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A New State in the 21st Century: Kosovo's Path to Independence

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A NEW STATE IN THE 21ST CENTURY: KOSOVO'S PATH TO INDEPENDENCE

*Reviewed by Alonit Cohen**

HENRY H. PERRITT, JR., *THE ROAD TO INDEPENDENCE FOR KOSOVO: A CHRONICLE OF THE AHTISAARI PLAN* (2010).

In THE ROAD TO INDEPENDENCE FOR KOSOVO: A CHRONICLE OF THE AHTISAARI PLAN, Professor Henry Perritt explains the Kosovar Albanians' desire for a state of their own and the process they, and the world, went through to get it. This book review will first introduce the history of Kosovo. This will be followed by a summary of Professor Perritt's description of the negotiations between Kosovo and Serbia and the legal issues considered; the plan that the negotiation team proposed to the Security Council and the Security Council's failure to implement it; and Kosovo's unilateral declaration of independence in 2008. Finally, this review will discuss the weaknesses of the book, noting that Professor Perritt's tone and lack of sources leave the reader questioning whether the book presents an unbiased account of the dynamic and controversial events that occurred.

I. THE RECENT HISTORY OF KOSOVO

Kosovo declared independence from Serbia on February 17, 2008, in accordance with the Ahtisaari Plan and with the support of the United States, most members of the European Union, and tens of other states.¹ The dynamic and violent history of this region in the last century, which led to Kosovo's declaration of independence, began when Kosovo became an "administrative region" of Serbia during the Kingdom of Yugoslavs between the world wars. After WWII, Kosovo had a similar status within the Socialist Federal Republic of Yugoslavia (SFRY).² SFRY was made up of six republics: Bosnia, Croatia, Macedonia, Montenegro,

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1. Dejan Anastasijevic, *Joy in Kosovo, Anger in Serbia*, TIME, Feb. 17, 2008, available at <http://www.time.com/time/world/article/0,8599,1714164,00.html>; see ABA RULE OF LAW INITIATIVE, LEGAL PROFESSION REFORM INDEX FOR KOSOVO, 5 (vol. III 2009), available at http://www.abanet.org/rol/publications/kosovo_lpri_vol_iii_05_09_en.pdf.

2. LIBRARY OF CONGRESS, YUGOSLAVIA: A COUNTRY STUDY (Glenn E. Curtis ed., 1992), [http://memory.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+yu0012\)](http://memory.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+yu0012)).

Serbia, and Slovenia; and two autonomous regions within Serbia: Kosovo and Vojvodina. Under the 1974 SFRY constitution, Yugoslavia gave Serbia's autonomous regions an increased limited sovereignty over their police forces, courts, and civil institutions.³ However, in May of 1989, Slobodan Milosevic was elected president of Serbia, and immediately started reducing these freedoms.⁴ As President, Milosevic controlled the Yugoslav People's Army during the violent break-up of Yugoslavia in the early 1990's, during which around 200,000 civilians were killed through ethnic cleansing and genocide.⁵ In 1997, Milosevic stepped down as Serbia's president, in order to serve as the President of greater Yugoslavia. Just a year later, the conflict in Kosovo would begin.

In the second half of the 20th century, Kosovo had a large ethnic majority of Kosovar Albanians, and a much smaller minority of ethnic Serbs. In 1989, President Milosevic introduced a system of martial law in Kosovo and stripped much of its political autonomy.⁶ He instituted a policy of ethnic Serb dominance in industry, policymaking, teaching, the law and its enforcement.⁷ Throughout the 1990s, young male Kosovar Albanians formed a guerrilla force, known as the Kosovo Liberation Army (KLA), to oppose the Serbs.⁸

The KLA guerrilla forces initiated attacks against the Yugoslav National Forces in early 1998, to fight for the freedom of the Albanian Kosovars from Serbian oppression.⁹ The Yugoslav National Forces responded by purposefully committing acts of ethnic cleansing against the Kosovar Albanians.¹⁰ For the next year, NATO met with the Serbian government intermittently in an attempt to halt the atrocities in Kosovo. At the same time, NATO provided evacuation and relief aid to the Kosovar refugees.¹¹ In March of 1999, after the intensity of the attacks on civilians increased, United States Ambassador Richard Holbrooke independently met President Milosevic to persuade him to stop the attacks in Kosovo or face imminent NATO strikes.¹² When President Milosevic refused, NATO made the unanimous decision on March 23, 1999 to enter the region on behalf of the endangered civilians.¹³ "The Alliance want[ed] to stop further

3. ABA RULE OF LAW INITIATIVE, LEGAL PROFESSION REFORM INDEX FOR KOSOVO, 5 (vol. III 2009), available at http://www.abanet.org/rol/publications/kosovo_lpri_vol_iii_05_09_en.pdf.

