

# KOSOVO – SOME ASPECTS OF THE STATUS TRANSITION PROCESS

VUJO ILIĆ (FACULTY OF POLITICAL SCIENCES, BELGRADE UNIVERSITY)

**September 17 2006, Belgrade**

Serbia and Kosovo are about to put their relations on a new foundation. During 2006, the negotiations for determining the status of Kosovo take place. However, the demands of policy makers' on both sides towards sovereignty are unchanged since the period before 2000. These claims are explained through the dominant pursue of state interests and national interests. A difficult zero-sum situation occurs, where a compromise reached through exchanges seems impossible. If a compromise is not reached, the two sides would be confronted with a solution, imposed by the international community. The sides would benefit to different degrees from this, depending on the positions they built before and during the negotiating process. The purpose of this paper is to examine the logics of policies that led to this situation.

-----

## Introduction

Serbia and Kosovo are about to formalize their post-conflict relations. Most of the current problems stems from the status change of Kosovo as an autonomous province of the Republic of Serbia and SFRY/FRY. The constitutions<sup>1</sup> of 1974 made Kosovo an Autonomous Province of Serbia with an exceptionally high level of autonomy. Kosovo, arguably, was largely free from Serbian influence and could pursue its own interests in Serbian and Yugoslav Institutions.

From the spring of 1981, after the death of Josip Broz, the main 'arbitrator', the situation worsened. The demonstrations were initiated with demands for better quality of students life but soon turned towards the demands for status of Republic, inside, or, more radically, outside Yugoslavia. In September 2006, it is exactly 20 years since the publication (the famous 'leakage') of the infamous Memorandum draft<sup>2</sup>. Using rhetoric built on victimization of the Serbian nation, it was a response to a critical situation for the Serbian people and the Serbian Republic, for which the Serbian rulers were blamed.<sup>3</sup>

This document gave momentum to the rise of Serbian nationalism. It coincided with the rise of Slobodan Milosevic, whose policies led to the 1989 constitutional amendments that left Kosovo only with formal autonomy. These were met with fiery responses and a political mobilization of the Kosovo

<sup>1</sup> Constitutions: Federal (art. 1 and 2), Republic of Serbia (art. 1) and Province of Kosovo (art. 1).

<sup>2</sup> Mihajlovic Kosta and Krestic Vasilije, 1995

<sup>3</sup> "(Serbia) is not allowed to have its own state. A worse historical defeat in peacetime cannot be imagined. The expulsion of the Serbian people from Kosovo bears dramatic testimony to their historical defeat.", *ibid* p.126

Albanians, a sort of 'intifada'<sup>4</sup> that resulted in the 1991 referendum in Kosovo, held as illegal by the Serbian regime, but in which the independent 'Republic of Kosovo' was proclaimed. However, regional events slowly led to an increase in the number of radical elements in Kosovo society that denounced peaceful resistance as an unproductive strategy. In 1998, clashes between KLA and Serbian forces turned into a 'low intensity' war that eventually led, after ambiguous diplomatic activity in Paris/Rambouillet, to the 1999 78-day NATO military campaign in FRY.

The war ended with the signing of the Military-Technical Agreement in Kumanovo and United Nations Security Council Resolution 1244 and had far-reaching consequences. Serbia lost control over the province, which came under UN administration with a significant NATO presence<sup>5</sup> as a security provider. However, security was not achieved; instead, the situation reversed instantly, with Albanian refugees returning to Kosovo and Serbs fleeing<sup>6</sup>, in one of many turns of violence and revenge. Nevertheless, Serbia did not lose its claim to Kosovo: the UN SC Resolution 1244 guaranteed the territorial integrity and sovereignty of FRY/Serbia. With a few modifications, this is largely where the situation stands today: the security and sovereignty issues are not solved.

The Interim International Administration, introduced by UN SC Res. 1244, and the Constitutional Framework for Provisional Self-government<sup>7</sup> (May 2001) divided the authority over Kosovo between United Nations Interim Administration Mission in Kosovo (UNMIK) and The Provisional Institutions of Self-Government (PISG). A gradual transfer of power<sup>8</sup> from UNMIK to PISG has taken place ever since.

After the regime change in Serbia in October 2000, it was possible to think in direction of solving Kosovo's status. Initiatives had also existed during the nineties, but these were mostly obstructed in the beginnings<sup>9</sup>. In 2002, UNMIK started the "standards before status" policy, intended to check/balance the loud cries for independence and the ambiguous attitude of the local authorities towards the 'protector'. This policy was confirmed during 2003 in the Security Council and was operationalized by the Contact Group. Status talks were soon initiated, as preparations for a negotiating process.

