Martti Ahtisaari and the Kosovo¹ Final Status Process (B)

Notes:  (1) This "B" case is designed to be read or summarized after discussion of the "A" case.

(2) Throughout the text, a series of italicized and bolded questions are suggested to guide the panel discussion on Kosovo with Martti Ahtisaari during the Great Negotiator events of September 27, 2010. We urge readers to suggest variations and develop further questions to pose to Ahtisaari.

I. THE PROCESS

Defining the objective

Had anything changed in the fundamental political realities between Kosovo and Serbia ten years after the adoption of UN Security Council Resolution 1244 (1999)? Both parties had maintained their respective positions: Belgrade proposed to grant Kosovo substantial autonomy within Serbia while Pristina considered that Kosovo needed to be a sovereign and independent state. What would it take to break apart these entrenched positions?

Designing a sustainable structure for the peaceful co-existence of the people in Serbia and Kosovo required a realistic foundation. The more Ahtisaari vetted possible options, the closer he came to the conclusion that declaring Kosovo independence was the only viable political solution toward finalizing former Yugoslavia’s transformation.¹ Given the long history of mistrust between Kosovo Albanians and Serbs and the fact that both territories had been governed separately, it seemed highly unlikely that Serbian rule could be re-established without provoking a violent backlash. However, the UN-led administration could not continue infinitely, as it constrained the legitimate expectations of the local population for more self-government.¹ He concluded that an independent Kosovo was the only sustainable solution.

Having identified the ultimate goal, Ahtisaari determined that the “train had left the station on Kosovo” and that it “had a destination”.¹¹ Bringing all interests to the negotiating table to achieve this objective, however, would be a far greater test of his abilities as a mediator.

Queries for Ahtisaari: Was independence for Kosovo truly the only viable option? What about other options? Serbia and Montenegro had been joined in a loose constitutional arrangement a few years earlier. Why was it not possible to suggest similar arrangements for Kosovo and Serbia?

Defining the framework

Ahtisaari quickly realized that progress could not be made among the immediately affected parties if it weren’t for the support of the Contact Group. While collectively committed to establishing a process to determine Kosovo’s status, the members of the Contact Group were initially reticent to endorse a specific outcome – while the US and major European parties in the Contact Group supported independence, Russia did not. Thus, the diplomatic processes of the years following 2005 were designed to bring Russia on board. To force a critical discussion,

¹ Its name is pronounced Kosovo in Albanian and Kosovo in Serbian.
Ahtisaari got the Contact Group to agree to a set of principles to delineate negotiations. On 7 October 2005, the Contact Group adopted ten (10) guiding principles for a settlement of Kosovo’s status. Setting out these “rules of the game” allowed Ahtisaari to enter into negotiations under pre-determined parameters, giving him greater liberty to shape the substance of negotiations.

The principles had a signaling purpose to Belgrade and Pristina, laying out the international community’s non-negotiables. The principles provided, for example, that:

- The “settlement of the Kosovo issue should be fully compatible with international standards of human rights, democracy and international law and contribute to regional security”;
- The “settlement should ensure multi-ethnicity that is sustainable in Kosovo”; and
- The settlement “should include specific safeguards for the protection of the cultural and religious heritage in Kosovo.”

The principles also laid out “three No-s”: (1) no partitioning of Kosovo; (2) no going back to the status before 1999; and (3) no merging with other states. Laying out these basic tenets gave him the necessary support from the Contact Group to force more effective discussions. Ahtisaari’s authority was further bolstered by the decision to attach the Contact Group’s ten principles to the UN Security Council President’s letter endorsing his appointment. Thus, Ahtisaari had set a tone that would serve him well for the talks to follow.

Careful diplomacy and several contacts with capitals were required to convince members of the Contact Group that they needed to tell Belgrade that the process was heading toward Kosovo independence. His success could only be described as partial. While the United States conveyed to Serbia that independence for Kosovo was the final goal of the process, European Contact Group members were less inclined to support the same goal outright. At the same time, Russia, refused to communicate such a message to Serbia, unconvinced, that “the train was leaving the station.”

