultural heritage in Kosovo."
- The ICR "will play a role in the appointment to key economic positions".
- "The trusteeship over Socially Owned Enterprises (SOEs) will be transferred from the KTA [the current Kosovo Trust Agency] to a KTA successor institution, which will have substantial international involvement", as will that of the Kosovo Property Agency (KPA) management of private property disputes.
- Appeals against decisions of both the KTA and the KPA Property Claims Commission (KPA PCC) will be handled by a Special Chamber within (for KTA) and panels of (for KPA PCC) the Supreme Court, "with a majority of international judges".

These parameters suggest a presence far closer to that of the Bosnian case than Macedonia, threatening all the "*Raj*" elements that have distorted and even stalled self-governance in Bosnia. Unlike UNMIK, the ICR "will not have an executive mandate to administer Kosovo" and its International Civilian Office (ICO) will be smaller, but the powers of the ICR are what in Bosnia are the key to the "*Raj*" analysis, what are called the HR's "Bonn powers". The temporal dimensions of what the settlement calls "transitional arrangements" also appear taken directly from the initial stages of the Dayton Accord. Allowing a Constitutional Commission of 21 members to draft a new Constitution and the Kosovo Assembly to adopt it and approve all implementing legislation, including on general and local elections, local self-government and municipal boundaries, and establishment of 45 protective zones for "designated Serbian religious and cultural sites" in 120 days (the proposal uses a

telltale modifier, "formally") appears to repeat the mistakes of the Dayton accord and US and European misunderstanding of the democratic need for serious deliberation and debate on such foundational documents and their intensely political and consequential nature. Delays will be inevitable, the temptation of outsiders to impose greater, and the long-term consequences of the initial advantage to already organized political parties and forces similar.

Also identical to Dayton, both general and municipal elections are to be held "no later than 9 months from the entry into force", that is, the end of the 120-day transition. The difference with Bosnia, on the positive side, is that Kosovo has held four elections (two municipal in 2000 and 2002 and two parliamentary in 2001 and 2004) since 1999, and on the negative side, that at least six new municipalities will have to be created and proposals for others made and decided first. In place of Bosnia's 11 years, a new, "multi-ethnic" security force will be "established within one year", and although demobilization of the KLA (and its successor, the KPC), committed formally with NATO in June 1999, has been a failure, the KPC "will be disbanded within one year".

### **Lessons from UNMIK and EU Experience in 1999–2007**

The tension between granting clear-cut sovereignty to Kosovo while saying that such a grant will not work without intensive international involvement in its implementation – insisting that uncertainty about status end and then reintroducing uncertainty about who is empirically sovereign – is compounded by the temporal uncertainty of these unrealistic deadlines, inevitable delays in completing required tasks, and open-ended mandate of the international presence. The UNMIK experience with delays and incomplete implementation, such as demobilization, not only reinforces this prediction based on Bosnia but also is one of the prime justifications for handing the supervisory task over to the European Union. Some of the explanation for its delays lies in the absence of a political goal by which UNMIK could plan (was it administering a sovereign state, an autonomous province, a state-building mandate, or an autonomy project?) and the absence of international rules for such unsettled sovereignties, such as protection against holding UN staff (especially the mission head) personally liable for any disputes over privatization and property damages, or how to balance the requirements of international human rights standards against the need to act urgently to resolve emergencies related to human life and insecurity and fulfill its simultaneous peace mandate.

