

**K**osovo has raised three international debates. Firstly, NATO's decision in March 1999 to go to war over Kosovo created a deep division within the United Nations. The second debate was about the creation of an international administration for Kosovo and the third is now about the future status of the territory. The six 'just war' principles – a just cause, last resort, likelihood of success, proportionality, right intentions and legitimate authority – are traditionally applied to war settings in order to assess the legitimacy of the use of force. They can be also used to answer the question of the extent to which the Kosovo conflict can serve as a political model for forceful external involvement in a secessionist crisis with severe humanitarian consequences. But these six *jus ad bellum* principles can also be of heuristic value for dealing with the legitimacy of the creation of an international administration in Kosovo, and with Kosovo's right to unilateral secession and its recognition by other states.

## Kosovo and the Principles of Just Secession

**Bruno Coppieters**

### 1. Introduction – Three debates

Kosovo has triggered three international debates. First came NATO's decision in March 1999 to go to war over Kosovo. Its military intervention against the Federal Republic of Yugoslavia<sup>1</sup> created a deep division within the United Nations Security Council (UN SC), where Russia and China refused to agree with the other permanent members that the forceful displacement of the civilian population of Kosovo by the Belgrade authorities amounted to a just cause for military intervention. Nor did these two states agree that the war could be considered a last resort. They argued that the failed negotiations between Belgrade and representatives of the Kosovo Albanians at Rambouillet had not extinguished all hope of finding a peaceful outcome to the conflict. The UN SC was further divided on whether a war had any likelihood of success. Would it succeed in re-establishing security and multi-ethnic coexistence in Kosovo?

<sup>1</sup> Since 1992, Serbia and Montenegro have constituted the Federal Republic of Yugoslavia.

The world also debated the question of proportionality – whether the moral benefits of the war would be higher than its costs. The permanent members of the UN SC further accused each other of pursuing strategic interests in the region that were at odds with the interests of the population of Kosovo. These interests meant that policies on Kosovo were not actually driven by morally right intentions. The question of whether military intervention needed UN SC authorisation in order to be based on a legitimate authority was also crucial in the international debate on NATO's war in Kosovo.

The second debate was about the creation of an international administration for Kosovo. After the surrender of Serbia in June 1999, the main international actors agreed that the first priority for the region was international support for regional stability. According to UN SC Resolution 1244 (1999), Belgrade had no right to exercise its authority over the territory of Kosovo, even though formally this territory remained part of the Federal

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Republic of Yugoslavia: a decision on its future international status would be taken at a later stage. NATO troops – and, up to 2003, also Russian troops – were deployed as peacekeepers in Kosovo. The formal authority over this region was an internationalised body, coordinating the work of the UN, NATO, the EU and many other international agencies – a form of governance not to be found in any other secessionist crisis.

At the time, the ethical debate on the legitimacy of this international administration focused largely on the proportionality principle, which weighs up the positive and negative consequences of political decisions. The reconstruction of Kosovo entailed a number of successes and failures. One of the positive consequences of the creation of an international administration was that Kosovo Albanians no longer had to fear being forced out of their homes, as had happened to more than 800,000 of them in 1999.<sup>2</sup> But the military intervention leading to its creation had been followed by new forms of injustice which the international administration was unable to redress or prevent. NATO KFOR troops deployed in Kosovo and UNMIK international civilian police failed to give sufficient protection to its Serb population.<sup>3</sup> The first wave of Kosovo Serbs left the region out of fear, but many were physically driven out of their homes. Ethnically motivated crimes were inadequately prosecuted. Kosovo Serbs also left for economic reasons: post-war reconstruction did not provide the institutional environment needed for economic growth. In 2003, some 130,000 of Kosovo's Serbs – roughly two-thirds of its pre-war population – were still there, but a great number of them remained displaced within Kosovo and unable to return to their original homes.<sup>4</sup> The positive and negative consequences of the creation of an

international administration were thus substantial, and it was difficult to make a clear-cut proportionality calculation of its moral costs and benefits.

Where the democratisation of Serbia was concerned, Slobodan Milosevic, already weakened by his defeat in the war and the loss of Serb control over Kosovo, was ousted from power in October 2000. Regime change in Belgrade paved the way for an end to the dispute between Serbia and Montenegro, the two constituent entities of the Federal Republic of Yugoslavia whose relations had been severely strained during Milosevic's rule. It also led to a normalisation of relations with the international community. Serbia could even look forward to membership of the European Union, on the condition that it pursued state reforms. All these elements contributed to the stabilisation of the Balkan region.

But the international consensus on UN SC Resolution 1999 and the creation of an international administration for the territory did not mean that there was agreement on how to resolve the Kosovo problem. The future status of the territory was the subject of the third international debate on Kosovo. Western countries favoured recognising it as an independent country, whose transition to full independence would be supervised by the international community. Russia and China opposed this option, declaring themselves in favour of the present form of international administration. At the time of writing, the debate has still failed to lead to any decision.

All three debates on Kosovo had repercussions that went far beyond the region itself. The main issues concerned the resolution of secessionist conflicts in general. The questions at stake were as follows:

- 1) To what extent did the Kosovo conflict set a legal precedent, or even provide a political model, for forceful external involvement in a secessionist crisis with severe humanitarian consequences?
- 2) Should secessionist conflicts be solved by having the UN or other international organisations administer breakaway territories?
- 3) Do the people of a territory who have suffered severe injustice have a unilateral right to self-determination up to the right to independence?

In the view of the Western countries that were involved in NATO's intervention in Kosovo and in its international administration, and that have been supporting its right to unilateral<sup>5</sup> independence,

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<sup>2</sup> See International Crisis Group (ICG), "Kosovo: Toward Final Status", Europe Report No. 161, 24 January 2005, p. 2 (<http://www.crisisgroup.org/home/index.cfm?id=3226&l=1>). I have made extensive use of this report in the present analysis, although the various just-war principles referred to here are not used in this ICG report.

<sup>3</sup> The inability of KFOR and UNMIK to protect the Serb and Gypsy communities was glaringly obvious during the riots that erupted in March 2004, where hundreds of houses belonging to minorities were destroyed. See Human Rights Watch, "Failure to Protect: Anti-Minority Violence in Kosovo", March 2004 (<http://hrw.org/reports/2004/kosovo0704/>).

