

United States Diplomacy in Kosovo Final Status Talks
A Case Study in Multilateral Negotiations With Principal Mediators

Laurie Ball

WWS 547: The Conduct of International Diplomacy

May 12, 2009

I. Introduction

Kosovo unilaterally declared independence from Serbia on February 17, 2008 following the failure of two years of talks mediated by the U.S., the EU, and Russia (“the troika”), and the U.N. Secretary General’s Special Representative, Martti Ahtisaari. More than fifty countries, including the United States and all but five EU member states, have since recognized Kosovo as an independent state.¹ The U.S. was among the first countries to recognize Kosovo and made its intention to do so clear before the final failure of status talks in December 2007. This paper will examine U.S. diplomacy during the final status talks as a case study in multilateral negotiations with principal mediators.

This case study will employ the model for examining negotiations described by P. Terrence Hopmann, breaking the final status talks down into context, process and outcome.² Section II will provide a very brief (recent) historical context for the final status talks, focusing on the nature of the issue in question (independence), the relationship between Belgrade, Pristina, and Contact Group members, and the background factors that shaped the negotiations. Section III, the heart of this case study, will discuss the process of negotiations from the pre-negotiations phase into the final status talks, with a focus on U.S. diplomacy during the final status talks.

As described by Fen Osler Hampson, the pre-negotiation phase should include definition of the problem by the parties, agreement by the parties to negotiate a solution, and a de-

¹ CIA World Factbook, Kosovo, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/kv.html>. The five EU members not recognizing Kosovo as of May 2009 are Cyprus, Spain, Greece, Romania and Slovakia.

² See P. Terrence Hopmann, *Bargaining and Problem Solving*, in *TURBULENT PEACE*, Chester Crocker et al., eds. 445-68 (2001).

escalation phase.³ According to Lauren, Craig and George in Force and Statecraft, the conditions for successful negotiations are: (1) shared interest in reaching an agreement; (2) a mutual understanding of the parties' resistance points; (3) a settlement range of overlapping interests; (4) the perception of shared benefits; and, (5) skilled negotiators.⁴ However, the stated positions of Belgrade and Pristina before final status talks began indicated that none of the conditions for successful negotiations existed. This case study will look for times where any of these conditions were present, either between Belgrade and Pristina or between Contact Group members, over the course of the negotiations.

In its examination of the final status talks, this case study will focus on the U.S. as a principal mediator – that is, an external party with indirect security and other interests in resolving the final status question. This case study will pay close attention to U.S. interaction with other principal mediators, particularly Russia, because of the central role they played in the final months of negotiations and their ultimate collapse. This case study will also structure the narrative of final status talks as one shifting between bargaining and problem-solving paradigms over the course of two years. In its conclusion, this case study will analyze the result from the perspective of U.S. interests and seek to draw lessons for other occasions in which the U.S. engages as a principal mediator.

³ FEN OSLER HAMPSON, MULTILATERAL NEGOTIATIONS: LESSONS FROM ARMS CONTROL, TRADE, AND THE ENVIRONMENT 23-51 (1995).

⁴ PAUL LAUREN, GORDON CRAIG, AND ALEXANDER GEORGE, FORCE AND STATECRAFT: DIPLOMATIC CHALLENGES OF OUR TIME 154-57 (2007).

II. The Status Talks in Context

Kosovo was an autonomous province of the republic of Serbia and Montenegro within the Socialist Federal Republic of Yugoslavia until 1989. Beginning in 1989, under the authority of Slobodan Milosevic, Serbia began rolling back much of Kosovo's autonomy, bringing the province under tighter control of the Serbian capital, Belgrade, and repressing the Albanian-Kosovar majority in the province. In response, Kosovo declared independence in 1990, but only Albania recognized Kosovo as an independent state. Kosovar leaders focused initially on a non-violent strategy of resistance, but by 1996 the Kosovo Liberation Army (KLA), which used violence, was gaining popular support and strength. By 1997, the Serbian government had increased its attention to and repression in Kosovo.

Tensions between Albanian-Kosovars and ethnic Serbs continued to escalate, climaxing in 1998-1999. Following failed peace negotiations at Rambouillet in March 1999, NATO launched a 78-day bombing campaign in Kosovo and Serbia proper. At the same time, Serbia sent additional troops into Kosovo to conduct ethnic cleansing of Kosovar Albanians. On June 10, NATO peacekeepers entered Kosovo pursuant to U.N. Security Council Resolution 1244, which established an international civilian administration (known as UNMIK – the United Nations Mission in Kosovo) in Kosovo that continued to administer the province through independence.⁵ From the 1999 NATO intervention until after declaring independence, Kosovo was an international protectorate operating under the authority of the United Nations but under the sovereignty of Serbia.

In March 2004, Kosovar Albanians engaged in violent riots targeting the Serb minority in Kosovo. As Human Rights Watch reported:

⁵ U.N. Sec. Council Res. 1244 (1999), available at <http://www.un.org/Docs/scres/1999/sc99.htm>.

