

## **The Kosovo Quandary: on the International Management of Statehood**

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On March 10, 2007, after a final high-level meeting on a draft Comprehensive Proposal for a Kosovo Status Settlement, presented to the parties on February 2, the United Nations Special Envoy for Kosovo Martti Ahtisaari announced a dead end: “the parties’ respective 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>1</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.

An imposed solution, however, also requires agreement among the imposers. Stormy debate within the UN Security Council, mounting concerns that the Kosovo question could derail all of European Union (EU) foreign policy for sometime to come, and the ever present question of precedent followed this announcement, however. Far from completing the 16-year saga of the Yugoslav dissolution, a final decision on Kosovo’s status – internationally sovereign or highly autonomous within a new Serbia – appears no less thorny and contentious than the unsatisfactory compromise of UN Security Council Resolution 1244 of 10 June 1999.

Why is Kosovo’s status so contentious? This comment will argue that the focus on nationalists in either Serbia or Kosovo as the problem does makes the issue

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<sup>1</sup> “Press Conference by UN Special Envoy Martti Ahtisaari following the High Level meeting held in Vienna,” 10 March 2007, [www.unosek.org](http://www.unosek.org), press release of the transcript.

unsolvable, but that this is a consequence only of the way that outsiders (primarily the EU) have chosen to manage the problem from its beginning in 1991. Alternatives were possible. Second, nothing has changed in that initial approach to the problem of Kosovo, and the current proposal builds into the settlement a set of compromises that only makes the current uncertainty worse, not resolved. Third, while the past weighs heavily on the present, not all is lost. International management of the settlement's implementation could still build a constituency to support it, in Kosovo and the affected region, and thus promote stability, not instability, if the proposed International Civilian Representative, International Steering Group, and European Security and Defense Policy mission choose such a strategy.

The first step toward an exit from the current quandary is to reveal some misconceptions about sovereignty. As a huge academic literature demonstrates, sovereignty does little for one these days in the face of globalization and its interdependencies, transnational actors, and rising commitments to international conventions and regional economic and security alliances. Indeed, international sovereignty brings more responsibilities than privileges. It is the international community – the UN, the EU, the IMF, and others – that most requires a clear-cut, black and white legal decision on international borders and sovereignty; it needs sovereign partners who can be held accountable for the responsibilities of sovereignty within clear, defined borders. At the same time, it is also a misconception that the decision which the Security Council will make (whether immediately or in response to a *fait accompli* of individual recognitions by some member states) can be final. The current decision on Kosovo is only one step in a long process since 1991 and will not end in 2007. The

international management of the Kosovo question has been to treat Kosovo's sovereignty *as a process*. According to the proposal, the next stage will be "supervised sovereignty" with no time limit specified.

Third, the battle of precedent has been lost, but the loss occurred already in 1991 (with Slovenia and Croatia). Like the norm on sovereignty itself, however, an emerging norm on secession and related (even cavalier) violations of the territorial integrity of UN member states depends on interpretation and enforcement by the relevant international actors in a specific case. It is highly unlikely that the international power relations driving the status process in Kosovo will be repeated elsewhere, while the management of Kosovo's sovereignty process has sought throughout to protect the operative international rules of sovereignty, such as a diplomatic negotiation to achieve consent and the Helsinki Final Act.

There is no better demonstration of this tension between law and reality than the reason for pushing an end to uncertainty about Kosovo's legal status in 2005 despite overwhelming consensus that Kosovo does not meet the conditions for recognition. The widely accepted trigger for this move was the explosion of Albanian violence against minority Serbs in March 2004 whose cause, it was said, was the growing frustration and impatience among Kosovo Albanians at the continuing delays on full independence. External disagreements on Kosovo's right to sovereignty were, thus, overridden by a common interest in regional stability, minority rights, and crisis management, the same set of motives that had changed course in 1998 and 1999 but still framed as issues of national self-determination and sovereignty as in 1991.

The real objective of this push to resolve the status question now, in fact, is the economic crisis predicted during 2004 for 2005 and thereafter as a result of growing donor disinterest in Kosovo and declining aid, on the one hand, and the sovereign limits on alternative sources of finance for public expenditures and investment to those plummeting from donor grants, remittances, and customs revenues, on the other. A shift of obligations from international assistance to foreign borrowing and investment required clarity on Kosovo's sovereignty: membership in the international financial institutions, beginning with the International Monetary Fund, thus resolution of Kosovo's portion of Serbia's international debt, and an end to property disputes with Serbs and Serbia over socialist-era property rights so as to attract foreign investors.

