

NEGOTIATING KOSOVO'S FINAL STATUS

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1. The current situation

June 10th 1999 marks the beginning of a new stage for Kosovo. With confirmed withdrawal of the forces of the Federal Republic of Yugoslavia and the entry of KFOR, the UN Security Council adopted the Resolution 1244 (hereinafter: UNSCR 1244)¹, replacing thus the existing legal order with a new one. In general, Kosovo has experienced a very wide range of constitutional solutions. Since the end of WWII and until the last constitution of the Socialist Federal Republic of Yugoslavia (SFRY) in 1974, we have seen an enhancement of powers of Kosovo (as one of the two autonomous provinces). The federal constitution of 1974 introduced significant changes to the internal organization of the SFRY, decentralizing key areas of governance. Under these arrangements, the Socialist Autonomous Province of Kosovo (SAPK) "had equal representation within the supreme commanding body of the federation, a collective presidency of eight, comprised of a member of each federal unit of Yugoslavia. All representatives enjoyed the right to veto any decision over which the collective body had authority, including those relating to security².

¹ United Nations Security Council Resolution 1244/99. Available: <http://www.unmikonline.org/misc/N9917289.pdf> (last visited: 20 February 2006)

² Ilir Dugolli & Lulzim Peci, Enhancing civilian management and oversight of the security sector in Kosovo, KIPRED and SaferWorld, November 2005. p.5. Available online at: <http://www.kipred.net/UserFiles/File/SecSectorManagement.pdf> (last visited: 15 February 2006).



This positive evolution came to an abrupt end in 1989 when the autonomy was revoked. Kosovo came under direct rule by Belgrade and its cronies, an entire decade characterized by gross and systematic violations of human rights. Continuous oppression and fruitless efforts of civil disobedience led to an escalation and to the armed conflict in 1998-9.

Post-war governance in Kosovo also underwent continuous osmosis. The chairing structure of Kosovo experienced permanent improvisations and a number of short-term adjustments. With this aspiration and in order to share responsibility, the Joint Interim Administrative Structure (JIAS) was established in December 1999. JIAS was composed of two bodies: Kosovo Transitional Council (KTC) and Interim Administrative Council (IAC), both with consultative character with Kosovo-wide oversight. In addition, there were 20 administrative departments co-chaired by an international and a local co-head, whose responsibilities included administration, service delivery and revenue collection.

With local and national elections held in 2000 and 2001 respectively, legitimate institutions at all levels emerged. Still, UNMIK retained more extensive authority than any other UN mission of similar kind. The UN vested "all legislative and executive authority with respect to Kosovo, including the administration of the judiciary" in UNMIK itself and the Special Representative of the Secretary-General (SRSG)³. The SRSG remained the highest civil official and has been heading the international civil administration and the entire institutional hierarchy in Kosovo. Security structure on the other hand is split between KFOR and UNMIK Civilian Police (CIVPOL). The former is under the command of Commander of KFOR, responsible to the NATO HQ, while the latter, through Police Commissioner report to the SRSG.

2. "Creative ambiguity" of UNSCR 1244 and its implications

Division of governance between indigenous and international institutions stems out of the peculiar diplomatic settlement reached at the close of the Kosovo conflict in 1999. This settlement was encapsulated by UNSCR 1244 adopted in June 1999. While the Resolution in question "includes a commitment to Yugoslavia's sovereignty and territorial

³ EECR, Volume 9 Number 4, Fall 2000. New York University Law School and Central European University. Available online: <http://www.law.nyu.edu/eecr/vol9num4/constitutionwatch/yugoslavia.html> (last visited: 20 February 2006)

integrity, it essentially created a UN protectorate in Kosovo”⁴. More importantly, the UNSCR 1244 was enacted under the Chapter VII of the UN Charter which does not concern democratic state-building, but threats to international peace and security. UNSCR 1244/99 and the subsequent Constitutional Framework for Kosovo of May 2001 established a limited framework for self-governance under substantial international (civilian and military) supervision.