“On March 17 and 18, 2004, violent rioting by ethnic Albanians took place throughout Kosovo, spurred by sensational and ultimately inaccurate reports that Serbs had been responsible for the drowning of three young Albanian children. For nearly forty-eight hours, the security structures in Kosovo—the NATO-led Kosovo Force (KFOR), the international U.N. (UNMIK) police, and the locally recruited Kosovo Police Service (KPS)—almost completely lost control, as at least thirty-three major riots broke out across Kosovo, involving an estimated 51,000 participants.”⁶

These riots resulted in the destruction of “at least 550 homes and twenty-seven Orthodox churches and monasteries,” and the displacement of 4,100 minorities, mostly Serbs.⁷ Human Rights Watch, International Crisis Group, and others attributed the riots to a variety of factors, including an atmosphere of impunity in Kosovo for violence against minorities and frustration with the lack of progress toward resolving Kosovo’s final status.⁸

Following the riots, the U.N. Secretary General requested a report by his special envoy to Kosovo, Karl Eide, on the situation in Kosovo.⁹ At numerous points in a preliminary report he submitted to the Secretary General in August 2004, Eide noted that future inter-ethnic violence remained a frightening and plausible scenario if the status quo persisted.¹⁰ Eide proposed that the U.N. move away from its previous position of “standards before status,” requiring Kosovo to meet certain benchmarks, including minority protections, prior to engaging in final status talks.¹¹

Eide proposed that the U.N. consider three perspectives when considering the timing of future status talks: Kosovo residents, regional actors, and the international community. He proposed that talks begin by mid-2005 at the latest, but not before Serbian parliamentary

⁶ Human Rights Watch, *Failure to Protect* (July 2004) available at <http://www.hrw.org/en/node/11989/section/2>.

⁷ *Id.*

⁸ *Id.*; International Crisis Group (ICG), *Collapse in Kosovo* (April 2004) available at <http://www.crisisgroup.org/home/index.cfm?id=2627&l=1>.

⁹ Karl Eide, Report to the Secretary General, August 17, 2004, available at www.ico-kos.org/pdf/KaiEidereport.pdf.

¹⁰ *Id.*, paras. 2, 5, 12, 14.

¹¹ *Id.*, para. 31.

elections out of concerns for empowering radical nationalists in Serbia by broaching the subject of final status in the pre-election phase.

The March 2004 riots reminded the international community that its administration of the province would have no end before final status was resolved and highlighted the possibility that continued ambiguous status would lead to violence in Kosovo and in the broader region, including in Macedonia. Because of the U.N.'s unique role in administering Kosovo, the pre-negotiation phase in this case was atypical. The U.N. enforced a de-escalation phase following the riots by showing Pristina it was moving toward final status talks while not committing to any particular outcome, thereby attempting to ease Belgrade's concerns about parting with Kosovo.

Despite the international community's fears of violence in the region, such violence was unlikely to involve Belgrade directly and therefore Belgrade's willingness to negotiate on Kosovo's final status was not nearly as affected by these concerns as the Contact Group members were.¹² Similarly, as the majority in the province by a significant margin (representing roughly 90% of Kosovans), Kosovar Albanians were not significantly threatened by violence by the Serb minorities, did not expect violent action by Belgrade to maintain sovereignty over the province in the near future, and in any event anticipated the international community's (and especially UNMIK's) protection in the event that violence became imminent. Therefore, the talks' prospects appeared limited because there were no indications that Belgrade and Pristina were anywhere close to agreement.

¹² *Hopeful Signs Across the Balkans*, Economist.Com, Oct. 25, 2005 (The Economist Global Agenda) ["Serbia says that if Kosovo is taken away from it against its will, it would refuse to recognize the province's new status. Serbian politicians give warning that extreme nationalists could come to power in Belgrade as a consequence and destabilize the whole region. For their part, Albanians say that violence will erupt if Kosovo is not seen to be moving towards independence. Diplomats fear the Albanian threat more than the Serbian one."]

III. The U.S. as a Principal Mediator in Final Status Talks

(a) *The Pre-Negotiation Phase: Contact Group Members and the U.N. Set the Agenda*

The challenge after Eide's presentation was structuring negotiations that could bridge the wide gape between the stated positions and apparent interests of Belgrade and Pristina. This challenge led to a year-long delay between Eide's recommendation that negotiations proceed and the beginning of final status talks.

In June 2005, almost a year after Eide's report, the U.S. Undersecretary of State for Political Affairs Nicholas Burns stated on a visit to Kosovo that the U.S. position had changed from advocating "standards before status" to advocating "standards and status," essentially adopting Eide's proposal.¹³ Burns had previous experience in the Balkans, having attended the Dayton negotiations that ended the conflict in Bosnia and Herzegovina in 1995, and he was appointed Undersecretary for Political Affairs in March 2005. He would visit the Balkans numerous times during his nearly three-year tenure and would be a key player in U.S.-Balkans policy. Burns' leadership, and the U.S. desire to resolve the final status question in order to draw down its commitments in Kosovo and ensure future stability in the region, played a key role in moving negotiations forward despite the lack of shared settlement space between Belgrade and Pristina.