Queries for Ahtisaari: How did you frame your conversations with the different members of the Contact Group? How did the Contact Group come to agree to these principles? Did you approach a specific member of the Contact Group first, and why? In hindsight, is there anything that was missing from the principles? Did the principles produce the anticipated impact on Belgrade and Pristina?

Seeking coherence from the Kosovar Albanian side

Ahtisaari quickly realized that international allies – both abroad and on the ground – would be fundamental in getting around the political fragmentation among local leaders. He thus relied on the support and leadership of members of the international community in Pristina led by SRSR Søren Jessen-Petersen and U.S. Chief of Mission in Kosovo, Phillip Goldberg. They invited Kosovar Albanian political leaders to form a parallel coalition to negotiate Kosovo’s final status - the Unity Team, which received significant support from the US and some of the European countries.

The establishment of the Unity Team ensured more coherence from the Kosovar Albanian side and increased the legitimacy of Kosovar representatives by allowing members such as Hashim...
Thaci (the leader of the PDK who was not part of the governmental coalition in Kosovo) to take part in the negotiations. Kosovar Albanians now had a mechanism allowing them to set aside both personal and political differences and come together to manage a negotiation. Kosovo President Ibrahim Rugova initially chaired the *Unity Team*, later to be replaced by President Fatmir Sejdiu. The Kosovar Albanian delegation’s relative inexperience with complex international negotiations posed an additional problem for Ahtisaari. After having witnessed initial sessions where Kosovar representatives had refused to engage in any discussion, Ahtisaari’s team decided to take immediate action. Ambassador Albert Rohan, Ahtisaari’s Deputy Special Envoy, traveled to Pristina to meet with the members of the Unity Team. He told them: “We can’t conduct business this way […] Whoever you send – or you could go yourselves – must have the authority to participate meaningfully in discussions and negotiations.” Things reportedly improved thereafter.

*Queries for Ahtisaari: How would you respond to someone arguing that strengthening the capacity of one negotiating party exceeded your mandate? Did the Kosovar Albanian side manage to improve in such a short period of time? Did you try to remedy other weaknesses on their side during the process?*

**Working With a Reluctant Interlocutor in Belgrade**

There were further challenges ahead: convincing the Serbian political leadership of the urgency of action on behalf of the Kosovo Serb population seemed nearly impossible. Belgrade refused to accept the idea of an independent Kosovo and did not want to legitimize any process that may lead to such an outcome. Despite indications from a number of Contact Group members that Kosovo independence was the only viable political outcome, Serbian representatives seemed committed to defending their line.

Ahtisaari was direct and transparent with the Serbian representatives. He told them privately that he knew they might not like the direction in which he was steering the negotiation but that he counted on their active participation. Their response was unyielding. Thus, it seemed as if Ahtisaari would have to craft minority protection arrangements within the framework of Kosovo independence without constructive Serbian participation. How was he going to overcome this challenge?

To resolve this seemingly intractable situation, he developed a multi-step plan. He first decided to put practical issues ahead of a discussion on status. Between February and July 2006, his team presided over numerous rounds of discussions in Vienna that focused on issues such as the decentralization of competencies to municipalities or the protection of religious and cultural heritage. While Belgrade remained a reluctant participant, these rounds of discussions still allowed Ahtisaari to identify some areas of common ground.

In order to break down the wall of resistance, Ahtisaari realized he had to “be a Serb”. Truly understanding their perspectives and interests would be essential. He surrounded himself with a good team of experts who could draw upon other minority protection mechanisms in force in other jurisdictions. His team at UNOSEK in Vienna produced potential frameworks for the protection of the rights and interests of minorities in Kosovo.

