

**Kosovo's Final Status Negotiation Process:  
A Way Out or Cul-de Sac**

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Declaration

I hereby declare that this dissertation is my own original work.

(signature)

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## List of Abbreviations

ESDP	European Security and Defense Policy
EU	European Union
EULEX	European Union Rule of Law Mission
ICG	International Crisis Group
ICO	International Civilian Office
ICR	International Civilian Representative
IDP	Internally Displaced Person
KIPRED	Kosovar Institute for Policy Research and Development
KLA	Kosovo Liberation Army
KPC	Kosovo Protection Corps
NATO	North Atlantic Treaty Organization
OSCE	Organization for Security and Co-operation in Europe
PISG	Provisional Institutions of Self-Government
SRSG	Special Representative of the Secretary General
UN	United Nations
UNDP	United Nations Development Programme
UNOSEK	United Nations Office of the Special Envoy for Kosovo
UNMiK	United Nations Mission in Kosovo
UNSC	United Nations Security Council

## **Kosovo's final status negotiation process: a way out or cul-de-sac**

*“Kosovo's declaration of independence is the result of a long status process in which the EU left no stone unturned (to achieve) a negotiated outcome. Now it is important that all the people in the region enjoy peace and stability. No violence will be tolerated.” - Olli Rehn, EU Enlargement Commissioner*

## I. Introduction

The debate on Kosovo's future status has proved to be a long, difficult and complex process from historical, political as well as legal perspective. Kosovo's eight-year-long limbo and the prolonged negotiations over the resolution of its final status, together with evident inherent shortcomings including a rather jaded, temporary United Nations administration and an undeveloped, low-growth economy, risked to destabilise the entire region and to lead to a cul-de-sac with tremendous consequences not only for the region itself but for the Europe as whole.

This paper will examine the flow of the negotiation process over Kosovo's final status, the key elements of the international diplomacy and its role, its drawbacks as well as its progress. It will discuss the implementation of the "standards before status"<sup>1</sup> policy as one of the "core political project[s]" for the United Nations Interim Administration Mission in Kosovo (UN Security Council, 2004), the progress on the eight standards set forth therein that needed to be achieved by the Provisional Institutions of Self-Government as a "pathway" before Kosovo's final status could be addressed.

Strong emphasis will be given to an analysis of the Comprehensive Proposal for the Kosovo Status Settlement<sup>2</sup> of the UN Special Envoy Martti Ahtisaari, and the negotiations that followed after the failure to reach a compromise between Serbia and Kosovo Albanians. The UN supported talks lead by Ahtisaari began in February 2006. While some progress was noted on

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<sup>1</sup> See *Standards for Kosovo* available at [http://www.unmikonline.org/standards/docs/leaflet\\_stand\\_eng.pdf](http://www.unmikonline.org/standards/docs/leaflet_stand_eng.pdf)

<sup>2</sup> See the *Comprehensive Proposal for the Kosovo Status Settlement* available at: <http://pbosnia.kentlaw.edu/Comprehensive%20Proposal%20for%20the%20Kosovo%20Settlement.pdf>

technical matters, the question of the status itself remained unresolved. The year 2007, noted intensive efforts to resolve the issue of Kosovo's final status. However, international diplomacy did not succeed in bridging political differences and diametrically opposite positions between Prishtina and Belgrade while the UN, Interim Administration Mission in Kosovo continued to transfer remaining responsibilities to the Kosovo Provisional Institutions of Self-Government Institutions (PISG) (UNMIK, 2006).

On 2 February, 2007 UN Secretary-General's Special Envoy Martti Ahtisaari presented the plan for the future status process of Kosovo. According to this proposal, the minority communities will be granted special protection while the municipalities will undergo a process of decentralisation in order to ensure that the rights and interests of non-Albanian communities are protected. In this light, Kosovo would govern itself under international supervision but would have the right to enter into international agreements, including membership of international bodies. The proposal was considered as fair and balanced by the Secretary-General Ban Ki-moon. Furthermore, the proposal entailed the deployment of an international civilian and military presence that would supervise the new arrangements and ensure peace and stability. "A European Union (EU) Special Representative would act as an International Civilian Representative, with ultimate supervisory authority over civilian aspects of the settlement, including the power to annul laws and remove officials whose actions are determined to be inconsistent with it" (UNOSEK, 2005).

Series of meetings were held with Kosovo Albanian and Serbs to discuss the plan, consequently, several revisions were made and it was submitted to the Secretary-General for consideration.

Upon the suggestion of the Russian Federation, the ambassadors to the Security Council visited Belgrade and Kosovo in April and May in order get an impression of the situation on the ground themselves. In this light, the paper will try to demonstrate that this visit was

simply in order to pay lip-service to the notion of inclusive dialogue and negotiations given the fact that UN had already an established presence in Kosovo since 1999 and as such has reported regularly about the situation on the ground.

However, the members of the Council were unable to agree on how to resolve Kosovo's status during deliberation in May due to a continued lack of consensus among the various parties. On 1 August, 2007 the Secretary- General Ban Ki-moon, accepted a proposal from the Contact Group on Kosovo (The Contact Group is composed of the United States of America, United Kingdom, France, Germany, Italy and Russia. Most of the Contact Group meetings are also attended by representatives of the EU Council, EU Presidency, European Commission and NATO) that proposed to conduct an additional 120 days of negotiations. The negotiations would be led by a troika comprised of the European Union, the Russian Federation and the United States. This paper will give a chronological overview of the meetings and it will also examine the Troika's role in the negotiation process and the way it concluded its mandate without being able to facilitate an agreement on final status settlement. On 19 December, 2007 the Security Council discussed the issue of Kosovo, and the Secretary- General maintained that a timely status solution remained a priority.

This research will also tend to highlight the responsibility of the EU since it is preparing to take over the current United Nations Mission in Kosovo (UNMIK) and to manage reforms, ultimately in preparation for advancing Balkans' EU accession. Above all, this research will try to prove that EU diplomacy has both the capability and the responsibility at-hand to support and guide the region in the right direction. As Russia and the US remain diametrically-opposed on the issue, it is time for the EU to entirely take over the process and to create and implement its own plan.

Last but not least, with Kosovo's recent declaration of independence, the paper will try to address the reaction of individual states, as well as how UNMIK and particularly the EU will handle the transition thereafter. Focusing specifically on what are the political as well as legal implications and what steps should the international community, and primarily the EU, take to mitigate the consequences.

## **I. 1.1. Research Methodology**

The research is based on information obtained from a wide variety of sources that are used in a manner that lead to the answering of the main research question, as well as the issues that derive from it.

a) **Theoretical part** – This part is obtained from different books, journal articles and expert reports that deal with Kosovo's historical background and its conflict, with international diplomacy and negotiation process, and with political and legal implications. It is around these sources that the foundation and the main arguments of the paper is built.

b) **Primary Source Materials** – The materials such as documents, reports drafted by UNMIK, UNOSEK, Troika, EU and other International Organizations, Recommendations, Proposals, Agreements, Reviews, Covenants, Charters and Conventions are used and analysed in detail as they provide a highly important input in the construction of the theoretical framework. Furthermore, these materials are complemented by news items and press releases from both local and foreign media outlets.

c) **Interviews** – Interviews present another important aspect of the research as they enhance the overall analyses of the negotiation process from different perspectives. They are conducted with UNOSEK representatives, EU representatives, legal experts as well as with local interlocutors that were part of the negotiation process.

## **II. Historical background**

### **II. 1. 1 The roots of the conflict**

It is widely believed that the Yugoslav crisis began in Kosovo, however, the conflict between Serbs and Albanians should be traced back in history that predates Yugoslavia's collapse in 1991. The long-lasting dispute over the territory of Kosovo has endured for generations.

Albanians are convinced that they are autochthon inhabitants of Kosovo and that they are the ancestors of the Illyrians, Noel Malcolm states that: "...Albanians are one of the oldest established populations in Europe" (2002 p.lii). The Serbs in the other-hand claim that "Kosovo lies at the heart of its medieval kingdoms and that during the Middle Ages few, if any, Albanians lived amongst them". The Serbs support their claim with the fact that they have their ancient monasteries and churches throughout the territory of Kosovo. According to Malcolm (2008), the truth is that "Serbs ruled Kosovo for about 250 years, until the final Ottoman takeover in the mid-15th century. Churches and monasteries remain from that period, but there is no more continuity between the medieval Serbian state and today's Serbia than there is between the Byzantine Empire and Greece". The great Battle of Kosovo of 1389 also presents a highly remarkable point to concepts of Serbian history, heritage and national identity. Despite different historical schools of thought of the various assumptions from historians about the Battle of Kosovo, according to Malcolm, the battle should be regarded as an important turning-point: an event which ensured that Serbian statehood would be extinguished sooner or later. However, the significance of this battle should not be measured simply in terms of politico-strategic consequences. Malcolm explains that the story of the battle of Kosovo has become a totem or talisman of Serbian identity, so that this even has a

status unlike that of anything else in the history of Serbs (2002 p. 56). However, according to Judah (1999), “until today, the original story has exercised a powerful grip on the Serbian imagination and the call to avenge Kosovo was an emotional one during the 19th century reawakening of Serbian nationalism” (cited in BBC news, 1999). In this light, Dietrich Kappeler (1999) describes this perception of Serbs as: “The emotional and rather irrational view of Kosovo by the Serbs has had the unfortunate result that the Albanian population there was always seen as an alien element, somewhat comparable to the way that many Israelis consider Palestinians”. This perception has certainly had a huge and rather negative impact in the relationships of Serbs and Albanians throughout the history and has undoubtedly led to an unresolved conflict and this is very well described by Christopher Bennett who states that:

The Serb obsession with Kosovo may never cease to perplex foreigners. Serbs have not formed the majority there since the end of the 17<sup>th</sup> century and few Serbs, apart from those who actually live in the province, have ever visited it. Nevertheless, as far as many Serbs, not all of them extreme nationalists, are concerned, Kosovo is a sacred land which is destined to remain Serbian forever. This emotional attachment to Kosovo, the so-called ‘cradle of the Serb nation’, can be explained only as a part of a collective sense of disappointment among Serbs at what might have been, had the medieval Serbian Empire not been destroyed by the Turkish assault on Europe. It is rooted within the Serbian Orthodox Church, which cultivated and preserved national consciousness under Ottoman rule, and in stories from Serb Folklore which have been passed from generation to generation through the ages (1995, pp. 86-87) .

However, given the fact that Albanians make up the majority of the population in Kosovo, Serb claims were - and still are – irreconcilable, therefore it can be argued that the brutality of Yugoslav rule between the two world wars was unjustifiable and created ‘conditions’ for potential future insurgence.

## **II. 1.2.Kosovo under Tito's Yugoslavia**

Kosovo was one of the Yugoslavia’s poorest regions, it was the part of the country which virtually nobody, not even other Yugoslavs, visited. Therefore, it was precisely on the issue of

Kosovo that Tito's state came unstuck. Conditions in Kosovo went unreported in the West, while in Slovenia and Croatia the province was simply viewed as an unavoidable drain on the budget and the worst possible posting for conscripts during national service. Yet it was over policy towards Kosovo, or rather the change in that policy during the 1960s that Serb nationalists fell out with Tito, and this was the major reason they came to reject his vision of Yugoslavia. As a result of this rift which developed over Kosovo, Serb nationalists began to develop a new set of long-term political goals (Bennet, 1995).

Late 1960s and early 1970s noted signs of discontent among Serbs with Tito's Yugoslavia as a solution, they blamed it for the "protectorate of provinces over the republic" and the "historic injustice toward the Serbian nation" (Simic, 1993 p. 228).

In 1974, the new Yugoslav Constitution granted Kosovo an expanded set of political rights that certainly improved its political status. "Kosovo, along with Vojvodina, was declared a province and as such gained many of the powers of a fully-fledged republic: a seat on the federal presidency and its own assembly, police force and national bank. Power was still exercised by the Communist Party, but it was now devolved mainly to ethnic Albanian communists" (Wikipedia, 2008). The Constitution of 1974 offered a kind of a compromise that attempted to create a balance for both sides: on the one-hand with the Albanians in quest of founding their own republic, and on the other hand with the restless endeavours of the Serbs to keep Serbia in one piece. Tito's Yugoslavia had been designed in such a way that, theoretically, all Yugoslavia's peoples could feel that they belonged and that they would be treated in the same manner as the rest of the country. Tito himself endeavoured to remain impartial at all times and never to favour one people over another, so that he could step in and resolve whatever conflict might arise. However, as soon as the JNA (Yugoslav National Army) turned its guns against Albanians in the province of Kosovo, the Titoist vision of Yugoslavia had come unstuck. However, only after Tito's death did it come to the surface that

none of the parties were satisfied with the compromise. On this note Christopher Bennett concludes: “Within a year of his death and more than a decade before the country disintegrated in war, Tito’s Yugoslavia had already died in spirit, if not yet in form” (1995, p. 90).

