



## **Kosovo's Fifth Anniversary—On the Road to Nowhere? <sup>1</sup>**

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### ***Kosovo Today***

Five years have passed since NATO launched its first ever military operation in Europe to 'prevent atrocities and genocide' in Kosovo. The Bosnian debacle had certainly fostered the international community's resolve for robust military and diplomatic intervention. Dayton also provided the United Nation's Interim Administration in Kosovo (UNMIK) and KFOR with lessons learned for the challenges of modern post-conflict management, reaching far beyond mere peace keeping. In the case of Kosovo, the unresolved status issue exacerbated the challenges of outside state and nation building. Kosovo being the lynchpin of regional stability, in the aftermath of the war, a quick decision on independent statehood was considered a dangerous precedent for the 'powder keg' of Europe.

Under international law, Kosovo has remained part of the Federal Republic of Yugoslavia, now Serbia and Montenegro, although its inner-Yugoslav status as autonomous province of Serbia is disputed. UNMIK and Kosovo's Provisional Institutions of Self-Government (PISG) jointly exercise all sovereign prerogatives in Kosovo. The international community has provisionally taken over from the Belgrade authorities in ruling and administrating Kosovo. Most Albanian refugees returned right after Milosevic's capitulation in June 1999. Serbs who had fled after the war have only trickled back in small numbers despite substantial international programs for returnees. Today, Serbs constitute a locally concentrated minority of about 7% in Kosovo, the Albanians an 88% majority.

*Socio-economic development* in the structurally weak region of Kosovo has fallen far short of local and international expectations. In terms of housing and infrastructure the repair of war damages has been completed meanwhile, revealing underlying structures and macro-economic trends that offer little ground for optimism: a continuous slowdown in economic growth; a corresponding increase in unemployment; and a huge disproportion between import and export. What remains is a region with no major assets for sustainable economic development, but crippling historical legacies and structural deficits. (Kosovo 2000; Serbia and Montenegro 2003: 26-34) The reform process of belated transition is seriously hampered by the local ethnic standoff between Albanians and Serbs as well as by the political standoff between UNMIK, the Belgrade authorities and the Kosovar leadership.

*Human security* improved significantly for the ethnic and religious minorities in Kosovo as soon as KFOR moved in to restore order after all state institutions had broken down at the height of the conflict. Interethnic violence became incidental, but revived long-established traditions of Serb-Albanian enmity and the frequency of brutal incidents have effectively disallowed a return to 'normality.' The recent outbursts of violence have demonstrated how dangerously thin the cover of coexistence and how explosive the underlying hatreds are. The Serbs continue to live in scattered, isolated enclaves, some under permanent KFOR protection and generally lacking the minimal preconditions for normal life. Consequently, the results of the increased international efforts to restore a 'multiethnic Kosovo' by facilitating the return of Serb refugees and internally displaced persons (IDP) have been meagre, despite the abominable circumstances in refugee camps in Serbia proper. The number of potential returnees (230-240,000) canvassed by Belgrade is certainly way off the mark, but the number of actual returns (9,000 by early

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2004) is too low to be of any significance for the process (OSCE/UNHCR 2003; Ivanisevic 2004).

The domestic *political process* in Kosovo has been institutionalised in the Provisional Institutions of Self-Government (PISG). 'State building' (i.e., institution building) intentionally preceded democratisation. Heeding a key lesson from Bosnia, the international community opted for a bottom-up approach of democratisation, moving from local (28 October 2000) to central elections (19 Nov. 2001). The Constitutional Framework for Provisional Self-Government, signed by the Special Representative of the Secretary General of the United Nations (SRSG) Hans Haekkerup on 14 May 2001, prepared the ground for 'establishing and overseeing the development of provisional, democratic self-government institutions', as stipulated by UN Security Council Resolution 1244 of 1999. Rather than to prove the Kosovars' ability and willingness to rule themselves, the political bickering after the November 2001 elections produced a stalemate that only the new SRSG Steiner could resolve in March 2002. The net outcome was Ibrahim Rugova holding the Presidency and a coalition government of the main Albanian parties under Prime Minister Bajram Rexhepi. The electoral law granted the Serb minority and its Povratak coalition a substantial 'overrepresentation' in the Assembly (22 out of 120 seats). Yet, the elected assembly has in general refused to take into account legitimate minority concerns in the legislative process and has occasionally over-stepped its competencies. The 'reserved powers' of UNMIK - budget, monetary policy, minority protection, external relations, security (and the respecting of Resolution 1244) - are those that really constitute state sovereignty. On 7 March 2003, the Transfer Council of UNMIK and PISG was installed to manage the gradual transfer of competencies and responsibilities. Legally, the transfer to the PISG does not prejudice the final status as it could lead to both substantial autonomy in a post-Yugoslav state and to independent statehood.