However, the policies that culminated in the violence that erupted in 2004, alienated Kosovo Serbs from the political process, and partially discredited the position of the PISG. At the same time, it reminded the international actors, which bore responsibility for allowing the violence to erupt, of the necessity of solving the Kosovo's status. It also caused the Serbian government to support the Kosovo Serbs' election boycott later that year, because of the lack of security. Both events were important for future positions.

In 2005, the UN Secretary General's appointed envoy, the Norwegian diplomat Kai Eide, reported<sup>10</sup> that the demands in Kosovo were not met, but suggested that the negotiation process should be started

---

<sup>4</sup> Shkelzen Maliqi in Judah Tim, 2000

<sup>5</sup> It consists of 16000 strong ground troops.

<sup>6</sup> <http://www.srbija.sr.gov.yu/kosovo-metohija>

<sup>7</sup> <http://www.unmikonline.org/constframework.htm>

<sup>8</sup> Natsis Ioannis, 2005

<sup>9</sup> Janjic Dusan , 2003

<sup>10</sup> Eide Kai, 2005

anyway. In autumn the same year, the UN Secretary General appointed the Finnish diplomat Marti Ahtisaari as his Special Envoy for the settlement of the future status of Kosovo.<sup>11</sup>

The first track negotiations started in February 2006 in Vienna. These are formally bilateral negotiations between Serbian and Albanian negotiating teams, facilitated by a third party<sup>12</sup>. The negotiations take form as a Step-by-step diplomacy<sup>13</sup>, organized in rounds, with standard issues being discussed one at a time before the status issue. The Contact Group coordinates the collective mediation<sup>14</sup>, and makes a framework for agreement.

## Sovereignty

The intention of this paper is to examine the policies surrounding the negotiating process and the attitudes towards it. It argues that the policy makers' orientations towards goals did not change dramatically on either sides after a period of conflict, and that a negotiated solution is less likely to be reached than a solution imposed by arbiter. The issue of the sovereignty over Kosovo has been the object of a long-lasting conflict, and although it encompasses several aspects, the sides are not ready to give concessions to each other.

The Serbian state exercised sovereignty for most part of the 20th century, often coercively. Representatives of the Albanian population, which outnumber Serbs by 9 to 1 in the province, challenged Serbian authority on several occasions. After the war in 1999, the Serbian government lost *control* over the province, although they had lacked *authority* since the beginning of the nineties.<sup>15</sup> The Serbian-Kosovo relations are now an international problem, with representatives of the international community administrating Kosovo. Attempts by the respective sides to declare the problem as an internal Serbian one, or as a problem that Kosovo should resolve unilaterally, have been discouraged by the international community. After international military involvement, what was an internal issue of Serbia was temporarily settled under international authority by international treaty, and with the possibility of a permanent solution that would make Kosovo a Newly Independent State. Asymmetry that exists between Serbia and Kosovo in the process is not juridical, but reality of modern international relations, only Serbia is a state, but it has to negotiate with Kosovo as with another state.

The doctrine of sovereignty has from the beginning usually included two main principles: Internal sovereignty<sup>16</sup>, which might be described as 'sovereignty over' and External sovereignty<sup>17</sup>, or 'sovereignty in a relation with'. The two sets of issues, labeled as 'Standards' and 'Status' in 2002 by UNMIK and the UN SC, roughly correspond to internal and external dimensions of sovereignty. There is a dynamic relation between these two and they cannot be permanently settled separately from each other.

<sup>11</sup> Albert Rohan (Austria) is a Deputy to the Special Envoy.

<sup>12</sup> Young 1968 p. 34 in Kovacevic p. 98

<sup>13</sup> Kovacevic p. 161

<sup>14</sup> Crocker et al 1999 p. 9 in Kovacevic p. 106

<sup>15</sup> Certainly from the 1991 referendum.

<sup>16</sup> This intended to protect the head of states' exclusive competence in internal affairs.

<sup>17</sup> This originally meant that rulers have full autonomy in foreign affairs.

However, in order to make more sense of what this sovereignty consists of, finer distinctions are necessary. Krasner<sup>18</sup> distinguishes between four meanings of the modern term of sovereignty. These are 'International Legal Sovereignty', 'Westphalian Sovereignty', 'Domestic Sovereignty' and 'Interdependence Sovereignty'<sup>19</sup>. The first two relate mostly to "external sovereignty" and the third to "internal sovereignty", while the fourth aspect belongs to both.

If these categories are applied to the claims to sovereignty over Kosovo, several conclusions can be made. The dispute over International Legal Sovereignty imposes a zero-sum situation, with two possible outcomes: Kosovo may obtain international recognition as a newly independent state, or it may not. Both sides show great determination towards this particular aspect. International Legal Sovereignty is more than the maximum that Serbia offers<sup>20</sup> and less than the minimum demanded by the Albanians<sup>21</sup>. It is what Serbia has and does not allow for Kosovo to have.

