

Achieving a Final Status Settlement for Kosovo

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Achieving a Final Status Settlement for Kosovo

Janusz Bugajski, R. Bruce Hitchner, and Paul Williams

1. Purpose of this Report

On November 19, 2002, the Center for Strategic and International Studies (CSIS), the National Albanian American Council, and the Dayton Peace Accords Project held a one-day conference in Washington, D.C., at CSIS, entitled “The Future of Kosovo.” The conference was attended by U.S. policymakers, congressional representatives, regional specialists, nongovernmental organizations (NGOs), business leaders, journalists, as well as key activists and analysts from Kosovo. The vital question of Kosovo’s emerging status was discussed openly with a view to producing a subsequent report offering concrete recommendations to the U.S. administration, U.S. legislators, and major international organizations on the question of Kosovo’s future status.

A second meeting, sponsored by the Dayton Peace Accords Project and the Public International Law and Policy Group, and attended by representatives of the National Albanian American Council and the Project on Ethnic Relations (PER),¹ was held at the Center for Human Values at Princeton University on March 14, 2003, to review a preliminary draft of this report.

This report presents a rationale and roadmap for a final status agreement leading to a fully sovereign and independent Kosovo. The report does not represent the views of all the participants in the meetings noted above.

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¹ PER does not take a position on the final status of Kosovo.

2. Urgent Need for Final Status Planning

Continuing international ambiguity and delay over the final status of Kosovo is increasingly untenable. Confusion and obfuscation over whether the territory becomes a long-term United Nations (UN) or European Union (EU) protectorate, is unilaterally handed over to Belgrade's control, or is finally launched on a trajectory for statehood erodes the effectiveness of the UN Mission in Kosovo (UNMIK), fuels the misplaced hopes for some in Serbia that all or part of Kosovo will again come under the authority of Belgrade, postpones stability in Southeast Europe, and most disturbingly, contributes to increased tensions, political and economic stagnation, and an unhealthy culture of dependence among Kosovo's ambitious, youthful, and growing population.

The international community has argued that Kosovo's society and institutions must demonstrate that they are ready to govern responsibly before discussions on final status can begin. However, such a position, nourished by the ambivalence over status in UN Resolution 1244, turns the problem on its head. It is not so much up to the Kosovars to prove their ability to govern as much as it is up to the international community to make the case for why the development of functioning institutions in Kosovo precludes the determination of the territory's final status or why the nature of that status should remain in question.

Three and a half years after NATO took control of the territory from Slobodan Milosevic's forces, the foundations of credible self-governing institutions in Kosovo are already in place. Indeed, there are numerous sovereign states around the globe that are arguably less politically and institutionally developed than Kosovo with or without the presence of UNMIK.

The continued ambivalence over Kosovo's status and the virtually unchallenged authority of UNMIK raise the specter of a new form of colonialism, administered and shaped by a predominantly West European cadre of officials. This situation promotes both political and social instability and economic stasis in Kosovo.

The importance of moving to final status rapidly is also in Serbia's interest. As the late Serbian prime minister Zoran Djindjic observed, "We cannot define the statehood of Serbia, until we know what the status of Kosovo-Metohija is.... The world has to realize that after two years, Serbian Democrats, and I as representative of the Serbian government...still cannot say what our state is." Thus, addressing Kosovo's status will help not only Kosovo, but will also help Serbia to define its own statehood. Indeed, the resolution of Kosovo's status and the certainty of the region's future will allow the EU to move away from the continual need to stabilize the region and instead launch a new agenda in Southeast Europe.

In sum, there can be no certainty of stability and cooperation in the southern Balkans as long as Kosovo's future remains unclear.

3. Final Status and U.S. National Security Interests

In his letter of September 17, 2002, announcing the new National Security Strategy of the United States, President George W. Bush stated that:

The United States will actively work to bring the hope of democracy, development, free markets, and free trade to every corner of the world. The events of September 11, 2001, taught us that weak states, like Afghanistan, can pose as great a danger to our national interests as strong states. Poverty does not make poor people into terrorists and murderers. Yet poverty, weak institutions, and corruption can make weak states vulnerable to terrorist networks and drug cartels within their borders. The United States will stand by any nation determined to build a better future by seeking the rewards of liberty for its people.

The Balkans clearly fit into this important global objective of U.S. national security policy, and the region contains three categories of states that can assist Washington in its broader security mission: loyal allies (Bulgaria, Romania, and Albania), aspiring allies (Macedonia, Kosovo, and Bosnia-Herzegovina), and one future ally (Serbia and Montenegro). To become full allies of the United States, each of the above-mentioned states and aspiring states must continue to build strong democratic institutions and achieve, in the case of aspiring states and future allies, clearly defined statehood.

