

The beginning of the international process for defining Kosovo's final status

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Abstract

The trajectory that has followed the process of defining Kosovo's political-legal status has been as complex and difficult as it is unclear both in terms of time and content. While UN Security Council Resolution 1244 maintained (suspended) sovereignty over Yugoslavia over Kosovo and UN international administration (UNMIK), it was envisaged as a transitional phase. Both states, Kosovo and Serbia had completely different expectations. The former expected that after the abolition of international administration, Kosovo will declare its independence and begin its life as a pre-eminent entity, while the second, ie the Serb side, expects the resettlement of sovereignty there, allowing substantial autonomy. In these circumstances during 2004, especially after the events of March 2004, the status quo was preserved, and so the international community began to move slowly towards the definition of the future status of Kosovo.

Keywords: status, Kosovo, quint countries, UNMIK, negotiations.

Introduction

Resolution 1244 had created a status quo in Kosovo. The international administration was in the midst of two pressures: on the one hand it would have to maintain the sovereignty of the Federal Republic of Yugoslavia (FRY) over Kosovo while on the other hand, the people of Kosovo did not want anything less than independence. This resolution left the issue of open-ended status, thus making it a legal issue in a political affair for the international community. The issue of resolving Kosovo's final status as being sidelined by international actors, who considered that the status issue should be sidelined as far as possible. There was a high skepticism of international actors regarding Kosovo's independence, because it would have bad consequences for Bosnia-Herzegovina, where its Srebrenica republic would also seek its independence. The same could happen in the cases of Abkhazia and South Ossetia, the two Georgian regions that were being self-administered, under the protection of Russian-led "peacekeepers". They would also be declared independent or would join Russia (Weller and Marck, 2009):

However, a solution had to be reached, the issue of Kosovo's final status should have been defined as it was foreseen from Rambouillet to hold talks on finding a mechanism in order to review the status in 2002. In April of that year, the Secretary-General the UN reported to the Security Council that it had instructed its Special Representative (SRSG) to develop the benchmarks and benchmarks that would measure progress in Kosovo.¹ By submitting the report to the Council, then special representative Micheal Steiner had said that significant progress had been made in

¹ Report of the Secretary – General on the United Nations Interim Administration Mission in Kosovo, (2002), UN Doc. S/2002/436, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2002/436 (April 22, 2002).

Kosovo, arguing he was entering a new phase. Steiner stressed that UNMIK was now shifting some of its responsibilities to local institutions in the process of building a sub-state autonomy. This means that we are approaching the beginning of a political process in order to determine the future status of Kosovo. But first, some standards need to be met to begin final status talks (Weller and Marck, 2009). For drafting the spheres of standards, it became a coalition agreement of Kosovar parties that was mediated by UNMIK after general elections in the territory.

They were referred to: "Existence of functional state institutions; enforcing the rule of law; freedom of movement; the right of return for all Kosovars; development of market economy; clarity of property; normalized dialogue with Belgrade; and the reduction and transformation of the Kosovo Protection Corps (KPC) ". This policy was backed by the Security Council and was eventually remodeled as "pre-status standards" (Weller and Marck, 2009, 310). However, the eight standards did not take place until December 2003 when they were jointly presented by UNMIK and the Provisional Institutions of Self - Government in Kosovo. From March 2004, UNMIK's bureaucracy had taken over the process (Weller and Marck, 2009, 311). So from this it can be seen that there has been a delay in the process.

It was anticipated that the process of status review would take place in addition to the implementation of the standards. This review mechanism was officially endorsed by the Security Council on 12 December 2003² The international administration would periodically evaluate how well the standards were met, as to whether it should recommend whether or not the right time to launch the status talks. The Council further emphasized that the first time for a comprehensive review would take place sometime in mid-2005 (Weller and Marck, 2009, 311).

The international community's diplomatic process for resolving Kosovo's final status for Kosovo's institutions was most welcome, emphasizing that Kosovo is *de facto* independent, while the rest belongs to *de jure* recognition of Kosovo.