The ambiguous, or perhaps contradictory, mission of the international administration is summed up by UNMIK’s mandate under the Resolution in question to “promote the establishment of substantial autonomy and self-government in Kosovo”⁵. While the notion of ‘substantial autonomy’ offered a creative diplomatic solution six and a half years ago, it has, at least until recently, proved beyond successive international administrations to realize it on the ground⁶.

The vague mandate of international administration has been stretched between two conflicting objectives, (a) substantial autonomy as provided by UNSCR 1244 and (b) state-building aspirations of the Kosovo’s elite and its overwhelming majority. This situation naturally had serious implications for the political security on the ground. Kosovo is still administered primarily under the authority of Chapter VII of the UN Charter in the name of pacifying a threat to international peace and security and less in terms of a genuine state-building, although most analysts and officials recognize that this is in fact occurring. In other words, immediate stabilization has superseded efforts of genuine institution-building and empowerment of the local citizenry.

⁴ EECR, Volume 9 Number 4, Fall 2000. New York University Law School and Central European University. Available online: <http://www.law.nyu.edu/eecr/vol9num4/constitutionwatch/yugoslavia.html> (last visited: 20 February 2006).

⁵ United Nations Security Council Resolution 1244/99. Available online: <http://www.unmikonline.org/misc/N9917289.pdf> (last visited: 20 February 2006)

⁶ As early as 2001 the Independent International Commission on Kosovo concluded that the effect of ‘reserved powers’ in the hands of the SRSG meant that, “instead of the substantial self-government promised the Kosovars under Resolution 1244, they will instead get very limited autonomy”. Independent International Commission on Kosovo, ‘The Follow-Up to the Kosovo Report - Why Conditional Independence?’ (IICK, 2001), p. 20.

3. Building legitimate institutions

“While UNSCR 1244 assigns ultimate responsibility for Kosovo to the UN administration, it also requires that the UN develop ‘provisional institutions for democratic and autonomous self-government’ and progressively transfer its administrative responsibilities to the local institutions”⁷.

Institutions exercised only a handful of “transferred” responsibilities which under the Constitutional Framework for Provisional Self-government were not placed under the domain of “reserved responsibilities” for the SRSG and UNMIK⁸. There has been a huge political and moral investment by both international structures involved in Kosovo and political parties in organizing free and fair elections. In 2000 the first free elections in Kosovo were held. These were elections for municipal representatives and they were followed, a year later, by Kosovo-wide elections from which the Parliament, the Government and the President emerged. In 2002 and 2004 Kosovo had another wave of local and national elections, with gradually greater input and responsibility of local institutions in all areas of competence, including running the elections themselves. Finally, it is worth mentioning that transfer of power from one government to another and to the new president after the death of President Rugova, a person who has been at the forefront of Kosovo’s movement for independence and LDK for nearly 16 years, took place without major obstacles.

Exercise of the authority of UNMIK and Provisional Institutions of Self-government (PISG) throughout the entire territory of Kosovo has continuously been challenged by the existence of parallel structures supported and directly controlled by Belgrade. Parallel structures, including courts and other outlets of the Belgrade government, which operate in Kosovo without hindrance, drastically undermine both the identification of citizens with the rule of law and their trust in the system. This is particularly the case with the Serb community which relies on such outlets for delivery of basic services. In spite of a continuous political commitment of the international administration to resolve the issue of parallel structures little has been done and the reality on the ground proves the

⁷ EECR, Volume 9 Number 4, Fall 2000. New York University Law School and Central European University. Available online: <http://www.law.nyu.edu/eecr/vol9num4/constitutionwatch/yugoslavia.html> (last visited: 20 February 2006)

⁸ Regulation 2001/9 on A Constitutional Framework for Provisional Self-government. Available online: <http://www.unmikonline.org/regulations/2001/reg09-01.htm> (last visited: 15 February 2006)

contrary⁹. As noted by a respectable international think-tank: “Northern Mitrovica and the three northern-most Serb-dominated municipalities have been and continue to be bastions of Belgrade-supported parallel administration ever since KFOR consolidated the defensive line drawn by beleaguered Kosovo Serbs along the River Ibar in summer 1999”¹⁰. The persistence of parallel structures is generally seen as a political demonstration of Serbia’s presence in Kosovo as well as a reflection of mistrust between the two largest ethnic communities, which seriously undermines the implementation of the rule of law in the entire territory of Kosovo¹¹.