He then managed to convince the Kosovar Albanian delegation to make meaningful compromises. Independence would come at a heavy a price, he said. Conceding to minority...
protection and means to allow for peaceful coexistence of all groups would have to be part and parcel of any such agreement. He thus demanded the Kosovar Albanian leadership agree to an extensive list of difficult concessions, including:

- **The establishment of six** new or significantly expanded Kosovo Serb majority municipalities;\(^{xxviii}\)

- **Enhanced competencies** for a number of Kosovo Serb majority municipalities in areas such as secondary health care and higher education;

- **The ability for municipalities** to receive transparent funding from Serbia and the capacity to enter into inter-municipal partnerships and cross-border cooperation arrangements with Serbian institutions;

- **Extensive minority rights** in the areas of culture, language, and education. Albanian and Serbian would be recognized as the two official languages of Kosovo. Ahtisaari’s proposal also defined specific representation arrangements for minorities in the legislative, executive and judicial branches of government;

- **A system of special protective zones** to protect the Serbian religious and cultural heritage.\(^{xxix}\)

While discussions on practical issues made slow but continuous progress, Ahtisaari, felt he could no longer delay discussions over status. It became increasingly clear that Belgrade was unwilling to separate practical issues from the question of Kosovo’s status.\(^{xx}\) On 24 July, 2006, both delegations met in Vienna to attend the first round of discussions on status. Following the meeting, Ahtisaari declared to the press:

“[…] As the first meeting of its kind, today’s discussion was meant to enable both sides to present and argue their respective positions, and the meeting did achieve that objective […] it is evident that the positions of the parties remain far apart: Belgrade would agree to almost anything but independence, whereas Pristina would accept nothing but full independence.”\(^{xxxi}\)

In parallel, Ahtisaari announced a continuation of negotiations on practical issues in which both sides had a vested interest. From July 2006 until September 2006, his team presided over additional rounds of discussions. By fall, Ahtisaari was in a position to present a draft proposal to the parties. Following the announcement of Serbian elections for January 2007, Ahtisaari planned the future consideration of his plan for early in the following year, to not seem to be disrupting a democratic process.\(^{xxii}\)

**Questions:** Knowing Belgrade’s firm opposition to Kosovo independence, did addressing practical issues first really help you in identifying common ground between parties? What were the strategic calculations underlying your decision to plan future consideration of your plan after the Serbian elections? In hindsight, was it the right decision? When did you know that you were in a position to present a draft proposal and why?

**Securing International Support for the Proposal**

Ahtisaari had to make sure he enjoyed the highest level of international support as he moved forward. This was a particularly delicate challenge, as he needed to navigate a complex
international environment. His international audience “had many people sitting in it”\textsuperscript{xxiii} and included Contact Group countries, members of the UN Security Council and the European Union.

\textit{European Union}

Ahtisaari spent a considerable amount of time consulting, explaining, and cajoling European officials to keep them focused on the process. Forging a common European position regarding an issue as sensitive as Kosovo’s status required careful diplomacy and an in-depth knowledge of and respect for individual country concerns. \textsuperscript{xxiv} He surrounded himself with European experts to inform his discussions with member states, cognizant of both EU administration (Commission and Council) and individual member perspectives. Through his consultations, he managed to assess areas of common interests and made sure that the substance of his settlement addressed key European concerns:

- **Endorsement by the United Nations Security Council**: The endorsement of any solution by the UN Security Council was an essential factor to placate concerns of members such as Spain or Cyprus, and thus key to guaranteeing the Union’s support as a whole. \textsuperscript{xxv} This was not meant to pose significant problems given that the Kosovo final status process was premised on the idea that the UN Security Council would endorse the solution. The proposal needed, however, to be designed in a way that took careful account of any element that could trigger automatic opposition from some Security Council members;

- **Protection of minority rights and of religious and cultural heritage**: Adequate protection of minority rights for the Kosovo Serb community and other minority communities in Kosovo was another important concern for EU member states. \textsuperscript{xxvi} Strong minority protective mechanisms would reduce potential sources of tension between communities in Kosovo and thus contribute positively to regional stability – a key concern for the European Union. Ahtisaari understood that designing such mechanisms would also minimize the impact of Belgrade’s opposition on European countries;

- **EU involvement in the implementation of the settlement**: Ahtisaari was conscious of the fact that EU Member States expected the Union to be involved in the implementation of a solution. \textsuperscript{xxvii} He took account of this particular interest and recommended the appointment of a European official to act as European Union Special Representative in Kosovo (EUSR). He also recommended that the same official serve as International Civilian Representative (ICR) in order to supervise and support Kosovo’s efforts to implement his proposed settlement. He proposed the establishment of a European Union led mission to be headed by an official appointed by the Council of the European Union. The EU rule of law mission would enjoy broad responsibilities including the authority to ensure that cases of war crimes, terrorism, organized crime, corruption, and inter-ethnic crimes were properly investigated. \textsuperscript{xxviii} Through all these measures, Ahtisaari managed to keep Europeans as close as possible to him.

