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Eser Geçmişi / Article Past: 22/09/2021 28/09/2021

Başvuruda bulundu. Kabul edildi.
Applied Accepted

Araştırma Makalesi

DOI: <http://dx.doi.org/10.21551/jhf.995056>

Research Paper

Orjinal Makale / Original Paper



The Role of International Mediation in Defining Kosovo's Final Status

Kosova Nihai Statüsünün Belirlenmesindeki Uluslararası Arabuluculuğun Rolü

Abstract

The trajectory that the process of defining the political-legal status of Kosovo has followed has been as complex and difficult, as well as unclear both in terms of time and content. While UNSC Resolution 1244 maintained (suspended) Yugoslavia's sovereignty over Kosovo and the UN international administration (UNMIK) was envisaged as a transitional phase then both sides, the Albanian and the Serbian side had completely different expectations. The first expected that after the removal of international administration Kosovo would declare its independence and begin life as an independent entity, while the second, the Serbian side, expected the restoration of sovereignty there, allowing for substantial autonomy. In these circumstances during 2004, especially after the events of March 2004, the status quo could not be maintained for long and the international community began to move slowly towards defining the future status of Kosovo.

Keywords: status, Kosovo, quint countries, negotiations.

Öz

Kosova'nın siyasi-hukuki sürecin belirlenmesi için takip edilen yol, çelişkili ve zordu. Aynı zamanda, hem içerik hem de zamanlama açısından net olmama özelliğini taşıyordu. BM'nin 1244 no'lu Çözünürlüğü, Yugoslavya'nın Kosova üzerinde ki egemenliğini ortadan kaldırırken, BM'nin İdaresi (UNMIK) her iki taraf için de geçici olarak öngörülmesine rağmen, arnavut tarafı ve sırp tarafı, tamamiyle farklı beklentiler içerisindeydi. Arnavutlar, Kosova'dan Uluslararası idaresinin kaldırılmasından sonra, bağımsızlığı ilan edip, ayrı bir bölge olarak hayata başlamayı beklerken, Sırp tarafı hakimiyetini geri çevirmeyi ve özerkliğe müsaade etmeyi planladı. Bu şartlarda, 2004 yılı boyunca ve özellikle Mart 2004 olayları boyunca, Statüko'nun uzun vadeve aynı kalamayacağını ve Kosova bağımsızlığına doğru ilerlemesi gerektiğini gösterdi..

Anahtar kelimeler: statü, Kosova, QUINT ülkeleri, müzakereler,...

ATIF: HAJRA Milazim, "Kosova Nihai Statüsünün Belirlenmesindeki Uluslararası Arabuluculuğun Rolü", *Tarih ve Gelecek Dergisi*, 7/3 (Eylül 2021), s. (642-649)

CITE: HAJRA Milazim, "The Role of International Mediation in Defining Kosovo's Final Status", *Journal of History and Future*, 7/3 (September 2021), pp. (642-649)

Standards before status

Resolution 1244 had created a status quo in Kosovo. The international administration was in the midst of two pressures: on the one hand it had to maintain the sovereignty of the FRY over Kosovo and on the other hand the people of Kosovo wanted nothing less than independence. This resolution had left the final status issues open, thus making it from a legal issue to a political issue for the international community. The issue of resolving Kosovo's final status seemed to be being pushed aside by international actors, who considered that the status issue should be set aside as much as possible. There was a high level of skepticism from international actors regarding Kosovo's independence, because it would have unfortunate consequences for Bosnia and Herzegovina, where its Republika Srpska would also seek its independence. The same could happen in the cases of Abkhazia and South Ossetia, two self-governing regions of Georgia under Russian-led "peacekeepers". They too would be declared independent or join Russia. But a solution had to be reached, the issue of Kosovo's final status had to be determined as it had been planned since Rambouillet to hold talks to find a mechanism to review the status quo in 2002. In April of that year, the secretary general reported to the Security Council that it had instructed its Special Representative (SRSG) to develop benchmarks to measure progress in Kosovo.¹