The second aspect, Westphalian Sovereignty, is already heavily contested by the international military presence and the civil administration in the province. The Serbian side currently benefits from it, and should insist on it. No matter the future status, the Kosovo Albanians will attempt to minimize it, through the transfer of power that is ongoing, but slow. Albanians see that they may attain Westphalian Sovereignty if they obtain International Legal Sovereignty and their own military forces.

Substantial autonomy, the maximum that the Serbian side offers, relates to Domestic Sovereignty. The only problem with this offer is that the Albanians already have it. Discussion is opened for modes of political authority of Albanian majority over Kosovo minorities and their heritage.

The last issue, Interdependence Sovereignty, does not seem to be a real worry for the two sides. Because of the threat that organized crime poses for region, it would be in the best public interest for all sides to strengthen it, and it would mean a possible win-win situation, where all parties would benefit if some security arrangement could have been made.

---

<sup>18</sup> Krasner Stephen D., 1999

<sup>19</sup> - *International legal sovereignty* refers to the practices associated with mutual recognition, usually between territorial entities that have formal juridical independence.

- *Westphalian sovereignty* refers to political organization based on the exclusion of external actors from authority structures within a given territory.

- *Domestic sovereignty* refers to the formal organization of political authorities to exercise effective control within the borders of their own polity.

- Finally, *interdependence sovereignty* refers to the ability of public authorities to regulate the flow of information, ideas, goods, people, pollutants or capital across the borders of their state., *ibid* p 4

<sup>20</sup> (Substantial autonomy without international legal subjectivity), see Platform on the Future Status of Kosovo and Metohija June 12 2006

<sup>21</sup> (Fully independent and sovereign state), Resolution, Assembly of Kosovo, Pristina, November 17 2005

## Arguments

The Serbian side defined the Kosovo issue<sup>22</sup> as 'question of legality, not politics'<sup>23</sup>, arguing its position in negotiations with documents such as SC Res 1244, the UN Charter, the Helsinki Final Act and the 'Badinter Commission Report'. Still, political arguments<sup>24</sup> were also used, posing Kosovo's independence as security threat that may destabilize the Balkans and create an important precedent<sup>25</sup>. Similarly, the Contact Group has used the argument of unwanted precedent to support their principle that Kosovo should not be divided

The Albanian side had a very ambitious goal, claiming that everything except independence is failure, a position even less flexible than the Serbian. The arguments for this are put forth in the unwieldy Resolution of Kosovo Assembly, and it is a legal and political platform for the 'Delegation of Kosovo for Independent Kosovo'. Still, besides the right of self-determination, the Albanian side rarely bases its arguments in law. It tends to justify its demands by humanitarian and democratic principles, by which the 'people of Kosovo'<sup>26</sup> (ethnic Albanians) have 'earned' right to sovereignty from their 'liberation war' against decades long Serbian oppression, considered responsible for violations of human rights and, still unprocessed, war crimes.

## Interests

If we want to look for the reasons behind the parties' chosen policies and arguments, it is necessary to explain whose interests<sup>27</sup> the policy-makers intend to protect. In order to do that, certain distinctions should be introduced. The policy-making process has been suggested to consist of three levels: *the matrices of political homogenization, the policy makers' definition of interests, and the implementation of policies*. The second level is the principal focus of this paper<sup>28</sup>. Only policy makers, or 'rulers', have the

<sup>22</sup> Serbian side stands are on Parliament's Resolution on Kosovo and Metohija, November 2005. Two months later, The Platform of Negotiating Team of Serbia and SCG for Kosovo was presented and four months later, in May, during the process, The Platform on the Future Status of Kosovo and Metohija.

<sup>23</sup> Raskovic Ivic Sanda, 2005

<sup>24</sup> Gollust David Serbian Leader Warns Against Kosovo Independence VOA News Washington September 07, 2006

<sup>25</sup> This argument should be considered carefully. There are tens of cases of *de facto* independent, yet unrecognized entities, and around hundred movements that seek to secede (63 cases, by UNPO). Russia could enjoy benefits in cases of Transnistria, as well as Abkhazia, South Ossetia and Nagorno Karabakh, but precedent could turn against its interests in cases of Ingushetia, Ichkeria, Dagestan or even Far East. Without details of status solution, attitude of powers that have several problems of secessionist movements, with different stakes in each, are not certain.

<sup>26</sup> Thaci [Hashim](#) 'My people deserve their independence', International Herald Tribune November 25, 2005

<sup>27</sup> This paper defines such state interests that are not considered as single interest of entire country. National interest is based on importance of ethnicity in Balkans, but it does not necessary rely on nationalism as ideology, it's meaning not being nation-state as a whole. Interests are considered as being subjective, or, depended on what policy makers' make of them. This belongs, generally, to constructivist approach. The relation between identity and interests were mostly coincided with political culture approach.

