

# Failing Blueprint? The Indispensable Crossroad of a Transitional Administration in Kosovo

*Peter Ondrovič<sup>1</sup>*

The article is processed within a project granted by the Czech Science Foundation *Armed conflicts in international relations after the end of the Cold War* (Registration No. 407/09/0153).

*Abstract: There is at present little agreement between Belgrade and Pristina on the territorial consolidation of the current dispute. Military action in 1999 has resulted in deadlock. This paper sheds light on problem areas in the current theory of self-determination in international relations. It may stimulate debate on a final political and regional settlement between Serbia and Kosovo.*

*To investigate whether a settlement could be achieved without huge international involvement I have analyzed particular parts of the current theory of international relations and found that two possible approaches applicable to the issue can be used.*

*The findings indicate that the concept of autonomy and the concept of territorial exchange could be the most appropriate solutions. The concept of autonomy for Northern Kosovo offers the formalization of present relations, making progress with respect to the ongoing process of decentralization and the establishment of proper authorities in the area. In contrast, the concept of territorial exchange is the more dangerous solution bringing more problems and less stability.*

*To speed up the process, the EU and the US should support current talks on technical issues between Belgrade and Pristina. It is necessary to submit the question of territorial consolidation for negotiation as soon as possible to normalize life in the Balkans.*

Key words: *Autonomy, Kosovo, Territorial exchange, 2010 advisory opinion of the UN ICJ.*

## Introduction

Twelve years after NATO's bombardment of Serbia and the establishment of the Interim Administration in Kosovo under the authority of the UN, and three years after Kosovo's declaration of independence, Kosovo is still a kind of unfinished state. On 22 July 2010 the UN International Court of Justice (UN ICJ or the Court) announced an advisory opinion in accordance to the unilateral declaration of Kosovo adopted by the Assembly of Kosovo on 17 February 2008.

In 2005 in his article published in *Foreign Affairs*, Professor Charles A. Kupchan cited one Serbian resident describing life in Kosovo with the words "we do not call this life; we call it

---

<sup>1</sup> Contact: Department of International Relations and European Studies, Faculty of Social Studies, Masaryk University, Joštova 10, 602 00 Brno; e-mail: [366465@mail.muni.cz](mailto:366465@mail.muni.cz).

an imitation of life” (Kupchan 2005: 16). Kosovo’s power, international position and sovereignty are limited by UN Resolution 1244 adopted by the UN Security Council on 10 June 1999, as well as by the UNMIK regulations and the Ahtisaari Plan. Neither the United Nations Interim Administration Mission in Kosovo (UNMIK) nor the European Union Rule of Law Mission in Kosovo (EULEX) have been able to establish an open process of transforming a war-torn society into one with a powerful and harmonious system of state administration and peaceful relations between the various inhabitants.

A bad constellation has currently been deepened by several corruption scandals. Moreover, in December 2010, Mr. Dick Marty presented his report on serious crimes committed by top Kosovo officials to the Council of Europe. The report *Inhuman treatment of people and illicit trafficking in human organs in Kosovo* explored the involvement of top Kosovo officials in organ trafficking. Recently Kosovo has been facing an explosion in criminal activity, which makes its position at the international negotiation table much more difficult.

### **Research Design, Methodology and Primary Sources**

There is as yet no consensus on a final resolution to the Kosovo-Serbia dispute. This paper may present a possible political and regional settlement by considering the relevant pros and cons of each of the proposed solutions. The impact on wider international relations is not easy to determine.

To what extent can the Kosovo-Serbia dispute be resolved by the Ahtisaari Plan that is clearly failing at present? What other possible solutions are available in accordance with international law? What might the consequences of these solutions be in a wider context?

To answer the questions above I have examined other potential alternatives for resolving the territorial dispute. To find out whether territorial consolidation could be achieved without any external foreign intervention I analyzed relevant and current theoretical concepts of statehood in international relations. The present understanding of a regional settlement between Pristina and Belgrade is limited. The controversial question of consolidation is related to possible further political precedence and the potential chain reaction brought about by an implemented solution. There is a dynamic logic that flows from the background conditions to the final process of settlement and the general circumstances under which the final solution may be implemented. The concept of decentralization based on the Ahtisaari Plan includes some crucially inapplicable aspects and demonstrates the necessity of considering an alternative settlement. This paper pays

no attention to the general design of the Ahtisaari Plan that is commonly known.<sup>2</sup> The contemporary theory of international relations and relevant historical records offer two relatively applicable approaches to the Kosovo-Serbia dispute.<sup>3</sup> The concept of autonomy is the first alternative solution and the concept of territorial exchange is the second one. Autonomy has its roots in both the theory of IR and the theory of international law. Territorial exchange is a term used in the theory of international law and has some deep roots in conflict resolution.

The declaration of independence as a suitable subject for analysis is the *starting point* for this paper. An advisory opinion of the UN ICJ offers a supportive function. It is necessary to demonstrate why the declaration of independence did not violate international law and why it is so important for a recent development. The dispute over Kosovo-Serbia settlement could be solved by means of one of the above-mentioned concepts. I will continue to scrutinize two approaches in contemporary international relations offering a theoretical solution. *Thus secondly*, I will focus on the concept of autonomy. Personally, I believe that this concept presents the most acceptable solution. In some detail, I will outline the major elements of the concept that should be taken seriously into account. *Thirdly*, I will consider the concept of territorial exchange. Various problems raise questions about the potential implementation of this concept as well as doubts about the sustainability of this solution in the long term. I will not ignore the wider impact on international relations. *Finally*, I will present findings based on methodological approaches which compare both concepts and consider the wider impact on international relations. Moreover, I will summarize relevant aspects for further discussion.

---

<sup>2</sup> However, this article marginally parallels some elements of the Ahtisaari Plan that have direct or relevant indirect effects on the present situation. The general composition and possible spectral regional impact of the Ahtisaari Plan are not analyzed or incorporated into this article. Some annotations can be found in the paper that connect particular events to the past, namely to the range of the Ahtisaari Plan.

<sup>3</sup> In general, the contemporary theory offers quite a few theoretical solutions. Each theoretical solution considering ethnical or cultural backgrounds, the historical context, or cultural or even symbolic values could present hypothetical answers to the issue. Keeping the wider context in mind, the application of each individual solution to the Kosovo-Serbia dispute is more or less questioned. The article presents two possible solutions that consider the basic design elements of each proposed concept rooted in the theory. Moreover, the presented concepts take into account other relevant aspects such as the regional constellation, the historical dimension, the applicability of the presented approaches, historical records of a particularly presented concept and the potential application of the comparison of the theoretical dimension to the sub-sector. The proposed concepts do not, however, take into consideration such elements as symbolic or religious values, which are characteristic of both sides in question. Their dissimilarities might only present shaky elements in the final solution.