It has often been stated that much, if not everything, in Kosovo depends on the status question. As a return to the *status quo ante* in terms of sovereignty was considered unrealistic and as the international community rejected a territorial partition along ethnic lines, the ensuing stalemate of non-status was redefined as 'gaining time.' Due to timetables in Kosovo and Serbia and Montenegro, the status issue cannot be postponed much longer. The quasi-moratorium on the status issue has contributed substantially to stabilisation and normalisation in the region, but the productive phase of temporising is coming to an end. Conditionalities, incentives and international pressure will only go so far in turning a weak state-like entity into a functioning state. The achievements of a virtuous circle of 'standards before status' may easily be jeopardised by a subsequent vicious circle of politicking for final status – timing is of the essence.

A regional framework of democratic states and basic stability has emerged, whereas the status issue sticks out more and more prominently as a factor hampering economic and political progress as well as Euro-Atlantic integration for Kosovo and the Western Balkans. The domestic, regional and international context today may be far from ideal for a final settlement to the Kosovo question, but it is equally hard to project short or medium-term changes that would make the circumstances really conducive for a negotiated arrangement.

The past half-decade has underscored that the time horizons of international politics and the eager anticipation of the local communities tend to be incompatible with the elongated processes of nation and state building. It remains to be seen, however, whether shortcuts in these processes – if available – provide *real* answers to the many fundamental challenges Kosovo faces, e.g., economic restructuring, societal reconciliation and European integration.



### **Roadmaps and Roadblocks**

The status of Kosovo under international law is defined by UN Security Council (UNSC) Resolution 1244 (and can thus be changed by another UNSC resolution only). Reaffirming the sovereignty and territorial integrity of the Federal Republic of Yugoslavia (FRY), the resolution authorises an international (military and civilian) interim administration to provide for Kosovo's 'substantial autonomy within the FRY.' Thus, both Yugoslav sovereignty and international transitional administration depend in duration on Res. 1244. Although the 1991-1992 Badinter Commission did not consider the option of independence for Kosovo, its criteria might be interpreted to condone statehood for Kosovo, but not for the Republika Srpska and certainly not for Northern Kosovo or Southern Serbia. Under the 1974 Yugoslav constitution, Kosovo was given the right to establish its own constitution, legislative power, and financial autonomy. The bodies of executive, legislative, and judicial powers (including constitutional courts) had the same status as those in the republics. Moreover, as far as the political and legislative process on the level of the federation was concerned, Kosovo was equal to the six republics and directly represented in the federal parliament, constitutional court, and presidency. Independence for Kosovo would *upgrade* the province's borders to state borders, not *change* borders (as it would in the case of secession by the Republika Srpska from Bosnia and Herzegovina, the Mitrovica region from Kosovo or the Tetovo region from Macedonia). Typically, however, Resolution 1244 does not refer to past Serbian models of autonomy for Kosovo, be it before and under the 1974 Constitution or after Milosevic's revoking of Kosovo's autonomy in 1989. Thus, the argument of Resolution 1244 was not based on the constitutional order of Yugoslavia (and its restoration), but rather on the legitimacy of Kosovo's claim to substantial autonomy.

In the current situation, however, the international community is treading a thin line between respecting *de jure* Yugoslav sovereignty over Kosovo and *de facto* administrating the protectorate, with both Prishtina and Belgrade keeping a jealous and vigilant watch. Recently, for instance, the former Prishtina court now acting out of Nis indicted the commander of the Kosovo Protection Corps citing a Serbian Interpol warrant. UNMIK rejected the arrest of the KPC commander with the argument that the Nis court acted as a Serb parallel institution for Kosovo and had no jurisdiction. On at least three other occasions, Belgrade's 'virtual sovereignty' over Kosovo has already ignited major political controversies, with more sure to come (RFE/RL Newline vol. 8, No. 41, Part II, 3 March 2004) .