There are three compelling security reasons for why the United States should continue to stay engaged in the region and pursue the completion of its security project in Southeastern Europe, which includes the settlement of Kosovo's final status:

- First, Balkan security is not only important for NATO's credibility, but above all for America's credibility and global strategy. Incomplete or mismanaged postwar missions in the region, as well as in Afghanistan, may encourage extremists in other trouble spots to push their agendas. Furthermore, finishing the job adequately in Kosovo will lend credibility to possible U.S. efforts to build a postwar Iraq. Failure to do so may send the message to extremists that they can wait out the initial U.S. or allied military intervention until commitment wanes and priorities and resources are diverted elsewhere.
- Second, Southeast Europe must be consolidated as a "terrorist free zone," and most countries in the region will cooperate in this endeavor particularly if they see a pronounced U.S. engagement. In practice, preventing the penetration of international terrorist groups means promoting and ensuring democracy, self-determination, the rule of law, minority rights, regional cooperation, and economic development, while combating criminal networks active across the region. Afghanistan serves as a poignant example of how political neglect and the insufficient commitment of resources can engender renewed conflict. A final status settlement in Kosovo would enhance the prospects of making Southeast Europe a "terrorist free zone" by decreasing the trafficking of drugs, sex

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workers, and migrants from the East into Western Europe by criminal networks.

- Third, the United States has strong allies and aspiring allies in the Balkans, and they are eager to support Washington in any future challenges to transatlantic security. The United States must not neglect the national and regional security interests of these emerging partners at the risk of losing much of its influence as they gradually move closer to Brussels.

4. The Case for an Independent Kosovo

Moving toward final status negotiations cannot be accomplished without a clear vision of what that status will be. In our view, the only viable option now on the table is statehood for Kosovo.

A return to provincial status for Kosovo under Belgrade's authority cannot be seriously contemplated, as it would almost certainly lead to armed resistance. The creation of a tripartite union with Serbia and Montenegro is likewise a political chimera, as even the current union between these two states is unlikely to survive.

The only alternative to full-scale independence is the partition of Kosovo, along the model of the now-failed Cyprus plan. To that end, the late Serbian prime minister Djindjic and leaders of the Serbian community in Kosovo have proposed that "Kosovo should be separated into the Serb and Albanian parts" (i.e., a federal arrangement for an independent Kosovo with an autonomous Serb entity). While protecting the rights of the Serb minority is a top priority, the creation of a Serb entity that is linked to Belgrade would undermine the state-building process, and as the lessons of Bosnia demonstrate, a weak federal structure with strong entity governments is an ineffective model for building the national institutions necessary for implementing the rule of law, fostering economic development, and encouraging ethnic reconciliation. Djindjic's proposal has been rightly rejected by Reno Harnish, the chief of the U.S. Office in Pristina who observed, "All the proposals made by the Serbian prime minister, starting from the request to return the Serbian forces in Kosovo, insisting for the early solution of Kosovo status, as well as the last proposal for separation and federalization of Kosovo, are nothing else but attempts for the creation of mono-ethnic regions and new separations in the Balkans." The partition of Kosovo could set a much more dangerous precedent among all neighboring countries than the acceptance of an independent Kosovo within existing borders.

The merits of independence go well beyond the reductionist argument that statehood is the best of a bad set of options. Of all the options, only independence offers the prospect of a promising future for Kosovo and its neighbors. The case for independence can be elaborated on the basis of political, economic, and regional security considerations.

Political

- A freely elected self-government will gain greater legitimacy as a sovereign organ rather than as a simple tool in the hands of international players, primarily the United Nations. Its authority and accountability to the electorate will be enhanced through the successful completion of the process leading to statehood. This will also undercut attempts to subvert or circumvent the legitimate Kosovar authorities by nondemocratic and organized criminal elements favoring a weak or uncertain state that allows for their illicit operations, not only in Kosovo, but also across the border in Macedonia.
- An international commitment to statehood would lessen the likelihood of a social explosion in Kosovo provoked by painful economic conditions. Public morale and discipline will also increase with the realization that independence, which is overwhelmingly favored by the majority of the population in Kosovo, is achievable, imminent, durable, and vital to preserve.
- The creation of an independent Kosovar government, parliament, and judicial and other institutions is the only way to develop a law-abiding society and an inclusive democracy in which all citizens, regardless of ethnicity, are granted the full array of human and civil rights, including the right to return of all legitimate Serb refugees to their homes. Most importantly, an independent government will be in a position to set social, economic, and institutional priorities and draft legislation—actions now almost entirely in the hands of UNMIK and other international organizations.