In this study, I have adopted a two-step approach. *Initially*, I explore the broader impact of the declaration of independence analyzing an advisory opinion of the UN ICJ. I use an analytical method. The analysis is intended to question general conclusions and manifest the importance of a contemporary settlement. *Next*, I analyze the two concepts pertaining to the possible resolution of the Serbia-Kosovo dispute using comparative and deductive methods. The deduction and comparison are applied to illustrate conclusive results.

In conducting research for this paper, I have relied on four basic categories of primary source material. *Firstly*, I have used officially published annual reports of the UN General Assembly and the UN Security Council. These sources offer a wide spectrum of relevant information covering the process of development in the field. *As the second source* I have used officially released documents from the UN International Court of Justice. The documents provide the relevant judicial background to primary decisions *in re* of the Kosovo issue. *Thirdly*, my research entailed a survey of the world's most influential think tanks dealing with problems on the Balkans. *The fourth source* of information is the world's press, professional articles, papers and specialized publications.

### **Legality of the Unilateral Declaration of Independence**

Immediately, after the announcement of the declaration of independence, Kosovo received a mixture of responses from all corners of international society. Serbia has always had a very strong attachment to Kosovo, regarding it as a natural part of its territory. Even the changed wind in the Serbian political scene did not alter its negative attitude towards Kosovo's secession.

Serbia's strategy after Kosovo's secession has been primarily in the diplomatic area, with the aim of establishing the illegality of Kosovo's independence and blocking recognition by the UN. A helping hand was offered to Serbia by its traditional strong ally, Russia. Russia as a permanent member of the UN SC can significantly stack the cards against Kosovo's independence in the UN SC. However, Serbia was unable to stop its neighbors from recognizing Kosovo. As early as 2008, Slovenia and Croatia welcomed Kosovo's declaration of independence and immediately established diplomatic relations with Kosovo. Macedonia and Montenegro followed suit in spite of Serbia's huge diplomatic protests.

Immediately, Serbia began its diplomatic offensive and looked for a formula defining the illegality of such steps. To analyze the question of whether Kosovo's decision to declare independence was right and whether the unilateral declaration of independence was legal, it is

necessary to scrutinize various aspects of international law. The main concern was related to the term *people* and the principle of self-determination. The principle of self-determination has a long history and was reactivated during the first decades of the twentieth century. The biggest question over legal aspects of the unilateral declaration of independence concerns the issue of whether Kosovo Albanians constitute a ‘people’ who are entitled to call for independence from Serbia. An objective answer cannot be found easily, because the definition of a people is very unclear, similar to many other sensitive concepts in international law. This, in fact, allows some individuals and groups to produce arguments leading to confusing results. “Throughout international legal history, the term ‘people’ has been used to signify citizens of a nation-State, the inhabitants in a specific territory being decolonized by a foreign power, or an ethnic group” (Fierstein 2008: 433). On the other hand, there have been calls for a less rigid definition. According to some voices, “it’s a mistake to focus too much on the status question — whether a group counts as a nation or not — there is simply no likelihood of agreement on who gets that label” (Center for International & Comparative Law 2008). The answer is difficult to find. Loop holes in particular sections of international law reduce the certainty of resolving such issues. In modern society, self-determination and secession can only be viable solutions in limited cases involving the broad violation of human rights or previous autonomy agreements – solutions which have the general support of the international community.

### **No Violation of Any Applicable Rule of International Law Is Found**

The Kosovo conflict brought the issue of Balkan relations into a different dimension, which in fact led consequently to the politicization of Kosovo. In real terms, Kosovo has been the first-ever project of the UN with such an extensive transitional structure but with no clear vision of a final status. From 1999 to 2007 a political vacuum and a lack of international will to handle the political status of Kosovo paved the way for complicated conditions that finally contributed to the unwillingness of most states within the international community to unanimously accept the independence of Kosovo.

The unilateral declaration of independence had much bigger repercussions than expected at the international level. On 8 October 2008, the UN General Assembly adopted Resolution A/RES/63/3 requesting an Advisory Opinion from the UN ICJ on the question of the unilateral declaration of independence in respect of Kosovo. The UN General Assembly acted in compliance with Article 65 of the UN Charter. Thereupon, the Article authorizes the General Assembly to call upon the UN ICJ to give an advisory opinion “on any legal question” (The

United Nations 1945). According to the aforementioned resolution, the UN General Assembly asked the UN ICJ to render an advisory opinion on the question “Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?” (General Assembly 2008). The UN ICJ works as the principal judicial organ of the UN and based on Article 65 of the Statute of the UN ICJ the Court is entitled to give an advisory opinion on any legal questions.<sup>4</sup>

In truth, the advisory opinion of the Court is not binding for the UN General Assembly nor for any other body of the UN. The proceedings of the Court *in re* of assessing the legality of the unilateral declaration required the Court to scrutinize all applicable rules of international law. Keeping this in mind, the Court may handle the process containing only “an exact statement of the question upon which an opinion is required” (International Court of Justice 1945). The Court found no reason to ask the UN General Assembly to reformulate the question in Resolution A/RES/63/3 and thus formally prolong the process. On the contrary, the Court observed that the question was “narrow” and “clearly formulated” (International Court of Justice 2010) and saw no obstacles to acquit the request.

Serbia’s insistence that the unilateral declaration of independence promulgated by Kosovo violated its territorial integrity was one of the major aspects examined by the Court. The present status of Kosovo is the result of a political vacuum inadequately filled by the Interim Administration, UN SC Resolution 1244 and the UNMIK Constitutional Framework<sup>5</sup>. A key aspect of the present international legal order is based on the principal of territorial integrity. The issue of territorial integrity is specifically formulated in Article 2, paragraph 4 of the UN Charter. The principal of territorial integrity is further developed in two other international legal documents – Resolution 2625 of the UN General Assembly and the Helsinki Final Act. The resolution upholds “the principal that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations” (General Assembly 1970: 122). The Helsinki Final Act is the second international legal document adopted on 1 August 1975 reiterating the will of any state to “refrain from any action inconsistent with the purposes and principles of [...] against the territorial integrity, political independence or the unity of any participating State” (OSCE 1975). The violation of territorial integrity has always been

---

<sup>4</sup> The request must be made by “whatever body authorized by or in accordance with the Charter of the United Nations to make such a request” (International Court of Justice 1945).

<sup>5</sup> Including regulation 2001/9 that announced the creation of the Constitutional Framework.

considered as an act in direct contradiction to international law and the UN Charter. This fact forced the Court to turn its attention to the background of the authors of the declaration of independence, and the relevance and legal aspects of both documents – UN SC Resolution 1244 and regulation 2001/9 of UNMIK.