The second step toward ending the Kosovo quandary is to recognize the constraints on the current international strategy and goals -- consensus between two parties to a diplomatic settlement and regional stabilization -- of policy decisions taken by the EU in 1991. All rhetoric and decisions since the recognition of Slovene independence and the proposed settlement of the EU Hague Peace Conference in September-October to what the Badinter Commission decided was "a process of dissolution" have only cemented the definition of the conflict as one of competing national rights to govern a territory (in this case, said to be Serb and Albanian). At each stage, alternatives to Kosovo's independence became ever less likely, as almost a decade of negotiations on various aspects between Belgrade and Priština have shown. The Ahtisaari proposal simply elaborates, based on the Dayton accord for Bosnia and the Ohrid principles for Macedonia, how to accommodate these claims within the borders of one state, while retaining the basic principles of the Hague peace document. Between

October 1991 and February 2007, only the players have changed places: instead of special status and cultural rights for Kosovars in Serbia, Serbs are now to have special status and cultural rights in Kosovo. Alternative formulas, such as the one brought to Vienna by the Serbian negotiating team and which was formalized in the new Serbian constitution adopted by referendum in December 2006 -- “more than autonomy, less than independence” (in fact a restatement of UN SCR 1244) -- or real examples in the Åland Islands arrangement in Finland negotiated by the League of Nations, Northern Ireland, the relation of Hong Kong to China since the end of British rule, or that of Greenland to Denmark, are outside the conceptual frame of the powers who have been driving this process since 1991.<sup>2</sup> Without an explicit regional framework to replace the Yugoslav constitution which enabled these shared sovereignties among nations and nationalities, moreover, there is no means to craft an alternative to zero-sum sovereignties or to provide the reassurances to all affected parties that each can gain from this change and that stability will result.

The solution to this dilemma of past decisions is being sought in what one might call increasing Bosnianization of the process: an extremely complicated arrangement of territorial and constitutional protections for Serbs, their cultural and religious monuments, and other minorities within Kosova; an open-ended mandate of extensive international participation, oversight, monitoring, and even authority over domestic decisions; a very rapid transition for the most consequential pieces of implementation (e.g., 120 days to

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<sup>2</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); the latter two 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,” *Le Temps*, 3 February 2007.

write and approve a constitution, elections in nine months, and one year to demobilize and replace current security structures); and a finance-led economic strategy whose focus is security, not development. The lessons from Bosnia for the results of this approach are not comforting.

These lessons do not appear to matter to external powers and negotiators, however, because of the felt urgency on the economic crisis and the focus on UNMiK as the primary problem in Kosovo. Whether as local accusations of imperial behavior by UN staff or the UN's own analysis that no effective transitional administration (from planning to execution) is possible without a defined political endpoint, the Bosnian experience does not support the conclusion that replacing UNMiK with an EU-led supervision like the Office of High Representative plus OSCE under conditions of resolved status will satisfy either Kosovo Albanians or the conditions of deradicalization and democratic stability. Rather, one can predict that, as in Bosnia, delays will be inevitable, the external temptation to impose will grow over time, the initial advantage to currently organized political forces will be institutionalized, and the economic assumptions of the new strategy will prove wrong.

Despite the pessimism of this preceding analysis, the retention of executive power over Kosovo by the international community does provide some strategic space, some room for choice and maneuver, for managing the implementation of the status process in a more positive direction. International management of this process has two tasks: to get the initial decision on status accepted and then to keep it on track toward a sustainable solution. Already, however, the combination of a “big bang” approach – imposition and short timelines to create irreversibility – and a “gradualist approach” —

open-ended international supervision until Kosovo is (in the words of Kai Eide's 2005 report) "politically mature" – makes the political task much more difficult. Nonetheless, if it is recognized that the crux of the political problem is uncertainty about the consequences of a status decision, a strategy to overcome the political constraints can be designed.

There is aggregate uncertainty about the consequences for national aspirations throughout the region and about the economic outcome, and there is individual uncertainty over who will be winners and who losers in the short- and long-run. How can one know in advance? The irreversibility of a decision on sovereignty intensifies opposition *ex ante* as does the interdependence of political views on the national question and individual economic prospects. Also, the temporal sequence of the current international strategy is upside down – the economic preconditions of stability will take longer to emerge and are less certain than the national consequences which economic growth and positive discrimination are supposed to soften. Reference points for individual calculations, as prospect theory urges us to identify, are also different for each stakeholder. For example, Serbs' perception of loss is in the context of four previous losses in quite rapid succession since 1991, suggesting they will risk greater loss in the future to hold onto Kosovo, whereas any setback now on the road to independence after a series of gains since 1999 will be perceived as a loss by Albanians and likely provoke risky behavior to prevent such setback. None of these individual and political calculations are static, moreover, but depend on how the process plays out and what information arrives about consequences. The consequences may even make most people

and countries better off eventually (be Pareto-optimal), but the political task is to persuade them of this outcome *in advance* of knowledge.

The international (especially EU) managers have many mechanisms available for altering peoples' expectations of loss or gain, the actual distribution of losses and gains among groups, and the extent of uncertainty. Four are known in the literature: explicit attention to and shift in the *framing* of the issues; a *compensation package* that shifts the costs and preferably benefits all to buy broad support (such as a rapid improvement in the onerous visa regime that keeps people isolated and suspicious throughout the region); a multi-track approach that *sequences* the changes to focus first on outcomes with greater probability of success, popularity, and reassurance to increase that support; and *institutions* that make commitments credible and reduce the vulnerability of outcomes to political reversal.

As long as the international community insists that only Kosovo institutions should provide these credible commitments, few of the concerns among any of its neighbors will be addressed. These four mechanisms will only work within a regional strategy because it is the regional and international context of sovereignty that determines the content and meaning of legal status. Credible commitment must begin with the way the EU manages the settlement process and its credibility. Fortunately, the past has no hold on imagination or the intelligent design and dedicated implementation of such a strategy.