4. Olga Nikolić, *Šefovi Srbije i Jugoslavije od 1987 do 2000* [*Heads of Serbia and Yugoslavia from 1987 to 2000*], GLAS JAVNOSTI, Sept. 18, 2000, <http://arhiva.glas-javnosti.rs/arhiva/2000/09/18/srpski/P00091701.shtm>.

5. CAROLE ROGEL, THE BREAKUP OF YUGOSLAVIA AND THE WAR IN BOSNIA 37 (1998).

6. ABA RULE OF LAW INITIATIVE, *supra* note 3.

7. ABA RULE OF LAW INITIATIVE, *supra* note 3, at 5, 7.

8. *Id.* at 5.

9. See HUMAN RIGHTS WATCH, FEDERAL REPUBLIC OF YUGOSLAVIA: HUMANITARIAN LAW VIOLATIONS IN KOSOVO (vol. 10 1998), <http://www.hrw.org/reports98/kosovo/> (follow "Violations of the Rules of War by Government Forces" hyperlink).

10. U.S. STATE DEPARTMENT, ETHNIC CLEANSING IN KOSOVO: AN ACCOUNTING 5, 9 (2d report Dec. 1999), available at http://www.state.gov/www/global/human_rights/kosovooii/pdf/kosovii.pdf.

11. NATO's Role In Kosovo: *Historical Overview*, NORTH ATLANTIC TREATY ORGANISATION (July 15, 1999), <http://www.nato.int/kosovo/history.htm> (last visited Oct. 10, 2010).

12. *Id.*

13. *Id.*

serious, systematic human rights violations and prevent a humanitarian catastrophe in Kosovo.”¹⁴ NATO forces, entirely airborne, commenced a bombing campaign against the Yugoslav National Forces that lasted seventy-eight days.¹⁵

On the final day of the bombing campaign, the United Nations (UN) Security Council adopted Resolution 1244 which demanded the end to all violence and repression by Yugoslavia in Kosovo and the withdrawal of all forces.¹⁶ Russia, Serbia’s close ally, sent its envoy Viktor S. Chernomyrdin to inform President Milosevic that “he had no choice but to accept the West’s demands” and President Milosevic pulled his troops out of Kosovo.¹⁷ In addition, Resolution 1244 authorized member states of the UN to establish two organizations within Kosovo: an international security presence, Kosovo Force (KFOR),¹⁸ and an international civilian presence, known as the United Nations Mission in Kosovo (UNMIK).¹⁹ UNMIK would act as a “transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.”²⁰ Under UNMIK, this international civilian presence was authorized to facilitate “a political process designed to determine Kosovo’s status.”²¹ At the time, the United Nations expected that Kosovo’s “status” eventually would return to that of a region within Serbia.²² However, the United States and the majority of Kosovo expected otherwise.²³

From 1999 to 2004, UNMIK aided the Kosovar Albanians in creating a government and society for themselves, through civil administration, democratization and institution building, reconstruction and economic development, and humanitarian assistance. However, it did not begin the process of determining Kosovo’s final status of whether it would become an independent nation or return to Serbia as a province until 2004.²⁴ In the meantime, KFOR

14. Press Release, Federal Chancellor Gerhard Schröder (Mar. 24, 1999), *reprinted in* HEIKE KRIEGER, *THE KOSOVO CONFLICT AND INTERNATIONAL LAW: AN ANALYTICAL DOCUMENTATION 1974 – 1999* 399 (2001).

15. ROGEL, *supra* note 5, at 80.

16. S.C. Res. 1244, ¶ 3, U.N. Doc S/RES/1244 (June 10, 1999).

17. Richard Bourdreaux, *With Surrender, Milosevic Now Must Face the Music at Home*, L.A. TIMES, June 4, 1999, at 2, <http://articles.latimes.com/1999/jun/04/news/mn-44060/2>. By the end of May 1999, NATO estimated that 5,000 Kosovar Albanians had been killed as a result of ethnic cleansing, and 1.5 million people had been expelled from their homes. *NATO’s Role In Kosovo: Historical Overview*, *supra* note 11. Milosevic was indicted by the International Criminal Tribunal for Yugoslavia (ICTY) in the Hague in 2002 for war crimes and crimes against humanity in Kosovo, as part of an amended indictment that originally included his crimes in the previous Croatian and Bosnian wars. He died in 2006 before a verdict could be reached. *Prosecutor v. Milosevic, et al.*, Case No. IT-99-37-I, Third Amended Indictment (Int’l Crim. Trib. for the Former Yugoslavia July 19, 2002).