<sup>4</sup> See the "Introduction" to "Failure to Protect", *ibid.* ([http://hrw.org/reports/2004/kosovo0704/3.htm#\\_Toc77665973](http://hrw.org/reports/2004/kosovo0704/3.htm#_Toc77665973)) and International Crisis Group, "Kosovo: No Good Alternatives to the Ahtisaari Plan", Europe Report No. 182, 14 May 2007, p. 4 (<http://www.crisisgroup.org/home/index.cfm?id=4830&l=1>).

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<sup>5</sup> In the context of this discussion, 'unilateral' means that the decisions on the use of force or on the international

these decisions were based on a complex constellation of factors, at both the domestic and the international levels. They reasoned that secessionist conflicts in other parts of the world should be regarded as the product of entirely different factors, so the set of principles adopted to resolve the Kosovo conflict would never constitute a legal precedent or political model for resolving other secessionist conflicts.

This line of argument, denying the exemplary character of the Kosovo experience, is far from convincing, particularly when examined from the perspective of political ethics. First, emphasising the uniqueness argument in relation to Kosovo could lead to an interpretation whereby the question of status cannot be decided by universal principles but only by ad hoc criteria that are created to fit the circumstances of each particular situation. This type of argument would make it impossible to claim any legitimacy for the decisions taken on Kosovo, or even to have a rational discussion on the legitimacy of any decision concerning a secessionist conflict.

Secondly, any attempt to resolve a particular conflict may become part of a political model for discussing how to resolve other conflicts. This does not necessarily imply, however, that all secessionist crises should be resolved according to the same pattern.

Thirdly, since 1999, in a number of secessionist conflicts, Kosovo has already been turned into a political model on all three issues mentioned above: the use of force in secessionist conflicts, the internationalisation of such a conflict and the right to unilateral secession. Players draw lessons from the Kosovo experience to strengthen their own positions in the conflicts they are themselves involved in. The first Kosovo model was applied by the Georgian government in 1999 in an attempt to justify the use of force against Abkhazia, and the second by the secessionist Chechen government in 2003 in an attempt to persuade the international community to give Chechnya a UN-led administration. The third Kosovo model, on the right to secession, is still coming into being in 2007, pending a decision on this issue.

## 2. Application of 'just war' principles to the three debates

There is a body of scholarly literature under the heading 'just war' principles.<sup>6</sup> These principles – of

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status of the secessionist territory were opposed by the central government.

<sup>6</sup> On just war theory, see, among others, Michael Walzer, *Just and Unjust Wars: A Moral Argument with*

a just cause, last resort, likelihood of success, proportionality, right intentions and legitimate authority – are traditionally applied to war settings in order to assess the legitimacy of the use of force as an exception to the rule that public authorities have to preserve peaceful relations between one another and with their citizens. But they can also be of heuristic value for dealing with the legitimacy of the creation of an international administration, or with the right to unilateral secession and its recognition by other states. These are exceptions to the general rule that the international community has to preserve the territorial integrity of states and not withdraw part of a territory from the control of its central government. The six principles mentioned above take on a specific meaning in the systematic examination of the justification for such exceptions (see Boxes 1, 2 and 3).

### *Box 1. The Kosovo criteria for military intervention in a conflict on sovereignty*

1) *A war should have a 'just cause'*. The injustice to be prevented or remedied should be serious enough to justify the use of military force. In the case of a secessionist conflict, the central government will often invoke territorial integrity as a just cause for the use of force. But the secessionist party may likewise invoke the just cause principle in defending itself against the central government. External players can invoke humanitarian reasons, such as genocide or the threat of genocide, to justify their right or even their duty to intervene using military means.

2) *The decision should be guided by 'right intentions'*. A war about secession should be fought primarily for motives consistent with a just cause. External military intervention for predominantly geo-strategic motives, for instance, would be unjust.

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*Historical Illustrations*, New York: Basic Books, 1992; Anthony Joseph Coates, *The Ethics of War*, Manchester: Manchester University Press, 1997; Bruno Coppieters and Nick Fotion (eds), *Moral Constraints on War: Principles and Cases*, Lanham, Md: Lexington Books, 2002. See also "War", Stanford Encyclopedia of Philosophy (<http://plato.stanford.edu/entries/war/>). I have applied the just war principle to the Georgian-Abkhaz and the Chechen conflicts in Bruno Coppieters, "Secession and War: A Moral Analysis of the Russian-Chechen Conflict", in *Central Asian Survey*, December 2003, Vol. 22, No. 4, pp. 377-404 and Bruno Coppieters, "War and Secession: A Moral Analysis of the Georgian-Abkhazian Conflict", in Bruno Coppieters and Richard Sakwa (eds), *Contextualizing Secession: Normative Studies in Comparative Perspective*, Oxford: Oxford University Press, 2003, pp. 187-212.



3) *Only a 'legitimate authority' may launch a war to uphold a 'just cause'*. Persons or institutions that do not represent the public interest cannot be regarded as legitimate authorities when it is being decided to resort to force in a secessionist crisis. The extent to which the central government or the secessionist party may constitute such a legitimate authority has to be examined in each particular case. The conditions under which the UN SC may act as a legitimate authority in deciding on the use of force in secessionist conflicts are specified in the UN Charter.

4) *A 'reasonable chance of success' in upholding the 'just cause' is a prerequisite for starting military operations*. In a secessionist crisis, the probability of military defeat, or the impossibility of redressing or preventing injustice by using force, precludes the legitimacy of resorting to military means.

5) *The principle of 'proportionality' must be respected*. The anticipated cost of fighting the war for the 'just cause' should not be disproportionate to the expected benefits. This cost-benefit calculation refers to both moral and material benefits for the population concerned and for the world community at large.

6) *Violence may be used only as a 'last resort'*. Force is the last of the options for remedying or preventing injustice in a secessionist crisis. Before this step is taken, it must be very clear that all efforts to uphold the 'just cause' by other means have proved fruitless.