Presenting the report to the Council, the special representative, Micheal Steiner, had said that significant progress had been made in Kosovo, arguing that it had entered a new phase. Steiner stressed that UNMIK was now transferring some of its responsibilities to local institutions in the process of building substantial autonomy. This means that we are approaching the start of a political process in order to determine the future status of Kosovo. But first some standards need to be met to start final status talks.²

A coalition of Kosovo parties, mediated by UNMIK, reached an agreement on the scope of standards, following the general elections in the territory. They referred to: "Existence of functional state institutions; law enforcement; freedom of movement; the right of return for all Kosovars; market economy development; property clarity; normalized dialogue with Belgrade; and the reduction and transformation of the Kosovo Protection Corps (KPC)". This policy was endorsed by the Security Council and eventually redesigned as "standards before status"³. However, the eight standards were not developed until December 2003 when they were jointly introduced by UNMIK and the Provisional Institutions of Self-Government in Kosovo. By March 2004, the UNMIK bureaucracy had taken over the process.⁴ So from this it can be seen that there was constantly delay in the process.

It was anticipated that the status review process would take place alongside the implementation of the standards. This review mechanism was formally approved by the SC on 12 December 2003. The international administration would periodically assess whether the standards had been met, with the need to recommend whether or not it was the right time to start status talks. The council further noted that the first time for a comprehensive review would take place sometime in mid-2005.⁵

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

1 UN Doc. S/2002/436, 22 April 2002

2 Marck Weller, Shtetësia e Kontestuar, (Prishtinë, KOHA, 2009), fq. 310

3 Po aty, fq.310

4 Po aty, fq.311

5 Marck Weller, Shtetësia e Kontestuar, (Prishtinë, KOHA, 2009), fq. 311

The March 2004 riots and the Kai Aide report

Failure to define the final status had created a stalemate among the citizens of Kosovo. In addition, the citizens of Kosovo were experiencing a difficult economic situation. The unemployment rate was very high, even those few working workers had a job under their qualification and received a miserable salary. The economic powers were largely reserved for the international community and still coordinated by the EU Pillar and UNMIK. Now with an administrative budget three times larger than in 1999, Shtylla had the means to carry out the tasks expected of her. But she still faced major legal and political obstacles. Property rights were the most serious issue. The Ottoman despots, communist commissars, and Milosevic's allies had repeatedly caused confusion over ownership of land, buildings, and large firms. As a result of political uncertainty, there was a lack of investment, especially foreign investment. No big investor would risk their money in a new Kosovo unless they made sure the goods they bought were safe.⁶ This resolution had left the final status issues open, thus shifting it from a legal issue to a political issue for the international community. The issue of resolving Kosovo's final status seemed to be being pushed aside by international actors, who considered that the status issue should be set aside as much as possible. There was a high level of skepticism from international actors regarding Kosovo's independence, because it would have unfortunate consequences for Bosnia and Herzegovina, where its Republika Srpska would also seek its independence. The same could happen in the cases of Abkhazia and South Ossetia, two self-governing regions of Georgia under Russian-led "peacekeepers". They too would be declared independent or join Russia in creating a unique system of government throughout Kosovo, leaving Mitrovica under a kind of parallel administration led by Belgrade. Riots were directed against ethnic Serbs and Serb religious and cultural monuments in many areas of Kosovo, beyond Mitrovica.⁷ The riots lasted over three days, leaving 19 dead, 954 injured, 4,100 displaced 550 houses and 27 burned Orthodox churches and monasteries.⁸

The March riots without question accelerated the process, directly affecting the course of the negotiation process. These riots made it clear that: Kosovo can not remain in a state of status quo even further, with an undefined status and a miserable economic situation. This was announced by the institutional actors of Kosovo, stating that the citizens of Kosovo are tired of this situation, and to prevent other cases of outbreak of interethnic violence, the final status of Kosovo should be defined as soon as possible. Therefore, the elements of the projects for the implementation of the standards were accelerated, including the rule of law and security issues. Furthermore, given the instability and tensions that were manifested during the riots, the UN Secretary-General launched the overall process of reviewing the UN operation in Kosovo.⁹ This process was led by Ambassador Kai Eide, Norway's Permanent Representative to NATO. Ambassador Aide presented the initial report in August 2004, which was published just three months later, along with the Secretary-General's own recommendations for the next steps.