Economic

- There is little prospect for economic development until Kosovo is independent and self-governing, as any other status solution would lead to growing instability. Only responsible and empowered public institutions in an independent Kosovo will set the political priorities and invest in the infrastructure and services that will reduce the costs of production for private entrepreneurs and spur economic growth. Moreover, few, if any, foreign investors are likely to venture into a territory whose status remains unclear and whose future is ambiguous.

Regional Security

- Only statehood for Kosovo would ensure a more durable regional security in the Balkans—one that is not based principally on the presence of outside forces. With the development of an internal police force and a credible Kosovar military contingent, threats can be diminished and deterred, and contributions can be made to the international struggle against organized terrorism and criminality. Washington can then pursue a

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concrete timetable for a troop withdrawal, while NATO as a whole continues to guarantee the security of the new state from external threats. Local and European initiatives in the Balkans will also have greater chances of success, as suspicions over the ultimate motives of neighbors will continue to evaporate. Resources pumped into the region could then have a more practical and genuinely international dimension with lessened interference by foreign middlemen.

- The Stabilization and Association Process (SAP), the EU's main program for encouraging reform in the Balkans, requires participants to be, at a minimum, functioning sovereign states. As other Balkan states make progress towards the eventual goals of European integration, Kosovo is unable to participate because of its status as international protectorate. Only an independent Kosovo, not represented by UNMIK, can begin the essential process of European integration.
- Maintaining the de facto integrity of Kosovo will send a strong signal to extremists and ethnic agitators in Bosnia and Macedonia that partition is not an attainable goal. Dividing Kosovo along ethnic lines would only serve to encourage destabilizing elements throughout the region.

Finally, fears have been raised that independence for Kosovo will lead to further disintegration in the region. It has been asserted, for example, that independence for Kosovo would open the door for the Republika Sprska (RS) to secede from Bosnia-Herzegovina, and open the door for other ethnic groups within Serbia and other countries to demand territorial separation. These fears are misplaced. The case for separating the RS from Bosnia is frivolous, as it is an artificial entity created by ethnic cleansing and therefore undeserving of further status considerations. Moreover, there is no reason to believe that the RS or any other ethnic group could make claims to independence based on the criteria laid out by the Badinter Commission. Ultimately, the international community must make it clear that the resolution of Kosovo's status will carry no precedents for other ethnic groups or entities in the region.

5. Status *with* Standards: A Roadmap to Final Status Negotiations

UNMIK's Mandate under UN Resolution 1244

United Nations Security Council Resolution 1244 created a UN administration for Kosovo and charged it with facilitating "a political process designed to determine Kosovo's future status, taking into account the Rambouillet Accords."² The UN administration was then to oversee the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement.³

² United Nations Security Council Resolution 1244 (1999), para. 11.

³ Ibid.

While the Security Council did not provide an express timetable for resolving the question of the final status of Kosovo, it did indicate this process should be governed by the Rambouillet Accords, which set a three-year time frame.

Importantly, Resolution 1244 in no way intended for the deployment of a UN administration to supplant the process for a settlement of Kosovo's final status. Rather, 1244 is very clear in its mandate to the UN administration to facilitate the resolution of Kosovo's final status, to phase in Kosovo control of the mechanisms for self-government, and then to assist in the transfer of sovereign authorities to the new institutions created in any final settlement.⁴ More specifically, the resolution requires that the UN first assume control of sovereign functions, negotiate a constitutional framework, and then begin the transfer of sovereign functions to Kosovo institutions. Simultaneously, the UN is mandated to pursue a resolution of the final status of Kosovo.⁵

In the preamble to Resolution 1244, the UN Security Council cited the ritual affirmation of the commitment of all member states to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia (FRY) and the other states of the region, as set out in the Helsinki Final Act and Annex 2 of the Resolution.⁶ Crucially, the sovereignty and territorial integrity of the FRY was conditioned by the Helsinki Final Act and Annex 2 of the Security Council Resolution. The Helsinki Final Act provides for the equal recognition of a state's right to sovereignty and territorial integrity and of a minority peoples' right to self-determination. Annex 2 expressly places the respect for the sovereignty and territorial integrity of the FRY within the context of the "interim political framework agreement providing for substantial self-government for Kosovo,"⁷ and it also noted the necessity of taking full account of the Rambouillet Accords.⁸ It is therefore within the legal mandate of UNMIK to transfer authority to the provisional government of Kosovo.

The International Community's Role in Kosovo since 1999

In a speech at Humboldt University in Berlin on November 12, 2002, Michael Steiner, special representative of the secretary general (SRSG) to Kosovo, outlined the three-stage process of the international community's engagement in Kosovo since 1999. The first stage involved the NATO intervention, which ended

⁴ Ibid.

⁵ Ibid.

⁶ United Nations Security Council Resolution 1244 (1999), Preamble.