These principles are useful for gaining a better understanding of the application of the Kosovo model to other secessionist conflicts. Georgian President Eduard Shevardnadze was the first to follow the Kosovo model by calling for military intervention against a breakaway state in his own country, shortly after NATO's military intervention in 1999. Abkhazia, a territory that had been formally part of Georgia before the dissolution of the Soviet Union, seceded in 1993. This separation was the result of a Georgian military defeat. In August 1992 the Georgian authorities had attempted to resolve an ethnic conflict in Abkhazia, between their community and the Abkhaz, by using military force. But North Caucasus volunteers and Russian troops sided with the Abkhaz, leading to the defeat of the Georgian troops and the flight of nearly the entire Georgian population from the territory. Russia deployed troops to separate the conflicting parties, with UN peacekeepers in a monitoring role. The UN was given the further role of mediating between the parties. The UN regarded Abkhazia as part of Georgia, and was striving for a federal solution based on the principle of territorial

integrity, but the negotiations on the reunification of the territory with Georgia produced no concrete results. All Georgian appeals to the UN SC for forceful international intervention to crush de facto Abkhaz statehood were in vain, mainly owing to Russian opposition to any move in that direction. Only a minority of the Georgian population expelled from Abkhazia were able to return to their homes.

The Kosovo war then showed that it was possible for Western states to intervene forcefully in a secessionist crisis. In Shevardnadze's view, the ethnic cleansing of the Georgian population from Abkhazia constituted a just cause for intervention, as had been the case in Kosovo.<sup>7</sup> For Shevardnadze, the fact that NATO had intervened in support of a population that wanted to secede and create an independent state was secondary. More important was the idea that the use of military force remains the most effective instrument for ending the contest of wills in a secessionist conflict. The lesson the Georgian President was drawing from Kosovo was thus presented as an alternative to a peaceful resolution of the conflict over Abkhazia. But there were no strong arguments to bring this alternative option into line with the last resort principle. This option was also in breach of other just war principles. Shevardnadze himself conceded that, contrary to what had happened in Kosovo, here the use of force would require the full consent of the UN SC. Without Russian support, such intervention would create a new international conflict, which NATO members were unwilling to engage in. This meant that the application of the Kosovo model to Abkhazia was not in line with the legitimate authority and likelihood of success principles. For all these reasons, NATO countries have never taken seriously the suggestion to apply this Kosovo model to Georgia.

<sup>7</sup> See Floriana Fossato, "Georgia: President Supports NATO Air Campaign; Draws Parallels With Abkhazia", Radio Free Europe/Radio Liberty, News & Analysis, 11 May 1999 (<http://www.rferl.org/features/1999/05/f.ru.990511133219.asp>). On the positions of Georgian officials on how the Kosovo example should be followed by Georgia, see also Grigory Alexeyev, "CIS states claim new Savior – NATO", *The Russia Journal*, 30 August 1999 (<http://www.cdi.org/russia/sep0399.html>). See also "The Army and Society in Georgia", December 1999, p. 9 ([http://www.cpirs.org.ge/Archive/AS\\_12\\_99.pdf](http://www.cpirs.org.ge/Archive/AS_12_99.pdf)).

*Box 2. The Kosovo criteria for an international administration for a breakaway territory*

1) In order to prevent injustice in secessionist conflicts, the creation of an international administration for a breakaway territory should have a specific 'just cause'. Attempts to secede may be either illegitimate or legitimate. In the first case, an international administration may be helpful for guaranteeing a transition towards the reunification of a country in accordance with the principle of territorial integrity. In the second case, an international administration aims to redress or prevent serious injustice, such as genocide or other forms of severe oppression, perpetrated by a central government.

2) The creation of an international administration should be guided by 'right intentions' that are consistent with a just cause, and not by the particular geopolitical interests of certain outside powers.

3) Only a 'legitimate authority' may create such an international administration for a breakaway territory. It may be agreed with the central government, or imposed by the UN SC. The European Union does not in itself have the legal authority to create such an administration. It may be involved in one, however, on the basis of an authorisation from the central government or the UN SC.

4) A 'reasonable chance of success' in upholding the 'just cause' is a prerequisite for such an option. The ineffectiveness of an international administration in overcoming the secessionist crisis through either reunification or independence would go against this option. The non-sustainability of the new institutions or the inability of the administration to prevent an escalation of the violent conflict would negate the legitimacy of such an arrangement.

5) The principle of 'proportionality' must take into account the anticipated benefits, which refer to the correction or the prevention of injustice, and the costs. The external imposition of an international administration on the central government or on the population of the breakaway territory may negatively affect the self-sustainability of state institutions and the principle of democratic representation.

6) The creation of an international administration against the wishes of one (or both) of the parties has to be a 'last resort' solution for remedying or preventing injustice, in cases where consensual alternatives respecting the principle of the territorial integrity of states cannot be found.

NATO's war on Kosovo ended in June 1999. Just a few months later, in August, the Russian government under the leadership of Prime Minister Vladimir Putin decided to enforce a military solution in Chechnya, a territory in the Northern Caucasus that was under the control of secessionist forces. The Chechen forces suffered a decisive military defeat, and had to confine themselves to isolated acts of military resistance. In numerous cases, Chechen fighters even resorted to terrorist acts.

In 2003, the pro-independence Chechen government came up with its own interpretation of the Kosovo model. Its plan for 'supervised independence' for Chechnya was based explicitly on the Kosovo experience.<sup>8</sup> UN SC Resolution 1244 was the main reference in the appeal to the international community to give this war-torn territory an international administration.

The Chechen government argued that the correction and prevention of injustice required full sovereignty and independence. Chechnya was in principle considered to have a unilateral right to secede from the Russian Federation, but the Chechen authorities agreed that the UN SC would play a crucial role in the supervision and final recognition of independence. Chechnya would be given a UN-appointed administration to prepare the ground for democratic state reform and, ultimately, Chechen independence. The principle of legitimate authority was central to this idea.

The plan received support in some political circles, particularly among members of the European Parliament, but it never became part of the negotiations on a solution for Chechnya. Russia would never support the deployment of UN troops to secure its own national borders. The plan, therefore, had no real likelihood of success.

*Box 3. The Kosovo model for unilateral independence*

1) *Secession should have a 'just cause'*. This means that the injustice to be prevented or remedied should be severe enough to justify a unilateral declaration of independence, and the recognition of a new independent state by the UN SC and the international community against the will of the central government, or its partial recognition.

<sup>8</sup> The plan was entitled "The Russian-Chechen Tragedy: The Way to Peace and Democracy" and published in February 2003 by the Ministry of Foreign Affairs of the Chechen Republic of Ichkeria ([http://www.chechnya-mfa.info/paper/en\\_text.pdf](http://www.chechnya-mfa.info/paper/en_text.pdf)).