Firstly, the fact that Res. 1244 referred to Kosovo as *part of the FRY*, but not as the autonomous province of Serbia it actually was, has added to the confusion. Some have argued that the fact that the FRY ceased to exist with the creation of Serbia and Montenegro has made Res. 1244 irrelevant and thus Kosovo independent by default. Another line of argument – even for those who reject that Kosovo is part of Serbia and Montenegro as the successor state of the Federal Republic of Yugoslavia – claims that Res. 1244 precludes a return to a *status quo ante* as constituent part of the Republic of Serbia. The Belgrade Agreement for the Restructuring of Relations between Serbia and Montenegro (14 March 2002) included an explicit precaution for a possible disintegration after three years: 'If Montenegro withdraws from the state union, international documents related to the FRY, the U.N. Security Council Resolution 1244 in particular, shall relate to and fully apply on Serbia as its successor.' (Accord 2002) The suggestion that this provision violates the UNSC resolution by *re-introducing* Serb sovereignty over Kosovo seems far-fetched: The UNSC, respecting Yugoslav sovereignty, could not deny Kosovo being an autonomous part of Serbia under (any) Yugoslav constitution and theoretically Serbia might uphold the defunct 'shell' of the state union even after Montenegro's secession, if only because of Kosovo.

Secondly, for Kosovar leaders it is a must to protest any appearance of Serbian, Yugoslav or Serbia and Montenegro's *sovereignty over Kosovo*. The bilateral treaty on the rectification of the state border between FYROM and Yugoslavia was signed in February 2001. The clarification of the border delineation served the improvement of border patrolling on both sides (and thus may have contributed to the outbreak of violence in Macedonia by cracking down on grey zones). The Albanian leaders in Prishtina found it hard to stomach that the Belgrade authorities could rectify the border and thereby 'give away' some 2,500 hectares of 'their' territory. Formal respect of Yugoslav sovereignty and pragmatic reasons of border security made the UN and NATO accept the agreement.

Thirdly, similar protests were provoked by the explicit *reference to Kosovo* as a province of Serbia in the preamble of the Constitutional Charter of the State Union of Serbia and Montenegro (6 February 2003): 'the state of Serbia which includes the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohija, the latter currently under international administration in accordance with UNSC Resolution 1244' (Constitutional Charter 2003). The upcoming new Serbian Constitution is bound to trigger a similar bout of protest. Neither party to the conflict will allow the tension to subside or the political hype of status to wither away. Second-track simulations and non-status negotiations certainly have their merits, but they will not scratch the surface of the status issue, even without the existing time constraints

In hindsight, it is often argued that a window of opportunity for an 'imposed' final status arrangement (i.e., independence) actually existed when Milosevic was still in power. Whether the Serbs would have accepted the loss of Kosovo as punishment for the regime's crimes or whether Milosevic could have blamed it on the 'unpatriotic' opposition remains a matter of speculation. Irrespective of self-serving Russian and Chinese opposition to Kosovo independence in the UNSC, the idea of Kosovo's reintegration in a post-Yugoslav state gained some credence with the end of the Milosevic regime and the coming to power of the democratic and reform-oriented Democratic Opposition of Serbia (DOS) coalition in Belgrade. Additionally, it was argued that international pressure on the new democratic regime to settle the Kosovo issue might backfire and erode its popular backing in Serbia. For any Kosovar Albanian leader yielding one inch from the claim to full independence would be political suicide, as the status issue is not subjected to a cost-benefit analysis. Although many reform politicians in the Democratic Party and G-17 are more than willing to give up on Kosovo in order to boost economic reforms and European integration, they will say so only behind closed doors. The landslide victory of nationalist parties (ranging from Kostunica's DSS to Seselj's SRS) only adds to this political taboo.

### ***The Future Status of Kosovo***

Hypothetically, at least five main options for a future status of Kosovo are currently under discussion (see Table 1, cf. Calic 2004; Kosovo Final Status 2002; Altmann 2001). At the end of the day, however, all options fall into three distinct categories; those that grant Belgrade any sovereign rights over Kosovo (autonomy, reintegration), those that do not (independence) and those that leave this question unanswered (permanent protectorate, EU integration). As national sovereignty is indivisible from an Albanian-Kosovar perspective and as Belgrade is ready to consider any option *but* independence, room for compromise seem to be non-existent. The underlying logic of each option and the overall objectives of the international community are therefore key in deciding on the way forward. The international community's principles may be summarised as:

1. *Functional*: the prioritisation of a functioning state over a nation-state
2. *Final*: a finality of Balkan state disintegration
3. *Fair*: a fair arrangement respecting the rights of minorities *without*, however, thwarting the first two principles