⁷ United Nations Security Council Resolution 1244 (1999), Annex 2, para. 8.

⁸ Ibid. While some argue that the preamble in Resolution 1244 prevents a determination of Kosovo's final status, this is an inappropriate reading of 1244. The Rambouillet Accords, also in the preamble, "recalled" the commitment of the international community to the sovereignty and territorial integrity of the FRY. The accords then went on to provide for the near total exclusion of FRY sovereignty over Kosovo and for the creation of a mechanism to determine final status in three years. Therefore, the preamble of Resolution 1244 does not prevent the international community from moving forward with a process for resolving Kosovo's final status.

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the gross violation of human rights perpetrated by Slobodan Milosevic and ended with the establishment of UN Security Council Resolution 1244.

The second stage commenced with the implementation of Resolution 1244 and the creation of the UN mission in Kosovo. While security continues to be provided by NATO through the Kosovo Security Force (KFOR), UNMIK's mandate in the second stage is fourfold:

1. International administration;
2. Facilitation of substantial self-government;
3. Elections; and
4. Initiation of a political process to resolve Kosovo's final status.

The central objective of this second stage is the gradual transfer of competence and responsibility to the provisional Kosovar institutions. Steiner has established eight goals or standards that must be met by Kosovo's authorities as part of this transfer of power:

1. Functioning democratic institutions;
2. Rule of law;
3. Freedom of movement;
4. Return and reintegration of all Kosovo inhabitants;
5. Development of a market economy;
6. Full property rights for all citizens;
7. Dialogue and normalized relations with Belgrade; and
8. Reduction and transformation of the Kosovo Protection Corps (TKP) in accordance with its mandate.

According to Steiner, "substantial progress toward these standards is also the prerequisite for resolving the status issue."

The third and final stage of international involvement "will be to draw Kosovo closer to the European Union." This will include the replacement of UNMIK with EUMIK and is understood to be a long-term project.

The process of addressing Kosovo's final status is thus already underway and has begun to pick up speed as a result of the recent push by the late Serbian prime minister to address the province's final status. The recent call by SRSG Steiner for talks between Belgrade and Pristina on practical and technical issues and the agreement between UNMIK and the provisional government of Kosovo to begin the transfer of competencies to the latter are important first steps. However, there remain uncertainties about the evolution of this process. It is unclear, for example, how UNMIK's "standards before status" are to be implemented and benchmarked and whether the Kosovars can fully meet these standards any time soon. The achievement of standards cannot and should not be a prerequisite for the ultimate question of Kosovo's final status. The international community should recalibrate

its objectives so that the consolidation of viable government institutions in Kosovo is pursued in tandem with direct negotiations on final status.

The Roadmap to Final Status Negotiations

To that end, we believe that an approach of earned sovereignty with a clear roadmap and timetable—that combines the pursuit of standards of governance, continued institution building, and steps to final status negotiations—is essential. Such a roadmap would enable politicians and the public alike to focus attention on building functioning institutions more rapidly and effectively, rather than being preoccupied with evading international controls and constantly having to stress their commitment to independence. We believe the critical elements of this roadmap are the following:

Provisional Government of Kosovo

- A FULLY RATIONALIZED PLAN TO TRANSFER AUTHORITY TO THE PROVISIONAL SELF-GOVERNMENT. UNMIK and the office of Prime Minister Rexhepi have already begun discussions on the transfer of competencies in the areas of internal security, privatization, and the budget to ministries of the provisional government. As part of this process, the constitution should be amended to formalize the authority of the provisional government. (See also appendix 1 of this report.) A special council has already been established with the goal of achieving the complete transfer of authority by the end of 2003. The transfer process should include a program of administrative training and increased funding (see next bullet) to support salaries and infrastructure for the ministries and must be supported by a genuine commitment by UNMIK to a devolution of its authority.
- THE KOSOVO PARLIAMENT SHOULD UNDERTAKE A PROACTIVE LEGISLATIVE PROGRAM OF RESOLUTIONS THAT ENDORSE STANDARDS AND ADVANCE THE PROSPECTS FOR MOVING TO FINAL STATUS. It is critically important that the provisional government of Kosovo take the necessary steps to demonstrate its commitment to the full achievement of the standards outlined by SRSG Steiner. To this end, the parliament should pass a package of resolutions that, among other things, promotes reconciliation between Albanians and Serbs in Kosovo, protects minority rights, and confirms the territorial integrity of states in the region. Such resolutions would demonstrate to the international community that the provisional government is prepared to take full responsibility for establishing human rights and the rule of law in advance of final status negotiations.
- REFUGEE RETURN. It is imperative to allow for the reintegration of all refugees and displaced persons who wish to return to Kosovo. Tens of thousands of Serbs and members of other minorities, including Roma, were displaced during the return of the Albanian refugees in the summer of 1999. UN estimates indicate that over 230,000 Serbs who fled or were

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forced out of their homes when NATO intervened in Kosovo are currently registered as displaced persons in neighboring republics. To discern those with genuine claims, all returnees would be required to prepare a form that would provide data on their background and claims. The safe return of Serbs and other minorities should be ensured, as well as efforts to create opportunities for their sustainable return, such as jobs, education, and a secure environment in which to live.