4. “Standards before status” and the strategy of procrastination

Performance of the PISG and UNMIK is measured against a set of benchmarks set during the administration of the third SRSG, Michel Steiner. In his words, the role of the international community in post-war Kosovo constituted of three phases. The first phase was the NATO intervention, followed by the establishment of international administration, elections, gradual transfer of responsibilities to local institutions and improvement of, what Steiner labeled “eight standards”¹². After substantial improvement in the area of standards the process of addressing the final status would follow and the third phase, according to Steiner, would be to draw Kosovo closer to the European Union¹³. Yet, it was not before 2002 that UNMIK chief Michael Steiner introduced what soon turned into an official UNMIK mantra, “Standards before Status”. Officially, this policy set a number of benchmarks supposed to be met before proceeding on talks about Kosovo’s final status. However, such an approach was generally perceived as an effort to buy time rather than provide guidance and incentives to local institutions. As a consequence, the “Standards before Status” were gradually transformed into “Standards for Kosovo” which put them *en par* with status.

⁹ OSCE. Legal Systems Monitoring Section, March 2002, p.8.

¹⁰ ICG, Collapse in Kosovo. Available online: http://www.crisisgroup.org/library/documents/europe/balkans/155_collapse_in_kosovo_revised.pdf (last visited: 21 February 2006), p.12.

¹¹ Eide report, Oct. 2005, p.12.

¹² Standards include eight areas, viz. functioning democratic institutions; rule of law; freedom of movement; return and integration of all Kosovo inhabitants; development of a market economy; full property rights for all citizens; dialogue and normalized relations with Belgrade; reduction and transformation of the KPC. <http://www.unmikonline.org/standards/>

¹³ As quoted in Janusz Bugajski, R. Bruce Hitchner, Paul Williams, Achieving a Final Status Settlement for Kosovo, Center for Strategic and International Studies, Nov.2003. p.11-12

As pressure to tackle the issue of the status strengthened, there were increasing calls to clarify and prioritize key standards. In the words of the chief of mission of the US office in Prishtina, “standards are not legal terms but conditions for the existence of a successful society”¹⁴. At a hearing by the Foreign Relations Committee of the European Parliament’s Committee, a prominent MEP voiced that “Standards and status should go hand in hand”¹⁵. The same MEP voiced what Kosovars had been saying since the announcement of “Standards before Status” policy that “the Kosovo government is blamed for not meeting the required standards - regarding e.g. the rule of law, the return of refugees, property rights, a functioning economy - whereas it is not the Kosovo government but only the UN which has the power to do this.”¹⁶ In reaction to the above, “the Standards for Kosovo” were launched by SRSG Harry Holkeri and PM Bajram Rexhepi at the end of 2003. “Standards for Kosovo” were “agreed between the Kosovo provisional institutions of self-government and UNMIK, and were approved by the United Nations Security Council.”¹⁷

Impressions of a gradual progress and hopes for an ideal time for tackling the final status dissipated in March 2004. Kosovo then saw the worst violence since the end of the war, which left 19 persons dead, 900 injured, thousands displaced and around 700 buildings. In front of the riots, “the unstable foundations of four and a half years of gradual progress in Kosovo buckled and gave away”¹⁸. Rampage, among others, triggered appointment of a rapporteur tasked by the US Secretary General with responsibility to look into UNMIK and come up with suggestions for the way ahead. This report, prepared by Kai Eide, Norway’s ambassador to NATO, criticized UNMIK and the lack of its proactive strategy. In addition, it advised moving fast towards resolving the status question. It stipulated that there was “no ideal moment for raising the future status issue. There may not even be a