In October 2005, the U.N. Secretary General submitted Eide's final report to the Security Council. At the same time, the members of the "contact group" for Kosovo – the U.S., Russia, Britain, France, Germany, and Italy – reportedly agreed upon "three basic negotiating principles:

¹³ Jonathan Steele, *US Pushes for Decision on Kosovo Status*, THE GUARDIAN (London), June 8, 2005, 17.

no return to Serbian sovereignty, no partition of Kosovo and no unification of Kosovo with its Albanian neighbors.”¹⁴

This was a surprising development given Russia’s close relationship with Serbia and other contact group members’ expectations that Russia would support Serbia’s position offering Kosovo “more than autonomy, less than independence.”¹⁵ While Serbia attempted to keep independence off the table, the U.S continued to emphasize that independence, along with “other options,” was on the table. At speech in Pristina, Burns was careful to emphasize that the U.S. did not support any particular final status while also saying, “we don’t believe this negotiating train can be stopped; it’s got to move forward.”¹⁶ The pre-negotiations phase ended with the principal mediators agreeing to principles in line with U.S. interests and setting the agenda to include final status determination along with standards, achieving the desired U.S. outcome.

There was, however, no indication that Serbia and Kosovo had moved away from their diametrically opposed positions. As one commentator at the time noted, “Serbia says that the Albanians can have virtually anything they want except full independence. Albanians say that everything is negotiable except independence.”¹⁷ Still, the Contact Group managed to set an agenda that included final status and design a structure – U.N. mediation – designed to bridge the gap between Belgrade and Pristina by creating a problem-solving, rather than bargaining, paradigm for the talks.

¹⁴ Hans Binnendijk, *Kosovo’s Difficult Road; Limited Independence*, INTERNATIONAL HERALD TRIBUNE, Oct. 4, 2005, 9.

¹⁵ Kosovo as EU protectorate: Belgrade, Pristina entrenched over Kosovo Independence as talks loom, ONASA News Agency, Sept. 25, 2005; Tim Judah, *Kosovo Sets Out on Road to Independence*, THE INDEPENDENT, Oct. 24, 2005 [“[D]iplomats say that Russia, on whom the Serbian leadership was hoping for support, has already betrayed it.”].

¹⁶ R. Nicholas Burns, U/S for Political Affairs, Remarks to the Press at the U.S. Office in Pristina, Congressional Quarterly, Oct. 13, 2005.

¹⁷ Tim Judah, *Kosovo Sets Out on Road to Independence*, THE INDEPENDENT, Oct. 24, 2005.

By late October, it was clear that the U.N. Secretary General would appoint former Finnish President Martti Ahtisaari to be the U.N. envoy for final status talks. Given the diametrically opposed positions of the two parties, Ahtisaari was expected to conduct shuttle diplomacy to identify common interests between the two parties and seek a negotiated solution. Many expected the negotiations to fail, however, and for Ahtisaari's proposed solution (expected to be "conditional independence") to be imposed.¹⁸

The U.S., though careful to state that it had no position on the final status of Kosovo, continued to emphasize the principles agreed upon by the Contact Group,¹⁹ which many understood to leave only some form of independence on the table.²⁰ The U.S. also emphasized that the arrest of fugitives from the International Criminal Tribunal for the former Yugoslavia remained a precondition for membership in NATO's Partnership for Peace program or progress toward EU membership. Asked by Congress about what incentives the U.S could offer Serbia to negotiate Kosovo's final status given its continued insistence on the arrest of fugitives, Burns responded that the U.S. could "giv[e] Serbia the very clear sense that a successful outcome of these talks will actually add to the possibility of their future involvement with the EU and NATO." Burns also seemed to equivocate on Serbian membership in NATO, saying that resolution of Kosovo's final status was not a precondition for NATO membership but then adding, "I don't think anyone would take a country into NATO that had a major territorial dispute within it, in the heart of it, that had not resolved this huge question of the future of Kosovo."²¹

¹⁸ *Hopeful Signs Across the Balkans*, Economist.Com, Oct. 25, 2005 (The Economist Global Agenda).

¹⁹ "Hearing on Kosovo: A Way Forward?," States News Services, Nov. 8, 2005.

²⁰ *Kosovo Moves Toward a Messy Independence*, INTERNATIONAL HERALD TRIBUNE, Oct. 28, 2005, Opinion, 6.

²¹ "U.S., Europe Reject Partitioning Kosovo, State Department Official Says," US Fed News, Nov. 9, 2005.