<sup>28</sup> An example of Huntington's view on relations between three levels that influence foreign policy making correspond to the three levels presented in paper: "without a sure sense of national identity, Americans have become unable to define their national interests,

potential to define the issue in the public sphere/es in a short or intermediate timescale and, if necessary, change the definitions according to circumstances, by using public diplomacy (although such changes tend to be highly unpopular).

At the first level, two matrices of political homogenization, *the Liberal-democratic* and the *Ethno-Nationalistic*, are the long-term predominant models of self-identification. These identities are deeply embedded in societies and determine the policy-makers' personal and official orientation towards the supposed *stakes*. These are very hard (perhaps impossible) to change, and as in most of the Balkans, including the Serbian and Albanian communities, the *Ethno-nationalistic* matrix prevails over the weak and insufficient efforts of political minorities for change to a citizen-oriented matrix.

At the second level of analysis, the issue is the objects whose interests are taken care of. Policy-makers can perceive different objects and their values as jeopardized and act in order to provide for their security and prosperity, i.e. their "interests". These objects could be *state*, *nation* and *public*. The choice is usually made according to their identity on the first level and requires prioritized use of limited means in order to protect interests that often conflict. Without such conflict, this division of objects would not be needed, but both Kosovo and Serbia are multiethnic, and there are non-harmonic relations both between the state and ethnic groups, and between groups. Moreover, the relations between the society/public and the state are not firmly set or without conflict.

In more detail, the interests that may be taken care of are the following:

*State Interests*, which stand for the institutions of the current regime – political party/ies that constitute the core of the political power, its administration, and the wider set of institutions and individuals that are permanently relevant to power sharing, and which benefit from the status quo. How particular this object is, might vary, and in the autocratic state, it reduces to the narrow interests of one person and the interest group surrounding it.

*National Interests* stand for the interests of the dominant ethnic group in a state. It includes physical existence, material well-being, prosperity, but also the preservation of culture and identity as values, whether inside or outside state borders.

*Public Interest, or citizen's interest*, is the most democratic and the widest category, since it includes the prosperity of all the citizens of a state. For instance, leaders act according to public interests if they enable "color-blind" policies towards ethnic, religious, ideological or any other minorities<sup>29</sup> and ensure the security and prosperity for all.

The Third level is the level of implementation of policy. In 'military' terms, defining objects or stakes is a strategy while choosing *instruments* with which to conduct certain policies are tactics. Implementation, or the way the policies are realized, is the most evident behavior of an actor, and it can be, besides other, offensive or defensive, coercive or contractual, in accordance to democratic practices, or not.

---

and as a result subnational commercial interests and transnational and nonnational ethnic interests have come to dominate foreign policy." - [Samuel P. Huntington](#) *The Erosion of American National Interests From Foreign Affairs*, [September/ October 1997](#)

<sup>29</sup> Case of Roma minorities might be an unfortunate test for Serbia and Kosovo's adherence to public interests, since they mostly fled from Kosovo, and live in extreme poverty in Serbia.

Applying the second level of analysis to the case of Serbian-Albanian policy makers, the dominant pattern is as follows: Major political and social representatives of Serbia prefer state interests to national and public interests, while Kosovo representatives prefer national interests to state interests, which were preferred over public interests.

The **Serbian side** predominantly advocated the preservation of state interests, through (International Legal) sovereignty and the territorial integrity of the state. Serbian national interests in Kosovo seem heavily jeopardized, the ethnic Serbian community on Kosovo and the Internally Displaced (refugees) basic existential conditions are not met. In order to change this, compromise with Kosovo Albanians, on one hand, and 'partnership' relations with international community, on the other, are needed. Both of these do not present a priority for Serbian policy makers. Oppositional standpoints, in favor of maximizing the Serbian national interest in Kosovo were considered unacceptable, and disregarded<sup>30</sup>.

The use of a rhetoric that was incompatible with a compromise solution was an important part of the ruling establishment's strategy for mobilizing the people to support their political interests. In the Serbian case, it is a continuation of the practices of the regime of Slobodan Milosevic. In the matrix of nationalist mobilization, his instruments were undemocratic and coercive<sup>31</sup>. The interests Milosevic protected were mostly, if not always, oriented to his own the maintenance of power, i.e. state interests. The public interests were first sacrificed (through the sanctions and hyperinflation), and then the national interests (through the manipulation of Serbian rebellions). The International Independent Commission on Kosovo<sup>32</sup> cites the opinion of US official Christopher Hill's on how these interests collided in 1999:

[...Milosevic was open to the Rambouillet political deal but wanted to avoid the military element that came with it because "he felt that the true intention of the force was to *eliminate him and/or detach Kosovo from Serbia*. In fact there was nothing in the political agreement that was unsellable to the Serbs."]<sup>33</sup>