## II. 1.3 The rise of Milosevic - Kosovo under Serbian Rule

A stagnant economy helped bring to power Slobodan Milosevic, a former communist who assumed the leadership of the Republic of Serbia. One of the key elements in Slobodan Milosevic’s rise to power is certainly the manipulation he used over Serb national sentiment in relation to Kosovo. In April 1987, in his famous speech, he addressed a crowd of angry Serbs in Fushë Kosovë/ Kosovo Polje near Prishtinë/ Pristina - who were protesting against alleged harassment by the majority Albanian community – stating that “no-one would ever be allowed to beat them”. This speech of Milosevic was received with strong support and enthusiasm by Serbs throughout Yugoslavia and somehow determined the foundation of the rallies to come while Milosevic cleverly used it as a catalyst to transform himself from an inert Communist into a dissenter “patriot” that evoked the Serbian nationalism. By evoking the placated nationalism and ethnic contention, he managed to present himself as a persuasive leader and hero of the Serbs. He soon wrested control of Serbia's Communist Party from his previous ally and friend, Ivan Stambolic. In this light, the exploitation of the issue of Kosovo, rapidly helped Milosevic to take the role of a ‘national leader’, a role which enabled him to suppress all opposition. In this regards, he had strong and valuable sources of support from the media namely Radio Television Belgrade, which kept broadcasting his famous speech over and over again. As a matter of fact, between 1987 and 1989 the media offensive was entirely focused against Albanians. As Christofer Benet states:

The Serb national psyche which has so revolted the world since 1991 is not the product of centuries of historical evolution but has been deliberately manufactured and

intensively cultivated by Serbian media since 1987. The reason that the vast majority of Serbs are adamant that they are threatened by genocide on all fronts and that they were mercilessly exploited in Yugoslavia is quite simply because their media have been telling them so day in and day out for years. Myth, fantasy, half-truths and brazen lies were packaged each night into television news (1995 pp. 96-97).

However, attempts of some Serb intellectuals such as Bogdan Bogdanovic and Dragisa Pavlovic ( Dragisa Pavlovic is the author of the book “Olako obecana brzina” *Quick Change, Easily Promised* published by Globus, Zagreb, 1989) who dared to criticize Milosevic and to shed some light in the deteriorating situation which would ultimately lead to rather tragic consequences, did not succeed in their endeavors to raise awareness and they were even called the ‘enemies of the Serb nation’ despite of the fact that to outsiders they both represented all that was traditionally finest and most appealing in Serbia (European Journal of Social Theory, 2001).

While anti-Albanian campaigns continued, the Serbian Assembly started to prepare amendments to the Serbian Constitution which would severely restrict Kosovo’s power. These amendments would grant Serbia an immense power over Kosovo, Serbia would have control over Kosovo’s police and justice systems, as well as a wide range of other issues such as economic and social policy, educational policy, the use of language, issuance of administrative instructions (Kola, 2003). The abolition of the autonomy came into force by a decision of the parliament of the Kosovo autonomous province on 23 March, 1989, prior to voting on this decision, “Albanian deputies had received threats; during the vote, entrances to the parliament building were blocked by army tanks and army helicopters were in the air above the building; people who were not deputies took part in the voting; and the exact number of votes was not counted” (ibid).

Nevertheless, this abolition of autonomy in 1989 enabled Belgrade to exercise strong power over Kosovo and it was followed by the induction of a practice of systematic discrimination against Albanians throughout the decade in the state now called Federal Republic of Yugoslavia. Education in the Albanian language, as well as freedom of the public media,

were greatly reduced and Albanians were systematically dismissed from state employment and constantly discriminated in all spheres of social life.

## II. 1. 4. The end of peaceful resistance – The rise of Kosovo Liberation Army (UCK)

While police violence, arbitrary arrests, and other human rights violations became common practice, Albanians responded to this continuous oppression and discrimination of Milosevic's regime in a largely peaceful manner. Parallel unofficial institutions were established, including unofficial elections that resulted with the leadership of Ibrahim Rugova who reacted against this state ordered policy of repression with a non-violent resistance – akin to the one resembling Mahatma Gandhi towards British rule in India. Even though Rugova's strategy proved to be effective in keeping the peace, the international community did not seem to pay much attention to the Kosovo issue. At this time, the attention of the international community was focused more in Bosnia and Herzegovina namely in Dayton Peace Accords. Even though the Dayton process exclusively concerned Bosnia-Herzegovina and had no authority to deal with other regions, Albanian leadership thought that if the Kosovo issue was to be tackled at this stage, it could have prevented further deterioration of the situation. Actually, Swomley (1999 p.1) claims that "As more and more Kosovars were being killed, Rugova finally called off demonstrations against Milosevic and called on the United States through the Dayton accords for help. The United States ignored his appeals".

As Richard Caplan puts it: "To countless Kosovar Albanians, Dayton had already demonstrated the limits of the international support – and by extension, of Rugova's own effectiveness" (1998, p. 751). Indeed, Rugova's pacifist approach may have failed to attain tangible results due to the simple fact that Kosovo was left out of the Dayton peace talks.

Reluctance of the international community to include the Albanians in these talks, and not put Kosovo in the agenda of regional and international concerns, led to a growing disappointment amongst the Kosovo Albanians who began to lose their reliance in the peaceful resistance of their leadership and a gradual shift towards support for an armed struggle “On this note, in determining the role of the international community in emboldening Milosevic, Richard Caplan also observed that ‘one of the consequences of international diplomacy over the past decade has been to radicalise the Kosovo Albanians’ (1998, p. 752).

As the situation was increasingly deteriorating and the repressions by Serb military forces continuing, in November 1997, at a massive funeral of some murdered Kosovar Albanians, the UCK publicly came to the surface and asked for support from the Albanian population. While the response to calls for support from the Kosovo Albanians was enthusiastic, it was matched by the Serb willingness to engage in reprisals. If UCK shot a Serb policeman, the Serbs would set an entire village on fire and kill civilians. One of the major rather dreadful massacres was conducted in the region of Drenica on March of 1998 when 51 members of the Jashari family were killed by Serb forces allegedly in vengeance for a UCK provocation, “again, despite detailed reports of human rights investigators, the international community did nothing other than issue Milosevic with an empty warning” (Ruga, 1999).

In 1998, Milosevic increased the military presence in Kosovo and started an appalling policy of devastating and destroying whole villages in his attempt to eliminate UCK members. However, each destroyed village would result in more UCK members being mobilised in the defence of Kosovo. In January 1999, Serb forces killed 41 civilians in the Kosovo village of Racak. The OSCE Kosovo Verification Mission ( I worked for the OSCE KVM at that time and I witnessed a wide range of atrocities and human rights violations) namely William Walker, classified the incident as a massacre, while Milosevic claimed that the murdered

villagers were actually UCK terrorists wearing civilian clothes. However, the international forensic experts proved that Milosevic's claim was not true.

## II. 1.5 Rambouillet

As the violence continued to escalate, finally, in March 1999 the Contact Group consisting of United States, Britain, France, Germany, Italy, and Russia brought Kosovo and Serb negotiators together in Rambouillet, France in order to agree to a peace plan. The agreement called for the following:

The UCK to disarm; for Milosevic to withdraw and reduce his military presence in Kosovo; for autonomy to be restored to the province; and for a NATO peacekeeping force to be introduced. However, given the fact that the aspirations of both conflicting parties were diametrically opposite, this was too little for the Kosovo Albanians, who wanted guarantees of full independence, and too much for Milosevic, who wanted to maintain complete control over the province and would not consider an outside military force on Serb soil (*idem*).

The negotiations were ongoing in Rambouillet, while Milosevic continued to bring heavy weapons and troops into Kosovo. Consequently, if this plan is not accepted, NATO, threatened to bomb the Serbs, or completely abandon the Kosovo Albanians. For the latter, the conditions offered, even though not very favourable, had no other alternative given two other factors: the conflict was getting intensified and costly for Albanians in terms of people's lives and also, this plan offered a range of advantages in comparison to Kosovo's previous position. Hence, the Kosovo Albanians agreed to sign, however Milosevic refused.

Finally, on 20 March, the OSCE Kosovo Verification Mission withdrew from the region after facing strong impediments from Serbian forces to a degree that they were not in a position to continue to fulfill their task. Even though the atrocities against Albanians from the military forces had already begun, Richard Holbrooke made one last yet unproductive attempt to persuade Milosevic to sign the agreement, warning the consequences of the NATO bombing to his military infrastructure. However, Milosevic remained unchanged in his position, as

Richard Holbrooke explained: “I regret to say, but it is obvious that Milosevic only responds to force or the absolute incredible threat of the use of force. This was clear in Bosnia, and it was clear in Kosovo”( WGBH educational foundation interviews, 1999).

### III. 1.6 NATO Bombing Campaign

On March 24, 1999 NATO launched an air campaign against Serb military targets in Serbia, Montenegro, and Kosovo. NATO's objectives in relation to the conflict in Kosovo were set out in the Statement issued at the Extraordinary Meeting of the North Atlantic Council held at NATO on 12 April 1999 and were reaffirmed by Heads of State and Government in Washington on 23 April 1999 ( NATO, 1999).

At this stage, Milosevic’s forces responded severely, they began a supreme as Ruga describes it:

Campaign to ethnically cleanse Kosovo of its Albanian population, driving hundreds of thousands across the border into Macedonia, Albania, and Montenegro. Heavily armed Serb paramilitary forces, infamous for their tactics in Croatia and Bosnia, descended on Kosovo. At gunpoint they forced thousands of people from their homes, burning their towns and villages afterward. Many civilians were summarily executed. Most had all their money taken and their documents destroyed (1999).

Thus, on 10 June 1999, after an air campaign that lasted for seventy-seven days, NATO Secretary General Javier Solana announced that: “he had instructed General Wesley Clark, Supreme Allied Commander Europe, to temporarily suspend NATO's air operations against Yugoslavia. This decision was taken after consultations with the North Atlantic Council and confirmation from General Clark that the full withdrawal of Yugoslav forces from Kosovo had begun” (NATO, 1999).

This withdrawal was in accordance with a Military-Technical Agreement concluded between NATO and the Federal Republic of Yugoslavia on the evening of 9 June. Solana proclaimed

that he had informed about these developments in written the Secretary-General of the United Nations, and to the President of the United Nations Security Council. “The Secretary General of NATO urged all parties to the conflict to seize the opportunity for peace and called on them to comply with their obligations under the agreements which had now been concluded and under all relevant UN Security Council resolutions” (idem).

On 10 June the UN Security Council approved a resolution UNSCR 1244 expressing appreciation for the Federal Republic of Yugoslavia that accepted the principles for a political solution to the Kosovo crisis which would include an immediate end to aggression and an express removal of its military, police and paramilitary forces. The Resolution that was adopted by 14 votes in favour and none against, with one abstention (China), announced the UN Security Council's decision to deploy international civil and security presences in Kosovo, under United Nations auspices ( NATO, 1999).

### III. United Nations Mission in Kosovo (UNMIK)

Following NATO's military campaign against the Federal Republic of Yugoslavia (FRY) on 10 June 1999, the United Nations Security Council adopted Resolution 1244<sup>3</sup>, authorizing the United Nations Interim Administration Mission in Kosovo (UNMIK) to start the an extensive process of peace building, democracy, stability and self-government in Kosovo, a place with a collapsed infrastructure, a devastated civil administration and a divided population. To achieve this goal, UNMIK has been acting as the transitional administration for the region. Working closely with Kosovo's leaders and citizens, the mission has been performing an entire range of essential administrative functions and services covering such areas as health and education, banking and finance, post and telecommunications, and law and order. The structure of UNMIK has been divided into four sections known as "pillars":

Pillar I: Police and justice (United Nations)- Until the end of the emergency phase (2000), Pillar I mainly dealt with the provision of humanitarian assistance run by UN High Commissioner for Refugees (UNHCR).;

Pillar II: Civil Administration (United Nations);

Pillar III: Democratization and institution building (Organization for Security and Co-operation in Europe); and

Pillar IV: Reconstruction and economic development (European Union) .

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<sup>3</sup> See UN SC Resolution 1244 at:  
<http://daccessdds.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>

According to UN SC resolution 1244, the tasks of UNMIK are to: “perform basic civilian administrative functions; promote the establishment of substantial autonomy and self-government in Kosovo; facilitate a political process to determine Kosovo's future status; coordinate humanitarian and disaster relief of all international agencies; support the reconstruction of key infrastructure; maintain civil law and order; promote human rights; and assure the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo” (UN Security Council resolution 1244).

On this note, it is worthwhile stressing that Resolution 1244 for many analysts presents one of the most debated and paradoxical resolutions of the UN. They claim that this resolution as such leaves a lot of room for various and very diverse interpretations, such as the question of the sovereignty of Serbia on one-hand and the question of whether the resolution pre-determines the final status of the Kosovo or not, on the other. In this light, tackling the ambiguity of Resolution 1244, Ylber Hysa claims that resolution 1244 had to leave enough space for diplomatic manoeuvring and that it “was the only point of agreement within the international community” (2005, p. 47). Some analysts have even argued that the fact that the FRY ceased to exist has made Resolution 1244 extraneous and consequently Kosovo independent by default. One thing is sure, the legal ambiguity, made the implementation of the Resolution on the ground significantly difficult and complex, particularly in relation to the final status solution.