The legal aspect and relevance of UN SC Resolution 1244 are based on its adoption within the legal framework of the UN Charter,<sup>6</sup> which, in other words, means that Resolution 1244 imposes an international legal obligation. The legal interpretation of UN SC Resolution 1244 shall be understood from a broader perspective. *Firstly*, no matter what hidden interests played a crucial role, Resolution 1244 was a political solution to the deteriorating situation in Kosovo according to the UN Charter in general and brought about by specific chapters in particular. *Secondly*, Resolution 1244 established an international interim administration composed of civil and security elements to establish a civil and political system in Kosovo. The administrable system was created just for a limited period of time and cannot be understood as a permanent institutional framework. *Thirdly*, Resolution 1244 empowered the UN “with full civil and political authority and sole responsibility for the governance of Kosovo” (International Court of Justice 2010: 10). *Finally*, Resolution 1244 contains no provision relating to the definitive determination of the final status of Kosovo.

The second aspect of the legal structure can be found in UNMIK regulations including Regulation 2001/9. This Regulation promulgated the constitutional Framework establishing Provisional Institutions of Self-government in Kosovo. In addition, a Special Representative of the UN Secretary-General leading the UNMIK was appointed. The special representative held its authority under the legal framework of UN SC Resolution 1244. *Firstly*, the constitutional Framework was applicable in Kosovo for a limited period of time<sup>7</sup> and dealt with duties which would ordinarily be the subject of domestic law. *Secondly*, the constitutional Framework was implemented as a part of the body of law adopted for the purposes of the process of Interim Administration and cannot be applicable anywhere else on the planet. Thus, the constitutional Framework has only a territorial character and therefore a limited purpose. As a result, UNMIK regulations including Regulation 2001/9 bear an “international legal character” (International Court of Justice 2010: 8).

To close the question about the legal character of Resolution 1244 and UNMIK regulations, it is important to turn our attention to the possible violation, as a consequence, of

---

<sup>6</sup> Notably on the basis of Article 24 and 25 of the UN Charter and Chapter VII of the UN Charter.

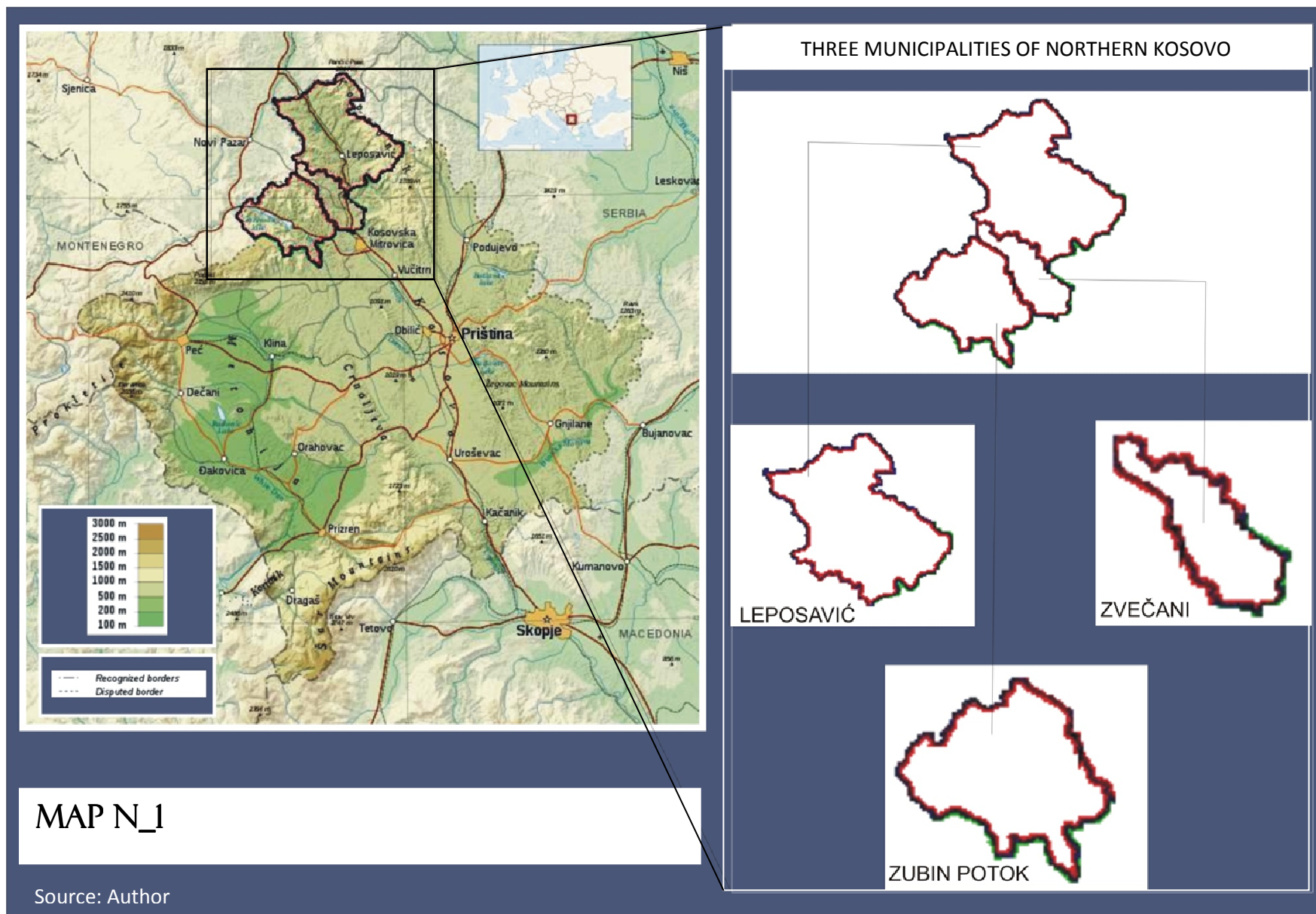
<sup>7</sup> Only during the process of the interim administrable phase.

both sources of international law by announcing a declaration of independence by the Assembly of Kosovo on 17 February 2008. *First of all*, in the advisory opinion of the Court, there was no single finding about any violation of any applicable rule of international law. *By and large*, it was made clear that the declaration of independence was an act of a people. It was not an act of any part or element of existing provisional institutions of Self-Government within the Provisional Framework, nor was it in contradiction to Resolution 1244. In other words, this means that the declaration of independence was an act of the authors of the declaration – that is, representatives of the people of Kosovo – which proceeded as a consequence of the failure of the whole political process dealing with the crucial importance of Kosovo's future according to the Ahtisaari Plan.

### **Trajectory of the Present Problem**

The Kosovo-Serbia dispute over a northern territorial area is a key aspect of the problem. Northern Kosovo (see map no. 1) is approximately only 1,200 square kilometers, which is equal to 11 % of the whole of Kosovo's land area. However, this small piece of land has a strategic position (see below in this section). Serbia and Kosovo cannot agree about formalizing their control over the North. Serbia has an ambition to integrate the North back into its territory; Kosovo has no desire to lose control of this strategic area.