The Kosovo Albanians have monopolized the idea<sup>34</sup> of Kosovo statehood. The very strong identification of the Kosovo Albanian society with the project of the Kosovo state makes national interests overwhelm state interests and form a basis for Kosovo politics. The unusual relation between society and state comes from Kosovo being an entity lacking the full qualities of a state. The institutions are newly formed and under development, and most elements that would be the basis for pursue of state interests are under international authority. The project of obtaining the missing aspects of sovereignty over the whole of Kosovo reflects the exclusive national interests of ethnic Albanians, not the interests of the whole population of Kosovo. The pursuit of these national interests has lead to, for one, a strong national mobilization that served to back the uncompromising attitude towards independence; secondly, deteriorating relations with minorities<sup>35</sup> that ended in segregation and ethnically inspired violence, culminating in March 2004; and finally, moves towards closer relations with ethnic Albanian across borders.

<sup>30</sup> For instance, case of Serbian politician Svilanovic that participated in the International Commission on the Balkans report.

<sup>31</sup> This is the only obvious difference before and after 2000.

<sup>32</sup> <http://www.reliefweb.int/library/documents/thekosovoreport.htm>

<sup>33</sup> Ibid p. 37

<sup>34</sup> Suroi Veton, Danas daily paper, 11 02 2006

<sup>35</sup> Formally, concern for this issue is high, if it serves the negotiating position.

In the pursuit of the described interests, no sides have shown any sign of willingness to compromise on any of the issues they stood for. The values of good governance are not considered as priority for the policy makers and public interests are heavily disregarded. The mobilization towards the interests that have been defined by the policy makers has been strong, and all bridges for return that are necessary for actors involved in negotiation processes seem destroyed, mostly by fiery rhetoric that serves only the interests of policy makers in internal power-struggle.

## Compromise through Exchangeability

Both sides are not willing to give away to compromise. Compromise should be based in 'Zone of Possible Agreement', but it seems that there is not any. The main obstacle, actors being strongly rooted in their positions, exists because of unwillingness, even to discuss, the possible concessions. Political instruments used and interests pursued had made possible trade-offs a danger for policy-makers' positions at home.

However, public opinion polls, made just before the negotiations started<sup>36</sup>, might explain the popular perceptions of a dilemma between the issues of security and sovereignty. Regarding to the range of problems that needs to be dealt with, Albanians stated 'Kosovo's final status' being very significant by (87%). This was followed by other chosen issues, such as 'Unemployment in Kosovo' (85%), 'The weak economy on Kosovo' (75%), 'Corruption in Kosovo' (70%), 'Kosovo education standards' (70%) and so on. On the other side, Serbs, both in Serbia and Kosovo, saw security and basic existential needs as a bigger priority than Kosovo's status.

Very significant: Kosovo Serb	%	Very significant: Serbia Serb	%	Very significant : Serbia Serb IDPs	%
Kosovo power supply	78	Public and personal security in Kosovo	83	Missing persons	84
Public and personal security in Kosovo	74	Missing persons	76	Return process of IDPs/refugees	84
Return process o f IDPs/refugees	72	Organized crime in Kosovo	72	Public and personal security in Kosovo	83
Kosovo's final status	65	Kosovo's final status	72	The rights of victims	82
Missing persons	62	Return process o f IDPs/refugees	71	Kosovo's final status	79

<sup>36</sup> "Coming to Terms with the Problem of Kosovo: The Peoples' Views from Kosovo and Serbia" October 20th 2005

Another poll<sup>37</sup>, made after six months of negotiation in Serbia, showed that 50.2% held the international community and 14.7% the regime of Slobodan Milosevic responsible for the possible loss of Kosovo. Asked what status they wished for Kosovo, 65% said that they wanted it to be a 'part of Serbia', but when asked what they thought would really happen, it was going to be an 'independent state' (46%), a part of Serbia (26%), or divided between Serbs and Albanians (21%).

The polls suggest that there was a window of opportunity for different policies, at least in Serbia, where other options than those officially pursued were not regarded as impossible. If certain arrangements could bring benefits to people's stated priorities, with security in the first place, policy makers' could have conducted a policy of compromise. Instead, the most important characteristic of a half year of negotiations was positional bargaining<sup>38</sup>. What parties experienced in this phase was a hard zero-sum situation<sup>39</sup> where every concession would be considered as a withdrawal, and would lead to "face losing" since public opinions were already mobilized for certain negotiating positions.<sup>40</sup>

If there was, or (less likely) still is, a way out, then it is in adopting negotiating tactics towards compromise finding<sup>41</sup> that can be found in exchanging points. Homans' Theorem states that:

[the more the items at stake can be divided into goods valued more by one party than they cost to the other, and goods valued more by the other party than they cost to the first, the greater the chances of successful outcomes.]<sup>42</sup>

An analogy with the theorem can be made for Kosovo: The Future Kosovo status is at stake, and can be divided into certain goods. These, may include: international recognition, membership in international organizations, security arrangements, international presence, international guarantees, role of minorities in political structures, constitutional or other constraints on the authorities' control of minorities and their heritage, other trans-border issues, EU integration prospects, etc. Depending on the perceived interests that attach different values to these goods, a trade-off is possible. If both sides, however, incline strongly towards the formal issues of International Legal Sovereignty a compromise is not likely.

