

## Resolving Kosovo's Status

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**Policy Paper  
Juni 2009**

**Resolving Kosovo's Status**

**Stefan Lehne**

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<sup>1</sup> Stefan Lehne was the Representative of the Council of the European Union in the Kosovo Status Process. The present article reflects his personal views and not those of any institution.

### **Peace but no Solution:**

Throughout history wars have frequently resulted in changes of borders. NATO's military intervention of 1999, however, ended without a clear outcome regarding the future of Kosovo. After three months of bombing targets in Kosovo and Serbia proper, NATO finally managed to obtain the withdrawal of the Serb security forces from Kosovo and the establishment of an interim administration by the United Nations. UN Security Council Resolution 1244(99) confirmed in its preamble the territorial integrity of the Federal Republic of Yugoslavia. At the same time, however, it left the future status of Kosovo open, as it empowered the civilian presence to 'facilitate a political process designed to determine Kosovo's future status, taking account the Rambouillet accords.'

NATO's readiness to settle for this ambiguous outcome was understandable given the situation at the time. The NATO intervention had not - as initially widely expected - led to a quick capitulation of Belgrade. After weeks of bombing, the Western alliance was faced with the tough and divisive option of launching a land war against Belgrade. Given this alternative, the compromise obtained by the Finnish president Martti Ahtisaari with active Russian support appeared highly attractive.

However, in the longer term, the international community had landed itself with an extremely thorny problem. It became clear rather quickly that resolving the status issue would not become easier with the passing of time, but rather more difficult.

Through Resolution 1244 the Kosovo Albanians had not realized their aspiration of an independent Kosovo, but as the exercise of Serb sovereignty in Kosovo was effectively suspended, they had at least obtained de facto separation from Belgrade. From their perspective, any conceivable compromise solution on Status short of independence – including even the most extensive form of autonomy - would have opened the door to renewed influence from Belgrade. In light of historical experience the Kosovars found such an outcome utterly unacceptable, and this severely limited their room for manoeuvre during negotiations on status.

Belgrade, also, did not become more flexible with the passage of time. Obviously, no solution could be found as long as Slobodan Milosevic remained in charge. However, the democratic government that emerged in October 2000 was equally reluctant to confront the issue. While the new leadership acknowledged the crimes committed by the Milosevic regime in Kosovo, nationalist sentiment still ran high in Serbia. The new government was particularly worried about the risks of having to acknowledge the loss of the territory officially. The international administration of Kosovo had absolved them of the risks and costs of policing the province, while allowing them to claim that the territorial integrity of Serbia remained intact. While Belgrade strongly criticized UNMIK for not

sufficiently defending the interests of the Kosovo Serbs, the great majority of the Belgrade leadership supported delaying any attempt to resolve the Status.

One rare exception among Serbian politicians was Prime Minister Zoran Djindjic, who shortly before his assassination in March 2003 expressed an interest in an early Status solution, presumably on the basis of a partition of the territory. However, this initiative died with its author.

In the international community attitudes to resolving the status were also ambivalent. On the one hand it was generally accepted that no genuine sustainable stability in the region would be reached as long as the Status problem remained unresolved. Not just in Kosovo and Serbia, but also in neighbouring countries there were groups who believed that some redrawing of maps might eventually become possible in the context of a future Kosovo decision. These mental reservations regarding the territorial organisation of the region gave rise to tensions and uncertainty. On the other hand it was equally obvious that any attempt to tackle the Status issue would in itself generate tensions and potential instability. Faced with this dilemma the main actors in the international community initially followed their conservative instincts, and delayed taking up the challenge.

However, during the years 2003/4 opinion gradually began to shift. More and more internal and international stakeholders understood that the status quo in Kosovo would not be sustainable for much longer. UNMIK had been broadly successful in dealing with the aftermath of the war and in supporting the reconstruction of Kosovo. It also had established the basic institutional basis for self governance. However, by doing so, UNMIK also had set in motion a political dynamic that became increasingly incompatible with a continuation of the protectorate structures. As the Kosovo leadership became more confident and democratically legitimized, their readiness to submit to an international administration declined. UNMIK was no longer perceived as a source of support but as an obstacle to self-determination.

UNMIK's acceptance by the local population was also negatively affected by its inability to help Kosovo develop a viable economy. Lack of access to the International Financial Institutions, inability to attract investors or to integrate into the regional economy contributed to the economic and social misery in Kosovo, and exacerbated the frustration in the political elite and the population.

Being aware how difficult it was, the international community, approached the Status issue with great caution. In 2002 the UN's Representative in Kosovo, Michael Steiner, launched the policy 'Standards before Status', which linked the prospect of an eventual status solution to progress on

good governance. This approach initially had some limited results in promoting reforms, but was increasingly criticized locally as a device to procrastinate on Status.

The anti-Serb riots in March 2004, which caused a number of deaths and the destruction of many Serb churches and houses, served as a powerful reminder of how unstable the situation continued to be. The report of UN Special Envoy Kai Eide in the aftermaths of the riots (and a second one by the same author written in 2005) played an important role in broadening international support for tackling the status issue and in preparing the ground for the launch of negotiations.