The March 2004 riots and the Kai Eide report

Failure to define the final status had created a mockery for the citizens of Kosovo. In addition, Kosovo citizens were also experiencing a serious economic situation. The level of unemployment was at a very high rate; even those few workers who worked had a job under their qualifications and received a miserable salary.

The economic powers were mainly reserved for the international community and still coordinated by the EU Pillar of UNMIK. Now with an administrative budget three times larger than in 1999, Pillar had the means to accomplish the tasks expected from it. But it still faced major legal and political obstacles. Property rights were the worst issue. Ottoman despots, communist commissars and Milosevic's allies, had constantly caused the clutter of land, buildings, and large firms. As a result of political uncertainty, there was a lack of investment and especially investment from abroad. No big investor would risk his money in a new Kosovo until he was assured that the goods he bought were safe (King and Mason, 2007). This resolution left the

² Statement by the President of the Security Council, (2003) United.Nations.S/PRST/2003/http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PRST/2003/26 (December 12, 2003).

issues of open end status, thus making this from a legal issue pass on to a political issue for the international community. The issue of resolving Kosovo's final status as being sidelined by international actors, who considered that the status issue should be sidelined as far as possible. There was a high skepticism of international actors regarding Kosovo's independence because it would have bad consequences for Bosnia-Herzegovina, where Republika Srpska would also seek its independence. The same could happen in cases of Abkhazia and South Ossetia, the two Georgian regions that were being self-administered, under the protection of Russian-led "peacekeepers". They would also be declared independent or would join Russia with a unique governance system throughout Kosovo, leaving Mitrovica under a sort of parallel administration led by Belgrade. The riots were directed against ethnic Serbs and Serbian religious and cultural monuments in many areas of Kosovo, beyond Mitrovica (Weller and Marck, 2009, 312). The riots lasted over three days, leaving 19 dead, 954 wounded, 4,100 displaced 550 houses and 27 churches and burnt Orthodox monasteries (Weller and Marck, 2009, 312).

March riots undoubtedly accelerated the process, directly affecting the course of the negotiating process. These disturbances make it clear that: Kosovo can not remain in a state of status-even further, with an undefined status and a miserable economic situation. This was also stated by Kosovo's institutional actors, stating that Kosovo's citizens are tired of this situation, and to prevent further cases of outbreaks of inter-ethnic violence, the final status of Kosovo should be defined as soon as possible. Therefore, elements of standards implementation projects have been accelerated, including rule of law and security issues. Moreover, given the instability and tensions that had been manifested during the riots, the UN secretary-general began the general process of reviewing the UN operation in Kosovo.³ This process was led by Ambassador Kai Eide, Norway's permanent representative to NATO. Ambassador Eide presented the initial report in August 2004, which was published only three months later, along with the Secretary General's own recommendations for the next steps. At the beginning of the assessment, the report presents a general situation where Kosovo society appears as a society that has nevertheless managed to cripple and make dramatic changes, taking into account the factual situation in 1999 (Bajrami, 2011). The biggest problem according to the report was the interethnic challenge, which had to be treated seriously. In addition, the report evidenced the deep dissatisfaction of the majority population with the international administration. He found that the policy "Standards before status" lacked credibility and should be replaced by "a policy based on priorities and real standards" (Weller and Marck, 2009, 313). Moreover, it was foreseen that the situation in Kosovo could deteriorate even more than to improve.

On October 7 2005 Ambassador Eide reported to the Security Council that the fulfillment of different standards was not the same, but the time had come to move towards status. Ambassador Eide added "The future status process should be carefully started. All parties should be gathered-and kept-together throughout the

³ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, (2004), UN, Doc. S.2004/613, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2004/613 (July 30, 2004).

status process. The end result must be stable and stable. No artificial deadlines should be set. Once the process starts, it can not be blocked but needs to be completed.”⁴ On October 24, the Security Council authorized the launch of the status process. In accordance with the Council, the Secretary-General appointed Martti Ahtisaari, former Finland’s president, who assisted the recent negotiation of the NATO campaign against Yugoslavia as a messenger its own specialty for Kosovo’s final status process (Weller and Marck, 2009, 315).