Table 1: Options for the Future Status of Kosovo

<i>Independent statehood</i>	<i>Autonomy within</i>	<i>Reintegration</i>	<i>Permanent international protectorate</i>	<i>EU integration</i>
conditional	Serbia	As third constituent part of the State Union of Serbia and Montenegro		
unconditional	Serbia and Montenegro			

The *Kosovar* position claims that international conditionalities concerning human and minority rights as well as a fully functional state will be fulfilled once Kosovar self-determination has run its course all the way to independent statehood. The logic of the Kosovar position is that it would be unjust to have a Serbian or South-Slavic state/federation rule over Albanian Kosovo. The arguments range from ethno-demographic (national self-determination) to legal (Kosovo's status under the Socialist Federal Republic of Yugoslavia (SFRY) constitution or the disintegration of the federation) to moral (Belgrade forfeiting its sovereign rights because of the atrocities committed by the Milosevic regime). Theoretically, independent statehood would not preclude a state restructuring within Kosovo through federalisation or cantonisation.

The *Serbian* position of a restoration of sovereignty over Kosovo could theoretically involve a range of options. Irrespective of the fact that a restoration is unlikely and that Belgrade has not even begun to contemplate the practical consequences, Belgrade's sovereignty could be implemented as an autonomous province of Kosovo either within the Republic of Serbia or within the State Union of Serbia and Montenegro. The exercise of constructing an autonomous status for Kosovo under the State Union and the Constitutional Charter is quite academic as any effort in that direction would reach beyond the projected life span of the State Union. Even if such an arrangement could be implemented at short notice, the dissolution of the State Union would again leave Kosovo behind with an undefined status under international law. The same basic argument of time constraints applies to the concept of a tripartite State Union. Harmonising *three* instead of two economic and legal systems into a State Union compatible with the EU Stabilisation and Association Process would be a mission impossible even without time pressure. Zoran Djindjic's suggestion of a status for Kosovo in-between autonomy and third constituent of the state union was equally fuzzy. Thus, disregarding the current Kosovar position and assuming the velvet dissolution of the State Union by 2006, autonomy within Serbia is the only 'real' option from the perspective of the current Serbian position.

### **Serbia with Kosovo**

A prospective independent Serbia including an autonomous Kosovo would face serious new constitutional, demographic and ethnopolitical challenges (see Table 2). The quality of Kosovo's autonomy would set a precedent for Vojvodina; and with the expected increasing vigour of the autonomy movement in that region, only equal status to Kosovo would be acceptable. The fact that Kosovo's autonomy under the 1974 constitution was linked as much to the SFRY as to the Republic of Serbia precludes a return to a *status quo ante*, but any new autonomy arrangement within Serbia for Kosovo, Vojvodina (and Sandzak?) would leave Belgrade with minimal, largely nominal sovereignty over these regions. The burden of transfers to Kosovo for economic development and security would easily top Tito's system of compensations. With one-third of the territory under autonomous rule and almost one-third of non-Serb population overall, the ethno-demographic composition and constitutional set-up of the 'new' state so desired by Serbian nationalists would destroy any illusions of a homogeneous, centralised nation-state. More likely, in controlling and administrating Kosovo, Belgrade would have a state of war on its hands.

Table 2: Basic Demographic and Geographic Data of the Republic of Serbia and Related Entities

ENTITY	Population		NATIONALITY	Members		ENTITY	Size	
	in thousand	in %		in thousand	in %		in sq km	in %
Rep. of Serbia	9,397		Serbs	6,495	69.1%	Rep. of Serbia	88,361	100,0%
Vojvodina	2,031	21.6%	Albanians	1,734	18.4%	Vojvodina	21,506	24.3%
Kosovo	1,900	20.2%	Hungarians	293	3.1%	Kosovo	10,887	12.3%
Serbia proper	5,466	58.2%	Bosniaks	211	2.2%	Serbia proper	55,968	63.3%
			Others	666	7.1%			
			Total	9,398	100,0%			

Source: Republic Statistical Office of Serbia (2002 census); Statistical Office of Kosovo (estimate)

The key distinction between the current process of 'standards before status' and the often-propagated alternative solution of 'conditional independence' is the *ex ante* determination of independence as the final status. The process leading from the *definition* of final status to the actual *awarding* of independence would then be the same; an (incremental) transfer of sovereign competencies under substantial international supervision and guarantees. In terms of sequencing transfer and standards, 'conditional independence' is frontloaded compared to the backloaded 'standards before status.' Logically, independence once awarded cannot be revoked and sovereign rights once transferred cannot be withdrawn. Thus, 'conditional independence' in its practical implementation would be similar to the current situation in Bosnia and Herzegovina with an Office of the High Representative (OHR) to uphold international standards and to move local politicking away from zero-sum games step-by-step.