Map no. 1. Kosovo with a closer look at Northern Kosovo. To the right of the map, three municipalities of Northern Kosovo – Leposavić, Zvečani and Zubin Potok in detail

The most straightforward way of understanding the present situation is to look at some of the roots of the problem. On 2 February 2007, Mr. Ahtisaari presented his final report called *Comprehensive Proposal for Kosovo Status Settlement*. On 26 March 2007, the final document dealing with the question of the final status of Kosovo was concluded by Mr. Ahtisaari. The document was presented to the UN Security Council as a Letter dated 26 March 2007 from the Secretary-General addressed to the President of the SC under the title Addendum: *Comprehensive Proposal for the Kosovo Status Settlement*. The Comprehensive Proposal together with the further elaborated Ahtisaari report, were one by one presented to the UN SC. The documents became the point of departure for the Ahtisaari Plan. *Firstly*, the documents assumed no legitimate reason for continuing the existing form of international presence in the territory. *Secondly*, according to the documents, stability and continuing development could be achieved only through the independence of Kosovo. The continuance of the international administration was no longer sustainable. Analyzing this fact in depth, the only “viable option” (Security Council T. U. 2007: 4) was independence with international supervision. *Thirdly*, Kosovo was declared to be a multi-ethnic society, which shall govern itself democratically. *Fourthly*, “Kosovo’s sovereignty would be limited by means of a new form of international presence under the leadership of the EU and the continuing authority of a representative of the international community” (Džihic, Kramer 2009: 3). *Fifthly and mostly important in our analysis*, the Ahtisaari Plan offers Serbian areas very broad autonomy and has opened links between Serbs living in Kosovo and Serbia.

### **Concept of Autonomy in the Theory of IR and the Theory of International Law**

Autonomy is a term used in both international law and international relations. Autonomy referring to general political and governmental self-rule is developed in both constitutional law and international law.

“The degree of autonomy or self-government enjoyed by a territory often has been utilized by international legal scholars to determine in which category of special sovereignty or dependency – protectorate, vassal state, dependent state, colony, associated state, or other category – a territory should be placed [...]. The related principle of self-government has been the subject since 1945 of a developing political ‘jurisprudence’ within the context of the United Nations, although neither the precise definition nor the application of these norms of self-government has been fixed or is wholly consistent.” (Hannum, Lillich 1980: 885)

Autonomy is also a term referring to a certain level of sovereignty. The term does not refer to the definition of a particular fundamental degree of independence that entitles the status

of autonomy. Autonomy or self-rule does not necessarily mean that the territory is fully independent from the central body. The theory of IR distinguishes between two forms of autonomous territories – full autonomy and limited autonomy. Previous studies of autonomy<sup>8</sup> in the theory of IR have shown that in some surveyed cases of autonomous areas, the territories have enjoyed a certain degree of international authority, allowing them to join international organizations and to enter into international agreements. However, it is important to remember that international law does not guarantee the possession of a full international personality for every concept of autonomous territory.

“Autonomous areas are regions of a State, usually possessing some ethnic or cultural distinctiveness, which have been granted separate powers of internal administration, to whatever degree, without being detached from the State of which they are part. For such status to be of present interest, it must be in some way internationally binding upon the central authorities. Given such guarantees, the local entity may have a certain status, although since that does not normally involve any foreign relations capacity, it is necessarily limited. Until a very advanced stage is reached in the progress towards self-government, such areas are not States. [...] Generally, autonomy is understood to refer to independence of action on the internal or domestic level, as foreign affairs and defense normally are in the hands of the central or national government, but occasionally power to conclude international agreements concerning cultural or economic matters also may reside with the autonomous entity.” (Hannum, Lillich 1980: 858, 860)

Theory and the concept of autonomy differentiate between several levels of autonomous independence. The final level depends on an allocation of executive, legislative and judicial authority between the autonomous body and the central governmental body. Autonomous independence includes a considerable “degree of international personality, a control over foreign affairs and defense, enjoyed by the autonomous entity, [...] police and security arrangements; land and natural resources; social services; financial and economic arrangements; and cultural, religious, and minority group concerns” (Hannum, Lillich 1980: 861).

### **Blueprint Design 1**

The decentralization process following the roadmap of the Ahtisaari Plan has led to a change of municipalities in the region. Immediately after the announcement of independence, the Northern municipalities started to fully enjoy their status and links to Serbia. This is the first

---

<sup>8</sup> For instance 22 case studies conducted for the U.S. Department of State and published as a two-volume report *The Theory and Practice of Governmental Autonomy* in 1980.

sign of problems traced back to the Ahtisaari Plan. To demonstrate a better understanding of the status of the Northern municipalities, it is necessary to compare current disparities between the Northern municipalities and the rest of the Kosovo area.

*Firstly*, the special status of Northern Kosovo is the immediate result of political decentralization after independence. The decentralization itself has its roots in the Ahtisaari Plan. From a broader point of view, Northern Kosovo represents a quasi-independent sub-region established within an independent area. In real terms, Pristina has no power there; nor has EULEX. *Next*, Northern Kosovo enjoys the special status; however, the area is an inherent part of Kosovo and to live in Northern Kosovo means to live in Kosovo. The special status does not guarantee any special political position or any different life conditions that would vary from those in Kosovo. *Thirdly*, the majority of the population are Serbs. The existence of a very strong group of ethnic Serbs supported by strong national bonds and feelings make the situation more difficult to resolve. The demographic situation has been changing disproportionately in favor of the Serbian population since the beginning of the twentieth century. One of the worst war atrocities occurred right in this area when Kosovo Albanians were systematically killed or forced to flee for their lives.<sup>9</sup> As a result, Serbs have become the majority in Northern Kosovo. *Fourthly*, Northern Kosovo is not under Pristina's power. Pristina lost control over the area during the second phase of transitional administration. As mentioned above, Pristina is powerless in Northern Kosovo and cannot enforce laws there. This situation has had a significant impact on many essential security levels such as the judicial system, courts and even services that are under the influence of Belgrade. Pristina's attempts to restore its power have always ended in conflict, with no positive result for Kosovo and a stronger connection between Northern Kosovo and Serbia. Thus, if Pristina wants to take control over the rest of the country (over Northern Kosovo), it must inevitably focus on the implementation of existing laws in Northern Kosovo as well as the security agenda. It is necessary to ensure that the civil sector is working properly in order that the system enables people to secure their rights. *Lastly*, the Kosovo Police Force was created in 1999 on the basis of Resolution 1244 as a new police entitled to maintain civil law and order. However, the legal and political vacuum in Northern Kosovo disallows effective law-enforcement. In real life, Northern Kosovo is under the scrutiny of Belgrade. Belgrade's interests are primarily focused on organized crime, and ordinary criminal wrongdoing together with law-enforcement at a local

---

<sup>9</sup> “[...] in 1998, Serbian military, police, and paramilitary forces under MILOSEVIC conducted a brutal counterinsurgency campaign that resulted in massacres and massive expulsions of ethnic Albanians. Approximately 800,000 Albanians were forced from their homes in Kosovo during this time.” (Central Intelligence Agency 2011)

level are mostly left aside unheeded. Pristina's powerlessness can be observed in this area too. All significant institutions in Pristina are cut off from Northern Kosovo and cannot intervene there. Alongside securing law-enforcement, Pristina has to restore its control over the whole length of its borders including those between Belgrade and Pristina delineated in Northern Kosovo.