Based on these processes it was seen that the final status would lead to some form of independence. Considering that for Belgrade this would be unacceptable, before the start of the final status negotiations, it was planned to build a process that would in each case offer an agreement so that the process would not be blocked, and in the end a solution could be achieved.

Vienna negotiations on final status

The international community had already seen the situation that Kosovo could no longer be left in a state of the status quo. As a result of this process was moved forward, organizing Vienna negotiations for the final status of Kosovo. Both sides in the negotiations, the Kosovo and Serbia authorities held diametrically opposed positions. On the one hand, Kosovo would accept nothing less than independence. On the other hand, Kosovo’s independence was absolutely unacceptable for Serbia. There were three structural factors that hindered the environment to negotiate. The first two factors relate to the principles of the classical international system, while the third factor relates to the modern principles of the international system. First, Belgrade’s position coincided with the strong support the international system maintained to maintain territorial integrity and territorial unity of states. Second, it was the principle of the state’s consent that obligations can not be imposed on states in violation of their will. Third, it was the principle that affirmed the proclamation and protection of human rights, which was becoming more and more important (Weller and Marck, 2009, 317). From these principles, the two principles coincided with the positions of Belgrade, while the third principle was on the side of Kosovo, when it is known that the suffering of the population in Kosovo, the mass displacement and over half of the population from the territory by Serbian military and paramilitary forces in 1999 were still fresh in the memory of international policymakers who were involved in the Kosovo crisis. It was the conviction of most Western governments that, given the fresh history, it would not be very realistic for Kosovo to re-establish under Serbian sovereignty.

The format of the talks- If we look at the negotiating process as a whole it was organized and developed according to standard rules which constitute a negotiating process in general. Based on this was defined the format of the talks, the assignment of the place, the time, the model of mediation, the implementation or the implementation of the eventual results (Berridge, 2011, 53). The format of the talks was straightforward.

⁴ Letter dated 7 October 2005 from the Secretary – General addressed to the President of the Security Council, UN Doc, S/2005/635, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kos%20S2005%20635.pdf> (October 7, 2005).

Mediators would invite delegations to Vienna for a period of several days, providing the agenda for a single sphere (e.g. decentralization) that should be considered during this period. They began on February 20, 2006, and they would be held around a table in a hut in one of Vienna's palace palaces. Negotiations were organized under the leadership of a large number of key world decision-making centers such as the Security Council, the Contact Group (US, UK, France, Germany, Italy and Russia), Regional Political and Security Organizations, states and teams, as well as a large number of experts. While the Contact Group led the negotiations, the process was, however, officially, the work of the UN. The UN Secretary General appointed not only the special envoy, Martti Ahtisaari, but also his deputy Albert Rohan of Austria who led the talks. The mediators were backed by UN Special Envoy for Kosovo (UNOSEK) office (Berridge, 2011, 53). A total of fifteen rounds of direct negotiations were held in Vienna during 2006. These negotiations were focused on decentralization issues, the protection of cultural and religious heritage, economic issues and the protection of minority rights.

The negotiating structure for Kosovo's final status was complex. The framework for the negotiations was set by the UN Security Council, based on the recommendations of Ambassador Eide and the UN Secretary General. This framework was rooted, in a general sense, in Security Council Resolution 1244 (1999) (Weller and Marck, 2009, 319). The Contact Group adopted ten "leading principles" for resolving Kosovo's status. In essence, these principles set red lines to be imposed by mediators in the negotiations. (Weller and Marck, 2009, 322). These principles emphasized that: there will be no turning back to the situation that existed in Kosovo before NATO intervention (Weller and Marck, 2009, 322). It was also emphasized that "Any solution that is unilateral or that is a consequence of the use of force would be unacceptable." Besides these parts of the principles was also what will not change in the current territory of Kosovo, in other word, nor the division of Kosovo, nor the unification of Kosovo with any state or part of any state.