At the beginning of the assessment, the report presents a general situation, where Kosovar society is presented as a society that nevertheless managed to recover and make dramatic changes, taking into account the factual situation in 1999. The biggest problem according to the report, was seen interethnic challenges, which had to be taken seriously. Among other things, the report highlighted the majority dissatisfaction of the majority population with the international administration. He noted that the "Standards before Status" policy lacked credibility and should be replaced by "a policy based on real priorities and standards".¹⁰ Furthermore, it was predicted that the situation in Kosovo could worsen rather than improve.

6 Iain King, Whit Mason, Paqe më çdo Kusht - Si dështoi Bota në Kosovë, (Prishtinë, Koha, 2007), fq . 190

7 Marck Weller, Shtetësia e Kontestuar, (Prishtinë, KOHA, 2009), fq. 312

8 Po aty, fq. 312

9 UN, Doc. S.2004/613, 30 June 2004

10 Marck Weller, Shtetësia e Kontestuar (Prishtinë, KOHA, 2009), fq. 313

On October 7, 2005, Ambassador Eide reported to the SC that meeting different standards was not the same, but it was still time to move towards status. Ambassador Eide added, "The process for future status must be started carefully. All parties must gather - and hold - together throughout the status process. The end result should be stable and consistent. No artificial deadlines should be set. "Once the process starts, it can not be blocked, but it must be completed".¹¹ On October 24, the SC authorized the launch of the status process. In accordance with the Council, the Secretary-General appointed Martti Ahtisaari, the former President of Finland, who had assisted in the final negotiation of the NATO campaign against Yugoslavia, as his special envoy for the Kosovo final status process.¹²

Vienna final status negotiations

The international community had already seen that the Kosovo situation could not be left in a state of status quo. As a result, the process moved forward, with the Vienna negotiations on the final status of Kosovo being organized. Both sides in the negotiations held the authorities of Kosovo and Serbia in diametrically opposed positions. On the one hand, Kosovo would accept nothing less than independence. On the other hand, Kosovo's independence was absolutely unacceptable to Serbia.

There were three structural factors that made it difficult for the environment to negotiate. The first two factors are related to the principles of the classical international system, while the third factor is related to the modern principles of the international system. First, Belgrade's position was in line with the international system's strong support for the preservation of the territorial integrity and territorial unity of states. Second, was the principle of state consent, according to which obligations could not be imposed on states against their will. Third, it was the principle affirming the proclamation and protection of human rights that was gaining in importance. Of these principles, the two principles were in line with Belgrade's position, while the third principle was on the Kosovo side, when it is known that the suffering of the population in Kosovo, the mass displacement of over half the population from the territory by Serbian military and paramilitary forces in 1999 were still fresh in the memory of international policymakers who were involved in the Kosovo crisis. It was the conviction of most Western governments that, given the recent history, it would not be very realistic for Kosovo to be placed back under Serbian sovereignty.