Multiple systems in Northern Kosovo make a consensus about solving the problem much more difficult to find. The interests of both sides in question and resistance to each other's demands mean that much greater effort must be made to find a solution. Again, both sides are tired of the continuing conflict on the one hand; on the other hand, each side hesitates to make any concession to the other side in case it should be regarded as a sign of weakness or surrender.

An alternative solution to the problem could be found in implementing the concept of full autonomy in Northern Kosovo. The majority of the population in Northern Kosovo are Serbs. However, looking at the whole territory of Kosovo, Serbs form just 7 % of the total population (U.S. Department of State 2011). Albanians with 88 % are the majority population in Kosovo as a whole (U.S. Department of State 2011). And here the problem of autonomy begins to emerge. To grant Serbs autonomy in Northern Kosovo would possibly lead to a chain reaction on the Albanian side. Kosovo is supposed to be a multi-ethnic state. Guarantying special rights to one ethnic group might lead to disaster. Autonomy is the very possible solution to the contemporary problems. It can create enough room for maneuver for Northern Kosovo to govern itself without any intervention from Serbia and with only limited interference from Pristina in local functions. Under the present circumstances it will not be easy to design autonomy for the North; however, it would be advisable to consider carefully the following basic elements and the structure of the autonomous system:<sup>10</sup>

*Firstly*, Northern Kosovo would have an independent local council. The local council would possess some degree of independent legislative power and would be responsible for the implementation of all local laws. Members of the local council should be elected through direct vote by the people of Northern Kosovo. The length of term in office is not as important as the participation of the people of Northern Kosovo in direct elections. Members of the council will represent the will of the people and will have to seek for re-election.

---

<sup>10</sup> Theory itself offers only basic guidelines and insufficient details for the practical structure of the system. The proposed structure represents the potential application of some theoretical elements of the concept of autonomy. A particular section of this article proposes the structure of the autonomy that demonstrates a basic system offering a general composition. The more detailed architecture of the system is planned to be separately elaborated in a future article.

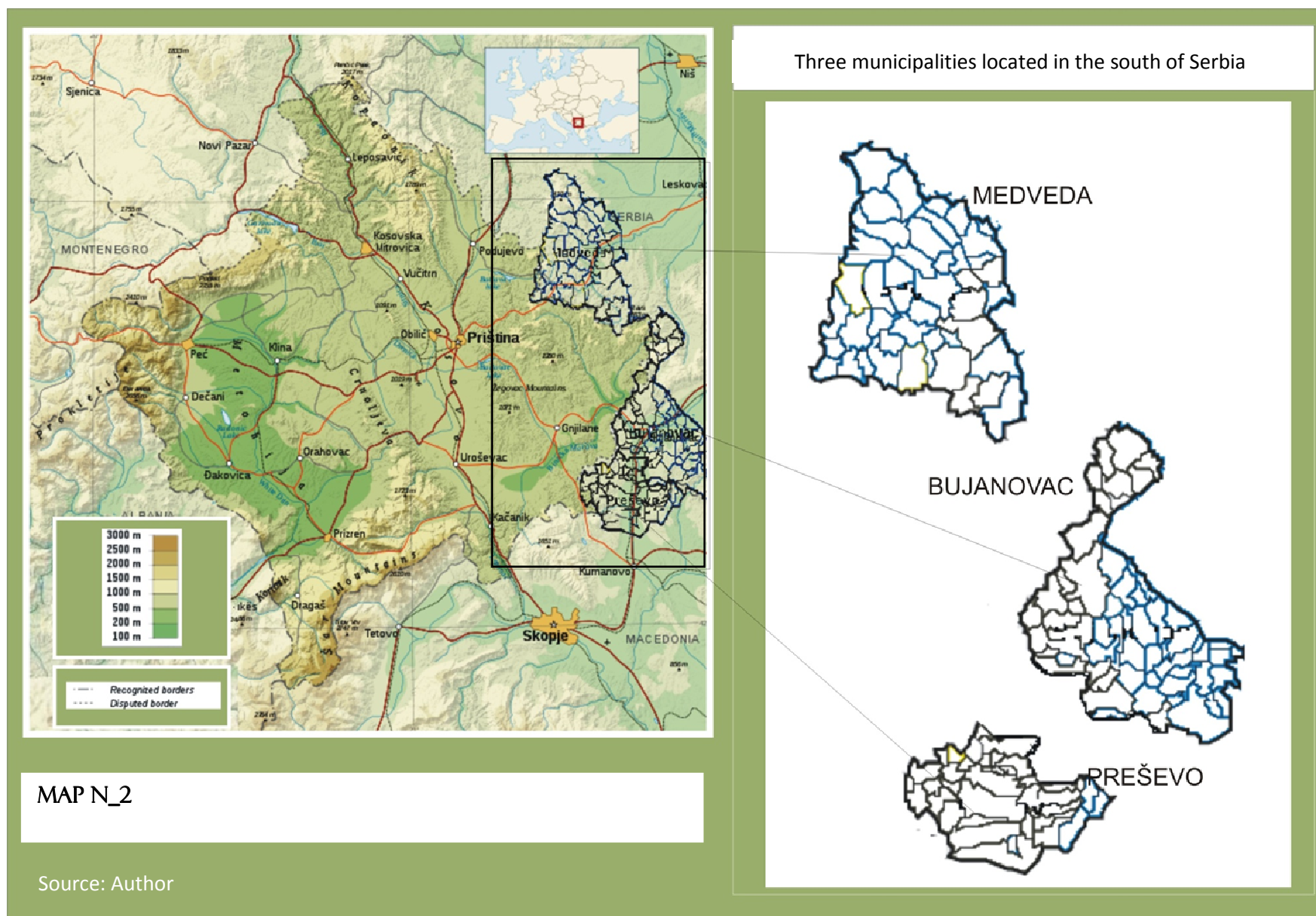
*Secondly*, Northern Kosovo should be led by a high representative. The high representative should be comparable to a prime minister; however, with some limited competencies. The high representative would represent Northern Kosovo in Pristina. In Pristina, the high representative would be part of the Kosovo government and promote the issues of Northern Kosovo at national level. The representation at international level should be very limited in accordance to the international law, which confers on autonomous territories no international personality. The high representative should be the leader of a majority party or even a majority coalition after an election to the local council.