The negotiations began in February 2006. Each party in the negotiations could have only seven representatives in the negotiating room. The start of the negotiations was of a technical nature, as was the decentralization, which later went to the status process. This is also called bottom-up negotiation approach (Knoll, 2011). The Kosovo delegation always contained the ministry or ministerial level to cover the issues raised for each negotiation session, community representatives and senior experts. Therefore, the composition of the team varied depending on the issue being considered. The delegation acted under the leadership of the so-called "Unity Team."⁵ The team was backed by the "Strategic Political Group" consisting of senior party representatives who were part of the Unity Team, as well as some experts whose role was to develop ambitions for the adoption of the Unity Team and who received part in the rounds of negotiations. On the other hand, Serbia had chosen for lower representation from its foreign ministry, along with representatives of other troops,

⁵ The Unity Group consisted of: President Fatmir Sejdiu (Democratic League of Kosovo); Prime Minister Agim Çeku (Alliance for the Future of Kosovo); Assembly Speaker Kolë Berisha, Hashim Thaci, leader of Democratic Party of Kosovo on behalf of the opposition, and Veton Surroi, chairman of the ORA party.

experts and “its representatives” of Kosovo’s communities. The issue of representation of various communities in Kosovo led to an abnormal situation. Representatives of the Serb community in Kosovo had a dualistic approach.

The positions of the parties in the negotiations were completely different. Belgrade was primarily interested in confirming its territorial sovereignty even if it was willing to suspend the exercise of political power for a while and to accept the pronounced limitation of power in the long run. However, unlike the previous position in Rambouillet, it was now interested to maintain a robust and efficient international security presence on the territory. This would give the international community an obligation to guarantee, by force, if necessary, the remnants of Kosovo within Serbia, alongside the obligation to protect the ethnic Serb population if there were still turmoil (Weller and Marck, 2009, 310). Before the negotiations started, the Serbian People’s Assembly gave a mandate to its delegation, demanding broad protection of international law, and expressing: “Any attempt to impose a solution to the legalization of the de facto partition of the republic Serbia with a disconnection of a part of its territory would constitute a violation of international law” (Weller and Marck, 2009, 328). For this reason, Belgrade’s position was extremely rigid, totally based on the structural principles of classical international law, supporting territorial unity over the demands for self - determination outside the colonial context.

On the other hand, the position of Kosovo was very clear. From the beginning to the end Pristina insisted on independence. But despite the fact that Kosovo’s position was clear, he did not avoid the risk. One of the dangers was related to what was not clear from where the process was going to go. Kosovo was represented in the talks in Vienna, but there were other, more powerful, layers of negotiations beyond its control: Contact Group, Security Council. The Kosovo delegation had received advice from experts who feared that Vienna negotiations would focus only on practical issues of governance within Kosovo. In the absence of Belgrade’s agreement on wider status issues, Kosovo could have come into the situation to hear that it had agreed to make significant concessions regarding decentralization, community treatment, and relations with Serbia. This ‘no-status’ ‘settlement’ could later be imposed internationally on Kosovo in the form of autonomy, at least for an indefinite interim period. Kosovo’s concerns in this regard were also increasing with the low level of consultations between the Special Envoy and its delegation. When the official invitation for the first round of talks came, there was no information on the format of the talks, the agenda or the negotiating process. There was the fear that, if the parties did not reach the agreement there, then the package could break up to the detriment of Kosovo at the UN SC level, when the interests of the major power politics rather than those of Kosovo could dominate (Weller and Marck, 2009, 333). If we talk about the process, Belgrade has some advantages compared to the Kosovo delegation. He could use his very competent Foreign Ministry, as well as well-established international contacts. Negotiators made it clear that they could review and settle the negotiating process with their diplomatic colleagues in Belgrade, as it would be normal. Kosovo was not treated in the same form.