¹⁴ Interview with Reno Harnish (Chief of Mission, US Office in Prishtina), January 13, 2003 VoA, “To Clarify Standards Before Status”, <http://pristina.usmission.gov/rh/rh16.htm> (last visited: 18 February 2006)

¹⁵ Doris Pack, European Parliament, Committee on Foreign Affairs 'Standards and status' should go hand in hand, http://europa-eu-un.org/articles/lt/article_4265_lt.htm (last visited: 18 February 2006)

¹⁶ Ibid

¹⁷ <http://www.unmikonline.org/standards/> (accessed 15 February 2006)

¹⁸ International Crisis Group, Collapse in Kosovo. 22 April 2004. Available: http://www.crisisgroup.org/library/documents/europe/balkans/155_collapse_in_kosovo_revised.pdf (accessed: 15 February 2006) . p.3

good moment”¹⁹. The report also claimed that the status quo was unbearable and would have only negative impact, and thus “the process must be initiated, albeit cautiously”²⁰.

5. Kosovo’s Internal Politics

During the first mandate of local institutions (since 2001 until 2004), Kosovo had a wide coalition government encompassing all significant political forces, the party of the resistance of the nineties, LDK (Democratic League of Kosovo), and the two major political forces that came out warring factions, PDK (Democratic Party of Kosovo) and AAK (Alliance for the Future of Kosovo). In addition, Serbs and non-Serb minorities each had a minister in the government. As differences among them were high, such a wide coalition was good news as it promised to avoid serious conflict among any of these factions. Although the next elections in 2004 produced a similar breakdown of political forces, a two-party coalition government left two significant parties in the opposition, PDK and the newly-formed ORA (meaning: “watch”, “clock” and “time”). Whereas this increased tension somewhat, there are increasing signs that opposition parties have rehabilitated in their role and are preparing for the medium or long-haul.

With regard to interethnic relations, although serious mechanisms have been introduced by UNMIK and by the Government of Kosovo, the lack of participation by communities has seriously hampered their integration. With the Serb intermittent exception and partially that of the Roma, all communities have been part of the institutions since 1999. Besides the partial participation in the local elections in 2002, Serbs boycotted three sets of other elections. Further, they withdrew from the Kosovo Parliament in early 2004 and have largely been missing from there ever since.

One Serb party, SDP (Kosovo Serbs’ Democratic Party), led by Slavisa Petkovic, has been present in the legislature and in the government, but its power is limited at best and it is largely considered as a traitor by other Serb entities. The mandates of other Serbs

¹⁹ Ambassador Kai Eide. The Situation in Kosovo Report to the Secretary-General of the United Nations. Report, p.13

²⁰ Ambassador Kai Eide. The Situation in Kosovo Report to the Secretary-General of the United Nations. Report, p.13

who do not attend the sessions of the Assembly have not been taken, although this party requested that their mandates should be given to his party.

Despite significant concessions made towards minorities, such as the 20 set-aside seats (uniquely granted on top of the seats won), ethnic budgeting (where the budget of every municipality is proportionally granted to each community), powerful municipalities, the use of Serb language across Kosovo at an equal footing with Albanian, these were insufficient to encourage the Serbs to join the institutions.

The major explanation for this is two-fold: (a) the lack of leadership among the Kosovo Serbs and the domination of Belgrade, and (b) the impending negotiations, and the effective meaning that joining the institutions would mean recognizing the independence of Kosovo. Although an effective political elite of Kosovo Serbs started to appear in 2004, their will to talk to Albanians was soon crushed by Belgrade which played local leaders against each other and marginalized them. Many analysts have thus accused Belgrade of sacrificing the future of local Serbs for their brinkmanship strategy of trying to hold of some parts of Kosovo. As a result, Kosovo Serbs today are a divided lot with a uncertain demographic concentration in some areas that they occupy today, and without any willingness to engage the Kosovar Albanians. Some of their leaders understand the mistake that has been made by boycotting the institutions, but are unable to make another decision given Belgrade's resistance²¹.