- **THE DEVELOPMENT OF A JOINT KOSOVAR POLITICAL PLATFORM.** Kosovo's political leaders must establish a joint political platform to ensure that the provisional government speaks with one voice in final status negotiations as soon as possible. (See appendix 2 for analysis of the need for Kosovar unity.)

Kosovo, Serbia, and Macedonia

- **DIALOGUE BETWEEN PRISTINA AND BELGRADE.** UNMIK has proposed that a dialogue between Pristina and Belgrade be established to build confidence and cooperation on both sides. The dialogue is expected to cover technical and practical issues. We believe that the dialogue would be best achieved if it were held in a venue outside the region, as it would force both parties to make a commitment to progress in discussions. A frequent refrain of various reports outlining options for a final settlement is that a wide range of outstanding practical issues could and should be resolved through pre-status negotiations between Belgrade and Pristina. Though we generally concur with this view, we are also aware that both sides must be clear from the outset about the nature and scope of such discussions. We believe that talks on territorial, political, military, economic, and humanitarian issues should be restricted to laying the groundwork for final status negotiations and that initial discussions should focus instead on confidence-building measures that include:

Scientific and educational exchanges and NGO cooperation;

Coordinated efforts against organized crime and trafficking and mutual assistance in tracing missing persons; and

Cooperation in tracing and locating missing persons from Kosovo through the establishment of a bilateral working group to conduct the work.

- **DIALOGUE BETWEEN PRISTINA AND SKOPJE.** Direct discussions should begin as early as possible between the provisional government of Kosovo and Macedonia to allay mutual suspicions and prejudices, to promote economic cooperation, to initiate educational and scientific exchanges, and to create the basis for a final agreement between an independent Kosovo and Macedonia. A key goal of this process would be the formal renunciation by the Kosovar Albanians of any territorial ambitions beyond the current boundaries of Kosovo. These discussions should begin in April and be completed before the end of 2003.

Kosovo and the EU

- **INCREASED DEVELOPMENT ASSISTANCE FOR KOSOVO.** The EU should actively promote Kosovo's structural reform and economic development, as well as cohesion within Europe, by increasing its earmarked assistance to Kosovo in 2003 and 2004 under the Community Assistance for Reconstruction, Development, and Stabilization (CARDS) program and by maintaining or increasing the level of aid in 2005–2006. Moreover, this assistance should be conditioned on direct participation of the Kosovo government in setting priorities and selecting projects linked to this aid, and it should be distinct from that provided to Serbia and Montenegro. The parameters of this new assistance program should be worked out at the EU summit in Zagreb scheduled for June 2003.

The United States and the European Union

- **U.S. AND EU COMMITMENT TO INDEPENDENCE FOR KOSOVO.** The cover afforded to the international community over Kosovo's final status by Resolution 1244 is fast ending. To that end, it is essential that the United States and EU offer a clear and unequivocal policy of independence for Kosovo by no later than the early fall of 2003.
- **U.S. AND EU COMMITMENT TO AN INDEPENDENT SERBIA.** The key to the resolution of Kosovo's final status lies in convincing Serbia that it is in its best interests to accept Kosovo's independence. This can be best achieved through U.S.-EU support for a Serbia independent of Kosovo and Montenegro. This could be achieved through a package of incentives and commitments to Serbia in return for its agreement to relinquish its claims to sovereignty over Kosovo. This package could include the following:
 - Guarantees of protection of the human rights of Kosovo Serbs;
 - Guarantees of protection for all Serb religious and cultural monuments in Kosovo;
 - Increased development aid to Serbia through the CARDS program;
 - Political support for its entry into the EU and NATO; and
 - Substantial and sustained technical, financial, and intelligence support in combating organized crime networks.

6. Final Status Negotiations

Final status negotiations should commence early in 2004. The goals of the negotiations should be clear from the outset. A comprehensive and detailed final status settlement plan should be prepared in advance as a basis for negotiations. It should comprise the components listed below.