(b) *Negotiations I: U.N. Mediated Problem Solving Between the Direct Parties*

In late November 2005, Ahtisaari made his first “fact-finding” trip to the region. While emphasizing that he sought a negotiated solution, there were hints early on that Ahtisaari’s proposal would be imposed on the parties if the negotiations failed. “[Ahtisaari] has a strong mandate, which includes detailed concessions for both sides. No party has the power of veto over any decisions or documents discussed in the talks, and parties can not leave the talks once they are underway. If one of them refuses to sign any of the proposed documents and abandons the talks, this will be regarded as acceptance of the documents under discussion.”²² On some occasions, Ahtisaari indicated that if the talks failed, the U.N. Security Council would impose a solution.²³ Ahtisaari continued to make fact-finding trips to the region through the end of the year, seeking to decipher the true interests of Belgrade and Pristina and identify a settlement space.

(c) *Negotiations II: Principal Mediators Change Their Tune*

In February 2006, the game of final status talks changed dramatically when Russia moved away from its initial support of Contact Group principles to a position more supportive of Serbia.

“Circumstances changed after Russian President Vladimir Putin said openly that the solution to Kosovo should have a ‘universal character’ and not be unprecedented, as implied by Western circles. This was how Putin chose to send a signal to Washington not to take for granted Russia’s consent to Western plans for [Kosovo]. If the West insisted on granting Serbia’s southern province independence, then it should consider independence for Nagornyy Karabakh – an Armenian region in Azerbaijan, but above all for Transdniestria, a province close to Russia that seeks to break away from Moldova. If the two regions obtained

²² Vesna Peric Zimonjic, *UN Gets Tough in Pursuit of Kosovo Deal as Talks Begin*, THE INDEPENDENT (UK), Nov. 22, 2005.

²³ “UN Envoy Urges Kosovo Serbs to Define Protection ‘Mechanisms’,” BBC Monitoring International Reports, Nov. 23, 2005.

independence, possibly on the model of Kosovo-Metohija, Russia would considerably extend its influence in post-Soviet territory, something the West – especially the United States – wants to avoid.”²⁴

The United Kingdom responded immediately to Russia’s changed position by openly supporting independence for Kosovo.²⁵ A week later, the U.S. Ambassador to the U.N. indicated that the U.S. position might be shifting toward more openly favoring independence: “We must be realistic about possible outcomes. Independence is a possible outcome. Any status outcome must be acceptable to the people of Kosovo.”²⁶ At the same time, the Pristina newspaper *Koha Ditore* reported that diplomats “from the Contact Group countries, including the EU and NATO” echoed the UK’s pro-independence stance in private meetings with Serbs.²⁷ *The Economist* reported similarly.²⁸ The next week, *The Guardian* reported that U.S. Envoy for the Final Status Talks, Frank Wisner, “sent the same message [as the British] to the Serbs.”²⁹

At the end of February, UN Special Representative Ahtisaari acknowledged the growing support for independence within the Contact Group, but reportedly remarked, “I think it is important for all of us, you, me, the government of Serbia-Montenegro and everybody else to take private messages seriously. I emphasize that, as far as I have understood the Contact Group,

²⁴ “Report Describes Putin’s Statement on Kosovo as ‘Surprise Gift’ for Belgrade,” BBC Monitoring Europe – Political, Feb. 2, 2006 [text of report by Vladimir Radomirovic entitled “When I say Kosovo, I mean Caucasus” published by Politika (Serbia)].

²⁵ “TV Reports UK Envoy Tells Kosovo Leaders Independence Achievable,” BBC Monitoring Europe – Political, Feb. 7, 2006 [excerpt from Kosovo Albanian television KohaVision TV on Feb. 6, 2006, quoting John Sawyers, Political Director of UK Foreign Ministry].

²⁶ “Amb. Bolton: Statement in Security Council On Kosovo,” States News Service, Feb. 14, 2006.

²⁷ “Kosovo Paper Argues Contact Group Members Support UK Stance on Independence,” BBC Monitoring Europe – Political, Feb. 14, 2006 [text of commentary by Agron Bajrami and Augustin Palokaj entitled “Promise of Independence: Invitation to Albanians to show generosity in negotiations,” published by Koha Ditore (Pristina), Feb. 13, 2006].

²⁸ *When Hard Truth’s Shock: Kosovo’s Future*, THE ECONOMIST, U.S. Edition, Feb. 18, 2006.