Non-Serb, or often called, other communities, have not faced any similar relationships with their mother countries but have also split in smaller clusters and have ended up with less power to make an impact. Whereas greatly advantaged with representation in the Assembly, and arguably the ability to influence the formation of the government, all communities had split in several groups at different times. For example, the Bosniaks belong to three different political parties, although two finally entered a coalition of non-Serb minorities forged by the international community. Turks have also managed to coalesce around a single party as have done the Egyptians. The Roma remain split also, often due to unhelpful meddling of international Roma groups.

²¹ For e.g. the leader of the "Serbian List for Kosovo and Metohija", Oliver Ivanovic. "Boycott of Kosovo elections was a mistake", 2 March 2005. New agency B92. Available: http://www.b92.net/info/komentari.php?nav_id=163374&version=print (visited: 24 February 2006)

6. Negotiations' environment

By their very nature, negotiations are tricky and imply making difficult concessions. As this paper shows, in return for independence, Kosovars will need to agree to a peace agreement which will comprise a decentralization scheme, an international mission with prerogatives on minority rights and perhaps some limitations of exercising external sovereignty, although the last two only for a limited period of time. Further, numerous processes occurring at the same time may befuddle the Kosovar policymakers, an example of which has been the handover of new competencies, which had almost stalled in the past six years, and is now likely to proceed at a rhythm faster than the government can absorb, thus overburdening government with weak managing capacity.

Another seriously distracting factor was the death of President Rugova, however this was quickly offset by the orderly and quick transition with the election of the new President, Fatmir Sejdiu. The most senior potential candidates were not viewed as consensual enough, hence the narrowing of options on LDK's General Secretary, Mr. Sejdiu. Local institutions such as the Kosovo Police Service (KPS) and the Kosovo Protection Corps (KPC) also passed an important test and managed the security during the burial ceremony impeccably. It is worth noting that 10% of KPS is composed by Kosovo Serbs, and the proportional of minorities in senior levels reaches 20%, significantly more than their share of the population. The KPC has also marked an increasing inclusion of minorities as well.

7. Regional policies towards Kosovo and its status

Official policy of Serbia about the status of Kosovo is a vague formula "more than autonomy less than independence" with a proposed political - territorial autonomy for Serbian community under the direct Belgrade's authority. This practically means a return of Kosovo in the situation it was before 1999, possibility that has been rejected by the Contact Group (a group of nations that supervises international policy in Kosovo, comprised of US, UK, France, Italy, Germany and Russian Federation).

The recent statements, initially of the political director of the Foreign Office, and increasingly of a large number of international officials heralding that independence is gradually becoming acceptable and a potential option, has brought nervousness in Belgrade.²² As a reaction to growing indications about the shape that Kosovo's future status will take, the leader of Radical Party of Serbia, Tomislav Nikolic, claimed that he has reached a deal with Prime Minister Vojislav Kostunica to declare Kosovo an "occupied territory" and to resist by "all possible means" any outside imposition of a separate and independent Kosovo, a statement which has not been denied so far by the Prime Minister²³. These signs display a lack of consolidated vision amongst Serbia's policymakers regarding the untying of Kosovo's knot. Even a stronger indication of this state of confusion is President Tadic's plea in front of the Security Council in mid February 2006, for a "grace period of 20 years before the final status of Kosovo should be reached"²⁴ which no international policymakers entertained.