Since June 1999, when Kosovo became an international protectorate under United Nations administration, lots of investments were put into setting up a well-functioning administration and to maintaining a stabilise situation. UNMIK retained certain reserved powers in Kosovo, such as control over security, protection of minority rights, foreign relations, and energy, till the determination of the Kosovo's final status. However, the issue of final status, as one of the most important and rather perplexing issues for both, Albanians and Serbs, remained largely unaddressed. The UN Resolution 1244 itself did not outline a specific vision for the final

status, Christopher J. Borgen, an Associate Professor of Law at St. John's University School of Law interprets it as:

On balance, it appears that Resolution 1244 neither promotes nor prevents Kosovo's secession. Although operative paragraph 1 of Resolution 1244 states that a political solution shall be based on the principles of Annexes 1 and 2, those annexes are silent as to the governmental form of the final status. The annexes only state that an "interim political framework" shall afford substantial self-governance for Kosovo and take into account the territorial integrity of Federal Republic of Yugoslavia. Paragraph 11(a), states that the international civil presence will promote "the establishment, *pending a final settlement*, of substantial autonomy and self-government in Kosovo..."[emphasis added] The substantial autonomy language is thus addressed to the interim status of Kosovo. Moreover, the references to the territorial integrity of Serbia are only in the preambular language and not in the operational language. The document is therefore silent as to what form the final status of Kosovo takes (2008, p.2).

Given the ambiguity of the Resolution and the intricacy of the political situation the international community was long reluctant to tackle the issue of final status settlement since the issue as such was very complex and controversial with the Albanian majority unanimously claiming full independence and Serb minority claiming that Kosovo must be restored to Serbian sovereignty.

In the light of these circumstances, UNMIK has been wrapped in a sovereignty enigma as Bernhard Knoll puts it:

Rather than promoting particular statehood and self-determination claims -as Resolution 1272 (1999) did with regard to the future political status of East Timor- Resolution 1244 and its implementing mission have been concerned with the creation of organised political institutions. Together with the body of law subsequently promulgated by UNMIK Resolution 1244 laid the groundwork for an outcome that has not yet been agreed upon. The Resolution stopped short of making the more enduring promise at the core of the UN trusteeship system: that sovereignty, suspended as it was under fiduciary administration, would eventually be reconstructed along the lines of, and vested in, an actor newly established by the UN Charter, 'the peoples' (2005 p.3).

Consequently, the following step in the evolution of governance policy was the so-called Standards before Status programme. "In 2002, with a provisional government formed, UNMIK's chief Michael Steiner created the Standards before Status slogan which, in 2003/2004, was refined into an operational policy, with benchmarks for good governance and inter-ethnic accommodation." (ICG, 2007).

#### IV. 1. 1. Standards before Status

The Standards for Kosovo were launched by the Special Representative of the Secretary General (SRSG) Harry Holkeri and Prime Minister Bajram Rexhepi on 10 December 2003. Kosovo Provisional Institutions of Self-government (PISG) and UNMIK agreed upon these standards and they were approved by the United Nations Security Council. The Standards for Kosovo presented a set of targets that Kosovo had to meet in order to initiate the talks about its future political status. Standards for Kosovo were based on the principle that Kosovo should have “functioning democratic institutions rule of law, freedom of movement, sustainable returns of Internally Displaced Persons, community rights, a functioning economy, property and cultural heritage rights, dialogue with Belgrade, and a Kosovo Protection Corps operating within its agreed mandate and the law” (UNMIK, 2004).

A policy document under the name “Standards for Kosovo”<sup>4</sup> was developed. Kosovo had to accomplish the standards that this document sets out, in accordance with UN Security Council Resolution 1244 (1999) and the Constitutional Framework<sup>5</sup> and the original standards statement, approved by the Security Council. Moreover, the UN Security Council in the Presidential Statement of 12 December 2003 on the Standards for Kosovo, restated the primacy of the regulations promulgated by the SRSG and subsidiary instruments subsequently as the law applicable in Kosovo. “Any discriminatory elements in post March 1989 legislation relating to Kosovo will not be applied” (UN Security Council, 2003).

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<sup>4</sup> See: Standards for Kosovo documents at: [http://www.unmikonline.org/standards/docs/leaflet\\_stand\\_eng.pdf](http://www.unmikonline.org/standards/docs/leaflet_stand_eng.pdf)

<sup>5</sup> See: Constitutional Framework For Provisional Self-Government in Kosovo available at: [http://www.unmikonline.org/pub/misc/FrameworkPocket\\_ENG\\_Dec2002.pdf](http://www.unmikonline.org/pub/misc/FrameworkPocket_ENG_Dec2002.pdf)

“These standards reinforce Kosovo’s parallel progress towards European standards in the framework of the EU’s Stabilisation and Association Process, based inter alia on the Copenhagen criteria. The standards describe a multi-ethnic society where there is democracy, tolerance, freedom of movement and equal access to justice for all people in Kosovo, regardless of their ethnic background”(idem).

In addition, the so called “The Kosovo Standards Implementation Plan (KSIP)”<sup>6</sup> was developed. KSIP was a document that described the concrete actions which must be taken in order to meet the Standards with clear definition of responsibilities action points and timeframe in which they should be performed. This plan was also agreed between the PISG and UNMIK and was finalized on 31 March 2004.

The rationale for launching this campaign, was therefore to set a number priorities and objectives that had to be accomplished prior to the consideration of Kosovo’s final status. “According to the ‘Standards before Status’ policy, the Provisional Institutions had to achieve certain standards, or benchmarks, before the final status of Kosovo could be addressed ”( UN Security Council, 2004).

In one aspect the “Standards before Status” policy can be viewed as a policy of conditionality through which Kosovo's international administration attempted to measure the performance of local institutions against imported 'standards'. While Belgrade perceived this as a few years of postponement of any serious consideration of the status, the wording of the slogan was not very popular amongst the Albanian population, the latter would refer to it as Standards for Kosovo with a tone that entailed a dose of infliction. Conditioning final status talks on the fulfilment of a set of 'standards' also provoked criticism from local political leaders as according to them they were designed to delay the addressing of the final status, there was

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<sup>6</sup> See: The Kosovo Standards Implementation Plan at: [http://www.unmikonline.org/pub/misc/ksip\\_eng.pdf](http://www.unmikonline.org/pub/misc/ksip_eng.pdf)

criticism from international commentators as well, they argued that the task of institution-building is made more complex when it plays out in an environment of suspended sovereignty (Knoll, 2005).

However, despite the criticism, I consider that for the Kosovo Institutions, the Standards before Status policy had an incredibly positive impact from the professional perspective as they served to increase commitment, to build internal capacity as well as to strengthen local institutions. Furthermore, the PISG expressed a huge dedication in the implementation of the standards. The Prime Minister of Kosovo at that time, Mr. Bajram Rexhepi expressed optimism that standards can be met. He said the people of Kosovo can help this process that will result in a better life for all. He stated that “Meeting the standards must be seen as something that contributes directly to the realization of the status according to people’s will, Kosovo’s closer approach to the European Union and making Kosovo a functional and democratic place” (OSCE, 2004).

Another benefit of this conditionality policy was to contribute to providing parties with opportunities to agree on basic requirements that Kosovo must meet during an intermediate phase in order to qualify for discussion on status. As Michael Steiner stressed: “In facing the challenge of developing a new political culture, the most difficult stage is when groups that have grown accustomed to working in opposition to the Government or each other finally get their opportunity to become the Government and work together” (UNMIK, 2002). The international community under the umbrella of UNMIK was involved in various forms in the evaluation of the standards implementation from the side of Provisional Institutions of Self Government (PISG). PISG created series of working groups that met regularly in order to move forward the progress on these “benchmarks” ( I personally observed and attended regular meetings of the Working Groups on Standards, standard 3 and 4 held on 23 August

and 12 September, 2007. Participants: PISG, UNMIK, OSCE and diplomatic offices in Kosovo).

Since summer 2002, UNMIK has presented regular baseline reports to the UN Security Council on the implementation of benchmarks. Knoll describes that “since early 2003, the benchmarking process has been reinforced by the Tracking Mechanism for Kosovo, through which the European Commission tracks the development of standards and provides sector-specific recommendations for different policy areas. Under the Tracking Mechanism, Kosovo is obliged to gradually bring its legislation and institutions into line with the EU acquis, and receives access to the EU market in return”. However, he notices that the policy does not link a particular future territorial status to the fulfilment of such conditions. Rather, it makes the fulfilment of standards a condition for commencing discussions on that status. More worryingly, he concludes that: “Kosovo's political institutions are asked to meet standards that are not under their control, but under that of UNMIK and of Serbia” (2005 p.4).

In November 2003, the US announced a new initiative on behalf of the Contact Group nations, promising a review of Kosovo's status in mid-2005 to find out whether a set of specified standards on governance and treatment of ethnic minorities was achieved by that date. The 'Standards for Kosovo' plan endorsed by Security Council (SC), flowing from the Contact Group initiative, established five joint UNMIK-PISG working groups to plan and co-ordinate the fulfilment of the standards to be evaluated by UNMIK in quarterly reports to the SC through the Secretary-General (*idem*).

However, a turning-point came on 17 and 18 March 2004, following an incident in the divided city of Mitrovica which resulted in the drowning of three Albanian boys allegedly chased by some local Serbs by a dog. As a consequence, brutal interethnic violence and riots were sparked throughout Kosovo. According to the International Crises Group (ICG) (2004),

“the rampage left nineteen dead, nearly 900 injured, over 700 Serb, Ashkali and Roma homes, up to ten public buildings and 30 Serbian churches and two monasteries damaged or destroyed, and roughly 4,500 people displaced”. ICG claims that the riots were not organised, I do share this opinion, they were more spontaneous, with extremists, criminals as well as hooligans and burglars taking advantage, particularly on the second day. “Frustration and fear over the international community's intentions for Kosovo, UNMIK's inability to kick-start the economy and its suspension of privatisation, and Belgrade's success over recent months in shredding Kosovo Albanian nerves all built the tension that was released with explosive force by the inciting incidents of 16 March”(ICG, 2004 p.12).

March 2004 certainly presented a drawback in the process furthermore, it blemished the image, credibility and reputation of UNMIK and KFOR. The severe inter-ethnic violence of March 2004 showed a clear indicator that proved that the international community's attempts to create a harmonious multiethnic society in Kosovo had failed.

Following these developments, a review of the Standards for Kosovo took place and standards reinforcing multi-ethnicity such as the freedom of movement, the free use of language, and the promotion of tolerance in education received priority.

On 31 March 2004 UNMIK launched the Kosovo Standards Implementation with detailed actions required for the fulfilment of standards which would lead to the final status talks (UNMIK, 2004). Consequently, on 23 May 2005, Secretary General Kofi Annan appointed Mr. Kai Eide of Norway as a Special Envoy to undertake a comprehensive review of the situation in Kosovo in order to assess if the conditions are primed to enter into a political process that would determine the future status of Kosovo. When Kai Eide presented his report on 7 October 2005, he emphasized that there would never be an appropriate moment for addressing Kosovo's future status given the parties' totally opposed positions on the issue. However, he supported the commence of the status process, as he considered it important to

keep the political process from stagnation and he did not believe that postponing the status process would lead to significant progress in the implementation of standards. “It is unlikely that postponing the future status process will lead to further and tangible results. However, moving into the future status process entails a risk that attention will be focused on status to the detriment of standards”(UN Security Council, Kai Aide Report, 2005). In this light, Kai Aide concluded that although the standards implementation in Kosovo had been uneven, the status quo was unsustainable and the time had come to move to the next phase of the political process and launch negotiations on future status of Kosovo.

On 1 November 2005, Kofi Annan appointed former Finnish President Martti Ahtisaari as his Special Envoy to lead the political process that would resolve the future status of Kosovo. Martti Ahtisaari’s appointment signalled the commencement of the last part of the international administration of Kosovo in its present form, furthermore it signalled that the time for European Union’s intense engagement in this issue had come (UN Security Council, 2005).

## **IV. United Nations Office of the Special Envoy for Kosovo (UNOSEK) and the Status Process**

### **IV. 1.1 Background**

On 31 October 2005, the UN Secretary-General announced the Security Council of his plan to appoint Mr. Martti Ahtisaari, former President of Finland, as his Special Envoy for the future status process for Kosovo, and Mr. Albert Rohan, an Austrian diplomat, as Deputy to the Special Envoy. Their appointments were supported by the Security Council in a letter dated 10 November 2005, which read: “In his capacity as Special Envoy, Mr. Marti Ahtisaari will lead the political process *to determine* the future status of Kosovo in the context of resolution 1244...” [Emphasis added] (UN, 2005).