²⁹ Ian Traynor, *Serbia Threatens to Resist Kosovo Independence Plan: Talks Start Today but Could Reach Deadlock: International Community May Impose Solution*, THE GUARDIAN (London), Feb. 20, 2006, International Pages 24,

they were meant to be private.”³⁰ Russia reportedly did not sign nor object to private messages to Serbia stating that independence was the likely outcome of negotiations.³¹

The most plausible strategy for making these comments public is that the U.K. and U.S. sought to minimize the impact of Russia’s changed position on Serbian negotiating decisions and Serbian politics. The U.S. and U.K. likely thought that by making the alternative to agreement seem worse than a negotiated, conditional independence from Serbia’s perspective, they could convince Belgrade to start negotiating the terms of independence, since prior to February 2006 the two parties were in a stalemate with no overlap between their positions. However, further talks mediated by Ahtisaari in Vienna in April 2006 again ended in stalemate, and by the summer of 2006 diplomats and U.N. officials were predicting that talks would continue into 2007, beyond their year-end deadline.³²

By October 2006, news sources in Belgrade and Pristina were reporting that Russia opposed independence and that a U.N. Security Council vote on final status was therefore unlikely.³³ In an interview with a Pristina newspaper, the Russian liaison to Kosovo said:

“[W]hether you like it or not, Kosova is a part of a very big international picture. And many people throughout the world, especially in conflict areas, are looking [at] the example of Kosova and, depending on how the issue of Kosova will be resolved, they will follow that path. If everything is done in line with international law, this means that everybody will respect international law. If not, then we will face a lot of destabilized regions in the world, including on Russia’s borders. . . . I want to repeat what the president said – that we will not agree to any solution that

³⁰ “UN Envoy Discusses Kosovo Talks with Serbian Leaders, SCG Foreign Minister,” BBC Monitoring Europe – Political, Mar. 1, 2006 [text of report by B-92 TV (Belgrade) Feb. 28, 2006].

³¹ “European ‘Source’ Says Shift in Russian Position ‘Essential’ in Kosovo Process,” BBC Monitoring Europe – Political, May 14, 2006 [text of report by Agron Bajrami entitled “Status Will be Decided by November, with or without Serbs,” published in Koha Ditore (Pristina), May 9, 2006, quoting a “senior European official”].

³² “Sources Say Kosovo Status Resolution May be Postponed Until 2007,” BBC Monitoring Europe – Political, July 1, 2006 [Augustin Palokaj, “Negotiations may not end this year,” Koha Ditore (Pristina) June 30, 2006].

³³ “Serbian Daily Speculates on Impact of Russian Stance on Kosovo,” BBC Monitoring Europe – Political, Oct. 16, 2006 [V. Radomirovic, “Security Council Has No Solution on Kosovo,” Politika (Belgrade), Oct. 12, 2006]; “Kosovo Commentary Sees Russia ‘Raising the Stakes’ Over Status Resolution,” BBC Monitoring Europe – Political, Oct. 28, 2006 [Augustin Palokaj, “Russia raises stakes on Kosovo,” Koha Ditore, Oct. 25, 2006].

would be unacceptable to Belgrade. I do not want to elaborate on what will happen to the issue of Kosovo in the UN Security Council if one state might possibly use its veto. On our part, we do not like to use the veto. . . . Russia is a prominent member, and if we feel that the decision is not what it should be according to UN principles, then Russia could use its veto. But again, this is the worst thing that could happen.”³⁴

As Russian opposition to independence crystallized, Contact Group members supporting independence began to discuss the idea of an imposed solution more frequently. Those supporting independence saw it as better than the alternative of violence in the region, which many considered a plausible risk of not determining final status, but also feared heightened radicalism in Serbia in response to independence.³⁵ Out of sensitivity to internal Serbian politics, Ahtisaari delayed presenting his proposal until after Serbia’s January 21, 2007 parliamentary elections.³⁶ In December 2006, NATO extended Partnership for Peace membership to Serbia in a further effort to limit radical nationalists’ prospects for power in the January parliamentary elections. NATO opened Partnership for Peace to Serbia despite the fact that Serbia had not met the previous conditions, emphasized by Burns in Congressional hearings and elsewhere, to arrest ICTY fugitives Ratko Mladic and Radovan Karadzic.

After the Serbian elections, it was clear that Kosovo’s final status remained largely hostage to U.S/EU-Russian relations:

“[T]he United States and its European allies have agreed to support Kosovo’s permanent secession from Serbia under continuing international supervision, according to senior U.S. and European officials. . . . Moscow has privately hinted . . . that it is prepared to support the plan in exchange for U.S. and European acquiescence to the formal secession of two Russian-backed regions of Georgia.

³⁴ “Russia not to agree to Kosovo status solution unacceptable to Belgrade – envoy,” BBC Monitoring Europe – Political, Nov. 1, 2006 [Interview with Pristina Russian Liaison Office head Andrey Dronov by Ilir Krasniqi, “Russians with Belgrade Until the End,” Kosovo Sot, Oct. 31, 2006].

³⁵ *Independence Days: The Future of Kosovo*, THE ECONOMIST (U.S. Edition) Nov. 4, 2006.

³⁶ “UN Envoy Puts Off Presenting Final Status Proposal Till After Serb Poll in January,” States News Service, Nov. 10, 2006.

