



A Global Pro Bono Law Firm

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ABOUT PILPG

The Public International Law & Policy Group (PILPG) is a 501(c)(3) non-profit organization, which operates as a global *pro bono* law firm providing free legal assistance to developing states and states in transition involved in conflicts. To facilitate the utilization of this legal assistance, PILPG also provides policy formulation advice and training on matters related to conflict resolution. To date, PILPG has advised over a dozen countries on the legal aspects of peace negotiations and constitution drafting, and over fifteen countries in Europe, Asia and Africa concerning the protection of human rights, self-determination, and the prosecution of war crimes.

KOSOVO:  
NEGOTIATING FINAL STATUS

A Review of Lessons Learned From a Negotiation Simulation held in  
Pristina, Kosovo



The Public International Law and Policy Group (PILPG) organized and hosted a Kosovo Final Status negotiating simulation in Pristina from September 17-19, 2003. The exercise was based on a PILPG simulation on the same topic, which was prepared and played several times in Washington in 2001 and 2002. The materials were significantly updated to reflect the evolution of developments within Kosovo, Serbia and the international community.

The simulation was run three separate times, each with different participants. On the first day the participants consisted of approximately twenty young people drawn from a range of backgrounds, including officials, political party representatives, and NGOs. Noteworthy was the participation of Serbs from Kosovo and Belgrade. Participants in

the second day's simulation consisted entirely of "internationals," chiefly members of international organizations or NGOs working in Kosovo. In both of these sessions the simulation was run in the form of a negotiating exercise, lasting about four hours, followed by time for discussing lessons learned.

Participants in the third session consisted of Kosovo Albanian officials and political figures. This session was conducted in the form of a round table discussion of the issues rather than an actual negotiating simulation.

The objective of the three simulations was to stimulate thinking and provide familiarity with a broad range of relevant and practical issues relating to final status for Kosovar and international officials, academics, NGO reps, and observers who are engaged in preparing for the upcoming negotiations on Kosovo's future status. Participants in the simulations uniformly expressed enthusiasm for the experience, noting the value in sharpening thinking and exploring new ideas beyond those allowed by current policy positions of the institutions they represented. The Kosovo Albanian officials and public figures particularly welcomed the exercise and urged the repetition of similar opportunities to help them prepare for future negotiations.

The materials for the 2001- 2002 Washington-based simulations were prepared by Louis D. Sell, a former State Department official with wide experience in the Balkans; Vladimir Matic, a political science professor at Clemson University and former senior official in the foreign ministry of Yugoslavia before the country's disintegration in 1991; and by Rick Lorenz, a retired Marine Corps colonel who served in Kosovo and Bosnia. These materials

were updated for the 2003 exercise by Sell and Matic. The simulations were conducted in Pristina by Paul Williams of American University, and Albert Cevallos. Yll Hajdari and others of the Kosovo NGO Forum provided policy and administrative support. This project was made possible by a generous grant from USIP. The views in this report do not necessarily reflect the views of the PILPG, which does not advocate specific policy positions, nor does it reflect the views of American University.

## DAY ONE SIMULATION

Participants in the first simulation, held September 17, consisted of approximately 20 young people from the region. Most were Kosovo Albanians but Kosovo Serbs and Serbs from Belgrade also participated. In this session discussions quickly bogged down over the consideration of modalities, especially the issue of how Kosovo Serbs would participate in the talks. The two key questions of independence and borders lurked just beneath the surface in all of these discussions of modalities. Noteworthy in this session was the enthusiasm with which many of the young participants threw themselves into their assigned roles and also the openness toward colleagues from different sides of the fence which some displayed once they had reverted to their “real-life” roles during the “lessons learned” discussion at the end of the session. Also interesting was the willingness to engage in “outside the box” thinking displayed by some of the participants in this session.