2) *A unilateral declaration of independence and its recognition should have a 'reasonable chance of success' in achieving its aims.* These are threefold. First, the declaration and/or unilateral recognition of independence are unjustified if there is no reasonable chance of translating the just cause into reality. Secondly, there should be a reasonable chance of having the new state recognised in the long run by a substantial section of the international community. Thirdly, a declaration or recognition of independence is unjustified if it does not result in new state institutions that are sustainable.

3) *A unilateral declaration of secession and/or its recognition can only be a 'last resort' solution.* Before resorting to such a decision, it should be reasonably clear that all other options – including minority rights, autonomy and federalism – are powerless to remedy or to prevent injustice and that it is impossible to obtain the central government's agreement to the creation of the new independent state.

4) *A unilateral declaration of independence has to be made or recognised through a 'legitimate authority'.* This principle has two different meanings in this particular context. First, it refers to the legitimate authority of the secessionist movement. This should represent the entire population of the seceding territory. It should be able to enforce legislation over the whole territory and to act with respect for international human rights and minority rights. The need for a distinct and clearly identifiable national identity, and for a majority (perhaps even a special majority) of referendum votes in favour of independence, may also be approached from the principle of 'legitimate authority'. Secondly, it refers to the process of recognising a state through a legitimate authority on the international scene. This generally means entry into the UN.

5) *The principle of 'proportionality' should be respected.* The anticipated costs and benefits should be calculated at both the domestic and the international levels.

6) *The decision to seize independence or to recognise a state that has seceded unilaterally should be guided by 'right intentions'.* This means that the unilateral declaration or recognition of its independence – either by the UN SC or unilaterally by some states – should be motivated primarily by considerations consistent with the just cause for independence.

### 3. Testing options for Kosovo with the 'just war' principles

In 2007, it seems that five options are being envisaged for the future status of Kosovo (see Box 4). With the exception of the first one, they are based on the assessment that Kosovo has a just cause for independence.

#### *Box 4. Five options in the negotiations on the status of Kosovo*

- 1) An agreement between Belgrade and Pristina on autonomous status.
- 2) An agreement between Belgrade and Pristina on independence for Kosovo.
- 3) An agreement within the UN SC on supervised independence for Kosovo, paving the way for full implementation of the Ahtisaari plan.
- 4) A decision on the question of sovereignty and independence is put on hold, pending a resolution by the UN SC on supervised independence. This option may include a reform of Kosovo's state structures with the consent of the UN SC.
- 5) Kosovo's unilateral declaration of independence is partially recognised.

Each of these options needs to be examined further in the light of the 'just secession' principles – of just cause, likelihood of success, last resort, legitimate authority, proportionality and right intentions.

#### *A just cause for independence?*

The international authority established by the UN for Kosovo ruled out the exercise of state authority over this territory by Belgrade, pending a decision on its final status. The Western states who supported this SC resolution in 1999 were strongly motivated by a just cause argument. In their view, the Serb state was responsible for the massive violation of human rights in the 1998-1999 period. An international administration would prevent the Kosovo Albanians from being in such a situation again. The same just cause argument in favour of the establishment of a provisional international authority over Kosovo was then used to justify the definitive loss of sovereignty over this territory by Serbia.

The Serb government, for its part, likewise argues from the just cause perspective. It considers that the secession of Kosovo would violate its sovereignty and the principle of territorial integrity. It has strong historical ties to the region. From the Serb point of view, the independence of Kosovo would be a direct threat to the rights of the Serbian

minority of this territory. Belgrade does not accept the argument that the past crimes of Slobodan Milosevic justify the future independence of Kosovo, maintaining instead that the democratic Serbia that emerged from the overthrow of the Milosevic regime in October 2000 would give sufficient guarantees to prevent such injustice from ever being repeated again.

It may be concluded that the massive scale of the human rights violations created a just cause for Kosovo's independence, aside from the principle of territorial integrity. The injustice was so severe that it has delegitimised Serbia's sovereign rights over the territory to which this principle of territorial integrity is tied.

### *Does independence have a likelihood of success?*

The first option would give Kosovo autonomy within Serbia, while the four remaining options aim at its independence. What are their chances of success, with respect to 1) upholding the just cause, 2) achieving independence and 3) creating sustainable state institutions?

Where the first option is concerned, the Serb government argues that the war crimes committed against the Kosovo Albanians cannot be repeated in a democratic Serbia. Constitutional guarantees, they say, would be given to the Kosovo Albanians in the form of broad autonomy for Kosovo.

The likelihood of success of the autonomy option in preventing fresh injustice would be strengthened by European integration. Serbia has a reasonable long-term chance of becoming fully integrated within the European Union, and such integration is generally considered to have positive consequences on conflict resolution.<sup>9</sup> State reform in line with European democratic and legal standards would strengthen the guarantees for Kosovo Albanians. Integration within the EU, in particular, will increase the likelihood of shared sovereignty within a federal framework. The transfer of power from Serbia and from Kosovo to the European level of governance will decrease the points of friction between the communities and the significance of international boundaries. The Europeanisation of

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<sup>9</sup> On the consequences of European integration for secessionist conflicts at the European periphery see Bruno Coppieters et al., *Europeanization and Conflict Resolution: Case Studies from the European Periphery*, published in 2004 as a special issue of the *Journal on Ethnopolitics and Minority Issues in Europe*, 1/2004 (<http://www.ecmi.de/jemie/>). Also published as a book by Academia Press, Ghent, 2004.

Serbia is an additional argument in favour of autonomy for Kosovo.

Those who do not believe that autonomy can succeed in preventing fresh injustice against the Kosovo Albanians argue that the present constitution provides only limited forms of self-governance for the autonomous provinces, including Kosovo (Articles 182-187). They can regulate "matters of provincial interest" in accordance with Serbian law, but it keeps them under the close supervision of the central government and the Constitutional Court of the Republic of Serbia.<sup>10</sup>

Serbia agrees to looser links between Belgrade and Pristina than those stipulated in the present constitution. The autonomous status of Hong Kong within the People's Republic of China has been mentioned by Serb negotiators as a suitable model,<sup>11</sup> but there is no guarantee that such an autonomous status would be sustainable. Serbia has undergone thorough democratic reform, but it does not enjoy sufficient political stability or multi-ethnic tolerance to secure autonomy for Kosovo or power-sharing between the Serb majority and the Kosovo-Albanian minority at central state level.<sup>12</sup> For these reasons, the Kosovo Albanians do not feel that Serbia has become more trustworthy since the overthrow of the Milosevic regime. They are therefore unwilling to enter into negotiations on alternatives to independence.