In addition, in November 2005, as a mean to support the Special Envoy in this rather difficult process, prior to the start of negotiations, the members of the Contact Group issued ten “Guiding Principles” that read:

1. The settlement of the Kosovo issue should be fully compatible with international standards of human rights, democracy and international law and contribute to regional security.
2. The settlement of Kosovo’s Status should conform with democratic values and European standards and contribute to realizing the European perspective of Kosovo, in particular, Kosovo’s progress in the stabilization and association process, as well as the integration of the entire region in Euro Atlantic institutions.
3. The settlement should ensure multiethnicity that is sustainable in Kosovo. It should provide effective constitutional guarantees and appropriate

mechanisms to ensure the implementation of human rights for all citizens in Kosovo and of the rights of members of all Kosovo communities, including the right of refugees and displaced persons to return to their homes in safety.

4. The settlement should provide mechanisms to ensure the participation of all Kosovo communities in government, both on the central and on the local level. Effective structures of local self-government established through the decentralization process should facilitate the coexistence of different communities and ensure equitable and improved access to public services.

5. The settlement of Kosovo's status should include specific safeguards for the protection of the cultural and religious heritage in Kosovo. This should include provisions specifying the status of the Serbian Orthodox Church's institutions and sites and other patrimony in Kosovo.

6. The settlement of Kosovo's status should strengthen regional security and stability. Thus, it will ensure that Kosovo does not return to the pre-March 1999 situation. Any solution that is unilateral or results from the use of force would be unacceptable. There will be no changes in the current territory of Kosovo, i.e. no partition of Kosovo and no union of Kosovo with any country or part of any country. The territorial integrity and internal stability of regional neighbours will be fully respected.

7. The Status settlement will ensure Kosovo's security. It will also ensure that Kosovo does not pose a military or security threat to its neighbours. Specific provisions on security arrangements will be included.

8. The settlement of Kosovo's status should promote effective mechanisms to strengthen Kosovo's ability to enforce the rule of law, to fight organized crime and terrorism and safeguard the multiethnic character of the police and the judiciary.

9. The settlement should ensure that Kosovo can develop in a sustainable way both economically and politically and that it can cooperate effectively with international organizations and international financial institutions.

10. For some time Kosovo will continue to need an international civilian and military presence to exercise appropriate supervision of compliance of the provisions of the Status settlement, to ensure security and, in particular, protection for minorities as well as to monitor and support the authorities in the continued implementation of standards (BIRN, 2007).

In particular, these principles emphasize that any resolution in regards to the Kosovo status should ensure the multi-ethnicity in Kosovo, the protection of the religious and cultural heritage, reinforce regional security and stability, and should ensure that Kosovo can cooperate in an efficient manner with international organizations and international financial institutions. As stated by the Special Envoy: "When the international community has decided

to move forward with the future status talks, it has already then decided that the present status quo can't continue for ever. We have to be aware of that and recognize that the guiding principles form an important frame of reference to our work" (UNOSEK, 2005).

The status talks began in Vienna in February 2006, the initial rounds of the negotiations dealt with so-called "technical issues" in order to get the sides to focus less on the final outcome and above all to prepare the ground for tackling the determination of the final status. These talks on "technical issues" included protection of cultural and religious sites, financial issues such as deciding Kosovo's share of Serbia's debts, and the process of decentralisation namely the creation of new municipalities for the Serbian minority. The Congressional Research Service Report mentions that: "Ahtisaari and his deputies refrained from making specific proposals, instead permitting the Serbian and Kosovo delegations to put forth and discuss their own views" (CRS Report for Congress: Kosovo and U.S. Policy, 2007). Unfortunately, even on the technical issues the talks did not succeed as the parties failed to agree on any substantial points. The positions of the two sides remained firmly apart on most issues, and hardly if any movement toward concession was reported. It is worth mentioning that the Kosovo Albanian side proved to be more flexible more opened and more conceding throughout the entire negotiation process. On this note, Gjini (2008), leader of the Kosovo Working Group on International Presence, one of the working groups of the negotiation process, part of the Kosovo structure of the negotiation process, states that: " In some issues we found a common ground but in general, the claims of the Serbs were irrational" while Todorovic (2008), Kosovo Serb representative of the Working Group on Decentralisation claimed that there was no compromise at all throughout the talks as the Serbian side was convinced that the result was already predetermined and that the International Community was biased in support of the Kosovo Albanian side. In light of this, Winter (2008) claims that Ahtisaari's approach is quite unique however, he argues that Ahtisaari pushes for bilateral

negotiations while Kosovo issue is an international issue and as such from the very beginning should have been dealt with through multilateral negotiations. I tend to agree with this view as in the case of Kosovo, where neither Prishtina nor Belgrade were willing to abandon their fundamental goals, bilateral negotiations were most likely to lead to a continued stalemate. However, the restless efforts of UNOSEK as well as the widespread support of the international community throughout the process were undeniable. Thus, throughout 2006, UNOSEK held fifteen rounds of direct talks between Prishtina and Belgrade negotiating teams. Most of these talks as mentioned above, focused on decentralization, the protection of cultural and religious heritage in Kosovo, economic issues, and the protection of community rights.

It is important to mention a high level meeting with direct talks of the Kosovo and Serbian leadership presided by Marti Ahtisaari that took place in Vienna on 24 July 2006. At this particular meeting, the delegation of Serbia was led by President Boris Tadić and Prime Minister Vojislav Koštunica while the Kosovo Unity Team (Kosovo's Unity Team consisted of five-member negotiating team it was established to deal with final status issues ) was led by President Fatmir Sejdiu. The significance of this meeting was that the parties had the opportunity to present, at the highest level, their views for the future of Kosovo to the other, as well as to the international community. The international community was represented by UNOSEK and by observers from the Contact Group, the EU and NATO. In addition to these direct talks between the parties, since 26 January 2006, expert missions led by UNOSEK visited Belgrade and Prishtina to talk separately to the parties on various issues.

Since November 2005, extensive meetings of the Special Envoy Marti Ahtisaari and his Deputy Albert Rohan with other key players in the process took place, including briefings to the Security Council (UN Security Council Briefing, 2006); meetings with the Contact Group, EU Foreign Ministers, and other international actors, including NATO and the OSCE.

However, the depth of the antagonism between the parties predicted that probabilities for a mutual agreement at the end of this negotiating process were too low.

On 25 January 2007, the Special Envoy Marti Ahtisaari had a meeting with the Secretary-General of the United Nations Ban Ki-moon in Paris. The purpose of the meeting was to brief the Secretary General on the latest developments regarding the status process and to share with him the proposal on the final status settlement. Subsequently, the Special Envoy met in Vienna with the Contact Group members and introduced the content of his proposal, as part of the regular consultations and close cooperation process between UNOSEK and the Contact Group.

On 2 February, 2007, the Special Envoy Marti Ahtisaari went to Belgrade and Prishtina where he presented his draft of the Comprehensive Proposal for the Kosovo Status Settlement to President Boris Tadić of Serbia and to President Fatmir Sejdiu and to the Unity Team. The proposal detailed a wide range of issues in relation to the future of Kosovo with a special emphasis on the protection of non-Albanian communities in Kosovo, particularly the Serb minority. The proposal included provisions covering: “Constitutional provisions, rights of communities and their members, decentralization of local government , justice system, religious and cultural heritage, international debt, property and archives, Kosovo security sector, International Civilian Representative, European Security and Defense Policy (ESDP) Rule of Law mission, International Military Presence (KFOR), Legislative agenda” (UNOSEK, 2005).

Consequently, both parties were invited by the Special Envoy in Vienna to a series of meetings on the draft proposal. In the first round of talks, that took place between 21 February and 2 March 2007, delegations reviewed the entire document. Consequently, UNOSEK

revised its initial draft, and the Special Envoy invited the highest representatives of both Kosovo Albanians and Serbs to attend a high-level meeting in Vienna on 10 March, 2007. Belgrade delegation was led by President Boris Tadic and Prime Minister Vojislav Kostunica and Prishtina's Team of Unity was led by President Fatmir Sejdiu. Representatives of the Contact Group, EU and NATO were present in the meeting.

The conclusion of this high-level meeting left the Special Envoy with the conviction that parties showed no determination change their strongly established positions. "The parties' respective positions on Kosovo's status did not contain any common ground to achieve an agreement and that no amount of additional negotiation would change that fact, the Special Envoy concluded that the potential of negotiations was exhausted" (UNOSEK, 2006). Herein he declared that he will finalise his proposal for submission to the UN Security Council in the course of the month of March, 2007.

#### IV. 1.2 Ahtisaari's Comprehensive Proposal

Ahtisaari's Comprehensive Proposal for Status Settlement referred to as 'the Ahtisaari Plan', sets forth general principles through 15 articles in the main text, along with 12 annexes that elaborate these principles.

The key provisions of the proposal are:

- Multi-ethnic society - Kosovo will be a multi-ethnic society with democratic governing structures in compliance with rule of law, human rights and fundamental freedoms, and it will promote peace and prosperous existence for all its inhabitants.
- Constitution – The set forth principles shall be enshrined in the new Constitution of Kosovo. The Ahtisaari Plan defines the key elements that must form part of the Constitution.

- International Status - Kosovo will have the right to negotiate and conclude international agreements as well as the right to seek membership to international organizations.
- Protection and Promotion of the Rights of Members of Communities – The most essential element of the Plan is the protection and promotion the rights of all communities living in Kosovo. The plan foresees the protection of the rights of Kosovo’s non-Albanian communities in the legislative process, through provision of certain, enumerated laws to be adopted in the Kosovo Assembly.
- Decentralization - The Ahtisaari Plan foresees extensive powers at the municipal level with the aim of promoting good governance, transparency and effectiveness in public service. Municipalities where Kosovo Serbs are present in the majority, will have a high degree of financial autonomy. In addition, they will be able to receive transparent funding from Serbia and participate in inter-municipal partnerships and cross-boundary cooperation with Serbian institutions. The plan proposes the establishment of six Serb-majority municipalities.
- Justice system – The justice system will be integrated, independent, professional, and impartial. The Plan provides for mechanisms that ensure that the justice system is inclusive, thus ensuring access to justice to all people living in Kosovo.
- Protection and Promotion of Religious and cultural heritage - The Plan provides provisions that guarantee the peaceful and undisturbed operation of the Serbian Orthodox Church in Kosovo. More than 40 key religious and cultural sites will have Protective Zones which will prohibit construction or any other disruptive commercial or industrial activity. These special protected zones will enable the Serbian Orthodox to preserve its religious activities with dignity. In addition, the property rights of the Serbian Orthodox Church will be inviolable, it will have an exemption from taxes and

customs duties, and will be free to maintain relations with the Serbian Orthodox Church in Belgrade.

- Refugees – All refugees and internally displaced persons will have the right to return and reclaim their property and personal possessions in compliance with law and international standards. The Settlement calls upon Kosovo and Serbia to cooperate fully with the ICRC to resolve the fate of missing persons.
- Sustainable Economic development - The Settlement provides specific provisions intended to promote the economic development in Kosovo. It recommends transparent procedures to resolve property disputes and the issue of property restitution and calls for the continuation of the privatization process with substantial international involvement. In addition, the Settlement defines mechanisms to determine Kosovo's share of Serbia's international debt.
- Kosovo Security Sector - The Plan recommends a high level of local ownership in developing a professional, multi-ethnic security sector, under international oversight in order to ensure an ultimate success in this sensitive area. The Kosovo Police Force will have a unified chain of command throughout Kosovo, while the police officers will reflect the ethnic composition of the municipalities in which they serve. The plan foresees to establish a new professional multi-ethnic force, the Kosovo Security Force, that will have a maximum of 2,500 active and 800 reserve members while the current Kosovo Protection Corps will be dissolved within one year, after the end of the transition period.
- Future International Presence – Given that Kosovo's responsibilities under the Settlement will require a broad spectrum of complex issues and tasks, the plan provides for a future international presence to supervise and support authorities of Kosovo. This presence consists of three components:

1. An International Civilian Representative (ICR) – The ICR will serve in a dual capacity, as ICR and as EU Special Representative. His/her ultimate authority will be to supervise the implementation of the Plan. Furthermore, the ICR will have authority to annul decisions or laws and to sanction or remove public officials in case their actions reflect inconsistency with the letter or spirit of the Plan. Thus, the ICR will be the final authority in Kosovo in relation to the civilian aspects of the Plan.
  2. A European Security and Defence Policy (ESDP) Mission will monitor, mentor and advise on all rule of law related areas. It will assist Kosovo to develop efficient, fair and representative police, judicial, customs, and penal institutions and it will take over other activities with the aim of promoting Rule of Law and public security.
  3. A NATO-led International Military Presence will be responsible for providing a safe and secure environment throughout Kosovo, in conjunction with the ICR and in support of Kosovo's institutions until those institutions are ready to take over fully their security responsibilities.
- OSCE – The Plan requests OSCE for an extensive field presence to assist in the monitoring of implementation of the Settlement.

As seen from the provisions above, the Ahtisaari's comprehensive proposal foresees an internationally supervised sovereign entity that is committed to guarantee minority rights for members of non-majority communities and special protection for all minorities in Kosovo, with a special emphasis on the Serbian population. The proposal also allows Kosovo to become a functional state that may, for example, to apply for membership to international organizations such as the World Bank and the International Monetary Fund.