*Thirdly*, the high representative should remain at the head of the local government. A local government would be selected by the high representative. Members of the local government would lead particular sectors. The high representative and the members of the local government would be accountable to the local council.

*Fourthly*, Northern Kosovo will need security forces of some kind. The Kosovo police created by Resolution 1244 could play a significant role. However, it is worth considering the creation of a local security unit to secure law-enforcement at a local level. The unit would be independent in terms of investigation and it could establish cooperation with all police units set up in all neighboring countries. Competencies between the security unit and Kosovo police will be arranged with some prospects for cross-level cooperation. Because of problems at the local level that cannot be fully addressed by the Kosovo police, the local security unit would attend to local security and enforce the law.

*Fifthly*, as a result of autonomy, the local council would have the right to make local legislation. The local legislation should be limited in some aspects. Mostly, local legislation could cover the electoral system, some parts of the judicial system, the implementation of international and Kosovo legislation into the Northern Kosovo system, and legislation covering the local security unit and law-enforcement. However, Northern Kosovo will be supposed to implement all Kosovo legislation resulting from international standards and treaties as well as legislation that is beyond the scope of autonomy.

*Lastly*, Northern Kosovo should establish courts that could be independent of Kosovo's system of courts. The courts would have the authority to adjudicate legal disputes in accordance with the rule of law at the local level. Northern Kosovo could structure a single-tier court system. The Supreme Court should exist at the Kosovo national level. The people of Northern Kosovo would have the right to appeal to the Supreme Court, which could provide legal aid for individuals.



**Map no. 2.** Focus on three municipalities located in the south of Serbia. To the right of the map, all three municipalities Medveda, Bujanovac and Preševo are shown in detail

## Territorial Exchange

The autonomous system is not a very popular solution and is not favored by the key players involved in the process. Belgrade's strong support for Northern Kosovo and its intense diplomatic pressure to integrate the land into Serbia's territory can bring second possible solution to the present deadlock. There appears to be some possibility that Belgrade could consider a possible exchange of land with respect to the Northern Kosovo. Vague support for Kosovo's independence could be expressed as long as Kosovo gives up part of its land within the north. Three municipalities placed in the south of Serbia (see map no. 2) could possibly be handed over to Pristina in return. These three municipalities consist of two neighboring municipalities Preševo, Bujanovac, and one, Medvedja, which is isolated.

To understand the reason for the exchange of these territories, it is necessary to have a closer look at some key elements. *Why is Northern Kosovo so important for Pristina?* There are two reasons. *Firstly*, aside from the issue of territorial homogeneity, Northern Kosovo has for Pristina a strategic function as it includes a large water area, a dam with hydro-electric power plants and mineral resources that are crucial for Kosovo's economy. *Secondly*, the territorial homogeneity of the existing land is essential. No newly created state of the former Yugoslavia is ethnically homogeneous and precedence could trigger an uncontrollable chain reaction. Moreover, the partition of land along ethnic lines does not have some very happy endings in history.

*Why are Preševo, Bujanovac and Medvedja so valuable at the negotiation table?* *Firstly*, these three municipalities could be a very powerful card in Serbia's hand. Preševo, Bujanovac and Medvedja were very closely tied to the so-called boundaries of the Socialist Autonomous Province of Kosovo in the era of the Socialist Federal Republic of Yugoslavia. At the time of the delineation of the present borders, these three Serbian municipalities were forcibly torn away from the former Province of Kosovo. In the case of territorial exchange the three municipalities can be considered as valuable bargaining chips. *Secondly*, Northern Kosovo and the three municipalities of Serbia; Preševo, Bujanovac and Medvedja are ethnically the same. To attach these areas to Kosovo in return for Northern Kosovo could, for the sake of appearances, bring more stability and fewer tensions into Kosovo and Serbia.

Such a territorial exchange could seem a good strategy for calming emotions and setting down a course for successfully resolving the Kosovo-Serbia dispute. Unfortunately, however, it has one controversial stumbling block. Creating ethnically more homogenous states could fire



anger in other states in the Balkans such as Bosnia and Herzegovina and Albania<sup>11</sup>, and possibly spark fresh ethnic violence as well as dangerous discrimination against minorities.

### **Territorial Exchange and Theory**

Both the theory of IR and the theory of international law cover the issue of territorial exchange in detail and work with this concept from a number of perspectives. For the purpose of this paper, it is necessary to narrow the theoretical interpretation of the concept to some relevant aspects.

The legitimacy of any territorial exchange is quite difficult to quantify both in theory and praxis. Traditional theories of international law consider several models within which a state can extend its territory. Speaking about noninvasive forms of territorial expansion and exchange, all territorial changes must be based on legal grounds which are derived from an international treaty. Looking at the classification of territorial changes, it is necessary to focus on the concept of a territorial exchange that leads to “changes of the legal status of territories without transfer of territory or of sovereignty” (Kacowicz 1994: 8). This category classifies territorial changes occurring in the whole territory of a sovereign state or just in an independent area and is relevant to the purpose of this article.

Territorial changes including territorial exchanges “refer to political modifications or transformations dealing with a transfer of sovereignty over a given territory [...] or an alternation of the existing status of a state or a non-state territory without actual transfer of territory” (Kacowicz 1994: 5). Peaceful territorial exchanges occur during a process of change that maintains the *status quo* and utilizes peaceful instruments such as cooperation, negotiation and some kind of political bargaining.

In the Kosovo-Serbia dispute, the theory offers two possibilities that could likely be applied to this case. Territorial exchange could be achieved by a process of bargaining or negotiation which proceeds directly or by means of the third party model. Both bargaining and negotiation are meant to be more or less direct methods of communication between parties unless hostilities between the parties require a third party. The successful result of both methods is a written agreement that changes the system of territorial delineation and consequently the *status quo*.

In theory, the mechanism of territorial exchange is quite often likened to a system of horse-trading. This special label refers to the possibility of agreement on some kind of exchange.

---

<sup>11</sup>The Communist Tito regime redrew the internal borders of Yugoslavia in 1945 for political purposes.

The exchange is part of a treaty and is considered as a solution to some level of state conflict. Territorial exchange is the third approach within this so-called system of horse-trading. The remaining approaches include a process that may occur in state formation conflicts. The process is quite complicated and requires a change of identity of a people. There are population exchanges across internal borders and exchanges of territories. During the second half of the twentieth century, there was a significant decrease in the application of any of these approaches according to the experiences of World War II. However, since the end of the Cold War the use of these concepts has been reappraised. Very simply, territorial exchange means that each side holds territory the other one wants.

Looking at the issue of the concept of territorial exchange, particular norms and rules at the international level formalize and define interaction between states in all areas. The most important include norms associated with generally accepted principles of international law such as *pacta sunt servanda* and *uti possidetis* and *rebus sic stantibus* – legal doctrines applicable to treaties.