Launching of the first round of negotiations was a bit delicate issue. In accordance with the principles set out by Ambassador Eide in his second report to the UN Secretary

General, it was assumed that once talks start, they could be “blocked” by either side. In order to avoid the deadlock, on 12 January 2006, the parties were sent invitations “in favor of advancing the political dialogue for the future status of Kosovo” to talk about highly technical issues such as decentralization. The issue of decentralization took a lot of time-over half of the sessions. Belgrade sought the creation of 15 new municipalities, mostly inhabited by Serb (Weller and Marck, 2009, 336). The forms of decentralization of municipalities were different. One of the proposed models of decentralization by Serbs was the model of the Swiss cantons. However, after the presentation of the Swiss expert on this issue, the work was cut off by Ambassador Rohan, who had readily said “Kosovo is not Switzerland.” It was also examined whether the municipalities could or not become part of or form collective units or regions - a proposal that was opposed by Kosovo, fearing the de facto partition of the territory in a mainly Serb region that would he could administer himself through parallel structures. Moreover, the issue of the connections of these regions with Serbia was also manifested. However, despite the differences and disagreements in most of the issues and ideas discussed, it was agreed that a number of localities with non-Albanian residents should be declared by the municipality. As a consequence of the negotiations in Vienna, new municipalities were proclaimed: Gracanica, Ranillug, Partesh, Kllokot, Novobërdë and North Mitrovica. They functioned as such when municipal elections for mayors and municipal assemblies were held, having multiple competencies in education, health and cooperation with Serbian municipalities (Bajrami, 2011, 94). In the rest of the negotiations, three series of talks were held regarding the protection of cultural and religious heritage. While Kosovo favored a functional approach to this issue, Serbia again tried to gain control over large territorial enclaves surrounding religious and cultural sites (Weller and Marck, 2009, 336). An agreement was reached to protect cultural and religious monuments as protected areas which will be protected for several years by the international community. Meanwhile, the economic problems are costing only one session.

Two rounds of talks were held about the rights of non-majority communities that would be guaranteed by legal acts. This implies the representation of communities at the central level, such as parliament and government, where prevailed the proposals that non-majority communities should have reserved seats and guaranteed for different communities living in Kosovo. At this point, Kosovo authorities proved to be more reluctant, based on Bosnia and Herzegovina’s experience, which had taught Kosovo’s delegation to take care of short-term concessions that would make the territory unbiased in practice (Weller and Marck, 2009, 338). But the mediators insisted on the separation of power, advising the Kosovar side that “as soon as possible the issues of vital interest to minorities would be examined, the easier it would be to adopt a widely accepted deal.” Pristina was even too generous for issues related to minority communities, drawing up a catalog of legal rights and institutional mechanisms for the protection of community rights. These were developed in consultation with communities in Kosovo and under the guidance of the European Center for Minority Issues.

Based on the progress of the negotiations and what was being discussed, the two opposite positions of the parties can be clearly seen. Kosovo on the one hand made

some concessions in some ways, based on the hope that eventually it would gain independence. On the other hand, Belgrade was interested in how to gain as many rights as possible for the Serb minority in Kosovo, and their main goal was that Kosovo's final status was autonomy. The opposite positions were not only between the negotiating parties, but also among the mediators. Within the Contact Group, Russia had come out of the initial lines when it was declared that it would play a constructive role in this process. It was already listed as Serbia's main supporter, regaining and maintaining the power of blocking the negotiation leadership at the level of the Security Council and not just at the Contact Group level (Weller and Marck, 2009, 321). So Western countries had wronged in their calculations that Russia would be linked to the process from the early stages so that the outcome of the negotiations would gain the guaranty to pass to the Security Council, given Russia's control over the entire process. Moreover, Russia was thought to be able to exert influence over Serbia and could persuade Belgrade to negotiate constructively. While some of the great Western governments and the US were convinced that Kosovo's independence could be inevitable, Russia consistently opposed this notion. Moreover, Russia was reluctant to tolerate the possibility of imposing a solution to Serbia by the Security Council if Belgrade refused a reasonable agreement.

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