### **Towards Negotiations on Status:**

As the crucial decisions on setting up the Status process approached, the Contact Group, an informal body consisting of representatives of the US, UK, France, Russia, Italy, Germany, as well as representatives of the EU and NATO assumed the political lead. The Contact Group had been established in the Balkan crisis in the 1990s. Its renewed role in framing the Kosovo process was disliked by many EU countries which would have preferred a more prominent role of the EU as such. However, its composition appeared well suited to promote a coherent approach of the international community on Kosovo. It involved the US, which in view of its role during the war of 1999 was perceived by Pristina as the protector of the Kosovo Albanian interests, but also Russia, with its clear and outspoken sympathies for Belgrade. It included the majority of Permanent Members of the UN Security Council as well as the countries and organisations, which operationally carried the heaviest burden for the stability of Kosovo and the region.

The Guiding Principles adopted by the Contact Group in autumn 2005 reflected a carefully crafted compromise between the divergent views of its members. They do not take a position on the core issue, namely on whether Kosovo would be independent or enjoy autonomy within the Serbian State (even though they do state that 'Kosovo will not return to the pre-March 1999 situation'.) Certain options, such as partition or a union with another country, are ruled out. Otherwise the text formulates some objectives for the outcome (democracy, multi-ethnicity, decentralisation, compatibility with the EU perspective, continued international presence) as well as some principles concerning the process (no-use of force, inclusive dialogue etc). It stresses that a 'negotiated solution would be an international priority' - this was a major Russian concern. However, taking into account the views of the other Contact Group members, it also added that the process once started cannot be blocked and must be brought to conclusion.

These formulations express the fundamental dilemma at the very heart of the Status process. In the light of the diametrically opposed positions on the parties, nobody had great expectations for an agreed solution. The assumption of the Western members of the Contact Group was that in the absence of an agreement among the parties the international mediator would elaborate a proposal

for a settlement which would eventually be endorsed by the UN Security Council, replacing the regime of UN Security Council Resolution 1244. Moscow, of course, emphasized the priority of a negotiated outcome strongly at every occasion, but for a long time did not seem to rule out alternative ways of bringing the process to a conclusion.

Pristina responded to the initiation of the Status process with satisfaction, but also with considerable nervousness. The Kosovo leadership was worried that the international community would once again deny them full independence. There was great reluctance to sit down with Belgrade for negotiations. President Rugova, at this stage already gravely ill, repeated mantra-like at every meeting with an international interlocutor that immediate unilateral recognition of the independence of Kosovo would be by far the better option. Nonetheless, Pristina had sufficient trust in its international supporters, in particular the US, to engage in the proposed process.

Belgrade, by contrast, had little to gain from the process. The main players in Belgrade, President Tadic and PM Kostunica, therefore initially advocated postponing the talks pending further progress on respecting the rights of the Serb community, but eventually resigned themselves to their inevitability. Despite the considerable ideological differences between the pro-European Tadic and the nationalist Kostunica the Belgrade leadership also committed themselves to a common position. This desire to build the broadest possible consensus essentially put the more hard-line Kostunica into the driving seat. At first, Belgrade did not submit a comprehensive proposal, but limited itself to the formula 'more that autonomy, less than independence'. While this sounded interesting, it proved impossible to substantiate. In actual fact the Serbian position never developed beyond a model of broad autonomy.

### **Ahtisaari's Strategy:**

The selection of the Special Envoy of the UNSG who would lead the Status negotiations, which itself was based on consultations within the Contact Group and with the UN, was not difficult. The former President of Finland, Maartti Ahtisaari, was a rather obvious choice. He had not only an excellent record as an international mediator (most recently in ending the conflict in Aceh/Indonesia), he also had played a crucial role in ending the Kosovo war in Spring 1999.

The negotiations took the form of meetings of the parties facilitated by Martti Ahtisaari, his deputy Albert Rohan and their team, which took place in various ornate palaces in Vienna. These meetings were complemented by contacts between the mediators and the individual parties as well as by field missions of Ahtisaari's team. Ahtisaari also sought the input of a broad array of experts ranging from the EU, NATO, the Council of Europe, OSCE, the IFI's and others.

Ahtisaari had from the beginning a clear conception of the Status process. He knew that on the core question the two parties had diametrically opposed views which would make it extremely difficult, maybe even impossible, to strike a compromise. Offering the parties a forum for sterile repetitions of their respective positions would not have been productive. Therefore, Ahtisaari placed the emphasis of work on what he called 'status neutral' issues, such as the protection of religious heritage, community rights, decentralisation and economic issues. The idea was that, irrespective of the decision on whether Kosovo was a state or an autonomous province, these issues remained of vital interest for the Kosovo Serbs and had to be resolved. Hence, there might be a possibility for the parties to find common ground. Thus the negotiations on the Status of Kosovo were effectively transformed into a negotiation on the Status of the Kosovo Serbs.

### **Partial Convergence, but no Agreement:**

Ahtisaari's approach to the negotiations worked up to a point. Both sides seriously engaged in the discussion of these issues and on some aspects, in particular on protecting religious heritage, quite a lot of common ground could be identified. The Kosovo Albanians were ready to concede to the Serb Orthodox Church a great deal of autonomy and offer far reaching guarantees for the preservation of religious sites. However, ultimately the differentiation between status-relevant and status-neutral proved more difficult than anticipated and the confrontation about the first polluted the discussion about the latter.