\textit{UN Security Council and Contact Group}

Conscious of the importance of Russian support in the UN Security Council, Ahtisaari believed that constant consultation on Russia’s interests was paramount. He had an official from Russia
on his staff in Vienna and consulted regularly with the Russian Ministry of Foreign Affairs. He traveled to Moscow and met with Russian Minister for Foreign Affairs Sergey Lavrov. While the Russians had not explicitly opposed the direction that the process had taken initially, it became increasingly clear by the end of the process that Russia was beginning to remove itself from the negotiating table. Getting Russia on board would prove to be a very hard act.

Ahtisaari also made sure to consult with the other great UN veto power: China. He traveled to Beijing, met with Chinese officials and kept them well informed throughout the process. He did not expect China to actively support the settlement. Keeping Beijing well informed at each step was important however in order to maximize opportunities for China to abstain in the Security Council.

Ahtisaari was also particularly conscious of the importance of his relationship with the United States. He made sure to coordinate regularly and closely with them. He relied on the support of several U.S. representatives on his staff in Vienna. He spent a considerable amount of time consulting and briefing U.S. Ambassador Frank Wisner. He also had regular contacts with U.S. Under Secretary of State for Political Affairs Nicholas Burns and U.S. Secretary of State Condoleezza Rice.

Queries for Ahtisaari: Given Russia’s position by the end of the process, how realistic was it to link EU support to an endorsement by the Security Council? In hindsight, how solid was the support of EU member states for your proposal? Did you believe that your proposal had good chances of being endorsed by the Security Council?

Presenting the Comprehensive Proposal

As planned, Ahtisaari presented his draft proposal soon after Serbian elections had taken place. On February 2, 2007, he traveled to Belgrade and Pristina to share the draft of his plan with President Tadic and Sejdiu. On March 2, 2007 both delegations met in Vienna to discuss the draft. They met again on March 10, 2007 for the last time. Soon after the meeting, Ahtisaari declared to the press:

“Today’s meeting has concluded the negotiations held over the last 14 months, during which my team, with strong support from the international community, has engaged both parties in 17 rounds of direct talks and 26 expert missions to Belgrade and Pristina […] I regret to say that at the end of the day, there was no will from the parties to move away from their previously stated positions […] I had hoped, and very much preferred, that this process would lead to a negotiated agreement. But it has left me with no doubt that the parties’ respective positions on Kosovo’s status do not contain any common ground to achieve such an agreement. No amount of additional negotiation will change that. It is my firm conclusion that the potential of negotiations is exhausted.”

Soon after, Ahtisaari finalized his proposal and submitted it to the UN Secretary General. On March 26 2007, Ahtisaari’s Comprehensive Proposal for the Kosovo Status Settlement was forwarded to the UN Security Council. His proposal was based on the following main principles:

- Kosovo independence was the only viable option to solve the dispute over Kosovo’s status;
- Kosovo should be a multiethnic society governing itself democratically,
Kosovo’s capacity to tackle the challenges of minority protection, democratic development, economic recovery and social reconciliation on its own was still limited and its institutions needed to be further developed under the supervision of international civilian and military presences.

The Comprehensive Proposal contained several detailed annexes providing for an extensive protection system:

- **Annex 1** prescribed key institutional elements that had to form part of Kosovo’s future constitution;
- **Annex 2** addressed the protection and promotion of community rights. It proposed, inter alia, to recognize Albanian and Serbian as the two official languages of Kosovo and to ensure adequate representation of communities in public life;
- **Annex 3** provided for the decentralization of competencies to municipalities with a particular focus on the specific needs and concerns of the Kosovo Serb community and its capacity to have a high degree of control over its own affairs;
- **Annex 4** prescribed specific provisions to ensure that the Kosovo justice system be integrated, independent, professional and inclusive of all communities;
- **Annex 5** placed great emphasis on ensuring the unfettered and undisturbed existence and operation of the Serbian Orthodox Church in Kosovo. It also provided for an extensive system of special protective zones around more than 40 key religious and cultural sites and assigned responsibilities to NATO to provide physical security for a number of sites for an interim period;
- **Annex 6** stipulated specific provisions for Kosovo to assume its share of the public debt of Serbia;
- **Annex 7** prescribed mechanisms to ensure the adjudication of claims related to the privatization of public assets. It also provided for a mechanism to process disputed property claims related to the conflict;
- **Annex 8** provided for the establishment of a professional, multi-ethnic and democratic Kosovo security sector.
- **Annex 9** put in place a system of international civilian supervision. An International Civilian Representative (ICR) would be responsible to supervise and support Kosovo’s implementation of the Comprehensive Proposal. The ICR would also act as the European Union Special Representative in Kosovo;
- **Annex 10** defined the mandate and powers of a EU rule of law mission in Kosovo;
- **Annex 11** defined the powers and authorities of an International Military Presence in Kosovo.
- **Annex 12** provided a list of complementary legislation that Kosovo was required to adopt in order to incorporate the provisions of the Comprehensive Proposal into its domestic
legal order.

Ahtisaari had fulfilled his mandate. His Comprehensive Proposal was the result of an extensive process and was widely praised among many human rights experts as the most “detailed and sophisticated structure for protecting minority rights in a multiethnic society ever developed through international diplomacy”.xxxvi

II. POSTSCRIPT

By the time Ahtisaari’s Comprehensive Proposal had reached the Security Council, Russia had significantly distanced itself from his conclusions. EU unity had been premised on a quick Security Council endorsement of Ahtisaari’s settlement and a potential Russian veto in the Security Council seriously undermined hopes for unified EU support of the plan. In an attempt to prevent such an outcome, five drafts Security Council resolutions were discussed between March and July 2007 - to no avail – because Russia threatened to veto all of them. xxxvii

In July 2007, the Contact Group decided to lead a new 120-day negotiation process outside the Security Council. The reason for this new negotiation was twofold: First the major EU countries had difficulties in bringing all EU member states, including Cyprus, Greece and Spain, along. The US then struck a deal with the UK, France and Germany that they would support a US/EU/Russian Troika effort, to ensure each and every last effort had been made. The US and the European parties agreed that if the Troika process failed, the EU would side with the US and openly support independence for Kosovo. The Troika was thus mandated to lead this additional round of negotiations. The Troika held a series of meetings with Serbian and Kosovar authorities between August and December 2007. These discussions did not lead to any agreement between Pristina and Belgrade on the question of Kosovo’s status.

In the wake of the failure of the Troika negotiations which had lasted nearly half a year, US and European governments tried again to convince Russia to support a UN Security Council Resolution for Kosovo independence. Russia refused. At this point the US and the European countries faced a difficult dilemma: Should they allow Russia to stymie the process of Kosovo independence, which might provoke rioting and worse among the Albanian majority in Kosovo? On the other hand, they wondered what harmful effects on both US and EU relations with Russia might come from supporting Kosovo independence outside the Security Council framework would have inevitable costs to the US-European relationship with Russia and would diminish the. In addition, such a solution would weaken the authority of the UN. After weeks of intensive consultations between Washington, DC and European capitals, the US, France, Germany and the UK decided they would support a unilateral declaration of Kosovo independence in early 2008.

On Sunday, February 17 2008, Ahtisaari’s efforts revealed their practical significance as the elected representatives of Kosovo declared Kosovo to be an independent and sovereign state. Their declaration stressed that Kosovo was a democratic, secular and multiethnic republic and accepted fully the obligations contained in the Ahtisaari plan and committed to implement them in full.

Seeking the highest level of international recognition as possible, Pristina focused its energies on implementing the provisions of the Ahtisaari plan. A constitutional commission was formed to draft Kosovo’s constitution. Kosovo adopted a constitution that fully complied with the provisions of Ahtisaari’s Comprehensive Proposal. The Kosovo Assembly adopted more than 50
laws in order to implement specific provisions of the Ahtisaari plan and a constitutional court was established in June 2009.