Kosovo Albanians do not see their national interests endangered anymore, and strive for the formalization of their idea of statehood as the final national goal. Serbs in Kosovo are not secure, but policy makers insist on protecting formal aspects of its sovereignty.

## Imposing the solution

If the process continues as it does today, there will be less space for *face-saving*<sup>43</sup>, and an imposed solution will become more likely. Of course, even if a solution is imposed, it is always possible to 'mask it' in order to avoid negative consequences at the local political scenes. However, instead of being a negotiator's public diplomacy job, the solution will depend on the political will of the arbiter, which might choose to split the difference between opposite claims, in a way that he perceives them. Although the envoy Ahtisaari that would present such a proposal has been chosen as a neutral figure, without any

<sup>37</sup> 'Citizens of Serbia don't trust in negotiations outcome', Politika daily, 9th September 2006

<sup>38</sup> Kovacevic p. 113

<sup>39</sup> Zartman 2001 p. 48-9 in Kovacevic p. 86

<sup>40</sup> Kovacevic p. 84

<sup>41</sup> Kovacevic p. 139

<sup>42</sup> Homans George 1961 p. 62

<sup>43</sup> Kovacevic, p. 118

third interests to protect, an imposed solution would bring more leverage to the third countries involved in the process. The sides would benefit to different degrees from this, depending on the positions they built before and during the negotiating process. Besides the envoy Ahtisaari's, most of the political weight would then be carried by the foreign policy makers' of the Contact Group and by the Security Council's members. In that case, outcome might depend fully on the consensus between several international actors.

Countries, members of Contact Group<sup>44</sup>, had channeled the process intensively, through establishing principles and determining a timeline for the negotiations. In November 2005 it put down the Guiding Principles<sup>45</sup> that represented the framework for compromise. It clearly stated conditions for the future status<sup>46</sup>: no return to the state before 1999, no partition of Kosovo and no unification with any other part of any country. The main principles for solution were adherence to standards of human rights, democracy and international law and contribution to regional security. Equally important, CG stated that: 'The settlement needs, inter alia, to be acceptable to the people of Kosovo.'<sup>47</sup>

The supposed deadline for negotiations<sup>48</sup> is part of the tactics of dictating pace<sup>49</sup> that carries even more direct leverage. The advantage of low intensity negotiations is that, although their duration requires more effort from participants, the pauses opens room for new opportunities and possible deals. Negotiation researchers has established that ninety percent of actual (intense) negotiation happens in the last ten percent of a given time period.<sup>50</sup>, in this case, that period would be the end of November and December in 2006, so the biggest pressure from third parties is expected then. Failing to meet the deadline is of course a possibility, although most of actors do not support it.

The two parties responded differently to the Contact Group's Principles. The arguments of the Serbian party resided on principles of international law and regional security, while those of the Kosovo Albanians on human rights and democracy. The importance of the will of people of Kosovo was included to add significant weight to the Albanian side, while all other principles were meant to give space for the possible demands of Serbia<sup>51</sup>. The Principles did present a framework for the two sides to present their cases and to achieve a compromise.

In the evaluation of the presented arguments, previous experiences should be considered. The NATO intervention in Kosovo in 1999 made the cleavage between international law and international politics wider. The attack, labeled as Humanitarian intervention<sup>52</sup>, arguably conflicted with international law and the UN Charter and led to violations of international humanitarian law. These were justified in reference

---

<sup>44</sup> France, Germany, Italy, Russia, UK, US with representative of EU.

<sup>45</sup> The Contact Group's Guiding Principles for a Settlement of Kosovo's Status, 2005.

<sup>46</sup> The 'Three No's'.

<sup>47</sup> Statement by the Contact Group on the Future of Kosovo January 31, 2006

<sup>48</sup> End of 2006.

<sup>49</sup> Ahtisaari's proposed three-step solution also contributes to this tactic.

<sup>50</sup> Colosi 1986 p. 6 in Kovacevic p. 92

<sup>51</sup> Rest of the principles were aimed at: European perspective of Kosovo, constitutional guarantees for minorities, decentralization process, protection of the cultural and religious heritage, security arrangements, rule of law, international civilian and military presence.

<sup>52</sup> Chomsky Noam, 1999, on critique of humanitarian intervention.

to the principles of human rights, or their violation<sup>53</sup>. The countries that were involved in the decision to start the military campaign would of course strive to justify their violent means, and are not likely to look positively towards the insistence on the principles they breached in the first place.