In the previous section, we concluded that the severity of the injustice suffered by the Kosovo Albanians before NATO's intervention in 1999 justified independence from the perspective of a just cause. Independence can also be justified from the perspective of the likelihood of success principle. Autonomy within Serbia and other federal alternatives do not offer sufficient security guarantees to the Kosovo Albanians.

The four remaining options being discussed in 2007 in the international debate on Kosovo all aim at independence. The likelihood of success of this perspective is strengthened by the reasonable expectation that Kosovo's independence will be recognised by a substantial part – and in the long run, even the whole – of the international community. This is mainly thanks to Western support. To gain acceptance from the international community is difficult, but the combined diplomatic leverage of the United States and the

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<sup>10</sup> Constitution of the Republic of Serbia ([http://www.parlament.sr.gov.yu/content/eng/akta/ustav/ustav\\_1.asp](http://www.parlament.sr.gov.yu/content/eng/akta/ustav/ustav_1.asp)).

<sup>11</sup> *Süddeutsche Zeitung*, 6 November 2007.

<sup>12</sup> "Kosovo: Toward Final Status", op. cit., p. 15.



European Union gives Kosovo far greater diplomatic support than that enjoyed by any other breakaway state.<sup>13</sup>

Each of these four remaining options aims at achieving Kosovo's independence through different means. Their likelihood of success in achieving recognition has to be assessed separately. The second option – Serb consent to Kosovo's independence – is not likely. Kosovo is crucial to Serb national identity. The government's hands are tied by a Constitution that considers Serbian territory “inseparable and indivisible” (Article 8). The Serb Constitution (Article 114) further prescribes that the Serbian president has to swear that he will devote all his efforts to preserving “the sovereignty and integrity of the territory of the Republic of Serbia, including Kosovo and Metohija as its constituent part”.

The European Union and the United States had expected Serbia, which had put great faith in its expectation of membership of the European Union, to cave in to their diplomatic pressure. This pressure, however, was not sufficient to persuade the main political parties to give up Serbian rights over Kosovo.

It has often been asserted that Serb consent to independence could be achieved by making far-reaching concessions, such as territorial adjustments to the advantage of Serbia. For example, Serbian-populated Northern Kosovo could be attached to Serbia. At first, this kind of partition was deemed unacceptable by Western governments. The creation of ethnically homogeneous territories would be in breach of the principle of multi-ethnic co-existence, and undermining this principle would constitute a threat to the multinational Bosnian federation and the multinational Macedonian state.<sup>14</sup> But in the face of Serb and Russian intransigence, Western diplomats have softened their position on that question – without, however, being able to break the deadlock in the negotiations.

The second option thus fulfils the likelihood of success principle defined as the successful upholding of a just cause, but it does not fulfil the

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<sup>13</sup> Turkey remained diplomatically isolated when it recognised the independence of the Turkish Republic of Northern Cyprus (TRNC) in 1983. Russia would likewise be unable to gain a significant following in the international community if it were to recognise the unilateral declarations of independence made by Abkhazia, South Ossetia or Transnistria. This lack of likelihood of success largely explains why the Russian government has so far refrained from granting such recognition.

<sup>14</sup> “Kosovo: No Good Alternatives”, op. cit., pp. 10-15.

same principle when it is defined as the likelihood of achieving independence. It could be added here that this option would again be in accordance with the same principle when defined as the creation of sustainable state institutions.

A third option would be a unilateral decision taken by the UN SC – against the will of Serbia – on independence for Kosovo under international supervision. In March 2007, the UN Secretary-General presented a “Report” and a “Comprehensive Proposal for the Kosovo Status Settlement” to the UN SC. Both documents had been prepared by his special envoy, Martti Ahtisaari.<sup>15</sup> After abandoning all hope of reaching agreement between the parties, he pleaded in favour of a decision by the UN SC in support of supervised independence. Ahtisaari received support from Western countries, but Russia and China remained firm in their refusal to accept a UN SC proposal that would run counter to the Serb position on territorial integrity.<sup>16</sup>

Since 2006 the UN mediation process has had to be extended repeatedly in order to broaden international support for an agreement. Each postponement has been coupled with the setting of new deadlines, with still no breakthrough in the negotiations. But a compromise between the permanent members of the UN SC cannot reasonably be ruled out. It may thus be concluded that the third option fulfils the likelihood of success principle as far as the implementation of just cause is concerned, and as a reasonable strategy for achieving independence, despite the immense difficulties confronting international diplomacy.

Furthermore, it would meet the same likelihood of success criterion with respect to the creation of sustainable institutions. A UN SC resolution in favour of supervised independence would create the necessary legal framework for efficient governance in Kosovo. Expressing a view widely shared among Western diplomats, Ahtisaari stated

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<sup>15</sup> Letter dated 26 March 2007 from the Secretary-General to the President of the Security Council. Addendum. Comprehensive Proposal for the Kosovo Status Settlement, UN Security Council, S/2007/168/Add.1 (<http://www.unosek.org/unosek/index.html>). This document includes the Report and the Comprehensive Proposal. The concept of independence is mentioned in the former but not in the latter – a difference that is important in the search for international diplomatic support for the ideas present in both documents. See ICG, “Kosovo: No Good Alternatives to the Ahtisaari Plan”, No. 17, p. 3.

<sup>16</sup> On Russia's position, see Oksana Antonenko, “Russia and the Deadlock over Kosovo”, *Survival*, Vol. 49, No. 3, pp. 91-106.



that “economic development in Kosovo requires the clarity and stability that only independence can provide”.<sup>17</sup>

A fourth option available is to put the decision on hold, at least where sovereignty and independence are concerned. This option would give Western powers more time to persuade Russia and China not to oppose a SC resolution in favour of supervised independence. But even though this option fulfils the likelihood of success principle in terms of just cause and as a strategy for independence, it creates a series of sustainability problems of its own. A lengthening of the decision-making process could lead radical Kosovo Albanians to resort to force. Violent riots have already taken place (in March 2004), directed against the Serbian population of Kosovo. Hundreds of citizens belonging to the Kosovo minorities were injured in mobilisations across the territory that involved more than 50,000 people.<sup>18</sup> A repetition of such events could necessitate the use of force by the local police and by NATO’s KFOR troops, but without any guarantee that this would stabilise the situation. An escalation of violence would entail the risk of a spill-over into other Balkan states, including neighbouring Macedonia and Bosnia. But not all international actors appear to be worried by this eventuality. Russian diplomats did not seem particularly impressed by this argument against postponing a UN decision on final status.<sup>19</sup>

There are also substantial legal and economic arguments against postponement. As the clarification of the final legal status of Kosovo is intended to enable large-scale economic aid and investment to flow in from abroad, any delay makes economic recovery more difficult, particularly in a situation where economic indicators are worsening.<sup>20</sup> For these reasons, the option of leaving Kosovo in a legal and political limbo for an indefinite period has encountered strong opposition from Western states, and postponement would not meet the likelihood of success principle in its specific meaning of the creation of sustainable institutions.