The issue of decentralization quickly became the core element of the negotiation process. Pristina was ready to accept that local self government could be a good way to allow the Kosovo Serbs to run their daily lives themselves. They also accepted that additional municipalities could be created, where Serbs formed the majority. However, they insisted that decentralisation needed to take place within the framework of Kosovo law and involve some role also for the central Pristina institution. They also stressed that local self government should be 'ethnically blind' (i.e. apply in the same manner to Kosovo Albanian and Kosovo Serb municipalities) and insisted that there should only be two levels of government, the central institutions in Pristina and the municipalities.

Belgrade's approach was much more ambitious. Ideally, Belgrade would have carved out an extensive 'entity' with vast competencies closely linked to and supported by Serbia and almost completely separated from the Pristina institutions. They also insisted that the creation of new municipalities should not be decided on the basis of the existing distribution of the population, but on the basis of the pre-war situation thus allowing for the settlement of returning displaced persons. Consequently, there was a big gap in the aspirations of the two sides on the number of new Serb majority municipalities, with Pristina initially offering three and Belgrade demanding 15.

The approach of both sides was, however, similar in one important respect. Both of them aimed for a decentralisation model based on municipalities with overwhelming majorities of either Kosovo Albanians or Kosovo Serbs. Both understood that in the existing climate of mistrust and hostility a genuine integration of Albanians and Serbs was not a realistic alternative. Peaceful coexistence between two communities largely minding their own business and with limited contacts with each other seemed the only realistic solution.

While there was at least a substantive discussion on religious heritage and decentralisation, other important topics of the Status talks suffered from a lack of real engagement from both or one of the parties. On the important issue of community rights Pristina offered a generous regime of minority protection, whereas Belgrade refused to even accept the notion of a Serbian minority in Kosovo. On economic issues discussions on privatisation, property rights and debt settlement were overshadowed by mutual recriminations and irreconcilable claims.

In spring 2006 Belgrade presented its concept for the outcome on the core status issue itself. The paper provided for the substantial autonomy of Kosovo, with Belgrade retaining competencies in the areas of foreign policy, defence, monetary issues, human rights and Serbian religious heritage. It allowed for limited international competencies for Kosovo and access for IFI funding. Interestingly, in a departure from traditional notions of autonomy, the proposal did not envisage the participation of Kosovo's representatives in the central institutions in Belgrade. This was justified by Belgrade by the unusually broad scope of autonomy. However, it probably also reflected the inability of the Belgrade leadership to conceive the actual integration of two million Kosovo Albanian into the Serbian body-politic.

### **The Framing of the Comprehensive Proposal:**

The first meeting on the core Status issue on 24 July 2006, in which President Tadic, PM Kostunica, President Sejdiu and PM Ceku participated offered no grounds for any hope that the gulf between the independence and the autonomy approach would be bridgeable. While Ahtisaari continued the dialogue on the various substantive issues, he increasingly shifted his efforts towards the elaboration of a comprehensive proposal for the outcome of the Status process. The Contact Group had - with the support of Russia - already at the end of January 2006 proposed the elaboration of such a proposal and envisaged the conclusion of the Status Process by the end of 2006.

While the Vienna meetings (which continued in parallel to the drafting of the proposal) did not result in agreement, they nevertheless provided the Ahtisaari team with an in depth understanding of the interests and sensitivities of the parties. In areas where the dialogue had not been sufficiently substantive - for instance on the economy or on community rights - Ahtisaari relied on



the expertise of relevant international organisations such as the EU, the IFI's or the Council of Europe.

Consultation among Contact Group countries provided the main input on the question of the future international presence. While Ahtisaari initially tended towards a very light international presence with mainly advisory functions - he felt that the protectorate approach had not worked well in Kosovo or in BiH -, the views in the key capitals tended towards a more robust model. Eventually, the proposal provided for an International Community Representative (ICR) who would be the final authority for the interpretation of the Status Settlement and would have considerable corrective powers (such as veto over legislation and the right of dismissing officials who obstruct the implementation of the Status Settlement). This was less intrusive than the far reaching and comprehensive powers of UNMIK or the OHR in Bosnia-Herzegovina, but still implied significant limitations on the freedom of action of the Kosovo authorities.

In the area of security, Ahtisaari took up the offer of the EU to deploy a sizable international Rule of Law mission (EULEX), which would also have executive powers in areas such as organized and inter-ethnic crime. On the controversial issue of the 'Kosovo Army' he decided after extensive consultations with NATO to include the concept of a lightly armed 'Kosovo Security Force' with 2.500 members, which would replace the existing Kosovo Protection Corps.

The presentation of the proposal was delayed by internal political developments in Serbia. In the autumn of 2006 Kostunica and Tadic reached agreement on a new constitution (which would strongly confirm Serbian sovereignty over Kosovo) as well as on the holding of new elections in January 2007. In order not to interfere with the election process, Ahtisaari submitted his comprehensive proposal to the parties only in February 2007. The 58 page document dealt in detail with most aspects of Status. However, Ahtisaari at this stage refrained from expressing himself clearly on the core question of Kosovo's statehood as he did not wish to damage the chances of further negotiations.