Finally, if possible arbitrators, evaluating the claims for sovereignty over Kosovo, would use the same principles, set forth by the Contact Group, the Albanian side would benefit to a larger degree.

After the intervention, Kosovo had not been in the forefront of international publicity for some time, and today there is no unanimity in the Contact Group or Security Council on its future status. Writing in 1999, during United States' most 'intensive' involvement in the crisis, Nye<sup>54</sup> suggested, 'Kosovo itself is not a vital American interest, and it only touches tangentially on an "A list" issue (the credibility of the NATO alliance).' This might later have changed to some extent, with the US military presence in Camp Bondsteel and with the economic interests that appeared since, but not essentially. Nevertheless, the less importance an issue carries to the interests of the members of the Contact Group, the more space is opened up for lobbying, or organized representations of interests, especially in a relatively pluralist system, such as the US. In this case, the Kosovo side was much more successful in their lobbying efforts, measured in length, intensity and experience<sup>55</sup>. US officials had mostly kept out of openly<sup>56</sup> favoring any particular option<sup>57</sup>, but during the 108<sup>th</sup> and the 109<sup>th</sup> sessions of the Congress, several resolutions were introduced that advocated U.S. support for Kosovo's independence.

Other members of the Contact Group differ in their view of the negotiations. Among the members most sympathetic to independence, UK had, on several occasions stated that independence should be the outcome of Kosovo negotiations. In early 2006, John Sawyers, the Political Director of the Foreign Office, stated that Kosovo in the future will be independent state<sup>58</sup>. The rest of the members of the Contact Group, with the exception of Russia, had relatively synchronized policies when compared to previous crises in the region. No country, however, denied the possibility of independence. Most concrete standings of these countries, as EU members, were set out in three joint reports of Javier Solana and Olli Rehn "The Future EU Role and Contribution in Kosovo"<sup>59</sup> in which, intention of the EU is to gradually overtake<sup>60</sup> responsibility for the region from UNMIK.

On the other side is the Russian foreign policy standpoint that Kosovo's independence should be considered as forming an international precedent. This could present some support to the Serbian claim<sup>61</sup>

---

<sup>53</sup> Havel Vaclav, 1999 p. 6

<sup>54</sup> Nye Joseph S., [1999](#)

<sup>55</sup> Dinmore Guy, 2005

<sup>56</sup> Frank G Wisner, Special Representative of the Secretary of State to the Kosovo Status Talks, however,

<sup>57</sup> Burnes in Woehrel and Kim, 2006

<sup>58</sup> [...the outcome of the future status will need to be acceptable for the majority of people in Kosovo. Now, we know that the majority of the people aspire to independence. Some will say that is the only option.] Sawyers John, British Foreign Office Political Director January 31 2006

<sup>59</sup> 'The Future EU Role and Contribution in Kosovo', 2006

<sup>60</sup> Helly Damien and Pirozzi Nicoletta, 2006

<sup>61</sup> Russian President Putin: "One can't apply one rule to Kosovo and other rules to other situations . . . If the solution [for Kosovo] is not acceptable to us we will not hold back from using our right of [Security Council] veto." - Wagstyl 2006

as discussed before, not very strong support if the other parties in CG do create a consensus<sup>62</sup>. The strongest support to Serbian claims, however, comes perpetually from Chinese officials<sup>63</sup>.

In the end, there is a struggle between the interests of the great powers, and when Kosovo does become an important international issue, at the moment of decision about its status, the solution will be completely out of, already weak, grasp of local policy makers.

## Conclusions and Prospects

This paper examined the policies surrounding the transition process in which the future status of Kosovo and relation with Serbia is determined. Its conclusion is that the parties did not show significant will for compromise. The question of political transition imposes identity dilemmas and evokes emotions in the public spheres. Most importantly, the policy makers' orientations towards the interests they represented caused them to strengthen their positions, instead of making concessions, which are necessary for compromise.

The motive for negotiation is to come up with something that is better than the alternative from not negotiating. In this case, Kosovo Albanian side has the better BATNA (Best Alternative to Negotiated Agreement<sup>64</sup>), and they would probably find their interests satisfied in an arbitrated solution. An imposed solution does not look well for Serbian positions. If there is a political will for a compromise, then exchange of points is the method to pursue it with. If negotiations fail, however, an imposed solution will create a very unstable climate in the region that will ultimately not benefit anyone.

The latest development in Serbia, however, shows that policies that are intended for internal usage negatively affect the negotiating positions. Public contestation of Ahtisaari's legitimacy and attempts to put the blame on the international community, reliance on spoken third party promises that does not carry enough weight, the Prime Minister's emotional messages, and finally the Parliament's resolution for Kosovo's status in the new constitution. After six months of negotiations, it seems that Serbia opened a window for escape, rather than for an opportunity.