Negotiation format- If we look at the negotiation process as a whole it was organized and developed according to standard rules which constitute a negotiation process in general. Based on this it was determined: Format of talks, location, time, model of mediation, implementation or putting into practice of eventual results.¹³ The format of the talks was direct. The mediators would invite delegations to Vienna for a period of several days, offering them the agenda for only one area (eg decentralization) to be considered during this period. They started on February 20, 2006 and would take place around a horseshoe-shaped table in one of the palaces of the city of Vienna. The negotiations were organized under the leadership of a large number of major world decision-making centers such as: the Security Council, the Contact Group (US, UK, France, Germany, Italy and Russia), Regional Political and Security Organizations, states and teams as well as a large number of experts. While the Contact Group was leading the negotiations, the process was, however, formally the work of the UN. The UN Secretary-General appointed not only the Special Envoy, Martti Ahtisaari, but also his Deputy, Albert Rohani of Austria, who led the talks. The mediators were supported by the Office of the UN Special Envoy for Kosovo (UNOSEK).¹⁴ A total of fifteen rounds of direct negotiations were held in Vienna during 2006. These negotiations focused on issues of decentralization, protection of cultural and religious heritage, economic issues and protection of minority rights.

11 UN Doc, S/2005/635, 7 October 2005

12 Marck Weller, Shtetësia e Kontestuar, (Prishtinë, KOHA, 2009), fq. 315

13 Geoff Berridge, Diplomacia: Teoria dhe praktika, (Tiranë: Dudaj, botimi i katërt, 2011), fq. 53 - 75

14 Takim i nivelit të lartë rreth statusit të ardhshëm të Kosovës, Deklaratë e Grupit të Kontaktit (24 korrik, 2006), Vjenë.

The structure of Kosovo's final status negotiations was complex. The framework for the negotiations was set by the UN Security Council, based on the recommendations of Ambassador Eide and the UN Secretary-General. This framework has its roots, in a general sense, in Security Council Resolution 1244 (1999).¹⁵ Grupi i Kontaktit miratoi dhjetë "parimet udhëheqëse" për zgjidhjen e statusit të Kosovës. Në esencë këto parime i vendosën linjat e kuqe për t'u imponuar nga ndërmjetësit në negociata The Contact Group adopted ten "guiding principles" for resolving Kosovo's status. In essence, these principles set the red lines for the mediators to impose in the negotiations.¹⁶ These principles emphasized that: there will be no turning back to the situation that existed in Kosovo before the NATO intervention.¹⁷ It was also stated that "Any solution that is unilateral or that is a consequence of the use of force would be unacceptable.", neither the partition of Kosovo, nor the unification of Kosovo with any state or part of any state.¹⁸

Negotiations began in February 2006. Each party to the negotiations could only have seven representatives in the negotiating room. The start of negotiations was of a technical nature, such as decentralization moving later to the status process. This is otherwise called the bottom-up approach to negotiation¹⁹. The Kosovar delegation always contained the level of minister or ministers to cover the issues raised for each negotiation session, community representatives and senior experts. Therefore the composition of the team varied depending on the issue under consideration. The delegation operated under the leadership of the so-called "Unity Team".²⁰ The team was supported by the "Strategic Political Group" composed of senior representatives of the parties that were part of the Unity Team, as well as some experts whose role was to develop positions for the approval of the Unity Team and who received participate in the daily rounds of negotiations. On the other hand, Serbia had chosen for lower representation from the ranks of its foreign ministry, along with representatives of other bodies, experts and "its own representatives" of Kosovo communities. The issue of representation of different communities in Kosovo led to an abnormal situation. Representatives of the Serb community in Kosovo had a dualistic approach.

The positions of the parties in the negotiations were completely opposite. Belgrade was mainly interested in confirming its territorial sovereignty even if it was willing to suspend the exercise of political power for another time and to accept the severe limitation of power in the longer term. However, unlike his previous position in Rambouillet, he was now interested in maintaining a strong and efficient international security presence in the territory. This would transfer to the organized international community the obligation to guarantee, by force if necessary, the remnant of Kosovo within Serbia, in addition to the obligation to protect the ethnic Serb population, if there were to be riots again.²¹ Before the start of the negotiations, the People's Assembly of Serbia gave its mandate to its delegation, demanding the broad protection of international law, and stating: "Any attempt to impose a solution towards the legalization of the de facto division of the republic of "Serbia's secession of a part of its territory would constitute a violation of international law."²² For this reason, Belgrade's position was extremely rigid, based entirely on the structural principles of classical international law, supporting territorial unity over demands for self-determination outside the colonial context.