In his Comprehensive Proposal, Ahtisaari's suggested that Kosovo's current "state of limbo cannot continue", therefore "the time has come to resolve its status". He sees Kosovo's independence as the only option that would ensure political stability as well as economical viability. "Only in an independent Kosovo will its democratic institutions be fully responsible and accountable for their actions...With continued political ambiguity, the peace and stability of Kosovo and the region remains at risk. Independence is the best safeguard against this risk." ( UN Security Council, 2007) Thus the Ahtisaari plan sets out a kind of a compromise between the maximum positions of each side. Ahtisaari defines his status proposal a "foundation for a democratic and multi-ethnic Kosovo in which the rights and interests of all members of its communities are firmly guaranteed and protected by institutions based on the rule of law" (Julie & Woehrel 2007).

It is important to emphasize that over ten pages of the 63-page Proposal (including its twelve Annexes) are devoted to the process of decentralization, therefore, I will give more space to the analysis of decentralisation in the context of the status resolution process as it is considered to be a technical issue and, as such, an opening topic of the negotiations: "The first round of talks focused on decentralization, as one of the core issues to be addressed in the context of the status resolution. The delegates exchanged views on the competencies at the municipal level in a number of areas, such as: health care, education, culture, social welfare, police and justice."(UNOSEK Press Release, 2006) International community made extensive efforts to use the decentralization of local government as conflict mitigation and transformation tool between the Albanian and Kosovo Serb communities of Kosovo. Since the launching of the Kosovo's final status talks in early 2006, the professed asymmetrical decentralization has been considered as a key and a highly political issue for the resolution of the final status of Kosovo. However, at the outset of the future status talks, decentralization was viewed differently by the various stakeholders. These views to a large extent depended on the motivations of each party for a final solution of the Kosovo issue. According to Robert Gjoni:

Albanians ultimate goal was “Independence Now” so they viewed decentralization as a price for the independence and seemed prepared to offer considerable concessions in turn for their statehood. K-Serbs were interested to achieve the maximum degree of the self rule from the authority of Prishtina and viewed decentralization as a way of strengthening their political power and keeping strong ties with their “mother state” Serbia; So far Belgrade’s motivations are difficult to understand but in the beginning Belgrade was poised to use decentralization as an instrument to improve the situation of K-Serbs in Kosovo at the same time strengthen their political influence over K-Serbs; and International community’s main interest was to see a stable and secure Kosovo and Balkan region considering decentralization as a key to end the stalemate and ensure a sustainable multiethnic coexistence (2007 p.7).

When addressing the issue of decentralization, Ahtisaari Plan stipulated the establishment of five new municipalities in which Kosovo Serb community would be the majority. Furthermore, it stipulated the enlargement of an existing Kosovo Serb municipality to include additional Kosovo Serb settlements which would predominantly change the ethnical composition of that particular municipality in favour of the Kosovo Serb community. Another important factor is that the plan envisaged extensive responsibilities for the municipalities and enhanced competencies to Kosovo Serb municipalities in health, education, cultural and religious matters, enhanced participatory rights for the Kosovo Serbs in selecting the police station commanders and improved representation of Kosovo Serbs in the judicial and prosecutorial system of Kosovo. As per local finance, it allowed higher autonomy in determining and using municipal budgets. The Proposal provided the right for the three bigger Kosovo Serb municipalities to receive funds from central government. Furthermore, the Government of Serbia was granted a privileged donor status, including the right to offer extra salaries for municipal employees. The proposal also allowed Kosovo Serb municipalities to get technical assistance and expertise from advisors and consultants from the Republic of Serbia. These municipalities have the right to receive money from Government of Serbia in private bank accounts subject only to notification of Kosovo treasury. In addition, the

Proposal provided the right of municipalities to establish cooperation and partnerships as well as the right to create associations of municipalities with the aim of protecting and promoting their rights and interests. By and large, the plan foresaw 11 Kosovo Serb municipalities out of a total of 35 municipalities and created the possibility that Kosovo Serb population comprising 8% of the whole population of Kosovo would rule autonomously about 33% of the Kosovo's territory (ibid). Another valuable factor to be mentioned here regarding decentralization in the context of the negotiation process is that the provisions of the Proposal that were the most disputed were those which related to the inter-municipal cooperation and collaboration of Kosovo Serb municipalities with Serbia. Albanians were concerned that free and uncontrolled cooperation would strengthen Kosovo Serb ties and their unconditional commitment to Belgrade, and as such open the way to partition. On this note, Meyer (2007) criticizes the Ahtisaari's plan as according to him it institutionalizes ethnically based municipalities on both sides and in this way creates a base for the majority Serb areas to declare their own independence. If we add the fact that Kosovo's northern municipalities have been a prohibited zone for the Kosovo Albanian leaders as well as the population since the war, and that UNMIK did not succeed to exercise its protectorate in the whole territory of Kosovo, allowing Kosovo Serb parallel structures to operate and not recognise its authority, then the concerns of possible partition to some extent were reasonable. The Movement for Self-determination (Lëvizja Vetëvendosje), which is a radical movement that opposes talks, refuses to submit, and intends to achieve and realize self-determination for the people of Kosovo, by not recognising the legitimacy of UNMIK demonstrated strong reactions against the decentralization process: “ There is an effort to expand the enclaves, connect them in a joint territory, and legalize Serbian government structures there through decentralization with the intention of creating a Serbian entity in Kosova” (Vetëvendosje, 2007). UNDP and Kosovo Institute for Policy Research and Development (KIPRED), on the other hand, suggested that in order for the process of decentralization “to have success in Kosovo it must

be left for after the status has been solved” (KIPRED, 2007). However, Kosovo Albanian leadership according to Gjoni, “Ahtisaari’s decentralization provisions provided ample opportunity for accommodating the diversities and made the power of the central government more controllable and less threatening. Through a deeply asymmetrical decentralization it instilled some hope for a new beginning instead of renewed conflict” (2007, pp. 8, 9).

Overall, Ahtisaari’s Comprehensive Proposal is seen as a "balanced and fair compromise solution". The plan offers advantages to both Albanian and Serbian sides, Balkan researcher Franz-Lothar Altmann in the Austrian daily ‘Der Standard’ on 13 February observed: "On the one hand it proposes a high degree of sovereignty for Kosovo, on the other it tries to offer the Serbian minority as many guarantees as possible. The Serbian contingent in Kosovo can continue to maintain close contact with Serbia. The Serbs in Kosovo can remain Serbian." (cited in Euro topics 2008) Many international political analysts and experts insisted that Kosovo was already quasi-independent. In the edition of Swiss daily Le Temps on 30 October 2006, historian and Balkans expert Serge Métais wrote that the EU should defend Kosovo's independence more actively. "Different views have been exchanged. It is time for the European Union to express its will. It should say that it is prepared to recognize the independence of Kosovo. It should also say that this State is dedicated to joining the EU."(idem) Therefore, apart from offering Kosovo with *de facto* independence, another significant feature of the Ahtisaari plan is the central role it assigns to the European Union in a framework of a future setting. In his paper on *Implementing the Ahtisaari Proposal: The European Union’s Future Role in Kosovo*, Dominik Tolksdorf states that: “An essential precondition for the success of the Ahtisaari proposal is that the EU, and particularly its member states, must demonstrate a clear commitment to making Kosovo fit for Europe”. He also states that the “EU can demonstrate its maturity as a capable foreign policy actor by

effectively conducting the mission in Kosovo and proving that it can contribute added value to international crisis management” (2007).

According to International Crisis Group, “there was a strong support from the major Western countries for the adoption of a resolution based on the full Ahtisaari plan. But it was also important to exhaust all reasonable opportunities to achieve the greatest unity possible within the Security Council, and most importantly, to avoid a Russian veto” (2007 p. 9.).

On 5 April 2007, the Assembly of Kosovo approved the Ahtisaari’s Proposal as a fair and just solution despite of the fact that there were reactions from some small political parties and the Movement for Self-Determination in particular. In the other hand, Kosovo Serbs and Belgrade were reluctant to support it openly but seemed to accept the technical proposals. The US and EU considered Ahtisaari’s Plan as a fair and balanced solution however, Russia opposed it declaring that it would use its veto against any solution which had not be agreed by both Belgrade and Prishtina.

As per report, while Belgrade considered Ahtisaari’s recommendation as totally unacceptable, Kosovo Assembly almost unanimously approved both, the Proposal and the Report. Russian Federation also rejected the report stating as mentioned above, that the only solution it will support would be a negotiated one, a solution that would be acceptable to both negotiating parties. On 26 March 2007, the Secretary-General submitted the Ahtisaari Proposal and the Report to the Security Council.<sup>7</sup>

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<sup>7</sup> Available at [www.unosek.org/docre/report-english.pdf](http://www.unosek.org/docre/report-english.pdf)

#### IV. 1.3 Ahtisaari's Proposal at the UN Security Council

In early April, at the UN Security Council informal consultations regarding the Proposal began. Intense and long deliberations that followed along with tense debates between the United States and Russia, the latter made two demands. The first demand was to make a comprehensive examination of the implementation of Resolution 1244. Vitaly Churkin, Russia's ambassador to the UN said "To us it is logical, and in fact imperative, to see where the international community stands on the implementation of Resolution 1244 before we can - - with all the responsibility invested in us by the international community -- consider Mr. Ahtisaari's proposal." (Radio Free Europe, 2007). While the first demand was rejected, the second demand to send a fact-finding mission in the region in order to obtain "first-hand" information regarding the situation on the ground was accepted. Thus Russia by pushing strongly in the UN Security Council for this fact-finding mission, not only ensured support for Belgrade, it also managed to "buy time" since the debate over Ahtisaari's proposal would be delayed until the return of the fact-finding mission but above all, it showed that it is still an important factor in the international arena as one of the five permanent members of the UN Security Council, that can exercise the right to veto any resolution. Thus, it was agreed that this mission would gather information and impressions about the real situation and consequently prepare a report for the Security Council. In this context, I would like to argue that the fact-finding mission, presents another paradox, for the simple fact that the administration of Kosovo was placed under the authority of the Secretary-General of the United Nations as of 1999, and as such was required to keep the Security Council informed about developments and the work of his temporary administration through regular reports.

Even though a situation like this, delay tactic presented another triumph of the “political game” over common sense, one cannot help but putting forward these rather ironic questions: *Didn't Security Council “trust” a body established by the UN itself which administers Kosovo for such a long period of time?*

*Can a visit from 24-29 April prevail a nine year UN-led administration and enlighten the situation?*

In any case, the mission spent a week in the region while their visit was used by both Kosovo Albanians and Serbs to try to convince the ambassadors by delivering their emotional but rather polarised and highly political views. Thus for example, the ambassadors were taken to the ethnic Albanian village Krushe e Vogel, where 113 men and boys were shot and then burned by their Serbian neighbours and paramilitary forces on March 26, 1999 (Global Policy Forum, 2007) but also they visited Svinjare, a Serb village south of Mitrovica, where the ambassadors were shown houses that had been burned down by ethnic Albanians during riots in March 2004 (described in Chapter III) (idem).

Consequently, the fact-finding mission in a report concluded or rather reaffirmed that the standing points of Prishtina and Belgrade still remained firmly apart and that the coexistence between the conflicting parties was difficult to be achieved. However, the report proposed a new round of negotiations with the suggestion that final status resolution for Kosovo should entail a broader European perspective while acknowledging that status quo cannot continue (UN Security Council, 2007).

Ideally, the adoption of a new resolution that would replace UNSC Resolution 1244; establish the basis for Kosovo's supervised independence; and provide a mandate for new international missions in Kosovo as stipulated in Ahtisaari's plan was needed. It is almost generally agreed that Ahtisaari's plan presents the best solution for Kosovo, and as such, Ahtisaari did not encounter that it will be impossible to secure a resolution in the UN Security Council (Sauer, 2008). However, the plan even though endorsed by EU, NATO and particularly US, it did not

meet the support of Russia. The US voiced its support and will to have an agreement as quickly as possible. The Kosovo daily newspaper Koha Ditore, communicated the statement of Nicholas Burns at a conference in Berlin, that the U.S. Government hopes the UN Security Council will adopt the new resolution on Kosovo's status in May 2007:

We think the time has come for Kosovo to become independent; we want to move the process forward in the coming weeks so that the UN will support the process that will lead to the independence of Kosovo. We will work closely with Great Britain, France, Germany and other countries to present a new resolution, which we hope will be adopted and Kosovo will become independent (2007, p.2).

Conversely, Russia by not approving this attitude of US, threatened that it may use its veto power in the UN Security Council. Predictably, these diametrically opposed positions of US and Russia on the resolution of the status of Kosovo impelled them into a rhetoric that did not give much hope to a compromise. "Russia has opposed a quick timetable, strongly criticized the Ahtisaari plan, raised concerns about the international precedent Kosovo may create and hinted that it might veto a draft that does not take its position into account" (ICG, 2007). Thus, a number of draft resolutions circulated in the UN Security Council without a success to gain Russia's consent. The draft resolutions were reviewed and some provisions changed in order to meet the concerns of Russia, yet the Foreign Minister, Sergei Lavrov, criticised and rejected the new draft, stating that "behind diplomatic niceties, it amounted to the same plan to grant Kosovo independence that Russia has consistently opposed." (Reuters, 2007a).