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<sup>17</sup> “Report of the Special Envoy”, op. cit., p. 3.

<sup>18</sup> Human Rights Watch, Human Rights News, Kosovo: “Criminal Justice System Fails Victims”, 30 May 2006 (<http://hrw.org/english/docs/2006/05/30/serbia13441.htm>). See also Human Rights Watch, “Not on the Agenda: The Continuing Failure to Address Accountability in Kosovo Post-March 2004”, 30 May 2006 (<http://hrw.org/reports/2006/kosovo0506/>).

<sup>19</sup> “Kosovo: No Good Alternatives”, op. cit., p. 6.

<sup>20</sup> “Kosovo: Toward Final Status”, op. cit., p. 1, 5.

To address this problem it has been proposed that Serbia and Kosovo should regulate their relations, except on the question of sovereignty. Under these conditions, state reforms in Kosovo could proceed, but the questions of sovereignty and independence would remain to be decided in the future.<sup>21</sup>

The fifth alternative is a unilateral declaration of independence by Kosovo and its recognition by major countries.<sup>22</sup> The US and a number of European states could take such a step towards partial recognition in the expectation that other states would follow suit. Such an option would turn independence into an irreversible option, and thus fulfil the likelihood of success principle in that particular respect. Such a strategy may, however, require a good deal of time, particularly if the EU member states are not unanimous in their attitude. This option would also fulfil the likelihood of success principle defined as the creation of sustainable institutions, even if the main measures proposed by Special Envoy Ahtisaari would have to be implemented without the legal basis provided by authorisation from the SC.

### *Is independence a last resort option?*

The first two options are based on an agreement between the conflicting parties, so the question of independence as a last resort does not arise. The Western governments, faced with Russia’s opposition to the third option of a UN SC decision on supervised independence, have already moved to discuss a choice between the fourth and fifth options. Those who oppose the fifth option – partial recognition of a unilateral declaration of independence – stress that the third option of a UN SC decision still remains on the table and that the fourth – to put the decision on hold – still leaves some room for seeking agreement at the international level. This is excluded in the fifth option. It may therefore be concluded that the third and fourth options are in line with the last resort principle, but the fifth is not.

### *Is independence based on a legitimate authority?*

In a just secession analysis, the principle of legitimate authority refers first of all to the legitimacy of the process of recognising independence and secondly to the legitimacy of the new state institutions that are to be created within

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<sup>21</sup> *Der Tagesspiegel*, 5 November 2007.

<sup>22</sup> This option is analyzed in depth in International Crisis Group, “Breaking the Kosovo Stalemate: Europe’s Responsibility”, Europe Report No 185, 21 August 2007 (<http://www.crisisgroup.org/home/index.cfm>).

the framework of supervised independence. The latter involves assessing their sustainability, representativeness and respect for minority rights.

The Kosovar institutions that came into being after the 1999 war were weak and incapable of taking on the responsibilities normally assumed by state authorities. The failure to integrate the Serbs and other minorities, opposition to the return of Serb refugees, lack of qualified personnel and widespread corruption were among the main problems found in the post-1999 context.<sup>23</sup> The principle of ‘standards before status’, adopted by the UN in 2002, was intended to create democratic institutions based on the rule of law. State reforms preceded the present international discussion on the supervised independence of Kosovo, as a necessary condition.

Ahtisaari’s “Comprehensive Proposal” of 2007 contains a list of general principles, such as the aim of creating a multi-ethnic society with Albanian and Serbian as official languages, respect “for the highest level of internationally recognised human rights and fundamental freedoms, as well as the promotion and protection of the rights and contributions of all its Communities and their members”. It further rules out unification with Albania and, as part of the supervised nature of Kosovar independence, sets up a comprehensive international framework to “supervise, monitor and have all necessary powers to ensure effective and efficient implementation of this Settlement”. The decentralisation of state power to the municipal authorities is designed to strengthen the multi-ethnic character of self-governance.

The active involvement of the EU, the appointment of an International Civilian Representative with wide powers, and an international military presence, all constitute strong guarantees that human rights and democratic standards will be upheld in the new state, particularly with respect to its minorities – or rather, the non-Albanian ‘communities’, as called in the UN proposal.

Unlike the autonomous institutions to be created for the Kosovo Albanians within Serbia under the first option, the Ahtisaari plan gives broad guarantees of the sustainability, representativeness and respect for minority rights of the state institutions. In principle, the last four of the five options mentioned above could address these issues, but only the second (through Serb consent) and the third (through a UN SC resolution) would implement the Ahtisaari plan in full. Both options would thus meet the legitimate authority principle in its two different meanings: as regards the

legitimacy both of the process of recognition and of the creation of state institutions.

In the fourth option, the suspension of the sovereignty issue would, at best, be linked in the short term to a new resolution by the UN SC to proceed with further state reforms in Kosovo. This could then include a partial implementation of the Ahtisaari plan. But even if this did not happen, the state institutions would still be regarded as legitimate, being based on the present UN SC resolution on the creation of an international administration. Where the legitimate authority principle in relation to the process of recognition is concerned, this option is based on the assumption that in the future an agreement can be found within the UN SC. It is thus in accordance with both meanings of the legitimate authority principle.

The fifth option, on the contrary, should be seen as not being in line with the legitimate authority principle in its first meaning, as it refers to partial recognition, ruling out acceptance by the Serb central government and the UN SC as a whole. Full legitimacy would be lacking even if Kosovo were to be recognised by a substantial part of the international community. Furthermore, lack of UN supervision of the process leading to independence would create serious legal problems for the EU in its reconstruction and state-building efforts. But this would not necessarily make them less legitimate in terms of their representativeness or respect for minority rights. The fifth option is thus in accordance with the legitimate authority principle in its second meaning.