Washington and its allies oppose that Russian bid, and officials said this week they are uncertain how quickly this diplomatic dance will play out.”³⁷

(d) *Negotiations III: Bargaining Based on the Ahtisaari Plan*

While this “dance” progressed, and shortly after the Serbian elections, Ahtisaari presented his proposed solution to Contact Group members in a secret meeting, and later presented the plan to officials in Belgrade and Pristina. Ahtisaari was expected to solicit proposals for modification from Belgrade and Pristina and then to present his proposal to the Security Council for its approval.³⁸ However, when Ahtisaari presented the plan in the two cities, it did not include a recommendation on final status. According to Ahtisaari, “[I]t is not for me or my team to decide on the status; it will be solved when the matter goes to the Security Council.”³⁹

In preparation for the status question to go before the Security Council, the U.S. offered reassurances to Russia that Kosovo’s independence would not affect the status of “Russian autonomous regions” including Chechnya and North Ossetia, but did not publicly address the questions of South Ossetia and Abkhazia. Simultaneously, the U.S. sought to assure Serbia that it continued to support Serbia’s “European future,” and cited Serbia’s inclusion in NATO’s Partnership for Peace program as evidence of the possibilities ahead.⁴⁰

After the failure of additional talks in March 2007, Ahtisaari reportedly sent a secret letter to the U.N. Secretary General recommending imposed independence as the only solution to

³⁷ R. Jeffrey Smith, *Kosovo Wins Support for Split from Serbia; U.S., European Allies Agree to Secession with Ongoing International Supervision*, WASHINGTON POST, A10, Jan. 26, 2007.

³⁸ Craig S. Smith, *U.N. Plan Expected to Pave Way for Kosovo Independence*, THE NEW YORK TIMES, A3, Jan. 27, 2007.

³⁹ Vesna Peric Zimonjic, *UN Avoids Issue of Sovereignty in its Kosovo Plan*, THE INDEPENDENT (London), Feb. 3, 2007.

⁴⁰ Nicholas Kravlev, *U.S. Assures Russia on Backing of Kosovo*, WASHINGTON TIMES, A13, Feb. 8, 2007.

the Kosovo question.⁴¹ U.S. officials at the time of the proposal's release questioned whether Russia would in fact exercise its veto.⁴² European diplomats expressed similar uncertainty as to Russia's intentions in April 2007.⁴³ On April 25, 2007, *The Irish Times* reported that the Russian Foreign Minister promised to exercise the veto power if independence came up before the Security Council.⁴⁴

On May 11, 2007, the U.S. began publicly using the possibility of a unilateral declaration of independence as a bargaining chip with Russia. The U.S. said the Security Council's failure to consider a resolution including independence could lead to a unilateral declaration of independence, which would risk destabilizing the region.⁴⁵

During the summer of 2007, resolution of Kosovo's status had shifted to negotiations between Washington and Moscow rather than between Belgrade and Pristina. In June, the U.S. and the EU submitted a Security Council resolution providing for four more months of talks between Belgrade and Pristina but declaring that the Council would impose independence if those talks failed. Russia immediately announced its opposition to this resolution.⁴⁶ Despite its involvement in this resolution, the EU was conspicuously absent as a power-player during this period.

“Instead of leadership, the EU then left things to Washington . . . unlike Europe, the Americans have been crafting a plan B. They are considering the idea of

⁴¹ Colum Lynch, *U.N. Mediator Calls for Kosovo Independence; Chief Negotiator Says Kosovars, Serbian Government Will Never Agree on Rule*, THE WASHINGTON POST, Mar. 21, 2007.

⁴² David R. Sands, *Moscow Ponders Independence Plan for Kosovo*, THE WASHINGTON TIMES, A11, Mar. 28, 2007 [“Senior U.S. officials say privately that it is still an open question whether Russia would veto the Ahtisaari plan, despite its long-standing ties to Belgrade.”].

⁴³ Judy Dempsey, *Diplomats to Increase Pressure on Serbia to Accept Kosovo Plan*, THE NEW YORK TIMES, 8, Apr. 18, 2007.

⁴⁴ Daniel McLaughlin, *UN Team Visits Serbia as Russia Blocks Kosovo Bid*, THE IRISH TIMES, 11, Apr. 25, 2007.

⁴⁵ Warren Hoge, *U.N. Security Council to Review Draft on Kosovo Independence*, THE NEW YORK TIMES, A6, May 11, 2007.

⁴⁶ AP, *Russia Rejects U.N. Kosovo Resolution*, USATODAY, June 20, 2007, available at http://www.usatoday.com/news/world/2007-06-20-kosovo_N.htm.

encouraging the Kosovo Albanians to declare independence unilaterally with the promise that Washington will recognize the new state.”⁴⁷

In July 2007 the U.S. began publicly making the case for unilateral independence, phrasing Russia’s choice as one between U.N. sanctioned and supervised independence or unilateral independence in accordance with the Ahtisaari Plan.⁴⁸ On July 21, 2007, the sponsors of the June U.N. Security Council resolution withdrew the resolution due to Russia’s announced intention to exercise its veto power.⁴⁹