18. S.C. Res. 1244, *supra* note 16, at ¶ 7.

19. *Id.* at ¶ 10.

20. *Id.*

21. *Id.* at ¶ 11(e).

22. HENRY H. PERRITT, JR., *THE ROAD TO INDEPENDENCE FOR KOSOVO: A CHRONICLE OF THE AHTISAARI PLAN* 64 (2010).

23. *Id.* at 63.

24. *Id.* at 79-80, *see id.* at 91.

maintained general security, although violent disputes between ethnic Albanians communities and ethnic Serb communities occasionally erupted.

II. SUMMARY OF THE ROAD TO INDEPENDENCE FOR KOSOVO

A. *The Negotiations*

Professor Perritt begins his book by narrating the 2004 riots initiated by the Kosovar Albanians in Pristina, Kosovo's capital.²⁵ Kosovar Albanians were frustrated with UNMIK's oversight and delay in the final status negotiation process that had been called for in Security Council Resolution 1244, five years prior. On March 16, 2004, Kosovar Albanian youth responded by destroying UNMIK vehicles and attacking the homes of Serbs with rocks and fire.²⁶ According to Professor Perritt, the violent riots were the healthy catalyst to start the international negotiation process, which began in February of 2006 in Vienna, with direct talks between Belgrade and Pristina representatives.²⁷

UN Resolution 1244 required UNMIK to facilitate a political process regarding Kosovo's status. UN Secretary-General Kofi Annan selected former Finland President Maarti Ahtisaari to direct the negotiation process because of his strong negotiation background in Africa, Asia, and the Balkans.²⁸ Professor Perritt portrays the negotiations as Serbia pursuing hard line policies and unrelenting power over Kosovo.²⁹ Professor Perritt also describes Kosovo's lack of diplomacy at the beginning of the negotiations, and how the U.S. and European countries strongly controlled Kosovo during the negotiations.³⁰

The negotiation team and the parties met jointly to discuss the delicate issues of decentralization (creation of municipal governments); "minority rights" (rights of the Serb communities in Kosovo); the "right of return" (Serbs rights to return from northern Serbia to their homes in Kosovo); and protection of religious sites.³¹ Compromises were difficult to come by, and rarely, if ever, occurred.³² The most difficult negotiations were over the final status of Kosovo, where no real progress was ever made.³³ Although the rounds of negotiations failed, Professor Perritt commends President Ahtisaari and his team for their role in creating the "Ahtisaari Plan."³⁴ The plan, after almost fourteen months of failed negotiations between Kosovo and Serbia, was presented to the Security Council on March 26, 2007.³⁵ It detailed a process for creating the independent state of Kosovo and the development of international oversight in the region. However, international

25. *Id.* at 5-11.

26. PERRITT, *supra* note 22, at 121.

27. *Id.* at 81, 145.

28. *Id.* at 111-13.

29. *Id.* at 144.

30. *Id.* at 145, 158.

31. *See id.* at 145-52.

32. *Id.*

33. *Id.* at 157-60.

34. *Id.* at 159-60.

35. *Id.* at 165.

politics, supported by international legal concerns, immobilized the Security Council, which never voted to enact the plan.

B. Legal Issues in the Negotiations

Professor Perritt explains that the legal premises behind Serbia's (and Russia's) argument for the return of Kosovo to Serbia were that (1) today's international system supports state sovereignty, and (2) Resolution 1244 did not recognize potential independence for Kosovo.³⁶ Rather, Resolution 1244 recognized the need to return the region of Kosovo to Serbia.³⁷ Since 1945, new states have achieved statehood when republics and federations broke up (such as the USSR) or former colonies separated from their colonial state. In addition, no state formed since 1945 has been admitted to the UN over objections from its original overarching state.³⁸ Allowing a portion of a state to secede over the objection of its larger state is against international norms.³⁹ Kosovo was never considered a republic with the right to secede from Yugoslavia, rather it was an autonomous region within the Republic of Serbia.⁴⁰ If the UN allowed Kosovo to become independent, this would go against the international legal norm of the last sixty years that prohibits unilateral secession.⁴¹