In the case of Macedonia its main concern is the level of stability and security in its immediate north neighborhood, which has the potential to significantly affect the speed of its integration into the European Union and NATO. In this respect, an early clarification of Kosovo's status is considered by Macedonian leadership as beneficial for its interests.²⁵ However, until late 2004, the position of Macedonia towards Kosovo's status was largely neutral in declarations, but discreetly was supporting the option of Kosovo as a part of Serbia²⁶. Now this position has shifted significantly and does not exclude the possibility of an independent Kosovo. Along the lines of this shift, Prime-Minister Vlado Buckovski has stated that Macedonia needs to protect its own interests in the region, regardless of its ties to Belgrade and will support any agreement between Belgrade and Pristina as long as it does not affect Macedonia's territorial integrity and sovereignty, and that Skopje as a minor player will play a constructive role²⁷.

The position of Albania since the beginning of the nineties has been discreetly pro-independence, but until lately this position was not an official state policy. The discrepancy between formal and informal policies occurred due to limits of Tirana's

²² Ian Traynor, "Serbia threatens to resist Kosovo independence plan", The Guardian, February 20th, 2006

²³ "Occupation – calls for a war", 16 February 2006. B92 News Agency. Available:

http://www.b92.net/info/emisije/kaziprst.php?nav_id=188822&yyyy=2006&mm=02 (visited: 22 February 2006)

²⁴ "Security Council on Kosovo", 14 February 2006. News agency B92. Available: http://www.b92.net/info/vesti/u_fokusu.php?id=24&start=0&nav_id=188535 (accessed: 24 February 2006)

²⁵ Radio Free Europe: Buckovski: Maqedonia është e interesuar për zgjidhjen sa më të shpejtë të statusit të Kosovës, September 1st, 2004, <http://www.europaelire.org/programs/features/2004/09/20040901171552asp>

²⁶ Macedonia Tilts Towards Kosovo's Independence, October 15th, 2005, Balkan Investigative Reporting Network, Available: http://www.birn.eu.com/insight_03_2_eng.php (visited 20 February 2006).

²⁷ Ibid

foreign policies, mainly imposed from its Euro-Atlantic aspirations. However, the Government of Sali Berisha has formalized the option of independence as its official policy since late 2005 by stating that Kosovo's status should be solved in accordance with the will of its citizens for self-determination, by guaranteeing the rights of all minorities in close cooperation with Contact Group²⁸. Such unequivocal statements have also followed from President Alfred Mojsiu. In the beginning of 2006 this position was further clarified by considering the option of independence essentially as non-negotiable, but modalities for achieving it as conditions²⁹, thus Albania became a front runner in the region for the option of independence.

Montenegro and Kosovo consider their unresolved status issues as unrelated to each other, despite the fact that both of them are nominally under the sovereignty of Belgrade and that both issues are to be addressed simultaneously. Similarly with Macedonia, the policy of Montenegro is largely neutral but not hostile to any option, and it is interested for an early solution through dialogue between Prishtina and Belgrade mediated by international community³⁰. Openly skeptical of the future of the state union, Montenegro's leadership privately endorses Kosovo's independence, though they realize that openly advocating such a policy would harm their own claim for breaking away from Belgrade.

8. Positions of the main actors in the negotiations process

International community

In two of its recent declarations, the Contact Group has put forward the principles for settling the status of Kosovo. The first declaration clarified what Kosovo's external status can not be, by four NOs: no return to pre-March 1999 situation, no partition of Kosovo, no union of Kosovo with any country or part of any country and not posing a military or security threat to its neighbors. The second declaration further clarified that Kosovo's future status has to be acceptable to the people of Kosovo.³¹

²⁸ See for example: "Now he says 'independence for Kosovo'", Kosovo Daily Newspaper "Express" p.7, October 19th, 2005.

²⁹ Interview with Albanian Foreign Minister Mr. Besnik Mustafaj, News24 republished by Kosovo Information Center, January 2006. Available online: <http://www.kosova.com/lexo.php?kat=9&atrikulli=30061> (last visited: 10 February 2006)

³⁰ "Kosovo's status according to the will of the citizens" ("Statusi i Kosovës në bazë të vullnetit të qytetarëve, thotë Berisha. Koha Ditore, p.2 October 19th, 2006.