Three other factors unrelated to status, however, appear frequently in the literature on the Kosovo transitional administration as well. The decision to hand this administration to the UN instead of the OSCE was made at the very

last minute in the late spring of 1999, giving the UN no time to plan. The lack of preparation in general for such a task, having never performed this task of administering a territory before (even in the days of the Trusteeship Council), meant the UN did not have staff with relevant knowledge, skills, and experience, including any knowledge of the local language, culture, and legal, administrative, and governmental traditions, nor, therefore, the administrative capacity to govern from day one. Third, the UN's procedures for personnel recruitment are in any case excruciatingly slow.<sup>27</sup>

The EU has two major advantages over UNMIK. As was the case for SFOR in Bosnia where a large majority of UNPROFOR troops simply "changed hats" from blue to green, the UN civilian and military operations can provide a smooth transition for the deployment of an EU-led international military and civilian presence. Second, UNMIK is leaving a legacy of significant regulations and data (e.g., the cadastre, property, and voting registers) which did not exist when UNMIK arrived in June 1999. Nonetheless, the EU was one of the four pillars of UNMIK and the same literature levels even harsher criticism of the EU for bureaucratic delays, especially in approving and disbursing funds for which the European Commission is infamous, and no less lack of preparation with appropriate professional and administrative skills and local knowledge than the UN administration.

### **Managing the Transition and Implementation**

The meaning of status for Kosovo will depend on the sustainability of this internationally driven "Settlement". Will it be challenged, by whom, how effectively, and with what consequences for Kosovo's status and for the political stability of its neighbors, especially Serbia, Macedonia, and Montenegro? Despite the worrisome predictions based on the Bosnian parallel, toward which this process has converged rather alarmingly, Kosovo's sovereignty is still a process. The following analysis is based on the assumption that while the past weighs heavily on the present, all is not lost. There remain elements of choice in the strategy and process of managing its implementation, and international actors still govern the agenda and the parameters of the ensuing politics over its outcome. They still hold executive power.

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<sup>27</sup> A particularly informative discussion of these problems in relation to property rights and the need to confront an emergency housing crisis the first year of UNMIK is given in Leopold von CARLOWITZ, »Crossing the Boundary from the International to the Domestic Legal Realm: UNMIK Lawmaking and Property Rights in Kosovo«, in: *Global Governance*, 10 (2004) 3, pp. 307–331.

Is the EU as constrained by the path that this process has taken since 1991 as everything that has preceded it? What is its room for maneuver? Will it choose to let the process be shaped endogenously by the balance of political and economic power in each of the affected countries and regionally, or will it seek to maximize its prospects for success? We can analyze this problem, I suggest, in a way formally similar to the political-economic transitions (democratization and marketization) in the former communist-party states in the rest of the region, central and eastern Europe and the former Soviet Union.

The debate on strategies of transition from socialist regimes to capitalist democracies was on two linked political questions: how to get reforms (an agenda of profound transformation) accepted initially and how to keep them on track by preventing policy reversals and political backlash.<sup>28</sup> Those who favored the "shock therapy", "big bang" approach focused on the importance of speed in making the reforms irreversible and on the window of opportunity presented by the political honeymoon of any major change, when executive decisions are relatively autonomous because political forces have not yet organized around effects. The "gradualists" argued that all such major transformations take time to implement because they depend on institutional change and the costs come first and are concentrated while the benefits take time to be manifest and are diffuse. The political task, therefore, was to build a constituency in support of reform and its continuation. This argument was reinforced by the fact of democracy – however autonomous the executive branch in initiating and designing the changes, they were still accountable to the public – to parliamentary approval and to voters' sanction in periodic elections.

The difficulty in either prescribing a management strategy to the EU or assessing its likely outcomes is that the Kosovo status process combines both strategies. The decision will be imposed and no further negotiation over the terms of the Settlement allowed, thus a kind of "big bang" approach. The transition period, as discussed above, is extremely short (120 days, with elections within the following nine months and the security sector transformation completed within one year). Its international supervision over a period with no specified end point (only a review after two years), however, suggests instead a gradualist strategy, based on the assumption that its implementation will take a long time and that fears and costs will drive political action sooner than perceived or actual benefits. The same mixed strategy was used by the international community in Bosnia, and its most persuasive and unanswered