It is important to stress out that the reasons for the Russian support were not only related to its historic ties with Belgrade and its tradition to support Serbs and Orthodox communities, Russia's main argument was that this would present a bad precedent might provoke huge problems elsewhere. Meanwhile, the EU, UN and US representatives reaffirmed that Kosovo is a sui generis case, it presents a unique situation and that the outcome of its final status would not set precedent as it does not have any relevance to other disputed territories.

On this note, Tim Judah states:

Russia constantly points to the so-called 'frozen conflicts' across the former Soviet Union. These include Transnistria, Nagorno-Karabakh, South Ossetia and Abkhazia, not to mention Chechnya. So, Russian diplomats ask, if it is all right for these regions, which all raise similar, difficult issues about secession, to exist in a frozen status limbo, then why can't Kosovo? In other words, they are gambling that Kosovo Albanians will not take up arms again if they do not achieve their aims. This seems a forlorn hope. Kosovo is not frozen but rather boiling under the surface. In 1998 hardliners came to the fore because they argued that the passive resistance of the then Kosovo Albanian leader Ibrahim Rugova had not borne fruit. Today, all Kosovo's mainstream leaders counsel restraint on the grounds that this, and relying on their western friends, will deliver independence. If this, however, is seen to fail, then hardliners will again come to the fore. In February two Albanians died in protests against the restrictions foreseen in the Ahtisaari plan. The protest was organised by Vetevendosja, a civil disobedience movement, that some observers feel could be manipulated by veterans of the former guerrilla Kosovo Liberation Army (KLA), if it was useful for them to do so in a bid to spark a new conflict (cited in Real Institute Elcano, 2007).

The responses of US and Kosovo leadership to rather threatening statements of Russia were strong as well. The U.S. Ambassador to the United Nations, Zalmay Khalilzad, stated: "We are determined to move forward, either within the Council or otherwise" adding that if Russia continued to object "this will not stop the situation from going forward, but it will be outside the Security Council framework, which is not what we want."(Reuters, 2007b). The other response came from the Kosovo Prime Minister, Agim Ceku: "It seems that an acceptable solution cannot be found in the Security Council. For us, it is not enough when countries say that they wait for a resolution. We have to stop pretending that the Security Council has answers to all of the questions" (Balkan Investigative Reporting Network BIRN, 2007).

In these rather tense circumstances, a series of high level meetings followed between the European governments and that of U.S. but did not manage to come to a common agreement. A G8 meeting held in Germany, somehow recapitulated efforts for an agreement as Russian officials stated openly that Russia's position remain unchanged opposing the views

of other G8 members. A turning point came with the proposal of the French President, Nicolas Sarkozy, who recommended a postponement of the status resolution process for six months in order to encourage further talks but “set the Ahtisaari plan as a default solution” (Kim & Woehrel, 2007). Later, a new UN draft resolution followed that incorporated aspects of Sarkozy’s proposal, namely this draft resolution would give the parties another four months for negotiations. This new plan was again rejected Serbian and Russian officials reiterated the argument that new talks should not set forth the outcome. Similarly, a summit meeting held between Bush and Putin in Kennebunkport, Maine did not produce any agreement or positive results. Therefore, realising the continuous disagreement and seeing no hope for reconciling the different positions, on July 20, the US and European Security Council withdrew their latest iteration for a new resolution.

#### V. 1.4 The Diplomatic Troika

As described above, the complicated negotiations over a new UN Security Council resolution did not succeed, therefore, on July 25, 2007 the Contact Group came to an agreement to embark on a new round of talks on the future of Kosovo represented by a Troika. The Troika consisted of European Union, United States and Russia namely diplomats, Wolfgang Ischinger of Germany, Frank Wisner of the US and Aleksandr Botsan-Kharchenko of Russia. The Troika was under the authority of U.N. Secretary-General Ban Ki-moon and obliged to report back to the Security Council by December 10, 2007 (after 120 days). The Troika negotiators stated that they would generate all possible options and called for Kosovo Albanians and Serbian parties to be constructive and opened in their approach towards negotiations. This new round of negotiations brought a new wave of scepticism, uncertainties as well as created room for speculations. Kosovo Albanian representatives in general, were sceptical that this new round of negotiations would result in a compromise, while Serbs hoped

for the continuation of the process. More importantly, it was not clear once the period of 120 days is over, whether this would represent the very end of the negotiation process or whether the talks should continue – Russia’s position in this regard was persuasively for the continuation of talks until the parties reach a mutual agreement. Hence, in this chapter, I will give a chronological overview and examine the flow of the negotiations process, and the diplomatic efforts undertaken by the Troika at this final stage based exclusively on Troika’s statements and the report. The chapter will describe the way the diplomatic Troika concluded its mandate without being able to facilitate an agreement on final status settlement which eventually contributed to the unilateral declaration of independence in February 2008.

The Troika hosted a series of meetings. It is important to stress out that at the meeting with the Troika in Vienna on 30 August (Troika Press Statement, 2007), both parties restated their commitments in regards to the security situation thus refraining from any activities or statements that might jeopardize the security situation. These initial mutual commitments gave positive indications that the parties were prepared to pursue negotiations and to build with the international community a peaceful future for the region.

The following meeting with the parties as reported by Troika was held in a constructive atmosphere as Belgrade and Pristina representatives reconfirmed their commitment to the Troika process which was to be concluded by the Contact Group reporting to the UN Secretary General by 10 December. They elaborated on their respective positions regarding final status of Kosovo. Both sides reaffirmed commitments to abstain from any acts or statements that might be regarded as provocative. It is important to note that at this stage, the question of partition has not been placed on the agenda of either party and since Troika was guided by the Contact Group's Guiding Principles which reject partition so far this was another indication there was hope that process would continue unhindered. However, it is important to note that the meetings with the parties were held separately.

On 18 and 19 September (Troika, Press Statement, 2007) the Troika met with delegations from Pristina and Belgrade.

Belgrade was represented by Foreign Minister Vuk Jeremic and the Minister for Kosovo and Metohija Slobodan Samardzic as well as Feodor Starcevic, Branislava Alendar, Aleksandar Simic, Gaso Kenezevic, Thomas Fleiner, Milos Jovanovic, Zoran Soljaga, Aleksandra Radosavljevic, Valdimir Jovicic, Marko Jaksic and Goran Bogdanovic.

Prishtina was represented by the Unity Team led by President Fatmir Sejdiu, Prime Minister Agim Ceku, President of the Assembly Kole Berisha, Hashim Thaci, Veton Surroi, Blerim Shala and Skender Hyseni.

The Troika reported that this was another meeting with a constructive atmosphere where representatives of the delegations responded to the questions asked by Troika. The delegations were reminded of the commitments they made in regards to the negotiations process such as abstention from provoking statements or acts that could hinder the process. Furthermore, internal political developments in Kosovo and Serbia should not be reflected or have a negative impact in the Troika process.

These meetings were meant to prepare the parties for the first round of direct negotiations that was foreseen to take place in New York on 28 September. In the light of these upcoming talks, the Troika called upon Prishtina and Belgrade to present and develop realistic proposals.

It is worth mentioning that prior to the direct talks a meeting of Contact Group Ministers (Contact Group, 2007), together with the UN Secretary General, EU High Representative, the European Union Presidency, European Commissioner for Enlargement and the NATO Secretary-General took place in New York on 27 September to discuss the Kosovo Status Process. A representative of UNOSEK was present in this meeting, as well. The Troika reported on the progress of the negotiation process.

Ministers reaffirmed that a timely resolution for Kosovo's status is essential for the stability and security of the Western Balkans and for Europe as well. Ministers also reaffirmed their determination to seek a negotiated settlement endorsed by the UN Security Council. Furthermore, they expressed their full support the assessment of UN Secretary General that the status quo is unsustainable as it can have negative consequences for Kosovo's political, social and economic development and can destabilise the region. In the light of the upcoming direct talks between Prishtina and Belgrade, the ministers expressed full support for the Troika process and welcomed the progressiveness and the constructive atmosphere of the first rounds of talks. Ministers reassured that the Contact Group's Guiding Principles of November 2005 should continue to be the foundation of the framework for the status process, which is based on UN Security Council Resolution 1244. Since elections were due in Kosovo on 17 November, the Ministers expressed the hope that they would take place with full participation of all communities in peaceful way and order.

Given that the next step in the Troika process will involve direct talks between the Contact Group Ministers appreciated this advancement towards direct discussions and urged both sides to approach the remaining negotiations with creativity, courage, and in a spirit of compromise. In addition, the Ministers advised the parties to take seriously the opportunity provided by the Troika process to secure a negotiated settlement. The responsibility is on each of the parties to develop realistic proposals. It is important to mention that even though Ahtisaari's Comprehensive Proposal remained on the table, the Contact Group showed its readiness to support any agreement reached between the parties. However, knowing the diametrically opposed positions of the parties, and the fact that Ahtisaari's proposal had been proclaimed by many political analysts, as well as the Contact Group itself, as one of the best solutions yet rejected by Belgrade and accepted by Prishtina, it was very unlikely that a round of 120 day talks would bring a negotiated outcome.

Thus, on 28 September (Troika Statement, 2007), the negotiating Troika met in New York City with leaders of Kosovo and Serbia to discuss Kosovo's future status. The Belgrade delegation was led by President Boris Tadic and Prime Minister Vojislav Kostunica. The Prishtina delegation was led by President Fatmir Sejdiu and Prime Minister Agim Ceku. The Troika initially facilitated two hours of direct dialogue between the parties. This was the first face-to-face meeting held under the auspices of Troika. After the direct dialogue, the Troika met with each delegation separately in order to explore further their positions while encouraging the parties to present their proposals in a way that would appeal to the other side.

The parties agreed on the so called "New York Declaration"<sup>8</sup>, which reassured that they are willing to engage seriously in discussions and to refrain from making statements that could destabilize the security situation in Kosovo. This particular meeting already showed that the parties firmly remained in their positions, even though, Prishtina's approach, appeared more conciliatory in comparison to the Belgrade delegation (Sauer, 2008).

The following meeting of Belgrade and Prishtina delegations under the auspices of Troika took place in Brussels on October 14 (Troika, 2007). The direct dialogue on Kosovo's future status continued, this time the negotiating parties expanded on the discussions they had in New York and presented their respective proposals on the future Kosovo status in greater detail. Belgrade elaborated its proposal of autonomy for Kosovo within Serbia, while Prishtina elaborated its proposal of friendship and cooperation between two independent states and full implementation of minority rights.

Serbia proposed the so-called "loose integration model" a proposal that is based on the model of Hong Kong, "more than autonomy, less than independence" that would grant the

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<sup>8</sup> See New York Declaration September 28, 2007 available at: [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressdata/en/declarations/96187.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/declarations/96187.pdf)

Kosovo Albanians substantial autonomy but not full sovereignty. The Serbian model implied that the borders of Serbia would remain intact but Kosovo would have "95% sovereignty" with minimal or no integration into Serbia. According to this model, Kosovo would govern its territory politically and economically, it would have the right to make economic agreements and participate in international institutions - apart from the UN. According to the Serbian side, this would be agreed in a contract that would be signed by Belgrade and Prishtina and would be guaranteed by the UN (The Economist, 2007).

Belgrade presented its vision of substantial autonomy for Kosovo within the borders of Serbia while Prishtina presented its vision of friendship and cooperation between two independent states and full protection of the minority rights as recommended by UN Special Envoy Martti Ahtisaari. A complete draft of a treaty of friendship, collaboration and reciprocal respect to preside over future relations between the independent states of Kosovo and Serbia was presented by the Prishtina delegation. It foresaw a Permanent Cooperation Council between Kosovo and Serbia, as well as other cooperative instances to deal with issues of common concern such as returns, missing persons, organised crime and achieving EU and NATO membership. "The Cooperation Council would have a permanent secretariat, convene regular high-level meetings, invite third-party mediation and oversee the expansion of other forms of cooperation" (ICG, 2007).

The proposal submitted by Belgrade was not a full proposal but merely a "PowerPoint" presentation that Belgrade presented as a "minimum integration" variant in which Kosovo would enjoy "95 per cent" jurisdiction over its own affairs (ibid).

On the other hand, Prishtina by proposing the Treaty of Friendship presented its vision on the future relationship with Serbia as two independent states. As mentioned above, this treaty of friendship would be based on good neighbourly relations, cooperation on issues with mutual interest, full protection of minorities, progress on the issue of missing persons, establishment

of common organs for cooperation based on the treaty and partnership in the realisation of the mutual vision for the Euro Atlantic integrations however, the “cooperation between two independent states” already predetermined the status outcome, namely implied an independence for Kosovo and this was totally unacceptable for Belgrade.