Professor Perritt states that Kosovo's legal arguments for an independent state were that 1) Serbia forfeited the right to govern Kosovo during the war; 2) Serbia continued to relinquish sovereignty when it did not take governmental control over the territory of Kosovo after the war; and 3) that Resolution 1244 applied only to the interim arrangement for Kosovo, not final status.⁴² According to the emerging international legal norm *responsibility to protect*, if a state fails to protect its citizens, an international or foreign military may enter into the sovereign territory.⁴³ Thus, Serbia forfeited the right to govern Kosovo when it failed to protect its Albanian citizens in the 1999 war, and in fact, actually committed crimes against its citizens.⁴⁴ In addition to Serbia forfeiting its right to govern in 1999, sovereignty and statehood depend upon a government's ability to exercise control over the territory of the State.⁴⁵ Serbia continued to ignore its governing role for the Albanian majority living in Kosovo (98% of the population), and UNMIK and KFOR exercised effective control over the region.⁴⁶ Thus, Serbia

36. PERRITT, *supra* note 22, at 121.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *See id.*

42. PERRITT, *supra* note 22, at 121-23.

43. *Id.* at 121; *see also* INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT (2001), *available at* <http://www.iciss.ca/report-en.asp>; RESPONSIBILITY TO PROTECT: THE GLOBAL MORAL COMPACT FOR THE 21ST CENTURY (Richard H. Cooper & Juliette V. Kohler eds., 2009).

44. PERRITT, *supra* note 22.

45. *Id.* at 123.

46. *Id.*

relinquished its sovereignty over Kosovo.⁴⁷ Finally, according to the Kosovar Albanians, a close reading of UN Resolution 1244 showed that the words “autonomous,” “self-administration” and “self-government” applied to the interim situation in Kosovo, but did not apply to the future status of the region.⁴⁸

C. *The Failure of the Security Council*

The most novel aspect of the book is its discussion of the dichotomy between the successful creation of the Ahtisaari plan and Security Council's failure to implement it. The Secretary-General of the UN established the negotiation team to aid in the final status talks between Kosovo and Serbia. The talks themselves, over a period of fourteen months, failed.⁴⁹ However, President Ahtisaari created a plan for the UN that would give Kosovo independence, allow for continuing international oversight and peacekeeping forces in the region, and establish a system to protect the Serb minority living within Kosovo.⁵⁰ Unfortunately, the UN did not act on the recommendation because of a deadlock in the Security Council.⁵¹ Russia, in an effort to wield its political strength while holding the presidency of the Security Council, would not bring the plan to a vote, and would likely have vetoed the plan based on Serbia's legal arguments, had it been put to vote at a later date.⁵² This allowed other smaller countries to follow suit, pledging not to support the recommendation. If the Security Council's role is to prevent war and promote peace, then by not acting on the Ahtisaari plan, the Security Council failed.⁵³ Regardless, because Kosovo declared unilateral independence with the backing of the United States and most of Europe, Professor Perritt acknowledges that state interests can circumvent the Security Council, at least when powerful states are involved.⁵⁴

III. CRITIQUE

A. *Professor Perritt's Tone*

In the first twenty pages of the book, Professor Perritt startles the reader when he describes how he, as the Dean of Chicago-Kent College of Law, lied to get visas for a group of faculty and students to travel to Kosovo in December of 1998 (as well as lying to get their rental car).⁵⁵ This was during the time when the refugee problem was escalating, and the KLA and Serbian forces were fighting one another in civilian areas.⁵⁶ Then he “pestered the UNHCR” (UN Refugee Agency) into taking himself and the students to a KLA stronghold where they could see the action.⁵⁷ There is no question that humanitarian support is important during such a

47. *Id.*

48. *Id.*

49. *Id.* at 165.

50. *Id.* at 166, 164.

51. *Id.* at 178.

52. *See id.* at 178-79, 192-93.

53. *Id.* at 275-76.

54. PERRITT, *supra* note 22; *see id.* at 183.

55. PERRITT, *supra* note 22, at 41.

56. *Id.*

57. *Id.* at 43

crisis, but in this case, Professor Perritt took law students through a war zone to administer “aid” – setting-up internet on a few computers in the UNHCR office in Pristina.⁵⁸ Although the reader may be surprised by Professor Perritt’s judgment, it is also important to note that this story illustrates that he has first hand knowledge of Kosovo in the late 1990’s that he contributes to the book.