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<sup>28</sup> The following discussion leans heavily on Gérard ROLAND, »The Political Economy of Transition«, in: *Journal of Economic Perspectives*, 16 (Winter 2002) 1, pp. 29–50, which neatly summarizes a large literature on the question.

criticism was its failure to build a domestic constituency in support of the Dayton accord and its principles for lasting peace in an independent Bosnia, indeed, an unwillingness even to recognize its necessity.<sup>29</sup>

The crux of the strategic problem is uncertainty. While the uncertainty over Kosovo's legal status will now end, uncertainty over the consequences of that change in status will not. Aggregate uncertainty exists over the stabilizing effects of the national question – will Kosovo's status end Albanian aspirations for borders that affect southern Serbia, Macedonia, Albania, and Montenegro and Serb aspirations in regard to Bosnia-Herzegovina (and if not, then also revive Bosnian Croat prospects since their aspirations remain)? Aggregate uncertainty also exists over the economic outcome. Will the opportunity to borrow abroad and invite foreign investors lead to economic growth and development within Kosovo (and its positive spillover in the region, including a shift in prospects in the legal economy that would diminish the attraction of and need for the illegal and criminal economy, particularly in Kosovo and Macedonia), and will it be fast enough and with the necessary employment effects to fulfill the assumptions in the current status policy about the consequences for political stabilization and peace? Equally consequential is individual uncertainty, which exists for individuals and groups over who will be winners or losers of the status change. Losers there will be, but who are they and more importantly, do they know *ex ante*, and who will mobilize them? Uncertainty means that people do not know in advance whether they are going to be winners or losers. The decision may even be Pareto-optimal, that all are better off eventually, but the political task is to be persuasive of this outcome *in advance* of such knowledge.

Two aspects of the status change compound the difficulty of the political task. First are the reversal costs. In general, the fear that a path cannot be reversed increases the intensity of opposition *ex ante* because the fear that one might lose is compounded by the expectation that it will be difficult to reverse course, even if the outcome is good. In the case of Kosovo's legal status, however, unlike a market reform or initial choice of economic policy, a Security-Council decision on sovereignty will be irreversible. Only its substance can be massaged.

The second complication is the interdependence of the two aggregate outcomes which intensifies individual uncertainty, and its fears, because of the temporal difference in their consequences. Although the economic effects are

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<sup>29</sup> A particularly articulate version of this argument is by Gianni LA FERRARA, »International Engagement and the Quest for Bosnian Stability: Time for a Change?«, in: Stefano BIANCHINI/Susan L. WOODWARD (eds.), *From the Adriatic to the Caucasus: Viable Dynamics of Stabilization*, Ravenna: Longo Editore, 2003, pp. 135–153.

intended as the precondition of political stabilization, they will take longer to take effect than the effects on the national question which they are supposed to moderate. The discouraging evidence on the economic effects from the region and the rest of eastern Europe and the former Soviet Union is known and feeds expectations of loss. In the language of the normative literature on Balkan nationalisms, hard borders nationally will long precede soft borders economically. As is both logical and empirically in evidence in the vote for the Serbian Radical Party in Serbia, individual views on the importance of the national question are strongly influenced by one's economic prospects: losing economically leads to greater intensity of feeling about loss on the national question. Experience here, too, makes this worse, namely, the strong influence, in reality or perception, of national identity on the distribution of aggregate economic outcomes. To be a member of a national minority is to be, or at least perceive oneself to be, an object of national discrimination for jobs, incomes, social welfare benefits, opportunities for upward mobility through education and promotions, and other economic and public goods. To be a member of a national majority in the three states where international settlements require a reversal of some of these effects – in Kosovo, Macedonia, and Bosnia-Herzegovina – however, also means the perception of *relative* loss in the future as more public resources including employment are redirected to national minorities.