On the other hand, Kosovo's position was very clear. From beginning to end, Pristina insisted on independence. But despite Kosovo's clear position, it did not shy away from risk. One of the

15 Marck Weller, Shtetësia e Kontestuar, (Prishtinë, KOHA, 2009), fq. 319

16 Po aty, fq. 322

17 Po aty, fq. 322

18 Po aty, fq. 323

19 Bernhard Knoll, The Kosovo Status Process and the Prospect of Sovereignty, p. 127

20 Grupi i Unitetit përbëhej nga: Kryetari Fatmir Sejdiu (LDK); kryeministri Agim Çeku AAK; Kryetari i Kuvendit Kolë Berisha, Hashim Thaçi, lider i PDK-së në emër të opozitës dhe Veton Surroi kryetar i partisë ORA.

21 Marck Weller, Shtetësia e Kontestuar, (Prishtinë, KOHA, 2009), fq. 328

22 Po aty, fq. 328

dangers was related to what was not obvious where the process that had started would lead.²³ Kosovo was represented in the Vienna talks, but there were other, more powerful layers of negotiations out of its control: the Contact Group, the Security Council. The Kosovo delegation had received advice from experts, who feared that the Vienna negotiations would focus only on practical issues of governance within Kosovo. In the absence of an agreement on the part of Belgrade on broader status issues, Kosovo could have been put in a position to hear that it had agreed to make important concessions regarding decentralization, the treatment of communities and relations with Serbia. This statusless “solution” could later be imposed internationally on Kosovo in the form of autonomy, at least for a temporary and indefinite period. Kosovo’s concerns in this regard were growing even with the low level of consultations between the special envoy and her delegation. When the official invitation came for the first round of talks, there was no information on the format of the talks, the agenda, or the negotiation process. There was a fear that, if the parties did not reach an agreement there, then the package could be broken to the detriment of Kosovo at the level of the UN Security Council, when the interests of the politics of the great powers and not those of Kosovo could dominate.²⁴ If we talk about the process, Belgrade had some advantages compared to the Kosovo delegation. He could use his very competent Foreign Ministry, as well as very well-established international contacts. The negotiators were clear that they could review and decide the negotiation process with their diplomatic counterparts in Belgrade, as would be normal. Kosovo was not treated in the same way.

The launch of the first round of negotiations was a somewhat delicate issue. In accordance with the principles set out by Ambassador Eide in his second report, sent to the UN Secretary-General, it was assumed that, once the talks began, they could be “blocked” by either side. To avoid a stalemate, on January 12, 2006, the parties were invited “in favor of advancing political dialogue on Kosovo’s future status” to discuss highly technical issues such as decentralization. The issue of decentralization took a long time - over half of the sessions. Belgrade demanded the creation of 15 new municipalities, mostly inhabited by Serbs. The forms of decentralization of municipalities were different. One of the models of decentralization proposed by the Serbs was the model of the Swiss cantons. However, after the presentation of the Swiss expert on this issue, the affairs were cut off by Ambassador Rohan, who emphatically said “Kosovo is not Switzerland”.²⁵ The question of whether or not municipalities could join or form collective units or regions was also considered - a proposal which was opposed by Kosovo because it feared a de facto division of territory into a predominantly Serb region that would could manage itself through parallel structures. Moreover, the issue of the connections of these regions with Serbia also arose.²⁶ However, despite the differences and disagreements on most of the issues and ideas that were discussed, it was agreed that a number of localities with non-Albanian residents would declare municipalities. Thus, as a result of the negotiations held in Vienna, new municipalities were announced: Gracanica, Ranilug, Partesh, Klllokot, Novo Brdo and North Mitrovica. These became functional as such when municipal elections for mayor and municipal assembly were held with multiple competencies in education, health and cooperation with Serbian municipalities.²⁷

In the rest of the negotiations, three series of talks were held regarding the protection of cultural and religious heritage. While Kosovo favored a functional approach to the issue, Serbia again sought to take control of large territorial enclaves surrounding religious and cultural sites.²⁸ An agreement was reached to protect cultural and religious monuments as protected areas which will be protected for several years by the international community. Only one session was devoted to economic problems.