Furthermore, the essential norms connected to territorial changes are further embodied in rules dealing with neutrality, reciprocity, the principles of territorial integrity and political independence, nonintervention, self-determination, and the preservation of balance. Territorial exchange is a quite sensitive problem that questions the status of sovereignty. Theories often see the problem of territorial exchange as the conflict of claims over sovereignty versus demands for self-determination.

## **Blueprint Design 2**

In spite of some drawbacks, the model of territorial exchange could have some logic in solving the present Belgrade-Pristina deadlock. However, playing this card could destabilize the whole region. The most important consideration is that there is no compromise that could possibly be put on the negotiating table. *What might be the result of territorial exchange?* The answer is not as simple as the question itself. Thinking about the impact of such events, a possible trajectory can be indicated. *Firstly*, there might be only one positive result of a territorial exchange between Kosovo and Serbia. The area including Leposavić, Zubin Potok and Zvečani, as three municipalities of Northern Kosovo, is a historical part of Serbia. Northern Kosovo was an inherent part of Serbia till the post-war redrawing of Yugoslavia's internal borders. The exchange could possibly reduce ethnic tensions in this micro-region. Serbia would gain back its historical land. Consequently, Belgrade would have no objection to recognizing Kosovo's independence

and support Kosovo's ambitions at the international level. However, this is just a one-sided result and only Belgrade would enjoy the benefit of such a step.

*Secondly*, if a redrawing of borders is to be done along ethnic lines, some serious problems in the region of the Balkans can be expected. Now I will ignore wider external relations as well as the wider international impact of such an exchange and just focus on the Balkans. A revision of internal borders during the era of the Socialist Federal Republic of Yugoslavia in 1945 left very deep scars in the Balkans. Some potentially serious problems may emerge. Internationally recognized support for the territorial exchange between Belgrade and Pristina would destabilize complicated relations and the fragile stability in Bosnia and Herzegovina. Bosnia and Herzegovina would, with high probability, face comparable moves by Republika Srpska towards secession and eventual union with Serbia. Macedonia would be no exception. Macedonia might follow suit and could on the other hand face a problem with the Albanian community. Stability in Macedonia largely depends upon the balance between the two major communities. However, hidden discrimination against Albanians in Macedonian society and their frustration would lead to the aspiration of Albanian populated territories in northern Macedonia to join Albania.

*Thirdly*, there is a very little logic in ethnic composition of the population in the rest of Kosovo. By attaching Preševo, Bujanovac and Medvedja to Kosovo, Kosovo will gain a more homogeneous ethnic composition. It is not a secret that Serbia spends substantial sums of money to attract Serbs to Northern Kosovo offering services of a higher standard and better education for young people. Long-term migrations of Serbs have resulted in a situation in which Kosovo is populated only by an aging Serbian population that has been consequently declining. Many Serbs who lived in Kosovo and wished to leave Kosovo have already done so.

Territorial exchange as a possible solution to the present Kosovo-Serbia deadlock could be very counterproductive. The solution is a very complicated one based on even more complicated rules of international law which are perched on the edge of legality. The negative consequences of such a move would significantly outweigh the potential benefits. The territorial exchange is a very complicated solution and in the end it might not bring benefits to any side in the conflict.

## **Conclusion**

Serbia and Kosovo have already entered negotiations under the auspices of the EU. The conditions seem to be satisfactory. The deal to exclude sensitive questions could bring some rationality into, and emotions out of the negotiating room. There are many less sensitive technical

issues such as problems with the movement of people, the recognition of documents, transportation, and energy supply that can be resolved more easily.

There is no doubt that sooner or later Belgrade and Pristina will come to a point where the question of the status of Kosovo cannot be avoided. *To what extent can the Kosovo-Serbia dispute be resolved by the Ahtisaari Plan, which is obviously failing at present?* Serbia and Kosovo have a long way to go. The success of any solution will mostly depend on the will of both sides. Serbia is fully aware of its position. Belgrade has to recognize Kosovo if Serbia wants to become a part of the European club. On the other side, Kosovo has got very strong international support, including that from the key members of the EU and the US. A solution is not easy and to become stuck on the issue of border recognition could stop the process of negotiation for years.

Kosovo, after independence, has already begun the process of decentralization. It is generally agreed that the unilateral declaration of independence has had a significant impact on the present process. The process taking place in Kosovo during decentralization based on a system of Interim Administration has limited territorial purposes. The system is unique and it would be very hard to apply the structure to a different dispute. The declaration of independence was the result of the inappropriate framing of Resolution 1244 dealing with the final settlement of Kosovo and was an act of the people of Kosovo. That is, it was an act of representatives of the people of Kosovo, which proceeded as a consequence of the failure of the whole political process dealing with the crucial importance of Kosovo's future, including the Ahtisaari Plan. The concept of decentralization based on the Ahtisaari Plan indicates some crucial system failures that created obstacles to putting the model into practice. The international community has already started considering other options that could alternatively ease the process of settlement. A continuance of the implementation of the Ahtisaari Plan will harden relations between Serbia and Kosovo and make the situation even more difficult. Recent history has proved that both the plan and the process of decentralization leading to territorial consolidation cannot work along current lines. The problem of Mr. Ahtisaari's strategy could possibly be found in the quite strong rejection of possible alternatives, which would allow the plan to be more flexible. The contemporary theory of international relations and the theory of international law offer two concepts applicable to the dispute over Kosovo. Both solutions bring some degree of risk.

*What other possible solutions are available in accordance with the international law? And what could be the consequences of these solutions in the wider context?* The concept of autonomy is the first possible solution and the concept of territorial exchange is the second one. Both concepts have proved their relevance in modern history and each of them can be taken as a serious alternative to the

present failing process. However, the solution is not easy and will influence the course of wider international relations. This paper dealt with alternative solutions to the Kosovo-Serbia deadlock. The alternatives have been proven to work in the past and are available possibilities according to international law and customs. Although this analysis suggests that there are two possibilities of solving the problem, as has been mentioned, implementing each of them exposes the international community to quite significant risk. Territorial exchange looks like an attractive way of solving the deadlock. Territorial exchange as part of the mechanism of territorial change solved many problems up to the first half of the twentieth century. However, the sustainability of the concept is questionable. Controversy remains regarding uncontrolled reactions amongst ethnic groups and huge ethnic problems on a global scale. In spite of the fact that territorial exchange has a very good basis in international law, poorly planned exchange could end in disaster. The solution applied in such an unstable region could result in the escalation of violence and comparable movements in neighboring countries and areas.