The parties explained their views on the proposal in several rounds of discussions in February/March 2007. While concerned about a number of provisions - particularly relating to the creation of new Serb majority municipalities - Pristina made it clear that it would be prepared to accept the package on the understanding that it would lead to independence. Belgrade, however, rejected it in the strongest terms as inconsistent with the territorial integrity of Serbia and introduced hundreds of amendments, which in many cases represented a hardening compared to the positions taken during the earlier meetings.

### **Ahtisaari's Package goes to New York:**

A final meeting on the political level on 10 March confirmed that the Vienna process had run its course. The fundamental disagreement on the core issue of statehood made further progress on the substantive issues impossible. On 26 March Ahtisaari submitted a revised version of the proposal to the UN Secretary General and through him to the Security Council. In a separate report he also underlined the urgency of resolving the Status, and for the first time clearly stated his view on the core status issue. In view of the long history of mistrust and enmity and the tragic experiences of the 1990s, he considered a reintegration into Serbia as not a viable option. He also rejected continuing the international administration, as it would not be acceptable to the population and would not allow sustainable economic development. This led him to the conclusion that 'the only viable option for Kosovo is independence, to be supervised during an initial period by the international community.'

Now the ball was in the court of the Security Council. While it looked likely that a draft resolution endorsing the Comprehensive Proposal would find the necessary support from the majority of Security Council members, the real question was whether Russia and China could be persuaded to vote in favour, or at least to abstain.

Beijing had followed the status process from a distance. In its rare statements on the issue it had stressed the importance of arriving at an agreed solution and underlined the principle of territorial integrity. However, it also always pointed out that Kosovo was primarily a European problem which should be resolved by the Europeans. Western diplomats assumed that Beijing by itself would not stand in the way of a Security Council decision.

The Russian problem was of a different nature. As a Contact Group member Moscow had from the beginning actively participated in the process. During its initial stages Moscow had cooperated well with the Western members of the group. Despite pronounced pro-Serb sympathies and a clear preference for a negotiated solution, Moscow seemed not to rule out a different outcome.

However, during the course of the Status process talks, relations between Western capitals and Moscow deteriorated significantly. A new Russian assertiveness, based on its wealth derived from energy exports, made itself felt. Fed also by a growing number of friction points with the West, in particular the US plans for European based missile defence installations and its support for further NATO enlargement, it increasingly affected the cooperation between Moscow and the Contact Group. The new tough line of Moscow found clear expression in Putin's harsh criticism of the US at the Munich Wehrkunde Meeting in February 2007.

These changes in the overall relationship had a visible impact on Moscow's handling of the Kosovo issue. Contact Group meetings became tense and unproductive. Moscow's rhetoric on Kosovo hardened significantly. It accused the West of undercutting negotiations by promising Pristina independence, vehemently rejected the concept of Kosovo constituting a 'unique case' and warned about the consequences of Kosovo's independence on other regions and, in particular, on the South Caucasus.

This link to Abchasia and and South Ossetia - interesting in terms of later developments - took two forms. For the most part it was expressed in the context of the defence for the principle of territorial integrity, which would be undermined by the Kosovo's independence. However some times it took on a more ominous 'warning' tone: In a TV live broadcast "hot line" Putin on 25 October 2006 stated:

"There are some contradictions in international law. On the one hand, international law states the need to uphold the principle of territorial integrity, and Russia abides by this principle, also in respect to Georgia, of course, and in respect to all other countries. International law also defines the concept of a nation's right to self-determination. We therefore need to find a solution to the situation in spite of all the contradictions. But we will, of course, follow with attention the international precedents in this area, including that of Kosovo."

As could be expected in the light of the deteriorating relations with Russia and the increasingly tough Russian line on Kosovo, the Security Council consultations on a Kosovo resolution proved difficult and frustrating. The Western supporters of the Ahtisaari package submitted a series of drafts. The support for the Ahtisaari proposal, still explicit in the earlier versions, was increasingly weakened and eventually abandoned, limiting the resolution essentially to a mandate for the future international presence. The idea was that the resolution would create the basis for continued international involvement, whereas the controversial Status decision would be resolved through a unilateral declaration of independence to be followed by recognitions by individual states.

Following an idea of the new French President, Nicolas Sarkozy, which he presented at the G 8 Summit in Heiligendamm on 6 June, the final draft resolution also included the idea of a final 120-day period of negotiations. However, even this watered-down version met with firm Russian resistance. Some optimists still hoped that the US-Russian summit in Kennebunkport on 1/2 July 2007 would lead to a breakthrough, possibly through a trade-off between missile defence and Kosovo. In actual fact neither side had much appetite for trade-offs and Kosovo was barely addressed at the summit.

### **The Troika Process – a Final Diplomatic Effort:**

Towards the end of July the Western sponsors of the draft resolution finally abandoned the efforts to obtain a decision in New York. The idea of a unilateral declaration of independence by Kosovo combined with a commitment by Kosovo to implement the Ahtisaari package was already much discussed at the time, but met with many reservations, particularly among EU countries. As there was a widely perceived need to gain some more time before the final decisions, President Sarkozy's concept of a final time-limited diplomatic effort at achieving a negotiated outcome found broad support.