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*“One issue which quickly came to the fore in the Kosovo Albanian group was a sense of powerlessness.”*

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One issue which quickly came to the fore in the Kosovo Albanian group was a sense of powerlessness. This was seen in observations that, under the Constitutional Framework currently applicable in Kosovo, the Kosovo government lacks any authority to engage in foreign relations and a conviction that whatever the Kosovo Albanian team proposed would be overruled by the internationals governing Kosovo. In seeking to persuade the Kosovo Albanians to agree to a gesture of good will, the strongly played EU figure advised the Albanians to understand that “the Europeans don’t like you.” The Kosovo Albanian team looked to the U.S. for support but found little in this particular simulation, which may be why one Kosovo Albanian player said his team should understand that the United States could withdraw from Kosovo “in a moment.” This feeling of powerlessness was probably one reason why the Kosovo Albanian team initially declined to speak substantively in the first plenary session until Belgrade demonstrated some

kind of a good-will gesture.

In their internal discussions, the Kosovo Albanian team identified two issues as not subject to negotiation: independence and retaining Kosovo’s territorial integrity. Although the simulation never got to the point of formally discussing the issue of the divided city of Mitrovica, there was broad recognition that this would be a focal point for talks about Kosovo’s future. The Kosovo Albanians displayed deep suspicion about Belgrade’s intentions in establishing what amounts to a separate authority in the northern part of Kosovo and about the acquiescence of the international community in allowing this to happen. On the other hand the Albanian team also displayed a sense of realism in acknowledging that the separateness of the largely Serb-inhabited north is a fact which they will have to deal with in the talks. At the end of the session, for example, the Kosovo Albanian delegation offered to grant broad decentralization to Serbs provided Belgrade recognized Kosovo’s territorial integrity.

Underneath this attitude was recognition—sometimes displayed in humorous or cynical asides—that territorial integrity and independence might be mutually exclusive. This, in turn, seemed to create some grounds for at least temporary compromise on full independence although not on the issue of any real rule by Belgrade over Kosovo. At the end of the simulation, under pressure from the EU representative, the Kosovo Albanian team offered to accept conditional independence but only provided this would lead to a binding referendum on Kosovo’s future in two-to-three years and also provided that it was not interpreted as Kosovo joining the new Serbia-Montenegro quasi-state.

Some Kosovo Albanians also suggested semi-seriously that a “three for three swap” might be possible, in which the three heavily Serb populated municipalities of northern Kosovo would be exchanged for three Albanian populated areas in the southern Serb region of Presevo. This attitude was based in part on recognition of the separate reality which Belgrade—tolerated if not abetted by the international community—has created in the northern part of Kosovo. Albanian feelings of powerlessness were also a factor; the team recognized that absent international support—not likely to be forthcoming based on past experience—it would be impossible for Pristina to regain control over the north. One counterpart to this feeling of being left in the lurch by the international community was the willingness of the Albanians to raise territorial issues of their own. Some of the Kosovo Albanian team members, for example, said that if Kosovo Serbs were allowed to sit on the Belgrade delegation, Albanians from Presevo or Tirana should join the Kosovo team.

The issue of the Kosovo Serbs quickly emerged as a key sticking point. The Kosovo Serb team initially sat with the

Belgrade delegation, provoking protests by the Kosovo Albanian delegation. A compromise, brokered by the Russian player, under which the Kosovo Serbs would sit on both the Kosovo team and the Belgrade team, was acceptable to the Kosovo Serbs but never gained the support of the Albanians who seemed conflicted on their views toward the Kosovo Serbs. On the one hand, seating the Kosovo Serbs with the Belgrade team implied that Belgrade still had a role in Kosovo and also seemed to point toward partition. On the other hand, the Albanians did not really believe the Kosovo Serbs would be willing to be part of an independent Kosovo. They also feared that Kosovo Serbs on their delegation would be a funnel for information to Belgrade.

The discussion showed how consideration of modalities could quickly lead the negotiations into deadlock. In the lessons learned discussion many of the participants, drawing attention to this phenomenon, stressed the importance of good preparation by the international organizers in order to clear away modalities issues before the two sides sat down for substantive talks. Other participants expressed the view that the only way to get beyond the issues of modalities into the discussion of substantive issues would be for the international community to impose solutions.

