

Anthony D'Amato, **Independence for Kosovo?** Jurist, 6-16-07  
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[Anthony D'Amato](#) [Northwestern University School of Law]: "Russia is the only Western power that champions Serbia's territorial claim over Kosovo. All other nations want independence for the former Serbian province. As I argued in a [previous editorial](#) for JURIST on this subject, I see no basis whatsoever in law for the UN Security Council's assertion of power to dispose of Kosovo. Thus whatever Russia's real motives might be, I think that objectively it is taking a principled position. The Security Council simply must not be allowed to ignore the constraints imposed on its jurisdictional competence by the UN Charter.

International lawyers are familiar with many ways in which nations have acquired territory: discovery, prescription, abandonment, accretion, acquiescence, cession, effective occupation, estoppel, reversion, etc. The Security Council has come up with a new one: fly-by bombardment.

This gets us to today's offer. Apparently the UN is willing to extend its own deadline for independence for Kosovo by 120 days, to give more time for talks over Kosovo between Serbs and ethnic Albanians. However the US envoy Frank Wisner made it clear that independence for Kosovo is the only outcome that will be permitted.

So the critical question for everyone interested in the twists and turns of Balkan politics is: what will the Serbs and Albanians talk about? The one subject about which there is no point in discussing is the future of Kosovo. For the Albanians would have no incentive to discuss that particular subject inasmuch as they will get 100% of Kosovo at the end of the 120 days of talks. Maybe the delegations from Serbia and Kosovo can talk about the weather. Or cabbages and kings.

The 120-day talkathon seems born out of desperation. So long as the Western powers insist on a unitary Kosovo, the problem will not be solved. The only solution lies in a fair partition of Kosovo. My own view is that, at present, Kosovo belongs to Serbia. (None of the above-listed ways of land-grabbing can take away Serbia's title to Kosovo.) But Serbia's human-rights violations in Kosovo, led by President Milosevic, require compensation to be given to the ethnic Albanians living in Kosovo. As I argued in an essay about Bosnia, swapping land for human rights violations seems to fit in with the reprisals system of customary international law. Ironically, this solution gets us back to the 120-day talkfest — which might work without the Wisner codicil."

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