Elements of a Final Status Settlement

Bilateral Goals in Relations between Kosovo and Serbia

- Kosovo will be independent with borders based on those of the former province;
- Kosovo will have sovereignty over Mitrovica, but the latter will be administered under a special regime of the UN or EU charged with undertaking a Brcko-style model designed to reintegrate the city into Kosovo through a process of municipalization;
- Kosovo will be permitted a small multiethnic national protection force that remains under the control of a continuing NATO presence to monitor the implementation of the final status agreement, ensure stability, and provide protection for all citizens;
- Constitutional guarantees for minorities, including options for flexible EU-style dual citizenship arrangements;
- A non-visa regime/Schengen-style agreement on freedom of movement between Kosovo and Serbia;
- Trade and commercial agreements: In addition to agreements on tariffs, currency, taxes, and investments in building modern highways and rail links between Belgrade and Pristina, this would include investments that can be initiated in border areas between Serbia and Kosovo in order to improve local infrastructure and encourage trade and the free movement of people;
- Cultural agreements on protecting churches and monuments: Cultural agreements should be initiated to afford protection and ease of access for Serbs to cultural monuments such as Orthodox churches, monasteries, shrines, and other landmarks inside Kosovo. Such a display of goodwill and accommodation by the authorities in Pristina would help engender mutual trust and tolerance.

Multilateral Goals among Kosovo, Serbia, UN, NATO, and the EU

- An agreement to replace UNMIK with a new EU administrative authority to work in collaboration with the Kosovo authorities to continue the process of building self-governing institutions and to prepare Kosovo for eventual integration into the EU. The resolution will also call for a continued NATO or EU security presence;
- General agreement among all parties that the final status agreement will not negatively impact the territorial integrity of any other state in the Balkans.

Multilateral Goals among Kosovo, Serbia, and the EU

- Kosovo and Serbia will be separately guaranteed increased assistance under the CARDS program;

- An EU commitment to Kosovo's accession to the European Union that will be decoupled from any projected accession of Serbia and Montenegro.

Modalities

Ground Rules

The framework for final status negotiations cannot be a repeat of the Rambouillet agreement of 1999. It should be clear from the outset that the negotiations will result in an agreement that provides for the independence of Kosovo, the details of which will be worked out in the course of the negotiations. A final agreement document should be prepared in advance for discussion. Negotiations should be led by a working group comprising the United States, the EU, and the UN and should be directed by two representatives—one from the United States and one from the European Union. Because the final agreement will address the new country's borders, it will be necessary to have representatives from Macedonia, and potentially Albania, in addition to the UN and NATO, all of whom will be signatories to the final agreement. Finally, it should be understood that the negotiations are not between Kosovo and Serbia, but an international process that will define the nature and structure of Kosovo's sovereignty as an independent state.

Venue

The parties to the negotiations will need to be confident that the venue is beneficial to all sides. This immediately rules out Pristina or Belgrade or any site in Southeastern Europe. As both Kosovo and Serbia seek to become EU members, it makes good sense for the negotiations to be held at a European site such as Brussels. However, consideration should also be given to holding the negotiations in the United States, as there are a number of advantages to U.S.-based talks.

- Although Kosovo and Serbia will eventually be part of the EU, there remains considerable uncertainty over the process of their accession. This could prove to be a distraction if talks were held in Europe.
- Holding negotiations in the United States would also increase the chances of reaching a final agreement, as the distance to Europe would deter the parties from taking unwarranted recesses and temporary adjournments as part of their negotiating tactics.
- U.S.-based talks are also less likely to be influenced by media interference and exploitation.
- U.S.-based talks will also serve as an incentive to keep the U.S. government engaged in Kosovo both before and after the final settlement.

Format

The venue options outlined above call for a Dayton-style framework, in which intensive negotiations are conducted over a fixed period, and with the clear sense

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from the commencement of negotiations that a final agreement will be reached. The United States and the EU should be in control of the negotiations from the outset. Unlike Dayton, all negotiations should be conducted directly among all the parties.

Post-agreement Process

The final agreement should be approved by the UN Security Council and followed by a donor conference to revitalize assistance to Kosovo. At this point, UNMIK should be immediately replaced by a joint UN-EU representative.

Provisional Timetable for Final Status

- April 2003: Kosovo-Serbia dialogue commences
- May 2003: Statehood Action Plan (SAP)
- June 2003: Dialogue between Pristina and Skopje
- July 2003: New development assistance plan worked out
- Fall 2003: United States and EU call for an independent Kosovo
- Early 2004: Final status negotiations begin
- June 2004: Final status settlement agreement drafted
- July 2005: Final status settlement agreement confirmed by UN Security Council
- June 2005: Kosovo statehood declared

Appendix 1: UNSC 1244 Not a Barrier to Resolution of Final Status

Despite the clarity of Resolution 1244 regarding the interim transfer of sovereignty to the UN administration and the legitimacy of a process for determining the final status, some European states have argued that Resolution 1244, by its preambular reference to the sovereignty and territorial integrity of the FRY, precludes an eventual independent final status for Kosovo. This argument, however, does not rest on a sufficient legal foundation.