Another interesting point which emerged from comments made by Serb participants was that their level of mistrust for Belgrade was almost as high as toward the Kosovo Albanians. The Kosovo Serb players, who included at least one actual Serb from Kosovo, said they wanted to be part of both delegations because they did not completely trust Belgrade to represent their interests. In the lessons learned discussion the Kosovo Serb team pointed out that both Belgrade and Pristina were posturing but the Kosovo Serbs needed practical solutions if they were to be able to continue to remain in Kosovo. The Kosovo Serb representative also pleaded for both sides to rise above stereotypes and seek common ground concluding, “I might not like you but I respect you,” an obviously deeply felt sentiment which provoked nods of approval from Kosovo Albanians as the session ended.

## DAY TWO SIMULATION

The second day simulation was played by about twenty internationals from the UN, OSCE, the police, and NGOs. The players were all familiar with the issues and with the Kosovo political landscape since many of them spent their working day dealing with them. The discussion in this exercise, accordingly, was informed and articulate but also probably more rational than would be likely in real negotiations where the participants would be both deeply suspicious of the other side and also looking over their shoulders at their home audience. The international players became so involved in the simulation dynamic that for a while they

insisted on continuing even as the moderator sought to bring the simulation to an end. The lessons learned discussion at the end of the session was at times quite revealing for what it said about the private views of some internationals.

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As on the first day, the issue of where to place the Kosovo Serb delegation quickly arose as a sticking point. In this occasion, however, the Kosovo Serb team insisted on being part of the Belgrade delegation and it was the international team which pressed them to join the Albanian (Kosovo) team. The Belgrade delegation, which worried about appearing too intransigent in comparison to the Albanian team, sought unsuccessfully to order the Kosovo Serbs to join the Albanian team. The Kosovo Serbs—who did not appear to be at all concerned about the appearance of excessive intransigence—objected to the inclusion of a Montenegrin component in the Belgrade team, asserting that Kosovo is part of Serbia alone and not part of the “Solana-state” of Serbia-Montenegro. The issue of negotiations among Serb components to the talks thus arose in a way that differed from the previous day’s simulation.

Unlike on the first day, the teams on the second day did not allow the exercise to bog down over modalities. At the conclusion of the first plenary session the international team adopted the tactic of withdrawing and leaving the Serbs and the Albanians to speak to each other in private. Although this did not result in immediate progress, it seemed to help set the stage for a subsequent deal proposed by the U.S. representative, who in this exercise took a very activist approach with the apparent agreement of the other members of the international team.

The U.S. undertook to try to persuade other members of the international community to accept “some sort of independence” provided that there would be no union with Albania or Presevo, Mitrovica would have a special status for two-five years similar to that of Brcko at Dayton, and that Kosovo Serbs would be given human rights and special political status. In the presence of the U.S. representative, the Albanians raised numerous objections but as soon as the U.S. withdrew the Albanians began to consider how they could adapt the proposal to their own benefit.

Later in the session the Serb delegation—apparently with international support—privately offered a deal on “conditional independence” to the Albanian team. The Serbs made their offer contingent on the Kosovo side guaranteeing minority rights, return of refugees, self-governing territorial status to northern Kosovo, substantial local self-

government to the Serb enclaves in the south, allowing the Serbian ministries of health and education to provide services to Serbs in Kosovo, and recognizing two separate municipalities in Mitrovica. The Serb delegation also suggested to the international team the possibility of Serb security forces being present in limited numbers as an important symbolic presence at Serb historic sites but they never broached this to the Albanian team.

After conferring privately the Albanian team, in the presence of the international team, welcomed the Serb proposal as an “important break-through.” The Albanians offered European-style human rights to the Kosovo Serbs but reserved on special rights and suggested a Brcko-type solution for Mitrovica, showing their reluctance to go along with Serb plans for splitting the city.