(e) *Negotiations IV: Final Bargaining Mediated by the Troika*

In August 2007, the EU, the U.S., and Russia operating as a *troika* mediated a final 120-day series of talks between Pristina and Kosovo. Despite previous statements that partition was not on the table, the EU negotiator indicated that all options were possible in these final, final status talks.⁵⁰ By late September, however, it was clear that the two sides still had no space for agreement, and the U.S. repeatedly emphasized its willingness to recognize a unilateral declaration of independence in line with the Ahtisaari Plan after the talks officially collapsed in December 2007.⁵¹

The EU began publicly discussing its intention to staff a mission in Kosovo following the failure of the talks, amidst worries that Russia would veto any resolution to continue the UNMIK

⁴⁷ Jonathan Steele, *On Kosovo, the EU is United – By a Sickening Lack of Will: Despite the Modest Successes of the Reform Treaty, the First Post-Summit Crisis Lays Bare Europe’s Failures*, THE GUARDIAN (London), 35, July 6, 2007.

⁴⁸ Warren Hoge, *U.S. May Bypass the U.N. for Kosovo Independence*, THE NEW YORK TIMES, A6, July 14, 2007.

⁴⁹ Warren Hoge, *Kosovo Independence Measure Withdrawn From U.N. Council*, THE NEW YORK TIMES, A2, July 21, 2007.

⁵⁰ Daniel McLaughlin, *Negotiators Prepared to Let Kosovo Be Divided*, THE IRISH TIMES, 10, Aug. 17, 2007.

⁵¹ Judy Dempsey, *Kosovo: Recognition Likely from US*, THE NEW YORK TIMES, A14, Sept. 25, 2007.

mandate after Kosovo declared independence.⁵² Once again, Serbian elections were to determine the timeline for final status decisions: the EU postponed its final decision on a mission to Kosovo until after the Serbian presidential elections in January and February 2008.⁵³ Between the preliminary elections on January 20, 2008 and the run-off election on February 3, 2008, a Pristina newspaper indicated that the U.S. and the EU had “reached an agreement on Kosovo status declaration.”⁵⁴ Shortly after the incumbent Serbian president Boris Tadic won reelection in the February 3 runoff, the EU apparently began private offerings of a Stabilization and Association Agreement to Belgrade.⁵⁵

Kosovo unilaterally declared its independence from Serbia on February 17, 2008. The U.S. recognized Kosovo as an independent country on February 18, 2008, quickly followed by many major European powers including France, Germany and the United Kingdom. By February 29, 2008, twenty-nine countries had recognized Kosovo.⁵⁶ As of May 1, 2009, 58 U.N. member states had recognized Kosovo.⁵⁷

⁵² John Ward Anderson, *EU Pledges Assistant to Kosovo on Path Toward Independence*, THE WASHINGTON POST, A17, Dec. 15, 2007.

⁵³ “Official Says EU to Decide on Kosovo Mission in Feb, After Serbian Elections,” BBC Monitoring Europe – Political, Jan. 18, 2008 [Shpend Limoni, “Mission in February,” *Express* (Kosovo), 14 Jan 2008].

⁵⁴ “Premier Says US, EU, Reached Agreement on Kosovo Status Declaration,” BBC Monitoring Europe – Political, Jan. 24, 2008 [Augustin Palokaj, Thaci: United States and EU Have Agreed on Declaration Timeframe, *Koha Ditore* (Pristina), Jan. 24, 2008].

⁵⁵ “Political Agreement Offered to Belgrade by EU Divides Political Scene in Serbia,” BBC Monitoring Europe – Political, Feb. 6, 2008 [RTS Radio Belgrade, 5. Feb. 2008]. The final SAA would not be signed until April 29, 2008, approximately a month before Serbia’s country-wide party elections. Many European capitals refused to ratify the agreement in light of Serbia’s continued failure to capture the three remaining ICTY fugitives: Radko Mladic, Radovan Karadzic, and Goran Hadzic. The arrests of these three men were said to be conditions for signing an SAA in previous negotiations. Serbia arrested Radovan Karadzic approximately four months after signing the SAA. The other two fugitives remain at large.

⁵⁶ “Daily Says Kosovo Recognized by 21 Countries So Far,” BBC Monitoring Europe – Political, Feb. 29, 2008 [Artan Mustafa, “World Thinks About Kosovo,” *Express* (Pristina), Feb. 28, 2008].

⁵⁷ “Saudi Arabia Recognizes Kosovo,” B92 News (Belgrade), Apr. 20, 2009, available at http://www.b92.net/eng/news/politics-article.php?yyyy=2009&mm=04&dd=20&nav_id=58634.