Serbia, backed by Russia, firmly opposed Kosovo’s declaration of independence framing it as an illegal act of secession. On 8 October 2008, it registered a diplomatic success by getting the members of the UN General Assembly to request an advisory opinion from the International Court of Justice (ICJ) to consider whether Kosovo’s declaration of independence was in accordance with international law. Many observers believed that Belgrade had managed, at a minimum, to slow down the number of countries willing to recognize Kosovo as an independent state.

In July 2010, the ICJ delivered its advisory opinion. It concluded that Kosovo’s declaration of independence did not violate international law. On September 9, 2010 the UN General Assembly adopted a resolution by which it welcomed the European Union’s willingness to facilitate dialogue between Serbia and Kosovo over Kosovo’s declaration of independence.

As of September 12, 2010, Kosovo’s independence was recognized by 70 states.

MAP OF KOSOVO AND ENVIRONS
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AAK</td>
<td>Alliance for the Future of Kosovo</td>
</tr>
<tr>
<td>EUSR</td>
<td>European Union Special Representative in Kosovo</td>
</tr>
<tr>
<td>FYROM</td>
<td>Former Yugoslav Republic of Macedonia</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
</tr>
<tr>
<td>ICO</td>
<td>International Civilian Office</td>
</tr>
<tr>
<td>ICR</td>
<td>International Civilian Representative</td>
</tr>
<tr>
<td>KFOR</td>
<td>Kosovo Force (NATO)</td>
</tr>
<tr>
<td>KLA</td>
<td>Kosovo Liberation Army</td>
</tr>
<tr>
<td>LDK</td>
<td>Democratic League of Kosovo</td>
</tr>
<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
</tr>
<tr>
<td>OSCE</td>
<td>Organization for Security and Cooperation in Europe</td>
</tr>
<tr>
<td>PDK</td>
<td>Democratic Party of Kosovo</td>
</tr>
<tr>
<td>SFRY</td>
<td>Socialist Federal Republic of Yugoslavia</td>
</tr>
<tr>
<td>SRSG</td>
<td>Special Representative of the United Nations Secretary General</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNESCO</td>
<td>United Nations Educational Scientific and Cultural Organization</td>
</tr>
<tr>
<td>UNMIK</td>
<td>United Nations Interim Administration Mission in Kosovo</td>
</tr>
<tr>
<td>UNOSEK</td>
<td>United Nations Office of the Special Envoy for Kosovo</td>
</tr>
<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
</tr>
</tbody>
</table>
August 2010 interview with U.S Ambassador Frank Wisner.


August 2010 interview with U.S Ambassador Frank Wisner.


See Paragraph 6 of the *Guiding Principles of the Contact Group for a Settlement of the Status of Kosovo*, *supra*. See also H.H. PERRITT, *supra*, at p.119.


August 2010 interview with U.S Ambassador Frank Wisner; See also H.H. PERRITT, *supra*, at p.175.

August 2010 interview with U.S Ambassador Frank Wisner.

Ibid.


Interview with Ambassador Albert Rohan referred to in H.H. PERRITT, *supra*, at p.145.

H.H. PERRITT, *supra*, at p.145.

H.H. PERRITT, *supra*, at p.144.

August 2010 interview with U.S Ambassador Frank Wisner.

Ibid.

Ibid.


Main Provisions of the *Comprehensive Proposal for the Kosovo Status Settlement*, *supra*, at paragraphs 3, 5, and 6.

H.H. PERRITT, *supra*, at p.156.


H.H. PERRITT, *supra*, at p.171.

August 2010 with U.S. Ambassador Frank Wisner.

Ibid.

August 2010 interview with EU diplomat.

Ibid.

See, inter alia, COUNCIL OF THE EUROPEAN UNION, *Declaration on Kosovo – Annex III to Presidency Conclusions of the Brussels European Council (16 and 17 June 2005)*, *supra*, at paragraph 10.


August 2010 interview with U.S. Ambassador Frank Wisner.

Ibid.

H.H. PERRITT, *supra*, at p.163-164.


Main Provisions of the Comprehensive Proposal for the Kosovo Status Settlement, supra, at paragraph 2.


H.H. PERRITT, supra, at p.165.

H.H. PERRITT, supra, at p.181.