Both delegations put questions forward as well as responded to each others’ proposals. They stated that they would continue to abide by their commitment made in Vienna on August 30, to abstain from any confrontational acts or statements that might endanger the security and stability of the region or the Troika process. Following this meeting, in its statement the Troika expressed its intentions that it would be “vigorous and proactive” in order to help the parties to reach an agreement on Kosovo's status; particularly, the Troika will work with the parties to identify areas of mutual perspective that might open a trail towards settlement.

The next meeting of delegations from Belgrade and Prishtina under the Troika auspices took place Vienna on October 22 to discuss Kosovo's future status (Troika Press statement, 2007). Given that the Troika committed itself to be vigorous and take a proactive approach in the search for a solution, it submitted to the parties points for discussion with the intention of identifying areas of agreement that might *open a path to a negotiated solution*. Separate meetings of the Troika with each side took place to further discuss possible areas of agreement in the parties' positions to continue with direct face-to-face discussions on the final status resolution. It is very important to mention that as part of the Troika’s commitments to explore all possible means for finding an agreement, as indicated by their promise “to leave no stone unturned in the search for an agreement”, the Troika on October, submitted to the parties its Principal Conclusions, the so-called 14 points. The 14 points of the document (BIRN, 2007) were as follows:

1. Belgrade and Prishtina will focus on developing the special nature of the relations existing between them especially in their historical, economic, cultural and human dimensions.
2. Belgrade and Prishtina will solve future problems between them in a peaceful manner and not engage in actions or dispositions that would be regarded as threatening to the other side.
3. Kosovo will be fully integrated into regional structures, particularly those involving economic cooperation.
4. There will be no return to the pre-1999 status.
5. Belgrade will not govern Kosovo.
6. Belgrade will not re-establish a physical presence in Kosovo.
7. Belgrade and Prishtina are determined to make progress towards association and eventually membership of the European Union as well as to move progressively towards Euro-Atlantic structures.
8. Prishtina will implement broad measures to enhance the welfare of Kosovo-Serbs as well as other non-Albanian communities, particularly through decentralization of local government, constitutional guarantees and protection of cultural and religious heritage.
9. Belgrade and Prishtina will cooperate on issues of mutual concern, including
  - a) Fate of missing persons and return of displaced persons
  - b) Protection of minorities
  - c) Protection of cultural heritage
  - d) Their European perspective and regional initiatives
  - e) Economic issues, including fiscal policy and energy, trade and harmonization with EU standards and development of a joint economic growth and development strategy in line with regional economic initiatives.

- f) Free movement of people, goods, capital and services.
  - g) Banking sector
  - h) Infrastructure, transportation and communications
  - i) Environmental protection
  - j) Public health and social welfare
  - k) Fight against crime, particularly in the areas of terrorism, human-, weapons- and drug-trafficking and organised crime.
  - l) Cooperation between municipalities and the government of one of the two sides.
  - m) Education
10. Belgrade and Prishtina will establish common bodies to implement cooperation.
  11. Belgrade will not interfere in Prishtina`s relationship with IFIs [international financial institutions].
  12. Prishtina will have full authority over its finances (taxation, public revenues, etc.)
  13. Kosovo`s EU Stabilization and Association Process (Tracking Mechanism) will continue unhindered by Belgrade.
  14. The international community will retain civilian and military presences in Kosovo after status is determined.

This 14-point document therefore sets out principles for Kosovo, while the word independence is not mentioned, the document stresses out that there will be no return of Kosovo to the pre-1999 status stating that Belgrade will not govern Kosovo and will not re-establish a physical presence in Kosovo". As can be seen from the document, the Troika urged Belgrade and Prishtina to co-operate on issues of common concern such as missing persons and return of displaced persons, protection of minorities, protection of cultural

heritage, economic issues. Both Prishtina and Belgrade delegations responded to the Troika's points. Kosovo Albanian leaders expressed their disagreement with some of the points but their overall response was that the most of the points in the document are what Prishtina has already proposed to the Serb delegations throughout negotiation process. In the other hand, the Belgrade delegation presented a 14 points document. Basically, the Serbian working points restated already known standpoint of Belgrade that it categorically opposes independence, and that Kosovo can have a broad autonomy within borders of Serbia.

The responses of the parties to each point were taken with high attention and recorded. Even though according to Troika's statement, the parties stated that they would continue to abide by their commitment made to abstain from any provoking acts or statements that might jeopardize the security and stability of the region or the Troika process, according to local media in Prishtina, this was considered one of the most difficult direct meetings for both parties and they had a heated debate while defending their views on the future of Kosovo. Therefore, as far as substantive part of the negotiations is concerned, no concrete move from the initial positions was noted despite the Troika's restless efforts.

The following meeting was held in Vienna on November 5 with leaders of Kosovo and Serbia to discuss the future status Kosovo. At this meeting, both sides were represented at the highest level. While the Troika stated that it was determined continue to explore on this basis various options with the parties, the rigid and diametrically opposed views of the parties indicated that there is no grounded hope for an agreement (Troika Press Statement, 2007).

The next meeting of the negotiating Troika and delegations from Kosovo and Serbia took place in Brussels on November 20. Prishtina delegation clearly stated or rather re-stated that its vision of Kosovo was a supervised independence in line with the recommendations of UN Special Envoy Martti Ahtisaari, whereas Belgrade continued to elaborate to Prishtina its vision of granting Kosovo a high autonomy inside the borders of Serbia. Therefore, despite

Troika's vigorous efforts to secure a negotiated settlement, no common ground was found, no mitigation of disagreements was achieved, no move from the long-established positions was made while the mandate of the diplomatic Troika was approaching its end and diplomatic means exhausted. It is worth stressing that after each meeting under Troika's auspices, the parties were reminded that the Troika process will be concluded by the Contact Group reporting to the UN Secretary General by 10 December 2007 (Troika, 2007).

On 28 November, the negotiating Troika completed an intensive conference with the delegations from Belgrade and Prishtina in Baden, Austria. The leaders of both sides were brought together to discuss the status of Kosovo. Intensive talks took place for almost three days. The Troika explored a broad spectrum of alternatives for a commonly accepted status outcome and advised the parties to generate all possible options that would lead to a mutual agreement in regards to the status of Kosovo. Regrettably, Belgrade and Prishtina could not find common grounds for an agreement as they both remained unchangeable in their well-established positions. Nevertheless, the Troika considered that this period of intense talks was beneficial for the parties as they had the opportunity to identify their shared interests and more importantly their aspirations towards European perspectives. The direct talks between the parties enabled the Troika to reiterate the fact that avoiding violence and maintaining peace is essential for the stability of the region. According to the Troika, every realistic option for an agreement was explored and as they expressed, no stone was left unturned in the search for a mutually-acceptable outcome. Unfortunately, no agreement was reached.

The Baden Conference marked the end of Troika-sponsored face to face negotiations on the future status of Kosovo (Troika, 2007).

According to Schmidt and Tolksdorf (2007) from the psychological perspective, the Troika talks have been a test of flexibility for both parties. Even though both sides have persistently held their positions on core issues, they have reflected some flexibility and, in their own way,

a desire to find a feasible approach for the future. They have also realised that there is a need to develop new terms that would be able to describe the current reality.

While the Troika process gave Prishtina and Belgrade a very last opportunity to find a mutual agreement, at the same time it gave EU time to prepare for its new responsibility. The facilitators promised to leave “no stone unturned” in their effort for a negotiated agreement that ideally could have transferred some responsibility from the EU capitals to Belgrade.

The negotiation process as such, actualised the Kosovo question within EU itself particularly to those member states whose foreign and European policies have not traditionally been concerned with Southeast Europe. Therefore, in a way it succeeded in the awareness on Kosovo issue as now, there is widespread acceptance in the European Union – even beyond the European members of the Contact Group – of the fact that the Kosovo issue is a European issue and that the Union has a specific responsibility in the process (Schmidt and Tolksdorf , 2007).

On December 7, 2007 the UN Secretary-General Ban Ki-moon received the report of the Contact Group drafted by the Troika to transmit to the Security Council. The report did not give recommendations on the way ahead as such it rather expressed regret that despite of intensive negotiations the parties did not succeed in reaching a mutual agreement as positions of the parties in relation to the sovereignty dispute were diametrically opposed. None of the parties could move from their previously stated positions. However, the report noted that the negotiations were useful as they convened important commitments from the two sides that they would not use violence and refrain from any actions that might jeopardize the security situation in Kosovo and in the region. The report confirmed the failure of the negotiations between Prishtina and Belgrade. The report also concluded that “the settlement of Kosovo’s status was crucial to the stability and security of the Balkans and Europe as a whole”.

The failure of these final talks marked a difficult phase ahead for UN as well for EU, while Russia called for the continuation of discussions; US warned that the reality on the ground should not be ignored.

The debate of UN Security Council held on 19 December, 2007 was concluded without any concrete steps. “The U.N. Security Council failed to bridge deep divisions over the future of Kosovo on Wednesday and Western countries said they would take the lead in steering the province to independence from Serbia. With Western backing, Kosovo's 90 percent Albanian majority is preparing to declare independence within weeks, setting up a showdown with Serbia and its big power backer Russia”. A joint statement by the EU ambassadors on the council and the United States said: "The potential for a negotiated solution is now exhausted," (Parsons, 2007). EU showed its commitment to take a leading role in “implementing a settlement defining Kosovo's future status in a careful and coordinated manner”. In the light of these events, EU decided to intensify preparations for a future EU and international deployment in Kosovo, in close coordination with other international actors. EU deployed two preparation teams in Kosovo, planning for a future International Civilian Office (ICO) and a an EU mission in the broader rule of law area under the European Security and Defense Policy (ESDP) (European Commission, 2007).

## **V. Declaration of Independence and the reaction of states**

Following the long and difficult negotiation process, the unsuccessful diplomatic efforts to bridge the gap between Kosovo and Serbia, the impossibility to secure a new resolution within the UN Security Council and the collapse of the Troika's negotiations, on 17 February 2008, the Parliament of Kosovo declared Kosovo an independent and sovereign state while pledging compliance with Ahtisaari Plan. Even though this was a unilateral declaration, the Kosovo leadership undertook this action in full consultation and accordance with international actors, namely the US and the majority of the most eminent European states.

At the time of this writing, the Republic of Kosovo has been formally recognised by 43 out of 192 sovereign UN member states. It is worth mentioning that a majority of EU member states 20 out of 27 have formally recognized Kosovo while Romania, Slovakia, Spain and Cyprus decided not to recognize it in the near future fearing that it can provoke secessionist movements in their countries. While Britain, France, Germany, and Italy insisted that Kosovo is a unique case not a precedent. Furthermore, three out of five UN Security permanent members have recognised Kosovo as an independent state, US, UK and France. Russia as stated earlier in the paper, strongly and continuously rejects the independence, while China still stands in an unclear position. It did however in May 2008 join Russia and India in a joint statement against Kosovo independence (Anon, 2008). It might be interesting to note that from the Former Yugoslav Republics several of whom have also been engaged in struggles for independence only two have to date formally recognised Kosovo (Slovenia and Croatia)

while Montenegro and Macedonia are still considering the recognition but are reluctant to damage relations with Belgrade. Twenty one NATO member states out of twenty-six have recognized Kosovo. Symbolically in May, the Kosovo flag was visible for the first time at EU institution in particular at the EU Parliament.

Expectably, Serbia rejected the independence of Kosovo with all possible diplomatic means claiming that it will do everything in its power "to revoke the unilateral and illegal declaration of independence," while warning that it will relegate its diplomatic relations with any foreign government that recognises Kosovo as an independent state. Moreover, Serbian reactions were expressed also with protests and violence, the protesters destroyed UNMIK border check points, occupied the Court building in Northern Mitrovicë. The protests culminated in violent attacks against foreign embassies in Belgrade on 21 February 2008, where the most blatant one was the burning of the American embassy. These attacks were condemned by the UN Security Council recalling that the "fundamental principle of the inviolability of diplomatic missions and the obligations on host governments, including under the 1961 Vienna Convention on diplomatic relations, to take all appropriate steps to protect embassy premises" (Videmsek & Bilefsky, 2008). Analysing the protests and reactions of Serbia in the aftermath of the declaration of independence, Timothy Waters, a professor at the Indiana University School of Law-Bloomington stated that the widespread protests probably help Serbia's effort to "portray independence as the destabilizing choice" (2008).