Between August and December 2007 an international Troika consisting of representatives from the EU (Wolfgang Ischinger), the US (Frank Wisner) and Russia (Alexander Botsan-Karchenko) conducted a series of meetings with both parties. Unlike the Ahtisaari process, the focus was now on the core status question itself. Following the Troika's intention to 'leave no stone unturned in the search for a solution' the whole range of options (including autonomy, independence, partition) was once more discussed without, however, leading to any significant evolution of the positions of the two parties. In fact, neither side had any incentive to become more flexible at this stage. After Ahtisaari's proposal for an independent Kosovo and President Bush's very public promise of independence during his visit to Tirana in June 2007 Pristina saw itself close to the fulfilment of its aspirations. It therefore proposed to Belgrade a treaty of friendship as a framework for cooperation between independent States. Belgrade, for its part, encouraged by Russia's firm support in New York, stuck to its proposal for autonomy.

While many of the discussions with the Troika were repetitive and sterile, Wolfgang Ischinger developed a new concept for dealing with Kosovo's status, which prompted considerable international interest. After a long futile battle against recognitions of the statehood of the GDR the German-German agreement of 1972 had allowed Bonn to move towards a policy of constructive engagement with the other German state, without abandoning its position of principle on German unity. Ischinger suggested an arrangement along these lines, in which both sides would preserve their legal position on Kosovo and avoid mutual recognition while committing to an ambitious and comprehensive framework of cooperation. At a time when the Belgrade leadership was actively fighting the emergence of an independent Kosovo, the proposal had no chance of acceptance, but it might still prove its worth at a later stage.

At the beginning of December 2007 the Troika submitted its report to the UN Secretary General and recognized that neither side was willing to change its position on the fundamental question of sovereignty over Kosovo. . The process of negotiation had now definitely come to an end. As the option of a Security Council decision remained blocked by Russia, there remained only one, rather

problematic, option to decide the Status question: a declaration of independence by the Kosovo Assembly, followed by international recognition.

The internal political agenda of Serbia imposed one final delay. The Western friends of Kosovo persuaded the Kosovo leadership to delay the declaration of independence until after the Serb Presidential elections scheduled for the end of January 2008, which resulted in a narrow victory of the incumbent, Boris Tadic over the leader of the Radical Party, Tomislav Nikolic.

### **The EU's Dilemma:**

The inexorable drift in the direction of a unilateral declaration of independence created enormous problems for the European Union. From the beginning of the Status process the EU had been less than fully united. While the great majority of Member States shared the view of Ahtisaari and the Western members of the Contact Group that there was no viable alternative to the independence of Kosovo, a significant minority had misgivings about such an outcome. Some Member States from the region such as Romania and Greece were bound to Belgrade by traditional friendship and sympathized with its views. Others, such as Spain and Cyprus, were worried about secessionist movements on their own territory and feared that the independence of Kosovo would create a dangerous precedent.

As long as the Contact Group remained operational, the EU Council found it relatively easy to bridge the internal divisions by simply mirroring the Contact Group positions in its own statements. After Ahtisaari submitted his proposal the EU still managed to agree to support the proposal (which did not explicitly mention independence), while emphasizing the need for a UN Security Council decision. Now, however, after the failure of negotiations and the blockage of the Security Council, the EU faced the risk of an open split, possibly as deep and painful as the one over the Iraq war of 2003.

The EU Council narrowly succeeded in avoiding the worst outcome. The 27 agreed that the question of the recognition of Kosovo would be left to the decision of the individual capitals. However, the EU would be united in its operational engagement, in particular in the deployment of its most ambitious civilian mission so far, EULEX, designed to strengthen the rule of law in Kosovo. The legal decisions concerning the mission were rushed through in January and early February 2008, as the support of all the 27 (in the end Cyprus abstained) would have been more difficult to achieve following a declaration of independence. The formula of diversity on recognition and unity in engagement was successful in safeguarding the EU's continued role in the management of the Kosovo issue. However, as the experience of the coming months showed, the policy was far from easy to implement in practice. The disagreement among member states on what Kosovo actually

was continued to hamper the EU's practical engagement and required on part of the EU institutions imagination and ingenuity...

### **Managing the UDI Scenario:**

On 17 February 2008 the Assembly in Pristina adopted a unilateral declaration of independence (UDI). The declaration committed Kosovo to the full implementation of the Ahtisaari proposal and welcomed the international engagement and supervision as provided for in this plan. It also contained commitments regarding respect for human rights and the rights of all communities of Kosovo, and promises regarding the development of friendly relations with all neighbours including Serbia.

The decision in Pristina was immediately denounced in the strongest terms by the government in Belgrade. Kosovo Serbs organised a number of demonstrations, which at this point remained peaceful. The Security Council held an inconclusive meeting with the participation of President Tadic. The Foreign Ministers of the EU adopted conclusions which confirmed the policy of leaving the issue of recognition to the individual governments moved forward with its operational engagement, namely the rule of law mission.

Over the following days a considerable number of States, including all the Western members of the Contact Group and a strong majority of EU countries, recognized Kosovo as an independent state. However, already at this stage the international response to the declaration of independence fell short of the expectations of Pristina and its Western sponsors.