Those international actors who have some room for choice about how the status decision will be managed are at an immediate disadvantage because of the way the process to legal status has been managed up to now. By making the issue a diplomatic negotiation on *national rights over territory*, the decision on status was framed in terms that are zero-sum and that are politically most vulnerable to emotional, spiritual (religious), and symbolic terms. Serbs lose after four previous losses in 16 years in quite rapid succession – of a country (Yugoslavia),<sup>30</sup> of 500 years of Serb history and homestead in the *Krajina* region of Croatia, of Bosnia-Herzegovina (in which they were a majority of the population until the late 1960s<sup>31</sup>), and of Montenegro – and they lose the terri-

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<sup>30</sup> See Veljko VUJAČIĆ, »Reexamining the 'Serbian Exceptionalism' Thesis«, Berkeley Program in Soviet and Post-Soviet Studies Working Paper Series, University of California at Berkeley, Spring 2004, available at: <<http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1030&context=iseees/bps>>.

<sup>31</sup> In the 1961 census, they comprised 42.8 % of the Bosnian population (the next largest were Muslims at 25.6 %, although the official recognition of Muslims as a nation in 1963 creates some unclarity about the true number), whereas they were 37.3 % (and Muslims 39.6 %) in the 1971 census. See Susan L. WOODWARD, *Balkan Tragedy: Chaos and Dissolution after the Cold War*, Washington: Brookings Institution Press, 1995, p. 33.

tory at the core of their national identity, symbols, and myths. Had the decision been a regional negotiation, for example, Albanians who also wanted to live in one country would also view a Kosovo sovereignty decision as a loss. Or, the terms of the negotiation might have been focused on a package of trade-offs in which the national conflict was only one of multiple issues and relative gains and losses.

Within these constraints, what can the current negotiators and those charged with supervising implementation do to minimize the political constraints on both the next step of the status process and on the long-term sustainability of the legal-status decision and its stabilizing outcomes? How can they anticipate, first, the potential opponents and the reasons for their *ex ante* calculations and concerns, and how can they design a sequencing of the package of changes that comprise "status" and a set of compensations and institutions that together will moderate or reverse opposition and/or build a strong enough constituency in support of the change in legal status to counteract it? What are the predictable costs and gains, and how will these be distributed across groups and individuals and over time?

The literature on the transitions in eastern Europe and the former Soviet Union warns us not to make assumptions about the political behavior of winners and losers based on a static measure of these categories. Those who win materially at the beginning, for example, may realize that they will lose with the next rounds of institutionalization and regulation and thus will use their initial gains (especially political leverage) to stop further reform; losers may be far more patient and continue to support a transition from which they lose materially but gain politically and thus retain hopes of making changes in the future.<sup>32</sup> That is, the "J-curve" that predicts a period of economic loss before gain and political obstruction from losers is not supported empirically (not only in regard to the behavior of winners and losers but, unfortunately, that economies do not begin to revive as its neoclassical theorists predicted).

Prospect theory can be seen to predict this result, but from an argument that appears to be the opposite, that people are loss-averse.<sup>33</sup> Individuals empirically will risk a future loss even of high probability over a gain of high probability because it is not the absolute value of the future gain or loss that matters to them but the perception of loss or gain from a reference point, usually the status quo. They overweight the costs of moving away from the status

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<sup>32</sup> This argument is most identified with Joel S. HELLMAN, »Winners Take All: The Politics of Partial Reform in Postcommunist Transitions«, in: *World Politics*, 50 (January 1998) 2, pp. 203–234.