1. Supporting Documents and Sources

The story of the negotiations and the inner thoughts of the negotiating team should be bolstered by additional sources. While the results of the negotiations are publically accessible, the negotiations themselves were held behind closed doors. Professor Perritt seems to have a deep knowledge and understanding of what happened in the negotiations, but his numerous citations to anonymous sources and interviews leave the reader wondering how he gathered information to write this book. Moreover, the reader must accept blindly that these anonymous sources were impartial. There is no doubt that many sources would feel uncomfortable divulging information on record that may portray top-level politicians in a negative light. Regardless, it is difficult not to be wary of first hand interviews conducted under complete anonymity. For example, Professor Perritt described the Serbs’ strategy of “delay, destabilize, divide, and discredit” without a single citation or explanation of how he could have gathered that information.⁵⁹

2. Possible Bias or Inaccuracies

Professor Perritt adamantly supports Kosovo’s independence, which seems to lead him to portray some of the events concerning Serbia with less accuracy. Crucial details in the descriptions of events concerning Serbia are sometimes missing. For example, Professor Perritt comments on the widespread Serbian nationalism and violent behavior by explaining how at the “Kosovo is Serbia” rally in Belgrade, five days after Kosovo declared independence, “150,000 demonstrators got out of control and set fire to the U.S. and British embassies in Belgrade, ransacked the McDonald’s again, and looted stores.”⁶⁰ However, most of the international news coverage of this incident suggests that Professor Perritt’s account is incorrect. Rather, news sources state that up to 150,000 Serbs marched peacefully from the parliament building in Belgrade to an orthodox church about a mile away in an effort to show democratic peaceful resistance toward Kosovo’s declaration, while only up to one thousand young men separated from the peace march to riot and attack the embassies.⁶¹ There is no question that there are violent

58. *Id.* at 41-42.

59. *Id.* at 127.

60. *Id.* at 218.

61. The most widely held view is that the attack was carried out by a fringe of staunch nationalists, many of them poor and from Serbia’s rural heartland, whose economic disillusionment, coupled with raw and real anger over Western backing of Kosovo’s independence, has boiled over into violent opposition to the United States and the European Union, which are viewed as the architects of the “false state”. See Interview by Amy Goodman with Liljana Smajlovic, Editor in Chief, Politika (Feb. 22, 2008), available at http://www.democracynow.org/2008/2/22/report_from_belgrade_serbian_protesters_set; *All Things Considered: Rioters Burn Vacant U.S. Embassy in Belgrade* (Feb 21, 2008) (downloaded using iTunes), available at <http://www.npr.org/templates/story/story>

Serb nationalists, but Professor Perritt leaves out the crucial detail that the majority of Serbia approached Kosovo's declaration of independence in a democratic way.⁶² Noting that Professor Perritt never cites to a specific Serbian source throughout the whole book, these details leave the reader questioning whether Professor Perritt accurately portrayed the facts concerning the Serbs and their actions throughout the whole final status process.

B. Professor Perritt's Promotion of the Ahtisaari Process

Professor Perritt concludes that, "For once in the Balkans, political transformation occurred through international diplomacy without prolonged violence as a stimulus. The hope is that the Ahtisaari and Troika processes provide a model that will be followed in the future."⁶³ This conclusion is surprising, considering that Professor Perritt described the failure of the diplomatic efforts in the negotiations between Kosovo and Serbia, and then the failure of international diplomacy to convince the Security Council to approve the plan. A new country of two million people declared unilateral independence because of the failure to achieve a solution through international diplomacy. Thus, it seems inappropriate to hope that the Ahtisaari process should be used as a model in the future. While the Kosovar Albanians did achieve independence, it was in spite of this model, rather than as a result of it. A stronger argument would be to use the *responsibility to protect* as a model in future conflicts. The emerging international norm first appeared in 1999, to aid in the support of NATO intervention into Kosovo. In the future, this norm could discourage a State from attacking its own citizens, knowing that its actions could result in a loss of sovereignty in the region.

The ROAD TO INDEPENDENCE FOR KOSOVO is recommended for those who want to understand the generalities of peace negotiations, the process and struggles of achieving a new state in the 21st Century, and Kosovo's path to independence. However, because Professor Perritt's detailed knowledge of the Kosovo-Serbia negotiations is uncorroborated, readers should find additional sources to verify any specific information.

.php?storyId=19246285; *PBS Newshour: US Embassy Attacked in Protest Over Kosovo Independence* (Feb. 21, 2008) (downloaded), available at http://www.pbs.org/newshour/bb/europe/jan-june08/belgrade_02-21.html; Dan Bilefsky, *Serbia Seeks Rioters Who Set Fire to the U.S. Embassy*, N.Y. TIMES, Feb. 24, 2008, available at <http://www.nytimes.com/2008/02/24/world/europe/24serbia.html>

62. *Id.*

63. PERRITT, *supra* note 22, at 272.