The international civil presence in Kosovo, which would take the form of an SRSG and accompanying staff, was authorized to provide an interim civil administration for Kosovo.⁹ The Security Council then made it clear, however, that the UN administration was only an interim entity and that, pending settlement of the final status of Kosovo, its primary task was to promote the establishment of substantial autonomy and self-government in Kosovo, based on the Ahtisaari Agreement and the Rambouillet Accords.¹⁰ To accomplish this objective the UN civil administration was charged with “organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections.”¹¹

As discussed below, a key element in this process was the adoption by the UN administration of a Constitutional Framework for Provisional Self-Government. The Security Council also made it clear in its reaffirmation and restatement of the Ahtisaari Agreement that the “negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions.”¹² Once the Kosovo institutions were created, the UN administration was to transfer to these institutions its administrative responsibilities while overseeing and supporting the consolidation of these provisional institutions, as well as other peace-building activities.¹³

Most importantly, the interim UN administration was also charged by the Security Council with the obligation to facilitate “a political process designed to determine Kosovo’s future status, taking into account the Rambouillet Accords.”¹⁴ The UN administration was then to oversee the transfer of authority

⁹ The mandate of the UN administration included the authority to: perform basic civilian administrative functions; support the reconstruction of key infrastructure and other economic reconstruction; support, in coordination with international humanitarian organizations, humanitarian and disaster relief aid; maintain civil law and order, including establishing local police forces, and meanwhile through the deployment of international police personnel to serve in Kosovo, protect and promote human rights; and assure the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo. See United Nations Security Council Resolution 1244 (1999), para. 11.

¹⁰ United Nations Security Council Resolution 1244 (1999), para. 10a.

¹¹ United Nations Security Council Resolution 1244 (1999), para. 11.

¹² United Nations Security Council Resolution 1244 (1999), Annex 2, para. 8.

¹³ United Nations Security Council Resolution 1244 (1999), para. 11.

¹⁴ *Ibid.*

from Kosovo's provisional institutions to new institutions established under a political settlement.¹⁵ Although the Security Council did not provide an express timetable for resolving the question of the final status of Kosovo, it did indicate that this process should be governed by the Rambouillet Accords, which set a three-year time frame (which expired last year).

Importantly, Resolution 1244 in no way intends for the deployment of a UN administration to supplant the process for a settlement of Kosovo's final status. Rather, 1244 is very clear in its mandate to the UN administration to facilitate the resolution of Kosovo's final status, to phase in Kosovo control of the mechanisms for self-government, and then to assist in the transfer of sovereign authorities to the new institutions created in any final settlement.¹⁶ More specifically, the resolution requires that the UN first assume control of sovereign functions, negotiate a constitutional framework, and then begin the transfer of sovereign functions to Kosovo institutions. Simultaneously, the UN is mandated to pursue a resolution of the final status of Kosovo.¹⁷

In the preamble to Resolution 1244, the UN Security Council cited the ritual affirmation of the commitment of all member states to the sovereignty and territorial integrity of the FRY and the other states of the region, as set out in the Helsinki Final Act and annex 2, of the resolution.¹⁸ Crucially, the sovereignty and territorial integrity of the FRY was conditioned by the Helsinki Final Act and annex 2 of the Security Council Resolution. The Helsinki Final Act provides for the equal recognition of a state's right to sovereignty and territorial integrity, and of a minority peoples' right to self-determination. Annex 2 expressly places the respect for the sovereignty and territorial integrity of the FRY within the context of the "interim political framework agreement providing for substantial self-government for Kosovo,"¹⁹ and also noted the necessity of taking full account of the Rambouillet Accords.²⁰

The Rambouillet Accords, also in the preamble, "recalled" the commitment of the international community to the sovereignty and territorial integrity of the FRY.²¹ The accords, as noted above, then went on to provide for the near total exclusion of FRY sovereignty over Kosovo and for the creation of a mechanism to determine final status in three years. Therefore, the preamble of Resolution 1244 does not prevent the international community from moving forward with a process for resolving Kosovo's final status.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ United Nations Security Council Resolution 1244 (1999), Preamble.

¹⁹ United Nations Security Council Resolution 1244 (1999), Annex 2, para. 8.

²⁰ Ibid.

²¹ Interim Agreement for Peace and Self-Government in Kosovo (Rambouillet, February 23, 1999), Preamble.