### *Is independence in accordance with the proportionality principle?*

The moral costs and benefits of each of the five status options have to be calculated at both the domestic and the international levels. Where autonomy is concerned, with the first option the costs would be higher than the benefits at both levels, as autonomy would probably not prevent renewed domestic conflicts with international implications. Where the four other options are concerned, one potential benefit of independence could be to lift Kosovo out of the legal limbo to which it has been relegated since the military intervention in 1999. The consequences for the non-Albanian minorities in Kosovo – primarily the Serb population that has not left the territory – also have to be assessed. International monitoring and control of the new state would give strong guarantees of minority protection in Kosovo. But it must also be acknowledged that the presence of international peacekeeping forces in Kosovo in the post-war period was not sufficient to secure the rights of the Serb minority, who fled the region in

<sup>23</sup> “Kosovo: Toward Final Status”, op. cit., pp. 8-9.

great numbers. At the international level, the first concern would be the potentially destabilising repercussions on other conflicts.

The costs and benefits would be in direct proportion to the type of outcome and the degree of international legitimacy this modus of supervised independence received in the various options in favour of independence. An agreement between the two parties on independence for Kosovo, in line with the second option, would in my view result in a positive proportionality calculation at both the domestic and international levels.

Despite being based on an endorsement by the UN SC, the third option would have significant negative consequences for the mediation of other conflicts. The establishment of a legal framework for supervised independence in the non-colonial world would constitute a novelty in secessionist conflicts. International security organisations such as the UN and the OSCE (Organisation for Security and Cooperation in Europe) have traditionally regarded the application of federal and other power-sharing techniques as the best approach to resolve violent ethnic conflicts and achieve re-unification of divided states and nations. After Kosovo, it will be more difficult to convince the leaders and populations of breakaway territories that there are viable last-resort alternatives to full sovereignty.

The fourth option – to postpone the status issue – could have substantial negative consequences for domestic security, and the fifth for international security. A split in the international community over the recognition of a new state, following the fifth option, would be detrimental to resolution of other secessionist conflicts.

Russia points out the importance of envisaging all the potential repercussions on international security of a unilateral Western decision on Kosovo. In its view, any decision has to be consistent with the management of other secessionist conflicts in Europe. Unilateral steps by the Western states leading to a recognition of Kosovo's independence could very well be followed by unilateral steps (not necessarily involving the recognition of their independence) on the part of the Russian government concerning Abkhazia, South Ossetia and Transnistria.

Unilateral recognition of a Kosovar declaration of independence would not only set Russia and China against the US, but would also create dividing lines within the EU. In one way or another, Spain, Slovakia, Cyprus, Greece, Hungary and Romania are all confronted with secessionist conflicts. The remaining EU members would have the greatest difficulty in convincing them that recognition of

Kosovo's independence without the endorsement of the UN SC does not affect their own interests.

Chinese observers are concerned that a unilateral declaration of independence by Kosovo and its subsequent recognition by the US and other Western states would create a model for Taiwan. Radical currents within the Taiwanese pro-independence movement might feel strengthened in their resolve to put a question related to sovereignty to referendum, in the hope that this might in the long run be recognised by the international community. Such a move would inevitably provoke a severe crisis in cross-Strait relations.

### *Are the motives for independence based on right intentions?*

There is no reason to believe that the true intentions of the Serb or Kosovar authorities diverge from their justification of their respective positions on secession. They both defend ideological positions that are in line with their views on nationhood and on their legitimate interest in a just world order. The Kosovo Albanian authorities are convinced that refusing them independence would constitute a severe injustice, while the Serb government argues that breaching the territorial integrity of its state would be unjust. Other motives undoubtedly exist, but they are of secondary importance in this respect. As far as the right intentions principle is concerned, both parties are thus defending what they subjectively regard as a just cause.

The positions of the external actors are more complex. Western governments, in particular the European Union, are directly involved in the management of Kosovo's affairs, and will thus be far more concerned about the consequences of any status decision for stability in Kosovo itself than either Russia or China, which do not have to carry the burden of the non-resolution of this conflict. Some EU members are likewise fearful of the indirect consequences of the option of partial recognition of Kosovo for secessionist conflicts within their own territory (Spain and Cyprus) or on the territory of one of their allies (Greek concerns about Cyprus). Russia has similar concerns in relation to the North Caucasus, but in a Western unilateral decision it also sees certain opportunities for strengthening its position on Abkhazia, South Ossetia and Transnistria. Despite these very different interests and perspectives, however, all the external parties – including Russia – are primarily defending a position that they subjectively consider to be in line with their view of nationhood and just cause. In this respect, the just intentions principle is respected in all the positions that have been taken concerning the future status of Kosovo.



#### 4. A Difficult Choice

In March 2007, Martti Ahtisaari argued in his proposal that Kosovo constituted “a unique case” which required “a unique solution”.<sup>24</sup> The case of Kosovo is indeed unique in many respects, including the circumstances of the conflict, but the option of supervised independence for the territory nonetheless remains based on a number of principles that have universal value. Because of this, it has already been possible to apply two ‘Kosovo models’ – one on the use of force in a secessionist conflict and one on the creation of an international administration for breakaway territories – in discussions on secessionist conflicts in Abkhazia and Chechnya. These applications, however, were not convincing, but it is very probable that the ‘Kosovo model’ on unilateral independence will have a greater impact in conflicts on sovereignty.

Serbia’s loss of control over Kosovo can be justified by the just cause argument. Supervised independence is the only means of guaranteeing the correction and prevention of severe injustice.

Where the principle of the likelihood of success is concerned, in choosing Kosovo’s future status a distinction has to be drawn between five different options: 1) autonomy, 2) independence with the agreement of Serbia, 3) supervised independence under the authority of the UN SC, 4) postponement of the final decision on independence in the expectation that this will be decided consensually within the UN SC at a later stage and 5) unilateral recognition of Kosovo’s independence by a number of states.

The likelihood of success principle has three different meanings. Only the four options in favour of independence meet the principle in its first meaning, as the successful upholding of a just cause. Where the second meaning is concerned – the successful recognition of Kosovo’s independence by the international community – Kosovo is a singular case among secessionist conflicts owing to the widespread support among Western governments for the idea of its supervised independence. This has created the reasonable hope that Russia and China may in the long term have to agree to this option. This expectation is assumed in the third, fourth and fifth options. The second, third and fifth options follow the principle in its third meaning, the creation of sustainable state institutions. In this respect, the potential risks implied in the fourth option are too great to be considered in line with this principle.