In contrast, the concept of autonomy proposes normalization. In fact, autonomy would allow Northern Kosovo to continue on its present course and establish all necessary conditions for self-government and its existence in the area. The issue remains sensitive, but the solution seems the most likely to help Kosovo and Serbia find common agreement and a way out of the deadlock. The truth is that neither Belgrade nor Pristina will emerge as the victor. However, the compromise embodied in the concept of autonomy for Northern Kosovo will help to start up the whole process. Autonomy is a complicated concept; however, the most elementary agreement should cover the following issues:

- The delineated boundaries should remain with no changes. Redrawing boundaries is not a stable solution and will not bring peace to this small micro-region.
- The North has to have a clearly set up governmental system and basic conditions for a democratic system of elections.
- Strong support for a sustainable judicial system is a must. Without precisely defined competencies and judicial institutions the North will not be able to combat deep-rooted organized crime.
- An agreement about new security units patrolling local areas of the North is essential and one of the key aspects of the system of autonomy.
- Northern Kosovo needs its representative. The international community needs to listen to the strong voice of the North, which is impossible without the institution of a high

representative and its circle. The North also needs to be represented in Kosovo, which is again not possible without a high representative.

- As an autonomous area, Northern Kosovo will have to establish an independent local council with the right to create a local legislation in some areas.

Indisputably, autonomy has some drawbacks and therefore some degree of risk, too. The most significant problem arises from the tendency of other areas to demand self-rule as well. This could possibly lead to a scenario involving the breakup of an entire state and the escalation of violence abroad. The questions remain open about the effectiveness of autonomy in Kosovo in general and in Northern Kosovo in particular. The general concept of autonomy that has been established in some parts of the world has so far proved its functionality. However, this would be almost the first time in history when the concept was implanted in a region in which memories of ethnic cleansing could very possibly jeopardize the process.

In conclusion, both approaches are on the very edge of sustainability. Neither of these proposed alternatives would be easily accepted. Comparing both concepts, autonomy offers easier normalization, smoother solutions and the lower possibility of the occurrence of some level of conflict. A territorial solution according to the concept of autonomy offers a better prospect for a stable future.

Moreover, Kosovo could continue its current development with only a few changes. While it may seem unlikely that either Pristina or Belgrade will show some will to compromise in the short term, it is important to remember that prolonging the agony could ethically destabilize the region. Kosovo and Serbia have to start from a new beginning and normalize their relations. Strong support for the North from Serbia and Kosovo can open up new possibilities for the North, Kosovo itself, and Serbia at the international level.

### List of Abbreviations

EULEX	European Union Rule of Law Mission in Kosovo
IR	International Relations
OSCE	Organization for Security and Co-operation in Europe
Regulation 2001/9	on a constitutional framework for provisional self-government in Kosovo
Resolution A/RES/63/3	Request for an advisory opinion of the International Court of Justice on whether the unilateral declaration of independence of Kosovo is in accordance with international law
UN ICJ	United Nations International Court of Justice
UN SC	United Nations Security Council
UN	United Nations
UNMIK	United Nations Interim Administration Mission in Kosovo

## Bibliography

- Center for International & Comparative Law (2008): *Kosovo's Controversial Secession*, the Duke University School of Law, on-line text <<http://www.law.duke.edu/cicl/news/story?id=1868&u=26>>. [cit. 15. 08. 2010]
- Central Intelligence Agency (2011): *The Centre of Intelligence – Publication*, on-line text <<https://www.cia.gov/library/publications/the-world-factbook/geos/kv.html>>. [cit. 25. 05. 2011]
- Džihic, V. – Kramer, H. (2009): *Kosovo After Independence: Is the EU's EULEX Mission Delivering on its Promises?*, Friedrich Ebert Stiftung Bibliothek, on-line text <<http://library.fes.de/pdf-files/id/ipa/06571.pdf>>. [cit. 12. 08. 2010]
- Fierstein, D. (2008): Kosovo's Declaration of Independence: An Incident Analysis of Legality, Policy and Future Implications, *Boston University International Law Journal*, Vol. XXVI, No. 2, on-line text <<http://www.bu.edu/law/central/jd/organizations/journals/international/volume26n2/documents/Fierstein.pdf>>. [cit. 15. 08. 2010]
- General Assembly (1970): *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations*, United Nations Documentation, on-line text <<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf?OpenElement>>. [cit. 15. 08. 2010]
- General Assembly (2008): *Request for an Advisory Opinion of the International Court of Justice on Whether the Unilateral Declaration of Independence of Kosovo Is in Accordance with International Law*, United Nations Documentation, on-line text <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/470/97/PDF/N0847097.pdf?OpenElement>>. [cit. 15. 08. 2010]
- Hannum, H. – Lillich, B. Richard (1980): The Concept of Autonomy in International Law, *The American Journal of International Law*, Vol. LXXIV, No. 4, pp. 858-889, on-line text <<http://www.jstor.org/pss/2201026>>. [cit. 22. 03. 2011]
- International Court of Justice (1945): *Statute of the International Court of Justice*, the UN International Court of Justice, on-line text <[http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0#CHAPTER\\_IV](http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0#CHAPTER_IV)>. [cit. 15. 08. 2010]
- International Court of Justice (2010): *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo: Summary of the Advisory Opinion*, The UN International Court of Justice, on-line text <<http://www.icj-cij.org/docket/files/141/16010.pdf>>. [cit. 15. 08. 2010]
- Kacowicz, A. Marcelo (1994): *Peaceful Territorial Change*, Columbia, South Carolina, University of South Carolina Press.
- Kupchan, A. Charles (2005): Independence for Kosovo: Yielding to Balkan Reality, *Foreign Affairs*, Vol. LXXXIV, No.6, pp. 14-20.
- OSCE (1975): *Conference on Security and Co-operation in Europe Final Act*, The Organization for Security and Co-operation in Europe – Documents Library, on-line text <[http://www.osce.org/documents/mcs/1975/08/4044\\_en.pdf](http://www.osce.org/documents/mcs/1975/08/4044_en.pdf)>. [cit. 15. 08. 2010]
- Security Council, t. U. (2007): *Letter dated 26 March 2007 from the Secretary-General Addressed to the President of the Security Council : Addendum : Comprehensive Proposal for the Kosovo Status Settlement*, the United Nations/The United

Nations Documentation System, on-line text <[http://www.unosek.org/docref/Comprehensive\\_proposal-english.pdf](http://www.unosek.org/docref/Comprehensive_proposal-english.pdf)>. [cit. 12. 08. 2010]

Security Council, t. U. (2008): *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, the United Nations/The United Nations Documentation System, on-line text <<http://www.un.org/Docs/journal/asp/ws.asp?m=S/2008/354>>. [cit. 15. 08. 2010]

The United Nations (1945): *Charter of the United Nations*, the United Nations/The United Nations Documentation System, on-line text <<http://www.un.org/en/documents/charter/chapter14.shtml>>. [cit. 15. 08. 2010]

U.S. Department of State (2011): *Country Profiles*, on-line source <<http://www.state.gov/r/pa/ei/bgn/100931.htm>>. [cit. 20. 08. 2011]