Apart from a few incidents the situation on the ground remained more stable than had been expected. On 18 February a large, obviously well-organized group of Kosovo Serbs forcibly removed border and customs controls at the two gates between Northern Kosovo and Serbia, an action that was defended as legitimate by Kostunica's Kosovo Minister Samardzic. On 21 February a large protest demonstration in Belgrade turned violent and resulted in attacks on a number of Western embassies. On 17 March a confrontation between international security forces and angry Serbs in front of the court house in North Mitrovica caused the death of one UNMIK policeman and a large number of injuries.

Even though serious, these incidents remained isolated and did not affect overall stability. Both sides understood the risk of escalation of any violent confrontation between Albanians and Serbs and kept their radical elements well in check. In other respects, developments following the declaration of independence remained more benign than most scenarios and contingency plans drawn up by governments and international organisation had forecasted

Contrary to earlier warnings the Belgrade government desisted from launching an economic war against Kosovo. Trade continued, the electricity supplies were not disrupted and the worst case scenario of an interference with the vital water supplies for Kosovo did not take place.

On the international level, too, Belgrade limited itself to relatively moderate steps. It withdrew its ambassadors from countries that recognized Kosovo and limited access to diplomats from these countries to high-level interlocutors. In international and regional fora Belgrade blocked the participation of delegations from Kosovo, unless they were ready to sit behind the traditional 'UNMIK/Kosovo' name plate.

More ominous were Belgrade's and the Kosovo Serbs' policies within Kosovo. Under the leadership of Kosovo Minister Samardzic Belgrade encouraged the Kosovo Serbs to separate all links to the Pristina authorities. They were encouraged to leave the remaining multi-ethnic institutions and to further develop 'parallel structures', i.e. join Belgrade-sponsored institutions servicing the Kosovo Serb community, which remained outside Kosovo's legal framework. The most far-reaching step in this regard were the parallel local elections held in May 2008, which were denounced by UNMIK as illegal, but nevertheless resulted in new administrations in the Serb majority municipalities. These steps amounted to a de-facto separation of the Serb areas from the Kosovo state. As Pristina had no influence in these areas, the situation began to resemble a 'frozen conflict', although the continued presence of UNMIK and KFOR ensured a limited degree of coherence.

### **Serbia's EU Orientation Survives:**

Internal political developments in Serbia in spring 2008 were crucial for the further handling of the Kosovo issue. Following the declaration of independence and the recognitions that followed, Prime Minister Kostunica turned against Serbia's European orientation and spoke out against the signing of the Stabilisation and Association Agreement, the important next step of Serbia on the way to EU membership. When President Tadic's party insisted on pursuing the European future in parallel to the struggle for Serbia's territorial integrity, Kostunica ended the coalition and initiated new elections. These elections resulted in a surprisingly clear victory for Tadic's Democratic Party. The EU's decision to support the signing of the Stabilisation and Association Agreement in the midst of the campaign was generally seen as a decisive boost for the chances of the pro-European forces.

Negotiations among party leaders resulted in the establishment of a coalition between the Democratic Party and its allies and the former Milosevic party SPS, which under its new leader Ivica Dacic wished to reposition itself as a mainstream party of the left. The main protagonists of a hard line on Kosovo, Kostunica's DSS and the Radical party ended up in opposition, with the Radical party breaking up soon afterwards. For the first time since the fall of Milosevic in October

2000, Serbia had overcome the traditional split among the democratic forces and could look forward to a longer period of internal stability under the undisputed leadership of President Boris Tadic.

Progress towards EU membership constituted the *raison d'etre* and primary objective of the new government, which implied a shift away from the strong focus on Kosovo of the previous coalition. Tadic, of course, did not abandon Belgrade's efforts to defend its territorial integrity, which derived from clear constitutional obligations. However, he attempted to move from the daily political struggle against the consolidation of Kosovo's statehood to the sphere of longer term legal challenges. Consequently, he placed Belgrade's initiative at the UN General Assembly to obtain an advisory opinion of the International Court of Justice on the legality of Pristina's declaration of independence at the very core of Serbia's Kosovo strategy. The Serbian resolution was eventually adopted in October 2008 with a substantial majority.

### **The “Parallel Universes”, Adjusting the International Presence:**

In Kosovo the declaration of independence was celebrated by the majority population as the realization of its greatest collective aspiration after decades of struggle. In the following months the Kosovo institutions lived up to their commitments to the Ahtisaari proposal by adopting a new constitution and more than 40 laws which met the requirements of the comprehensive proposal. However, some of the efforts to move ahead in implementing the document were frustrated by the lack of willingness of the Kosovo Serbs to engage in this process. The Ahtisaari document certainly constitutes one of most advanced regimes for the protection of minorities. However, as the minority concerned refused to engage it largely remained a paper strategy only.

As the celebrations ended the Pristina leadership faced a rather sobering reality. As the initial wave of recognitions diminished to a trickle it became clear that Kosovo's integration into regional and international structures would be a long uphill struggle. Kosovo's international position was characterized by the uneasy coexistence of parallel universes. While the new State tried to establish itself and the new international presence as provided for under Ahtisaari was being set up, remnants of the former UN protectorate structures persisted.