³¹ Statement by the Contact Group on the Future of Kosovo, November 2005. Available: <http://www.eu2006.at/de/News/information/0102Kontaktgruppe.html> (last visited: 24 February 2006);

Statements of the Contact Group were further clarified by various international officials, but initially by the Swiss Minister of Foreign Affairs as well as by the political director of the Foreign Office during his visit in the beginning of February 2006 in Prishtina and Belgrade, when he stated that independence for Kosovo was a realistic settlement. In addition, in the last UN Security Council debate on Kosovo that took place on February 16th, 2006 the US, British and French representatives urged a quick settlement, whereas the British official declared that independence was probably the only option for Kosovo. They have now been joined by similar declarations by many other high-level officials. In this line, the UN Special Envoy on Kosovo's Status, the former Finish President Martii Ahtisaari, declared that the Contact Group has achieved agreement that in the end the population of Kosovo has to decide how the future of the region will look like. These statements have been received with harsh reactions in Belgrade and by a number of Serbian representatives of Kosovo³². In spite of such reactions in Serbia, the first round of official talks on the status of Kosovo between Prishtina and Belgrade took place in Vienna on February 21 -22, 2006. The talks were evaluated as constructive by the Deputy UN Envoy Mr. Albert Rohan³³. There is no clear and long-term timetable about the talks, but the next meeting is expected to take place in March 2006. Although in a number of instances the Secretary General's Special Envoy expressed desire to have the talks concluded before the end of 2006, he also pointed that "there is no time schedule fixed..." and that, simply, it will be proceeded "as expeditiously as possible"³⁴.

Kosovo's negotiating team

Kosovo's political leadership went through a few failed attempts to set a structure in charge of negotiations, capped by the President of Kosovo, Ibrahim Rugova, on September 2005 who announced its establishment. Aside of the President himself who lead it, the team included the Prime Minister, Speaker of the Assembly, and presidents of two main opposition parties, PDK and ORA. By the end of September, the team's platform was endorsed in Kosovo's Assembly. The team, popularly labeled as "the team

"...Ministers look to Belgrade to bear in mind that the settlement needs, inter alia, to be acceptable to the people of Kosovo". Statement by the Contact Group on the Future of Kosovo (31 January 2006). Available: <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391638&a=KArticle&aid=1136909612032> (visited: 15 February 2006).

³² "Ahtisaari: Majority will decide" (Ahtisaari: Većina će odlučivati) News Agency, B92. Available: <http://www.b92.net/info/pretraga.php?q=ahtisari+vecina+ce+odluciti> (visited: February 19th, 2006)

³³ :Albert Rohan: Success" (Albert Rohan: Sukses), Kosovo Daily "Express", February 22nd, 2006

³⁴ UNMIK Press Briefings, Secretary-General's Special Envoy for the Kosovo Status Talks, Press Conference, Belgrade, Press Briefing Notes. 25 November 2005.

of unity” managed to meet couple of times before President Rugova passed away on January 21st 2006. After the election as successor of President Rugova, Fatmir Sejdiu quickly ensconced himself as the chair of the team.

The negotiation team is assisted by the Political-Strategic Groups and a number of expert teams, viz. a team on constitutional and legal issues, team on economic issues and a team on security issues. Some of the most striking difficulties displayed so far were related with the unclear division of responsibilities between these two bodies, dilemmas between delegation of responsibilities and micromanaging them as well as the lack of rules of procedure. The drama with Vienna talks on decentralization, with lengthy discussions on establishment of the delegation and appointment of its chair, which took place on 20-21 February 2006, illustrates a segment of these difficulties. Unable to find a solution for the chair of the Kosovo delegation for Vienna, Kosovo’s “team of unity” named two co-heads, one minister from the biggest party (LDK) and one former minister from the main opposition party (PDK). As both co-heads (the latter a member of the Strategic-Political Group and the former a regular participant in the meetings of the same) disagreed with the idea to have co-heads, this practically reversed the earlier decision of the “team of unity” leaving the group under a single chairperson. However, they finally mustered the much-craved ‘unity’ and returned satisfied from Vienna. As good elements displayed so far it is worth mentioning relatively consensual decision-making and readiness to involve as much as possible experts, both local and international.