Another move towards the defiance of Kosovo's independence appeared on 11 May, 2008 when Serbia organized and held elections in the Serb-dominated parts of Kosovo. The government of Kosovo and UNMIK SRSG claimed that only the UN has the right to organise local elections in Kosovo therefore these elections were illegal and would not be recognised. As a reaction against the voting, the Movement for Self-determination organized a rally blaming both UNMIK and the Government of Kosovo for the "incapability" to prevent

Serbian elections in Kosovo. Even though these elections were declared as illegal, the Serbs in Kosovo inaugurated their own assembly set up in defiance of the majority ethnic Albanian government and the United Nations (BBC News, 2008). It is important to note that the opening session of this parallel assembly took place on St Vitus day, the great Battle of Kosovo of 1389 that presents a highly remarkable point to concepts of Serbian history, heritage and national identity (described in chapter II). In the light of these events the President of the Council of the International Institute IFIMES and Visiting Professor at the University of Michigan Dr. Robert J. Donia, concludes as follows:

The Serb plan, in common with those of Milošević's lieutenants in 1991 and 1992, aims to contest the jurisdiction of the existing state and to incite conflict between conciliatory Albanians and Serbs, in this case those Serbs who would accept the generous terms of the Ahtisaari Plan and work within the framework of the Kosovo Constitution. The plan is also intended to provoke Albanians and international security forces to violence in order to discredit them internationally. The Serbian campaign is such a perfect imitation of Milošević strategies as to make its activities risibly predictable. Serbs following Belgrade's instructions are likely to locate their provocations in multiethnic areas or along ethnic boundary lines... The Serbian-government-led actions constitute a clear and present danger not only to safety and security in Kosovo but to stability throughout the region. The conduct of Serbian government ministries and parties in Kosovo is an egregious violation of behavior expected of an aspiring member of the European Union; it would be so even under guidelines for relations between constituent polities in Yugoslavia before Milošević's dubious legal changes of 1989 and 1990. As leaders of the US, the European Union, and NATO prepare to hail the imminent formation of a "pro-European" government in Serbia, they should also attend to the grave threat to stability that Serbia is incrementally implementing in Kosovo (2008).

This unrest of Kosovo Serbs orchestrated by Belgrade is a clear indication that Serbs still remain tied with myths and historical obsessions and unfortunately fail to recognize the new reality and by trying to set up parallel structures and refusing to integrate themselves in the Kosovo structures, they further complicate the situation.

Serbia relies heavily on an argument that the Declaration of Independence of Kosovo is illegal under international law. Personally, I find that argument to be disingenuous. If the majority of

the world's nations recognise the independence of Kosovo then this becomes a legal fact that can no longer be overturned by operation of law. The recognition itself provides the legal basis. Under the UN Charter and the de-colonisation process, many nations sought and gained legal independence and the Government of Kosovo seeks to rely on that precedent among others.

However, according to Hooghiemstra (2008), a legal expert with a long experience in Kosovo, fundamentally, the question of how Kosovo could or could not become independent is not a matter of *positive* international law. There is no authoritative international legal text governing this question. Even if the Security Council were to recognise the independence of Kosovo that would not make it 'legal', but would merely provide a strong argument in favour of the legality of that independence. The crucial element here is the behaviour of states, and their opinion about that behaviour. If the majority of states behave as if Kosovo is independent, and demonstrate by their behaviour that they are in agreement with this fact, then in law Kosovo is independent. In that case, Serbia's objections would become irrelevant. The tricky part is in deciding when a sufficient number of states have demonstrated their agreement with Kosovo's independence by their behaviour, such that we can say that it is 'legal'. But it is never 'illegal' in international law (as in 'against the law') – merely not yet 'legal'.

However, what Serbia is actually trying to do, behind the rhetoric, is to prevent a sufficient number of states from recognising Kosovo and ensuring, through its own interventions on the ground in Kosovo, that the independence of Kosovo cannot be realised 'in fact' and thereby also not 'in law'. On the other hand, the Kosovo government drafted the constitution which was approved by the duly elected Assembly of Kosovo and entered into effect on 15 June 2008. Moreover, the unilateral declaration of independence as mentioned earlier was prepared in consultation with a number of concerned nations as a method for implementing the Ahtissari Plan without UN Security Council Resolution approval. The Kosovo government

explicitly stated its willingness to comply with the limitations on its (sovereign) authority contained in the Ahtisaari Plan. According to the plan, the authority for the administration of Kosovo would shift to a new International Civilian Office (ICO), with support from the European Union. However, the transition *per se* proved not to be easy as it entails legal and political impediments.

### V.1. 1. Legal and Political Implications

To date, forty-three of the worlds' nations have recognised Kosovo as an independent state. It appears that a number of powerful nations hoped to circumvent the objections of the Security Council to this resolution of the status of Kosovo by appealing to the full community of nations. If the majority of the nations holding a seat in the General Assembly of the UN recognise Kosovo as an independent state, then arguably the resistance of the Security Council would no longer matter. The General Assembly has certain authorities to reach decisions by simple majority vote which could lead to a tantamount recognition of the independence of Kosovo without qualifications. In essence, this could be said to 'set aside' the objections of the Security Council. At any rate, to date an insufficient number of UN member states have recognised the independence of Kosovo for this approach to work.

The European Union, supported by the United States, proceeded with preparations for the establishment of the ICO, which is now operational on the territory of Kosovo. Several lawyers for the European Union sought to argue that UNSC Resolution 1244 authorises the UN Secretary-General to establish an international civilian administration for Kosovo, but does not specify that this administration must be operated by the UN. Several nations lobbied the UN Secretary-General to decide that the new ICO would replace UNMIK as 'his' international administration in Kosovo under 1244. However, this idea was met by strong

objections from Russia, a permanent member of the Security Council, and the UN Secretary-General did not want to proceed with this idea against the express will of the Security Council.

So, what are the implications? The implications are that at least four different entities have some claim to the authority to administer Kosovo: Serbia; UNMIK; the Government of Kosovo; and ICO. How could this be resolved? I will discuss each claimant in turn.

Serbia has based parts of its claim on the continued legal force of the UN SC Resolution 1244. Therefore, Serbia has no choice but to continue to recognise the authority of UNMIK. The solution to their claim appears to be in a cooperative venture between the government of Serbia, local authorities constituted under its authority, and UNMIK in those geographical areas of Kosovo where Serbia is able to operationalize its claim.

UNMIK had hoped to be able to dismantle itself, but now will not be able to due to the lack of consensus in UN SC. The SRSG of UNMIK has little choice but to remain the highest legal authority over Kosovo. The resolution of its claim seems to be in a joint venture with the ICO. Under SC Resolution 1244 the international administration of Kosovo is authorised to seek the assistance of other (regional) organisations, as it has done with UNHCR, OSCE and EU. Legally, there would not appear to be any barrier to the Secretary-General re-arranging the participating organisations of the UNMIK-structure to include the ICO, and any other new entities such as EULEX, as he recently stated “to reconfigure UNMIK”. The operations of UNMIK as such would be slimmed down, and in a sense the authorities of UNMIK would become shared between UNMIK, the ICO and the government of Kosovo.

The Government of Kosovo has explicitly stated its will to comply with the Ahtissari Plan. As such, despite the Declaration of Independence, Kosovo will accept a continuing relationship

with the ICO. If the ICO reaches a joint venture agreement with UNMIK, then this implies an agreement by the Government of Kosovo to continue cooperating with UNMIK. While the new Constitution of Kosovo does not provide this, the combination of the Constitution, UNSC Resolution 1244 and the Ahtissari Plan would provide a legal basis, however convoluted. A certain measure of sleight of hand may be necessary to pull this off. In particular, where some portions of the electorate of Kosovo consider that the Declaration of Independence has rendered the resolution 1244 null and void, this may lead to a period of political instability. In this perspective, the continued legitimacy of the UN SC Resolution 1244 may depend on developments in the international recognition of Kosovo's independence: the more states recognise independence, the less UNSC Resolution 1244 is compatible with the facts. Some will argue that once international recognitions have reached 51% of states, and then Resolution 1244 can no longer be considered valid, because it still presupposes that Kosovo is a part of FRY (now Serbia). At this point, in law, Kosovo will no longer be in any way part of Serbia and the legal basis of 1244 is no longer in existence. Hence 1244 can no longer be valid.

The primary backers of Kosovo independence have explicitly agreed with the Ahtissari Plan. They have stated their agreement to regard this Plan as the legal basis of their support for further operations in Kosovo. Arguably, all other states which have recognised Kosovo's independence have implicitly agreed to the Ahtissari Plan. This provides some legal basis for the functional role of the ICO as a variation on UNMIK's previous role, but does not provide for a legal basis for the presence of the ICO on the ground. The solution is being sought in a joint venture between the ICO and UNMIK. The intention seems to be to maintain the legal authorities of UNMIK with a shift in functional emphasis, but to re-organise the financing and operationalisation of the UNMIK functions through a new entity acting as UNMIK's 'delegate'. The biggest problem is how to link the authorities of the SRSG of UNMIK based

on 1244 with the proposed authorities of the head of the ICO under the Ahtissari Plan? What is the way out?

In any case, this solution will require a certain amount of adroitness. We shall see if the interested parties manage to pull it off. At any rate, the position of the SRSG will have to be maintained. I suspect that it will be resolved through a number of cooperative ventures, each with their legal bases.

## **VI. Conclusion**

On 12 June, 2008 the United Nations Secretary-General Ban Ki-moon informed the UN Security Council and the Presidents of Serbia and Kosovo about his plans to restructure the UN presence in Kosovo. On 20 June, 2008 at the Security Council debate on Kosovo in New York, Ban Ki-moon presented his proposal to reconfigure UNMIK and to give way to European Union that would play an enhanced operational role in the rule of law area under a UN “umbrella” headed by his Special Representative, in line with UN SC resolution 1244. In his opening statement the Secretary-General expressed:

The challenge facing us is an enormous one. In almost 40 years of my diplomatic life, I have never encountered an issue as divisive, as delicate and as intractable as the Kosovo issue. Legally, politically, morally, it is a landscape of enormous complexity and sensitivity that required the exercise of extraordinary objectivity and balance. The declaration of independence in February; the violence at the customs posts and in Mitrovica; the elections organized by the Serbs; the promulgation in Pristina of a new Constitution: all of these recent developments -- and many before them -- have been fiercely contested by the communities and their supporters abroad, and have profoundly changed the environment in which we are operating (United Nations Secretary General, 2008).

Ban-Ki-moon stressed out that the UN must accept "[the] profoundly new reality" resulting at least from the declaration of independence on 17 February, 2008. The new plan for the international presence in Kosovo was agreed by the majority of UN member-states however, Russia and Serbia strongly objected it. The 15-member council did not vote while still arguing about its legal approval (United Nations, 2008).

Whether UN Security Council will succeed to find a compromise with Russia, that remains to be seen however, one thing is for sure, there is no turning back. The prevailing over continuous rigidity of the Russian position will depend on the increasing number of the states that will recognize the independence of Kosovo, which I strongly believe contributes to the regional stability. In this light, the EU should take a key role first of all by assuming a more united policy vis-à-vis Kosovo based on the political reality on the ground and second by supporting economic development that would not allow Kosovo become a failed state but rather a prosperous part of Europe. The economic development is crucial and it can definitively serve as a path towards a sustainable solution that I hope will mitigate political divergences. In this light, a Donors Conference for Kosovo that will be hosted by the European Commission in Brussels on 11 July leaves us with a great hope that EU Member States, key international donors, International Financial Institutions, as well as international and UN agencies will contribute to Kosovo's socio-economic development, to create the conditions for growth, investment and jobs for all communities living in Kosovo. Kosovo is above all a European issue therefore the EU has committed to use all instruments to help Kosovo realise its European perspective.

Finally, as discussed in this paper, the diplomatic efforts through a negotiation process did not succeed and despite all political, tactful and strategic overtures led to a cul-de-sac. What is the way out? Given the current circumstances, I think that a realistic and future oriented view should triumph, the new political reality should be accepted and all parties with the continuous support from the International Community primarily EU should make efforts to find a common ground as there is no other better alternative. While this contributes to the peace and stability in the region, it also contributes to the fulfilment of criteria for membership in EU and NATO - at least this is a point that both parties agree.

## **VII. Recommendations**

### **To UNMIK:**

- Continue to urge members of the Security Council to come to a consensus on the issue of Kosovo and the way forward
- Lobby for Kosovo's admission into international organizations
- Take steps to cooperate fully with the EULEX mission and hand over appropriate competencies
- Together with EULEX, develop a strategy for the future of northern Kosovo

### **To the EU:**

- To develop more united and collective position on the issue of Kosovo among all 27 member states
- Support Kosovo economically and create the path towards EU integration
- Establish diplomatic presences in Kosovo
- Lobby for Kosovo's admission into international organizations
- 

### **To ICO:**

- Ensure successful implementation of the Ahtisaari's plan in all territory of Kosovo

**To members of the Contact Group:**

- Continue to encourage countries to formally recognize Kosovo
- Lobby for Kosovo's admission into international organizations

**To the Government of the Republic of Kosovo:**

- Continue to solicit recognition from countries which have not formally taken steps to recognize Kosovo to date
- Reach out to neighboring states, in particular ex-Yugoslav countries to enhance co-operation within the region on issues of common interest
- Support and implement Ahtisaari's plan particularly the process of decentralization.

**To the Government of Serbia:**

- Accept the new reality and take a future oriented view towards EU integration
- Encourage Kosovo Serbian community to get an integrated part of the Republic of Kosovo institutions
- Enter into agreements with the Government of Kosovo regarding the preservation of formal links with Kosovo Serbian community members in Kosovo [as per Ahtisaari plan, annex III, articles 10/11]

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