<sup>33</sup> The following discussion utilizes Jack S. LEVY, »Applications of Prospect Theory to Political Science«, in: *Synthese*, 135 (May 2003) 2, pp. 215–241.

quo and underweight the gains of doing so; they "tend to value what they have more than comparable things that they do not have". The reference point may not always be the status quo, however. "Expectation levels, aspiration levels, social norms, social comparisons, and recent losses" also influence its location, and in dynamic situations, people tend to redefine the reference point – seeing any setback after a series of gains as a loss even if it is from an improved position than the initial starting point. The reverse is also true: after a series of losses, people "engage in risk-seeking behavior to eliminate that loss and return to" the original status quo.<sup>34</sup> By implication, Serbian leaders will risk a much greater loss in the future – even seek risks – so as to hold onto Kosovo (not to lose it), whereas Albanians' aspirations and expectations regarding independence together with the series of gains since 1999, even though legal status entails a very high probability of substantial costs (such as the economic costs entailed in assuming its portion of the state debt and related public expenditures necessary for statehood, or for politicians, that they will now have to face politically the serious social and economic problems within Kosovo in addition to sovereign international obligations), make them perceive any setback on the road to independence now as a loss, though it may only be temporary, and to engage in risky behavior to prevent it.

The key insight that both literatures share, however, is the critical importance of framing. Whether one perceives oneself a loser or winner from change and what kind of risks one is willing to support to defend gains or protect against losses is, indeed, a matter of perceptions – of one's reference point in prospect-theory language. The political management of this status process requires explicit attention to framing – how local politicians are framing the issue and how those international and domestic actors who wish a sustainable, stabilizing outcome can incorporate framing into their strategy.

Finally, with careful attention to who gains, who loses, and how individuals and groups perceive the effect of this status change and are ready to act in relation to those perceptions, international authorities can design a strategy for easing both *ex ante* and *ex post* political constraints. Roland identifies four mechanisms from the political economy literature: (1) compensating transfers to losers to buy their acceptance; (2) partial reforms, which focus first on outcomes with greater probability of success, improved welfare, a lower degree of early losses, and overall popularity can, by moving everyone to an improved status quo while holding out the prospect of reversal, increase substantially the constituency in favor of the change and its continuation; (3) institutions that create credible commitment about the guarantees and transfers that make

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<sup>34</sup> Quotations from *ibid.*, pp. 215, 218.

the change acceptable to otherwise losers, thus reducing the vulnerability of its outcomes to political reversal on such commitments (e.g., due to a change in the governing party or coalition or a change in international priorities); and (4) delay to allow the status quo to deteriorate so much that all are ready for change.

While the fourth strategy could be said to have already been tried and is one that the international community has now rejected, it could still represent what the current Serbian political elite is pursuing, each for different reasons. European public opinion tended to favor compensation to Serbia, a simple version of the first strategy, in the period prior to the negotiations, but the Serbian negotiating team appears to have rejected both proposing a compensation package and taking actions that Europeans set as preconditions for compensation they could offer, such as faster track to EU accession. The result is that compensation is now directed solely at the Serb community *within* Kosovo (e.g., the right of Serb municipalities "to accept transparent funding" from Serbia and to establish "cross-boundary cooperation with Serbian institutions"; recognized status for the Serbian Orthodox Church, and protective zones for Serbian religious and cultural sites). Nonetheless, external actors are autonomous of the domestic politics of elections and competition within each country and thus can themselves propose ways of reframing assessments of loss. For example, a constant proposal in all discussions since the defeat of Slobodan Milošević which would not discriminate among winners and losers and has the very strong potential to shift the bases of all such local perceptions in a positive direction is a rapid change in the onerous visa regime for the region (and especially Serbia) that keeps these citizens isolated and reinforces perceptions of loss and calculations based on national criteria.

In building a political constituency for the status change, the ISG, ICR, ICO, and IMP can choose to sequence the elements of the status package and its implementation to reduce the uncertainty and accompanying fears, or perceptions, of loss which cannot be compensated. For example, Eide's report emphasizes repeatedly the importance of transferring competence from international to local authorities in Kosovo over the police and judiciary "with great caution" with a continued oversight by international police and judges, including "executive powers in sensitive areas", because, in his euphemistic language, these are "fragile institutions" and too rapid shift to Kosovo control would lead to a "further loss of credibility" of the justice system.<sup>35</sup> This proposal of a multi-track approach to the transition and the importance of

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<sup>35</sup> EIDE, »Report on a Comprehensive Review«, UN document S/2005/635, Annex (above fn. 1), Executive Summary, p. ii, paragraphs 39–41, 45, pp. 8–9.

sequencing should be welcomed and serious analysis done about the best way to create functioning and credible institutions of police and judiciary *first* rather than to delay their transformation through international participation. Sequencing to demonstrate successes, particularly where earlier failures have increased the level of *ex ante* uncertainty, could go a long way toward changing the current perceptions in a more realistic direction.