At this point the exercise halted to review lessons learned. In this part of the session a number of internationals seemed to step out of role and convey some messages—and considerable frustration—based on their own personal experience in Kosovo.

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Among the points that emerged were the following:

- One individual with long experience in Mitrovica pointed out that the Serbs in the north simply “cannot imagine” living under Albanian rule so a Brcko-style solution will not work there. The Serbs are well-prepared for the partition option and are buying up strategic property in the north from Albanian refugees—as Albanians are reportedly doing in the south.
- A senior international participant said the Serbs tend to focus on what they are sacrificing by giving up Kosovo, as everyone expects they will have to do, but in reality Kosovo is a problem that Belgrade is shedding. Belgrade can be expected to refuse until the last minute to compromise on granting independence because it would lose leverage to gain acceptance of its other demands, such as rights for Kosovo Serbs.
- It is difficult to impose security-related conditions on the Kosovo Albanians since they do not control security forces in the area.

- Any deal will require enforcement mechanisms but the international community has few and its track record in using those it does have is poor. One international said conditional independence is a chimera because there is no enforcement mechanism and concluded that the international community needed to move beyond UNSC 1244 and make preparations for full independence and getting out of Kosovo within two years.
- Another senior international figure thought that the model for the future of Kosovo was Rhodesia, predicting that as soon as the international security presence is weakened there would be massive human rights violations against Serbs remaining in Kosovo, leading most to flee and to an effective partition.
- A third senior international said conditional independence would not work but “conditions in return for independence” might. This experienced individual said that the sooner status is determined the better, adding that if the final status is to be independence, the process for achieving it should be full and quick.
- Another international asked if any of the international officials participating in the exercise expected Belgrade ever to return as a ruler in Kosovo and if anyone saw any alternative to independence for Kosovo. No one did.

### THIRD DAY SIMULATION

Participants in this session were only Kosovo Albanians, including officials, political party figures, and NGO leaders. Participants received all of the materials for study but due to sensitivities regarding role-playing of major political figures, the session was organized as a round-table discussion of the issues raised by final status negotiations.

All participants proceeded from the basis that full-fledged independence was the only acceptable outcome for Kosovo and that Serbia had not given up its hostile approach to Kosovo and to Albanians. No form of association with Belgrade was considered acceptable, including the “three republics” option which some Albanian participants seemed to believe was the preferred European outcome. Only one Albanian participant expressly favored partition—and several strongly opposed it. But a number of participants suggested that if other participants in the negotiations suggested redrawing borders, Kosovo could raise territorial issues of its own, for example the exchange of territory with Serbia or Macedonia or association with Albania. Although all Albanians agreed with the observation of one of the session moderators that the task was to create a situation whereby an independent Kosovo became a source of stability in the region, few of the participants

seemed to have given much thought to how to accomplish this. One exception was a well-respected political figure who noted that Serbia remains the strongest military power in the region and therefore stressed the importance of including in final status talks the issue of de-militarization of the region, especially if NATO forces withdrew from Kosovo as part of a settlement.

Other major themes that emerged from this session included distaste for the dialogue with Belgrade on “technical issues,” which at the time of the session the international community was pressuring the Kosovo Albanians to join, and recognition that the Kosovo Albanian elite had not developed a strategy for dealing with negotiations. Many in the session agreed with the evaluation of the U.S. leader of the simulation that the first round of status negotiations—between the Kosovo Albanian community and the international community—had already begun. Few seemed to have any practical ideas about how to get to the desired end point of independence or what to do after that status had been achieved. Many seemed to agree with the remarks of one participant that absence of clarity on final status was a major brake on Kosovo’s economic development. Despite this assumption there was no sense of hurry among the Kosovo Albanians about entering into status talks with Belgrade. There seemed to be consensus among the Kosovo Albanians that status talks should not begin until the Kosovo government had been given full constitutional authority to carry out self-government and foreign affairs. Skepticism about the future role of the UN or of Europe in final status talks was strong among Kosovo Albanian participants. Strikingly absent was any expectation that the United States would play a strong or positive role in upcoming talks. Kosovo participants made it clear that they preferred a strong leadership role by the United States but at the time the simulation was held many participants seemed to question whether the current U.S. administration was prepared to play such a role in light of Washington’s preoccupation with Iraq and other issues associated with the war on terrorism. Kosovo Albanian leaders subsequently welcomed the October visit to Kosovo by State Department Under Secretary Marc Grossman but what this visit says about a continued U.S. role in Kosovo and whether the Albanians can take advantage of it both remain open questions.