All relevant actors, whether they recognized Kosovo's independence or not, agreed that UN Resolution 1244 remained valid even after Pristina's declaration of independence. This was the only way to preserve a legal basis for the necessary international military and civilian presences. However, this also meant that the UN would maintain certain responsibilities in Kosovo. Contrary to the Ahtisaari proposal, which envisaged an clear transition from the old international civilian presence to the new, Kosovo now saw itself confronted with a proliferation of international



interlocutors. These found it difficult to coordinate their efforts effectively in view of the divergent legal basis and separate chains of command. .

In June 2008 the UN Secretary General launched an initiative to deal with some of these problems. In his report S/2008/354 he informed the Security Council that the declaration of independence and the adoption of a new constitution had created a new reality in Kosovo that made it impossible for UNMIK to fulfil the vast majority of its tasks as an interim administration. He therefore expressed his intention to reconfigure the international civilian presence and to support the EU's preparations to assume greater responsibilities in the rule of law area. The UN presence, which would continue to be strictly status neutral would be reduced and would carry out only few residual functions. A special dialogue between the UN and Belgrade would develop transitional arrangement in areas of particular concern for the Kosovo Serbs.

The initiative met with broad support in the Security Council, even though Russia and Serbia were sharply critical. As the Security Council was unable to make a decision, the Secretary General moved ahead with reconfiguration and instructed UNMIK to cooperate with the EU in preparing the European rule of law mission. While this represented important progress, it did not resolve the many contradictions and confusions inherent in the 'parallel universe' problem.

Towards the end of 2008 EULEX approached the stage of becoming operational, which raised the question whether it would be able to deploy all over Kosovo including in the Serb majority areas. Given the "soft mandate" of the mission an entrance into these areas by force was not a realistic option. Belgrade's agreement or at least tolerance would therefore be crucial. The new Belgrade government appeared ready to give its 'green light' if the UN Security Council would give its blessing to the role of EULEX, if the link between this operation and the Ahtisaari proposal would be downplayed and if the UN would commit to a number of guarantees in the areas of policing, justice, customs, infrastructure, boundaries and religious heritage.

The UN's readiness to accommodate some of these demands through transitional arrangements ran into fierce opposition in Pristina, which saw them as incompatible with Kosovo's sovereignty. In rejecting the UN's plan the Kosovo leadership for the first time refused to follow the advice of their Western friends including the United States. However, after complex negotiation both the proposed arrangements as well as the Pristina's opposition to them were included in a report by the UN Secretary General, which was submitted to the Security Council. The report also confirmed the intention of the Secretary General to hand over the lead role of the international community in the rule of law area to the EU. The Council welcomed the report in a Presidential Statement.

While this decision was not very substantive in itself, it was nevertheless significant. After several years of complete blockage the Security Council had regained a measure of agreement on the issue of Kosovo and essentially given its blessing to at least part of the new reality emerging from Kosovo's declaration of independence in February 2008. Following this decision and a supportive statement by Serbia's President Tadic, EULEX was able to deploy its personnel in all parts of Kosovo. In December 2008 it took over the international rule of law functions from UNMIK.

### **A Sort of Solution with many loose Ends**

A year and a half after the Declaration of Independence the situation in Kosovo is better than the sceptics had assumed. Few of the predicted catastrophic consequences for Kosovo and for the region as a whole have materialized. While some tensions remain, particularly in the North, Kosovo's overall stability has been maintained. NATO is considering a significant downsizing of its troop presence in 2010. The Government kept its commitments under the Ahtisaari plan and behaved responsibly towards the non-Albanian minorities. Undoubtedly, the vast majority of the population considers independence as a historic achievement and as a great step forward. This improves the chances for building functioning State institutions and for economic development.

Nonetheless, important challenges remain. While some Serb representatives have taken cautious steps in this direction, a genuine reengagement of the Serb minority in the political process of Kosovo is not in sight. As long as Belgrade's resistance continues, Kosovo's integration into the regional and international community will remain an uphill struggle. The problem of "parallel universes", the coexistence of statehood and of remnants of the old UN protectorate structures, persists. More recognitions and Kosovo's entry into the International Financial Institutions could tip the balance to the former, but the refusal of important international actors to recognize Kosovo as a State will remain a significant problem. In particular, the lack of agreement among its 27 member states hampers the ability of the EU to develop with Kosovo the same type of partnership, which has proven so crucial for progress in other transition states of the region.

The relationship with Serbia will continue to be a major factor for Kosovo's future. This in turn will depend on Serbia's progress towards the EU. A Serbia that is well on the way towards realizing its European ambitions will overcome the trauma of the loss of Kosovo and focus on other priorities. If, however, Serbia's road to Europe should be blocked, a revival of nationalist forces and continuing tensions related to Kosovo can be expected. Even under the most positive scenario Belgrade is unlikely to recognize Kosovo's statehood in the short and medium term. Probably the best that can be hoped for would be an interim solution along the lines proposed by Wolfgang Ischinger in the Troika talks, an agreement on a framework for practical cooperation between Belgrade and Pristina, with both sides agreeing to disagree on the legal aspects of Status.