Finally, by choosing to focus all solutions to regional stability onto the internal constitution and governing institutions of Kosovo, the international managers will have to confront the low credibility of Kosovo authorities and to find ways to reduce the high uncertainty over implementation of the Settlement commitments on the part of both Kosovo authorities and the EU supervisors. Critics of UNMIK emphasized the particular damage done to the long-term prospects for a multi-ethnic, politically stable, and regionally constructive Kosovo of UNMIK's inability (for lack of capacity and in some cases unwillingness) to enforce its regulations and protections. Serbian opposition to Kosovo independence includes the belief that it is a "dysfunctional state" <sup>36</sup> which cannot make credible commitments to the institutions that legal status and the Settlement require. Analyses of the effects on Macedonia consistently argue that the gains for Macedonian stability from an end to uncertainty about the borders of Albanian sovereignty, which would be real, depend as well on an end to the parallel structures established by the KLA in June–July 1999 and control over the *Albanian* criminal networks of cross-border smuggling and paramilitaries and long-distance trafficking in which, however, both Macedonian and Kosovar political elites are interested parties.<sup>37</sup>

To persuade interested parties that the legal status of Kosovo matters, but not in ways its opponents fear or its advocates expect, the international managers of this process will have to recognize that it is the international context that softens its power, not its domestic institutions, while solutions to regional problems and stability depend on a state's regional and international context.

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<sup>36</sup> Interviews with Members of Parliament in Belgrade, January 2006, and a common theme in public speeches on the subject of Kosovo.

<sup>37</sup> See, for example, Robert HISLOPE, »The Calm Before the Storm? The Influence of Cross-Border Networks, Corruption, and Contraband on Macedonian Stability and Regional Security«, Paper Prepared for the 2001 American Political Science Association Annual Meeting, San Francisco, August 30–September 2. As Graciana del CASTILLO writes in her analysis of economic reconstruction in Kosovo since 1999, the effect of the KLA parallel structures which filled the vacuum between the bombing campaign and UNMIK deployment was that "extortion and other illegal activities have become deeply ingrained in the Kosovo economy and will be difficult to eradicate" (chapter 10, p. 9, of an as yet unpublished manuscript).

**Abbreviations and Acronyms**

ESDP	European Security and Defense Policy
EU	European Union
HR	High Representative
ICFY	International Conference on Former Yugoslavia
ICO	International Civilian Office
ICR	International Civilian Representative
IMC	Implementation Monitoring Council
IMF	International Monetary Fund
IMP	International Military Presence
ISG	International Steering Group
KFOR	Kosovo Force
KLA	Kosovo Liberation Army
KPA	Kosovo Property Agency
KPA PCC	Kosovo Property Agency Property Claims Commission
KPC	Kosovo Protection Corps
KPF	Kosovo Police Force
KSF	Kosovo Security Force
KTA	Kosovo Trust Agency
NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organization
OHR	Office of the High Representative
OSCE	Organization for Security and Cooperation in Europe
PIC	Peace Implementation Council
SFOR	Stabilization Force
SOE	Socially Owned Enterprise
UK	United Kingdom
UN	United Nations
UNMiBH	United Nations Mission in Bosnia and Herzegovina
UNMIK	United Nations Interim Administration in Kosovo
UNPROFOR	United Nations Protection Force
UN SCR	United Nations Security Council Resolution
US	United States