Appendix 2: The Need for Kosovar Unity

For Kosovo, and the overwhelming majority of its people, an independent state recognized by the international community is the issue that eclipses all others. Only such a state will be capable of voluntarily integrating into NATO, the EU, and other international institutions. But the achievement of these goals requires a strategy and a vision. The Kosovars cannot simply rely on international actors to deliver statehood on a silver plate. A major task for Kosovo's political and civic leaders is to devise cogent, convincing, and positive arguments that independence is the most compelling option, as outlined in this paper. Moreover, these arguments will need to be convincingly presented to the key international players, especially to those in Washington and Brussels. Two simultaneous strategies to help forge national unity can be adopted by leaders of the aspiring state.

1. **CONTRACT FOR INDEPENDENCE.** Although a broad spectrum of political parties has emerged in Kosovo, they have little programmatic and policy distinctiveness since they all remain primarily focused on the issue of independence. The denial of status resolution by international players discourages healthy political competition in Pristina and beams all pronouncements and policies through the prism of national independence. Paradoxically, the denial of statehood discussions and decisions simply freezes political developments and stifles debate, as no party or political leader wants to be outmaneuvered in their overriding support for independence.

In such unfavorable conditions, Kosovar politicians need to forge a multiparty agreement or contract for a roadmap toward independence and statehood, as there is near national consensus for independence. Such unity on the primary national question would then enable political debate and vibrant competition with regard to domestic policy issues that would evolve. The dialogue on the criteria and timetable for independence, determined in negotiations with the international community, would itself have a positive impact on the domestic reform process.

2. **PROMOTING A KOSOVAR IDENTITY.** To strengthen the sense of unity and purpose, political leaders and opinion shapers in Pristina will also need to define and promote a distinct Kosovar identity. The sense of community was strengthened during the existence of Yugoslavia, particularly as a result of the racism and brutality of the Milosevic regime; with independence, a unified sense of community could then be promoted on the basis of a national identity. There are at least three possible definitions of Kosovars: as one subdivision of the Albanian nation; as a separate and emerging nation; or as a territory-wide identity regardless of ethnicity. There are clear advantages and disadvantages associated with each category and they need to be publicly and openly discussed.

The first option is to define Kosovars as simply a part of the all-encompassing Albanian nationality. Such an approach will obviously strengthen the sense of solidarity, unity, and cohesion. It would provide

historical continuity and a feeling of purpose and destiny. The notion of joint nationhood gives significant support and protection for the bulk of the population in the context of political uncertainty and international turmoil.

On the negative side, Kosovarism as essentially or exclusively Albanianism could be perceived as a major threat by neighboring groups whatever the reality of popular aspirations. It can be viewed as an encouragement for expansionism and the goal of a “Greater” or an “Ethnic Albania.” It may also threaten minority groups within Kosovo and those who wish to return. This characterization may therefore promote tension and conflict, as the Kosovars will stand accused of seeking absorption into a larger Albanian state once they attain national independence.

In the second definition of identity, the Kosovars can be transformed into a separate nationality in a prolonged process of ethnogenesis. This can also provide a focus for political unity, territorial stability, and national development. It can also encourage coherence in dealing not only with neighboring Slavic populations but also with Tirana, other foreign governments, and international institutions.

On the negative side, Kosovar distinctiveness may be seen as undermining Albanian unity, as well as creating potential competition and conflict points with Albania itself. Moreover, by shifting attention to ethnically defined nation building, such a definition may alienate the country’s national and religious minorities who will view themselves as outsiders in the emerging Kosovo state.

In the third instance, employing a definition of Kosovar that embraces a state territorial identity and civic-based citizenship regardless of ethnicity can also contribute to building cohesiveness. As an inclusive category, it will help reassure all the minority groups that they belong to the embryonic state entity. It will also contribute to undermining any accusations that Kosovo presents an Albanian expansionist threat to the entire Balkan region. This may also ease Belgrade’s concerns of having a threatening population of Albanian or Kosovar nationalists on its borders.

The disadvantages of a territory-based and distinct state identification must also be considered by analysts and public leaders. It could dilute the Kosovar’s Albanian identity, foster disputes with other Albanian communities, and even draw both Serbia and Albania into the fray in competition over the Kosovar population and its territory. However, if handled astutely and inclusively, the promotion of a civic-based identity is likely to lessen domestic conflicts and increase international cooperation.

Kosovo’s intellectuals, political leaders, and opinion makers need to agree which identity would most effectively consolidate the drive for independence and which identity would stifle and distract those aspirations as the territory gradually develops its political institutions. Identity remains a strong bonding agent and the major source of self-

respect in a fast-changing world. Rather than eradicating the popular yearning for local and group identities, the process of Europeanization and globalization may actually reinforce them. Individuals do not want their cultures and traditions submerged and they generally oppose uniformity and standardization. For Kosovo, however, identity is not just a question of uniqueness but of political subjectivity and national existence.