The option of a UN SC resolution in favour of conditional independence (option 3) and the option to put the question of independence on hold (option 4) are the only ones in line with the last resort principle. This criterion is not applicable to the option of achieving independence on the basis of an agreement between the parties (option 2). The same options (2, 3 and 4) are in line with the principle of a legitimate authority, understood as a legitimate process for achieving recognition. Where the creation of legitimate state institutions is concerned, all options with the exception of the first (autonomy) are in line with the legitimate authority principle.

The proportionality balance between the moral costs and benefits of supervised independence has to be calculated separately at the domestic and international levels. Where the former is concerned, the rights of the non-Albanian communities in Kosovo are a prominent issue. Where the international level is concerned, the extent to which Kosovo will be regarded as a precedent – and even a model for conflict resolution – in other secessionist cases may be regarded as one its main costs. Overall, however, the second and third options are in line with the proportionality principle. To put the decision on hold (option 4) is mainly positive at the international level, but could have a negative impact in terms of its domestic consequences. The opposite is true for the fifth option – partial international recognition.

The deadlock in the negotiations has led to mutual accusations. The main actors are accusing each other of seeking strategic advantage at odds with the security interests of the region and of the populations concerned. In terms of the just secession principles, they accuse each other of going against the principle of right intentions. But this criticism is open to challenge. Strategic interests do undoubtedly play a role, but they do not explain the difficulty in reaching agreement on common principles for resolving the question of just secession. In the case of great powers such as Russia or China, such interests remain subordinate to their view of the nation, and in particular to their fears of secessionist crises erupting on their own territory. For them, the very concept of a divided state has a different meaning than for the United States. Like Spain or Cyprus, Russia and China frame the problem of Kosovo in terms of their own national identity. It may be concluded that it is perhaps unfortunate that the search for geopolitical advantages not in line with the right intentions principle do not play a greater role in this conflict. That would make it easier to find a compromise.

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<sup>24</sup> Letter dated 26 March 2007, p. 4.

*Box 5. Five options and six principles of just secession in the Kosovo negotiations*

|   | Agreement between Serbia and Kosovo on autonomy | Agreement between Serbia and Kosovo on independence | UN SC decision on supervised independence | Final decision on independence on hold | Partial recognition |
|---|---|---|---|--|---------------------|
| 1. Just cause                               | No  | Yes   | Yes                                       | Yes                                    | Yes                 |
| 2. Likelihood of success                    |   |   |   |  |                     |
| - in implementing a just cause              | No  | Yes   | Yes                                       | Yes                                    | Yes                 |
| - as a strategy for achieving independence  | Not applicable                                  | No  | Yes                                       | Yes                                    | Yes                 |
| - in building sustainable institutions      | No  | Yes   | Yes                                       | No                                     | Yes                 |
| 3. Last resort                              | Not applicable                                  | Not applicable                                      | Yes                                       | Yes                                    | No                  |
| 4. Legitimate authority                     |   |   |   |  |                     |
| - of the process for achieving independence | Not applicable                                  | Yes   | Yes                                       | Yes                                    | No                  |
| - of the state institutions                 | No  | Yes   | Yes                                       | Yes                                    | Yes                 |
| 5. Proportionality                          |   |   |   |  |                     |
| - domestic                                  | No  | Yes   | Yes                                       | No                                     | Yes                 |
| - international                             | No  | Yes   | Yes                                       | Yes                                    | No                  |
| 6. Right intentions                         | Yes   | Yes   | Yes                                       | Yes                                    | Yes                 |

Box 5 sums up the five options in the Kosovo negotiations. Each of them can be assessed according to the six just-secession principles. The application of the principles of just cause and last resort lead to the conclusion that Kosovo's independence provides more solid guarantees of the prevention and correction of injustice than other forms of self-governance. This excludes option 1, autonomy. Of the four remaining options, which pave the way to independence, option 2 – namely, mutual agreement between Serbia and Kosovo on the creation of a new sovereign state – is fully in line with the just secession principles, with the exception of the principle of a reasonable chance of success.

A UN SC resolution in favour of supervised independence for Kosovo (option 3) is in accordance with all six principles. If this choice does not materialise, option 4 – putting a decision on sovereignty and independence on hold – may be the most reasonable alternative, despite its significant moral costs, notably the risk of domestic instability. For this reason, this option is not in line with the likelihood of success principle when it refers to the sustainability of state institutions, or with the proportionality principle when it refers to consequences at the domestic level.

Finally, option 5 – namely, division in the international community caused by partial recognition – does not appear to be justified. Such a unilateral act might be in line with the principle of

likelihood of success, as far as the creation of an independent state is concerned, but it would not be in accordance with the principles of legitimate authority (in terms of the process of recognition) or proportionality (with respect to the costs and benefits at the international level). It would therefore make it more difficult in the future for the international community to agree on questions of international justice.

## 5. Outlook

Kosovo's future status would have to guarantee that the type of massive injustices suffered by the Albanian Kosovars under Serbian rule would not be repeated, and that the Kosovar minorities will not meet a similar fate. An internationally supervised form of independence meets this criterion. But the strong support by Western countries of this status option is not sufficient to guarantee its full international recognition. Partial recognition (by some but not all of the permanent members of the UN Security Council) may strengthen Kosovar state institutions on the domestic level, but would negatively affect their international legitimacy and their access to international institutions and support programmes. Putting the decision concerning the final status option on hold would to the contrary constitute a certain risk for domestic stability, but would remain in line with international law and with the principles applied by Western governments in other secessionist conflicts. A suspension of the

sovereignty question would more particularly have the advantage that it leaves the door open to further diplomatic negotiations, particularly within the UN Security Council. Confronted with this dilemma, Western governments may decide in function of pressing concerns over domestic stability in Kosovo, in the hope that the long-term effects of such a decision would not be detrimental to the resolution of secessionist conflicts elsewhere. The denial that Kosovo could constitute a universal model is based on such a hope. This would not be a wise choice, but even in such a case, Western governments have an interest in a managed and limited form of recognition of Kosovo's international status, where some of the key issues of sovereignty and independence remain open for diplomatic negotiation.