## Bibliography

Batt Judy, editor, 'The Western Balkans: moving on' ISS Chaillot Paper n° 70, October 2004

Batt Judy, 'The question of Serbia' ISS Chaillot Paper n° 81, August 2005

Brinkley John 'Kosovo Final Status: Options and Cross-Border Requirements',

USIP Special Report No. 9, Jul 2002,

Chomsky Noam, 'The New Military Humanism', 1999

Dinmore Guy 'The battle for Kosovo moves to the corridors of US power' The Financial Times,

December 2 2005

---

<sup>62</sup> After the Cold War Russia used its veto power in UN SC three times (on subjects of Cyprus and Bosnia) and China twice (Guatemala, FYR Macedonia).

<sup>63</sup> Chinese State Councilor Met Serbian Officials Belgrade, Aug. 28 Beta News Agency

<sup>64</sup> Fischer & Uri 1991 p. 99-106 in Kovacevic p. 140

- Eide Kai A 'Comprehensive Review report to the President of the UN Security Council' October 2005
- Gollust David 'Serbian Leader Warns Against Kosovo Independence' VOA News, Washington, September 07 2006
- Havel Vaclav 'Kosovo and the end of the Nation State', New York Review, June 10 1999 p. 6
- Helly Damien and Pirozzi Nicoletta 'The EU's changing role in Kosovo: what next?', ISIS European security Review Number 29, June 2006
- Hinsley, F.H. 'Sovereignty' second edition Cambridge 1986
- Homans, George. 'Social Behaviour' New York, Harcourt, Brace, Jovanovic, 1961 p 62
- Huntington [Samuel P.](#), 'The Erosion of American National Interests', Foreign Affairs, September/October 1997
- Independent International Commission on Kosovo (IICK), 'The Kosovo Report: Conflict, International Response, Lessons Learned' Oxford, 2000
- International Commission on the Balkans, 'The Balkans in Europe's Future', April 12, 2005
- International Crisis Group, 'Kosovo: Toward Final Status' ICG Europe Report No 161, 24 January 2005
- Janjic Dusan 'Kosovo: Five Years of International Administration' Harriman Institute April 15-17 2004
- Janjic Dusan 'Kosovo Between Conflict and Dialogue (Ethnic Conflict and the Crisis of Identity: The Case of Serb – Albanian Relations)', Belgrade 2003
- Judah Tim, 'Kosovo: War and Revenge', 2000
- Judah Tim, 'EU Must Keep its Promise to the Western Balkans' CER, July 2006
- Radomirovic V. [What Frank Wisner Told Belgrade] Politika daily, February 2, 2006
- Kovacevic Zivorad 'Medjunarodno pregovaranje' [International Negotiation], Belgrade 2004
- Krasner, Stephen D., 'Sovereignty Organized Hypocrisy' Princeton 1999
- Mihajlovic Kosta and Krestic Vasilije 'Memorandum of Serbian Academy of Science and Arts. Answers to Criticism' SANU Belgrade 1995
- Mitic Aleksandar, Oberg Jan 'Many models for a future Kosovo', TFF Kosovo Solution Series # 9, April 7 2005
- Natsis Ioannis 'U.N. in Kosovo: 1999-2005 An Assessment of international administration' 2005
- Nye Joseph S., 'Redefining the National Interest', Foreign Affairs, July/August 1999
- 'Platform on the Future Status of Kosovo and Metohija' June 12, 2006, [www.srbija.sr.gov.yu](http://www.srbija.sr.gov.yu)
- Raskovic Ivic Sanda, 'Serbian arguments in negotiations on Kosovo and Metohija', Nova Srpska Politicka Misao, Belgrade, December 05, 2005
- 'Resolution, Assembly of Kosovo', Pristine, November 17, 2005 <http://www.assembly-kosova.org>
- Sawyers John, 'Independence is an option' January 31, 2006 B92 station
- Thaci [Hashim](#) 'My people deserve their independence' International Herald Tribune November 25, 2005
- The Center for Democracy and Reconciliation in Southeast Europe 'Coming to Terms with the Problem of

Kosovo: The Peoples' Views from Kosovo and Serbia', 20th October 2005

'The Contact Group's Guiding Principles for a Settlement of Kosovo's Status', November 2005

'The Future EU Role and Contribution in Kosovo' Summary note on the joint report by Javier Solana, EU

High Representative for the CFSP, and Olli Rehn, EU Commissioner for Enlargement, July 2006

'United Nations Security Council Resolution (UNSCR) 1244' (1999)

Wagstyl Stefan, 'Putin holds court for Russia, with digs at EU and US' [The Financial Times](#),

September 11, 2006

Woehrel Steven Julie Kim 'Kosovo and U.S. Policy' January 9, 2006