Serbia’s position

The platform(s) so far launched by Belgrade have been branded either as non-realistic or aiming partition. Various aims at a Serb entity, or veto over “vital interests” were rejected by most international stakeholders. Perhaps drawing from bitter lessons in Bosnia and Herzegovina most international stakeholders are not motivated to create a dysfunctional system.

Whereas the international community has not shown much sympathy for Belgrade’s requests, it has shown readiness to have Belgrade involved in the process and try to elicit practical demands of Kosovo Serbs that Kosovo can meet. Examples abound such as the appointment of municipal police heads, competences over justice, educational policies and curriculum, or horizontal links of Serbs with Belgrade. Belgrade has been

reluctant to engage in such talks fearing this would justify independence of Kosovo and Albanians were reluctant fearing this gives Belgrade a veto power over the solution of its status. It took fairly explicit signals by the international community to convince Kosovo Albanians to engage in making a more detailed document, the “Basic principles of local government reform in Kosovo”, to show willingness for concessions but leaves the actionable matters to the process of negotiations. Other issues which will have to be tackled are decentralization (boundaries and competencies of municipalities), protection and access to objects of the Serbian Orthodox Church, the future international mission, services for the Serbs such as health, etc.

The most important issue in this process is whether Belgrade will engage genuinely in designing mechanisms for the protection of local Serbs and to what degree will it push its drive for territorial maximization. One of the problems is that the Serbian team has only two Kosovo Serbs, who are anyway closely associated with Belgrade politics. This raises doubts over how and to what degree are the interests of Kosovo Serbs going to be taken into account. As it seems that Belgrade will not be accepting any independence for Kosovo, international community may attempt to get Belgrade’s signature to such an endeavor, but not at all costs.

9. A Negotiated Arbitration

Belgrade’s platform(s) so far have been deemed as contravening international human rights law and counter to contemporary state practice. However, as Belgrade insisted on a different role from that of a minority advocate, this role has partly been played by the international community who has been requesting that the Kosovar Albanians come up with a serious offer that addresses these issues. Involving the Kosovo Serbs and encouraging them to participate while ignoring Belgrade is next to impossible at this stage and this remains the main issue to be solved if possible; inversely, the imposition of a solution seems inevitable. This situation leads to a process by which Ahtisaari and his team will be negotiating between the two parts whatever is able to negotiate. Such a process will enable them to understand the fears and opportunities of both sides, based on which they can draft an agreement as acceptable to both sides as possible and make them sign it. Some, such as the ICG have already suggested that mutual agreement is

likely impossible and the international community should impose a solution. In a recent report that suggested that the international community and UN Special Envoy Ahtisaari “must accordingly prepare for the possibility of imposing an independence package for Kosovo, however diplomatically painful that may be in the short term, rather than hoping to finesse Pristina and Belgrade’s differences with an ambiguous solution, or one in which key elements are deferred.”³⁵

The role of the Contact Group is essential in getting the two sides to agree to such an ‘arbitrated negotiation’, which most probably seems to be independence, albeit with some strings attached. If one of the parties does not meet these expectations, the international community may easily be ready to impose it and keep peace. As Kosovo is argued to present a unique case in terms of international law, and “the “disastrous policies of the past lie at the heart of the current problem”³⁶, Kosovo’s independence will not be seen as a dangerous precedent and will bring a very much needed stability, security and sustainable democracy in the region.

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³⁵ International Crisis Group, “The Challenge of Transition”. 17 February 2006. Available: http://www.crisisgroup.org/library/documents/europe/balkans/170_kosovo_the_challenge_of_transition.pdf (visited: 20 February 2006), p.3

³⁶ Statement by the Contact Group on the Future of Kosovo (31 January 2006). Available: <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391638&a=KArticle&aid=1136909612032> (visited: 15 February 2006).