While the establishment of normal relations between Belgrade and Pristina is still far away and Kosovo's international integration will require great efforts, Kosovo's statehood is nonetheless an irreversible fact. Whatever the International Court of Justice will decide, when it pronounces itself on Serbia's request some time in 2010, countries will not begin to 'unrecognize' Kosovo. One can thus assume with some confidence that the territorial organisation of the region has been settled in a sustainable manner. This should allow the countries of the Western Balkans to focus on the real priorities, namely economic development and progress towards the European Union. The extent to which they will succeed will depend on their efforts and commitment, but it will also depend on the continued support and engagement of the international community and, in particular, of the European Union.

### **Conclusion:**

From today's perspective the Kosovo Status process can be seen as a qualified success. Nonetheless, the process turned out to be difficult and contentious, produced some collateral damage and left many loose ends. The assumption on which the Western capitals and Ahtisaari had constructed the entire process, namely that Moscow would in the end not stand in the way of a UN Security Council Resolution endorsing a Status proposal, turned out to be wrong. It is possible that Moscow always intended to take a tough line, and that Western diplomats misinterpreted the relatively constructive attitude of Moscow in the Contact Group consultations. It is more likely that Moscow kept its options open and that Vladimir Putin in spring 2007 opted for a tough stand in the light of an overall deterioration of relations with Western countries. In any event, ultimately the international community faced exactly the same divisions in the Status process as had marked its approach to the Kosovo crisis in 1998/99.

Would a slower and less ambitious approach by Ahtisaari and the Western members of the Contact Group have produced better results? Should more time have been given to negotiations? Might a step by step process delaying the ultimate status decision for a number of years, for instance until the time of EU accession, found more acceptance in Belgrade? Probably the answer to all these questions is negative. Had the process not been launched in 2005 pressure from the frustrated Kosovars would no doubt have increased, eventually leading to a radicalization which the already greatly weakened UNMIK would not have been able to contain. In all likelihood a crisis would have ensued, in which the non-Albanian communities might very well have been the main victims.

The views of Belgrade and Pristina on the Status of Kosovo were from the beginning to the very end diametrically opposite. Positions on such issues do not evolve rapidly, often not even in decades. In all likelihood a delay would simply have prolonged the agony and entailed increasing tensions and instability. Indeed, with the benefit of hindsight one might well reach the opposite

conclusion. Possibly the best moment for changes of borders and status, which are inherently politically difficult and emotionally traumatic, comes at the end of an acute crisis or a war, which in the case of Kosovo would have been the summer of 1999. As this opportunity was missed there was no real alternative to eventually tackling the issue, however messy and uncertain the prospects were. Once the process was underway there was a clear necessity to push it forward towards its conclusion. A significant interruption would no doubt have unleashed a dangerous negative dynamic on the ground.

Did the international community choose the right methodology for tackling the problem? The Kosovo process represented a curious mix of traditional and innovative elements. A UN Special Envoy appointed by the Secretary General with the backing of the Security Council represents the classical multilateral approach to the mediation of thorny international issues. In the case of Kosovo this approach was, however, complemented by the crucial political role of the Contact Group, a forum of big powers reminiscent of the 19<sup>th</sup> century “Concert of Powers”. The strong and systematic involvement of the European Union and of NATO both in the Ahtisaari team and in the Contact Group provided a further more innovative element. In the end all these factors together determined the dynamics and the outcome of the process.

Ahtisaari failed (unsurprisingly) as a mediator on the core status issues but succeeded in preparing a comprehensive and high-quality proposal for a settlement. Without the systematic involvement of six powerful nations the parties would certainly not have engaged in the process in a fairly disciplined manner. The hardening of the Russian position eventually reduced the Contact Group’s effectiveness and blocked the option of resolving the issue through a solution imposed by the Security Council. In this dangerous situation it was the involvement of NATO and the EU which saved the situation and helped to avoid a real calamity.

NATO, through KFOR, ensured basic stability in Kosovo and deterred the outbreak of violence. By offering the prospect of future membership the EU provided Serbia with the crucial incentive to avoid an escalation and limit itself to a relatively moderate response. The fact that the pro-European Democratic Party clearly defeated the nationalist Radicals in the May 2008 elections, even though the great majority of EU member states had just recognized the independence of Kosovo, testified to the enormous pulling power of Brussels as a factor in Serbian politics. This was further confirmed a few weeks later by the break-up of the Radical party over the ratification of the Stabilization and Association Agreement with the European Union.

Thus it can be said that the various components of the Kosovo Status process complemented each other well and compensated for each other’s weaknesses. The complex, multi-dimensional process was certainly cumbersome to manage, but it was also more resilient and ultimately more

effective than a more traditional diplomatic approach. Both the process and outcome certainly lacked elegance and clarity. However, in bringing the toughest piece of “unfinished business” of the Balkans a great deal closer to a solution, it represents a clear gain in stability for the entire region.

(About the author: Stefan Lehne was born in 1951 In Innsbruck, Austria. He is an Austrian diplomat who worked mostly on multilateral matters, including UN, C(O)SCE and EU. Between 1999 and 2009 he was part of the team of EU High Representative, Javier Solana, focusing on the Western Balkans and Eastern Europe. Currently, he is Political Director in the Foreign Ministry in Vienna)