IV. Conclusions

It was reasonable, in light of their status as principal mediators and their interests in concluding final status talks successfully, that the Contact Group members expected it to be possible for them to use their power and resources to gain leverage over Belgrade and Pristina to coerce an agreement. Through the U.N. Secretary General's Special Representative, the U.S. and other Contact Group members hoped to move the talks from a bargaining approach to a problem-solving approach and in so doing to create a settlement space despite the apparent clash between Belgrade and Pristina's interests. The U.S. appears to have overestimated Russia's interest in and commitment to a negotiated outcome in line with the Contact Group's initial principles. Had Russia been willing to coerce Serbia to agree to conditional, supervised independence, there may (or may not) have been success in creating a settlement range between Belgrade and Pristina. Given initial actions by Russia, surprising as they were, the U.S. hope that Russia saw its interests best protected by a negotiated final status, even if that status was to be conditional independence, seems to have been reasonable, at least when the talks began in 2005.

Once Ahtisaari presented his plan in March 2007, the negotiations returned to the bargaining paradigm – this time between the U.S. and Russia over Security Council action on the proposal. Between March and July 2007, Belgrade and Pristina were not invited to bargain on the proposal's details. However, after the U.S. announced in July 2007 that it would support a unilateral declaration of independence in line with the Plan, the U.S., the EU, and Russia returned to negotiations between Belgrade and Pristina in a bargaining framework, saying that all options were on the table.

The U.S.'s public commitment to independence in accordance with the Ahtisaari Plan was a reasonable effort to change Serbia's Best Alternative to Negotiated Agreement (BATNA),

and it may have been the only option with a chance of bringing Serbia to negotiate independence in light of Russia's failure to do so. However, it also served to improve Pristina's BATNA and leave Pristina with no incentive to negotiate terms less favorable to its interests than the Ahtisaari Plan. The U.S. may have relied upon Pristina's sensitivity to U.S. demands in its expectation that Pristina would in fact negotiate away from the Ahtisaari Plan if Serbia began to engage. However, it may also have sent a message to Serbia that there was no room to negotiate away from the Ahtisaari Plan. Without additional, as yet unpublished, information about U.S. diplomacy behind the scenes in Belgrade, it is hard to say whether Serbia believed the message that "all options" were on the table, despite the U.S.'s previous opposition to options such as partition. While the U.S. strategy was not effective in moving Serbia toward negotiating the conditions of independence, it is not clear whether the U.S. decision to worsen Serbia's BATNA at the cost of improving Kosovo's was a wise strategic move.

To the extent that the goal of the talks was simply to determine Kosovo's final status, even without an agreement, the talks may have been a success from the U.S. perspective. If Kosovo's unilateral declaration of independence promotes stability in the region, or at least does not provoke instability, and allows the U.S. to reduce its level of engagement in Kosovo, it may well be deemed a success for advancing U.S. interests despite the failure of talks. Time will tell whether this new status for Kosovo is in fact final, and whether the region will emerge stable. Instability in the form of violent protests has been persistent since the declaration in northern Kosovo and was a problem briefly in Serbia proper upon the declaration.

Even given the uncertainty that persists because of the recent nature of the talk's failure and Kosovo's unilateral declaration of independence, it is possible to draw some general lessons from this example with respect to the actions of the principal mediators, including the U.S. First,

principal mediators can force negotiations of an issue on their own timeline between two parties otherwise unlikely to engage in negotiations at that time if they exercise enough power over the area or issue in question. However, because the trigger for talks under these circumstances is the immediate interests of the principal mediators, and it is the agreement of the direct parties that is necessary, talks may be likely to fail.

The second (tentative) lesson from this case is that even failed talks can meet the principal mediators' interests under certain circumstances. In this particular case, the U.S. seems to have furthered its interests by forcing settlement of the final status question even without an agreement. This outcome likely also furthered the interests of Kosovar Albanians and probably many EU nations. Without closer examination of the Russian interests, positions, and political outcomes it is difficult to say whether the talk's failures furthered Russian interests. The unilateral declaration of Kosovo's independence and its subsequent recognition may have enabled Russia to act in South Ossetia in the summer of 2008, but it also may lead to more difficult questions about regions such as Chechnya that Russia intends to keep under its sovereignty.

If principal mediators force negotiations on their own time line, the likelihood of failure appears high if there is not a settlement space between the two (or more) direct parties when talks begin. Because the risk of failure is so high, the role of a neutral mediator is essential. When Ahtisaari pronounced the talk's failure, this was widely seen as the final result of a genuine effort to achieve agreement. Had the U.S. pronounced failure, Russia, Serbia and others would likely have alleged that the U.S. was rushing negotiations in order to further its perceived goal of independence for Kosovo.

Principal mediators forcing negotiations is a risky endeavor for the principal mediators and the direct parties. Therefore, the final lesson to draw from this case study is that it is essential that the principal mediators have a real settlement space between themselves regarding how to proceed in the plausible event that talks fail. The ambiguous status of Kosovo's declaration of independence continues to pose risks for the region and challenges for international relations. Reducing the ambiguity of failure through an agreement between the principal mediators could further stability and meet the interests of principal mediators more effectively than ambiguous results of failed talks, in addition to possibly increasing the likelihood of the negotiation's success.