The following are some of the more interesting and significant comments made by the Kosovo Albanian participants:

- The insistence by the EU on the “three republic option” is unrealistic. Serbs and Albanians should not be expected to live together and, if necessary, Kosovo is prepared for an exchange of territory with Belgrade, that is southern Serbia (Presevo) for northern Kosovo. Partition might actually make it easier for both Belgrade and Pristina to normalize their relations with the

EU and become accepted as part of Europe. Redrawing borders is not necessarily the Albanians’ preferred option but it has happened before and the notion is circulating in Kosovo.

- A well-known Kosovo Albanian figure, generally regarded as a moderate, fumed that pushing Kosovo into some kind of association with Belgrade as Montenegro had been, would lead to “genocide.” If this pressure continued, he suggested that Kosovo could well be forced to seek a federal status with Albania. Now is not the time to change borders but after independence it might be possible. This theme of a post-independence border change was mentioned by at least one other Kosovo Albanian participant.

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*“The insistence by the EU on the ‘three republic option’ is unrealistic.”*

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- Another senior political figure took a contrary view, noting that redrawing maps made him uncomfortable because each side could produce its own extreme map. Kosovo Albanians should not propose an exchange of territory but, in effect, an “exchange” of minority rights, in which Albanians promised to grant the same level of rights to Serbs in Kosovo that Belgrade was prepared to grant to Albanians living in Presevo.
- One well-known Albanian from the private sector remarked that it would be impossible as a matter of practicality for Kosovo Albanians to conduct negotiations if Kosovo Serbs were part of their delegation. This same figure was almost the only participant who seemed to make an effort at viewing the issue of status from the perspective of the other side. Noting that under almost any scenario Belgrade would lose Kosovo, the real problem for the talks therefore might be to design “carrots” for Belgrade—these would almost certainly be money and association with Brussels.

#### **LESSONS TO APPLY TO FINAL STATUS NEGOTIATIONS**

Following are several practical observations for future final status negotiations which emerged from the three productive and constructive sessions held in Pristina:

- Settle modalities in advance, through informal discussions with the parties and, if necessary, international fiat.

- Consider novel negotiating tactics. Serbs and Kosovo Albanians have been so deeply dug into their respective negotiating trenches for so long that raising any issue tends to trigger an immediate flood of well-rehearsed counter arguments. Breaking this cycle could provide an important psychological boost to the talks.
- Partition is an underlying reality in Kosovo today and will be an option regardless of what the international community says or prefers.
- The Kosovo Serbs will have to receive extensive political and human rights guarantees if Kosovo is to remain whole.
- Mitrovica is sure to emerge as a central issue. A Brcko-type solution seems to be emerging as an internationally favored option but making this work will require sustained international engagement after status is achieved.
- Both sides will turn to the EU for political and financial sweeteners to any deal. This gives the EU considerable potential leverage, provided its cumbersome internal mechanisms prove capable of producing realistic options and the will to support them rather than the all-too-frequent lowest common denominator approach to negotiations that in the Balkans leads to problem-creating rather than problem-solving. Not a single participant in any of the sessions expressed confidence that the EU would rise to the challenge.