23 Po aty, fq. 332

24 Po aty, fq. 333

25 Po aty, fq. 335

26 Po aty, fq.336

27 Arsim Bajrami, *Sistemi Kushtetues i Republikës së Kosovës*, (Prishtinë, Artini, 2011) , fq 94.

28 Po aty, fq.336

Two rounds of talks took place on the rights of non-majority communities which would be guaranteed by legal acts. This means representing communities at the central level, such as parliament and government, where the predominant proposals were that non-majority communities should have reserved and guaranteed seats for the various communities living in Kosovo. At this point the Kosovo authorities were more reluctant, based on the experience of Bosnia and Herzegovina which had taught the Kosovo delegation to be careful in granting short-term concessions that would make the territory ungovernable in practice.²⁹ However, the mediators insisted on the separation of powers, advising the Kosovar side that “the sooner issues of vital interest to minorities are addressed, the easier it will be to reach a widely accepted agreement”.³⁰ Pristina was even very generous on issues related to minority communities, compiling a catalog of legal rights and institutional mechanisms for protecting the rights of communities. These were conducted in consultation with communities in Kosovo and under the guidance of the European Center for Minority Issues.

Based on the progress of the negotiations and what was being discussed, one can clearly see the two completely opposite positions of the parties. Kosovo on the one hand somehow made many concessions, based on the hope that in the end it would gain independence. Belgrade, on the other hand, was interested in gaining as many rights as possible for the Serb minority in Kosovo, and their main goal was for Kosovo’s final status to be autonomous. Opposing positions were not only between the negotiating parties, but also in the ranks of mediators. Within the Contact Group, Russia had stepped outside the starting line when it was stated that it would play a constructive role in this process. It had already lined up as a key supporter of Serbia, regaining and maintaining the power of blocking the very leadership of the negotiations at the level of the Security Council and not only at the level of the Contact Group.³¹

Conclusion

Based on the progress of the negotiations and what was being discussed, one can clearly see the two completely opposite positions of the parties. Kosovo on the one hand somehow made many concessions, based on the hope that in the end it would gain independence. Belgrade, on the other hand, was interested in gaining as many rights as possible for the Serb minority in Kosovo, and their main goal was for Kosovo’s final status to be autonomous. Opposing positions were not only between the negotiating parties, but also in the ranks of mediators. Within the Contact Group, Russia had stepped outside the starting line when it was stated that it would play a constructive role in this process. It had already lined up as a key supporter of Serbia, regaining and maintaining the power of blocking the very leadership of the negotiations at the level of the Security Council and not only at the level of the Contact Group.

So the Western countries had erred in their calculations that Russia would be linked to the process from an early stage, so that the results of the negotiations would be guaranteed to pass to the Security Council, given Russia’s controlling involvement throughout the process. Moreover, Russia was thought to be capable of exerting influence over Serbia and of being able to persuade Belgrade to negotiate constructively. While some of the major Western governments and the United States were convinced that Kosovo’s independence could be inevitable, but Russia consistently opposed the notion of independence. Moreover, Russia was unwilling to tolerate the possibility of a solution being imposed on Serbia by the Security Council in the event that Belgrade would reject a reasonable agreement.

In this situation, Western European countries and the United States were forced to seek an alternative solution, forcing the Ahtisaari document as a guide and guarantee that Kosovo could be offered the option of independence overseen by a European mission (EULEX), which would monitor and assist its democratic functioning.

29 Marck Weller, Shtetësia e Kontestuar (Prishtinë, KOHA, 2009), fq. 338

30 Po aty, fq. 337

31 Po aty, fq. 321

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