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*“The situation in Kosovo is not getting any better. Independence is the only possible option and the sooner it is granted the better.”*

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- While the devil is often in the details, do not nonetheless become lost in them. Consolidate big negotiating breakthroughs before drowning in details. The final result will have to be a package deal because neither side will compromise on secondary issues before gaining its primary objective.

We believe that it is important to underscore one final lesson that was very apparent in the sessions: neither Kosovars nor internationals say publicly what they really think. Almost everyone involved in Kosovo with any experience in the region understands the following:

- The situation in Kosovo is not getting any better. Inde-

pendence is the only possible option and the sooner it is granted the better.

- *De facto* partition already exists on the ground; partition is the Serb fall-back option to an independent Kosovo. Partition can only be prevented if Serbs in the north are granted complete autonomy.
- Partition is likely to be accompanied by violence and population transfers in Kosovo and will have a spill-over effect in Macedonia and Presevo.
- Any conceivable final status agreement will require the expenditure of substantial sums of money and the presence of credible security forces, including U.S., for an unspecified duration.

The understandable and predictable diversion of high-level policy attention to other parts of the world and the relative calm which now prevails in Kosovo has resulted in equally predictable policy paralysis. The October 2003 Grossman visit was a welcome sign of renewed attention to the region but to be effective it needs to be followed up by a sustained high-level implementation of a policy that reflects the realities of the situation on the ground. Kosovo Albanian leaders welcomed the Grossman visit but more as a hoped for sign of renewed U.S. attention to the region rather than for the specifics of the policies Grossman articulated in public. Grossman’s call for a genuine implementation of the heretofore mirage-like “standards before status” approach, together with holding out the prospect of beginning status talks in 2005, may have bought some time but this interlude could well be brief and the issues will remain basically the same regardless of what, if any, progress is made on “standards.” The time bought by war for creative policy making and the application of constructive solutions to Kosovo’s problems has been all but expended as can be seen by the strength of nationalist votes in Serbia and other states of the region, a phenomenon which is certain to have a negative impact on Kosovo.

**OTHER REPORTS AVAILABLE FROM THE PUBLIC INTERNATIONAL LAW & POLICY GROUP AT [WWW.PILPG.ORG](http://www.pilpg.org) INCLUDE:**

**Unbreakable Bond: Serbs and Kosovo, (Field Report) December 2003.**

**Serbia After Djindjic: Can Invigorated Reforms be Sustained, (Field Report) October 2003.**

**Kosovo: Time to Negotiate Final Status, (Field Report) January 2003.**

**Somalia: Black Hawk Down No More, (Field Report) April 2002.**

**Kosovo: The Road Ahead, (Field Report) March 2002.**

**Nation Rebuilding in Afghanistan, December 2001.**

**A Blueprint for Next Steps in Kosovo, (Field Report) June 18, 2001.**

**Current Legal Status of the Federal Republic of Yugoslavia (FRY) and of Serbia and Montenegro, September 2000.**

**A Blueprint for Resolving the Nagorno-Karabagh Crisis, June 2000.**

**Intermediate Sovereignty as a Solution to the Kosovo Crisis, 1998.**

**Kosovo: From Crisis to Solution, November 1, 1997.**

**Implementing the Dayton Accords: Options and Recommendations, September 1997.**

**A Prima Facie Case for the Indictment of Slobodan Milosevic, April 1996.**

**PILPG NEGOTIATION SIMULATIONS:**

*Indonesia/Aceh:*

<http://www.publicinternationallaw.org/programs/peace/diplomacy/#Aceh>

*Democratic Republic of Congo:*

<http://www.publicinternationallaw.org/programs/peace/diplomacy/#Congo>

*Georgia/Abkhazia:*

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Georgia>

*Iraq Constitutional Negotiations:*

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Iraq>

*Kashmir:*

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Kashmir>

*Kosovo Final Status:*

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Kosovo>

*Nepal:*

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Nepal>

*Sudan:*

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Sudan>

*Tigris/Euphrates River Basin:*

<http://www.publicinternationallaw.org/programs/sovereignty/diplomacy/#Tigris>