The two 'international' options of a permanent protectorate and European integration deserve closer scrutiny. The *protectorate* is hardly a long-term option in and by itself. On the one hand, both 'standards before status' and 'conditional independence' or even autonomy under Serbian sovereignty would imply an extended international (civilian and/or military) presence as guarantor in Kosovo. The well-known 'unintended consequences' of protectorate arrangements such as the so-called 'inflexibility trap' resulting in 'frustrated societies, weak states and a crisis of democracy' are a stark argument against an unlimited continuation of this mode of governance (Krastev 2002).

The 1999 promise of a 'European perspective' for the Western Balkans evidently includes Kosovo. Nevertheless, the idea of a European short cut for Kosovo is largely utopian. Some have argued that the transfer of sovereign rights in the process of *EU integration* might make the sorting-out of sovereignty over Kosovo between Belgrade and Prishtina a superfluous exercise or at least one that could be cut short by integrating Kosovo into the EU as it is. This shortcut has three drawbacks. Firstly, taking Kosovo's inability to meet basic criteria as an excuse to reduce or forfeit conditionalities would undo the fundamental logic of EU integration strategies. Secondly, apart from the fact that sovereignty is generally seen as indivisible in the Balkans, the sovereign rights relegated to Brussels in the process of European integration are not those disputed between Prishtina and Belgrade. Thirdly, the EU can only negotiate a Stabilisation and Association Agreement (SAA) with a fully sovereign and functional state. In order to circumvent this dilemma and not to complicate the SAA preparations with the State Union of Serbia and Montenegro further, the EU has set up a Stabilisation and Association Process Tracking Mechanism (STM) for Kosovo. This joint technical working group of UNMIK, the PISG and the European Commission simulates the benefits of SAA preparations for the countries of



the region in terms of norm-setting and policy guidance for EU-compatible structural reforms. The outcome for Kosovo, however, cannot be the signing of an SAA. The government in Belgrade cannot be held responsible for the fulfilment of SAA criteria in Kosovo, nor can - to a large extent - the government in Prishtina. Judging by the track record of the other Balkan countries in the Stabilisation and Association Process so far, even an independent but weak Kosovar state would be an unlikely candidate for a fast track to EU membership. Conversely, the signing of an SAA with Serbia and Montenegro or, more likely, Serbia *and* Montenegro in the medium term - a feasibility report for Serbia and Montenegro is being prepared, but a ratified SAA before 2007 is unlikely - would have consequences for Kosovo too. Far-reaching autonomy within Serbia would create SAA problems similar to Bosnia and Herzegovina's and conditional independence would imply a separate SAA for Kosovo. Reform politicians in Belgrade therefore argue that progress on EU integration as well as on political and economic reforms would be much quicker without Kosovo (and without Montenegro).

Options involving an exchange of population or territory would fly in the face of the most basic European principles and would certainly trigger an avalanche of similar claims in the region and beyond. These options may be (and are) used as threatening gestures, but are non-starters in an orderly final-status process. The same applies to possible 'solutions' involving a partitioning of Kosovo along the (main) ethnic lines, with the Serb part joining Serbia and the Albanian part gaining independent statehood or revisiting visions of a Greater Albania. Accepting such a redrawing of borders would foster and legitimise similar ideas in Bosnia, Preshevo Valley and Macedonia - a slippery slope towards further ethnic cleansing. More importantly, such a decision would condone the concept of Kosovo as a second, mono-ethnic nation-state of the Albanians where minorities can at best be tolerated. Euphoric international promises to 'restore' multicultural and multiethnic communities have subsided and the international community has come to accept pragmatic solutions in refugee return and related property issues. Yet, countering creeping endeavours to turn states and state-like entities into mono-ethnic constituencies by violent or other means remains a prime objective.

*Restructuring* of Kosovo could be an option to accommodate ethnic minorities (i.e., the Serb population), both in a framework of conditional independence and as an autonomous province of Serbia. *Federalisation* would create two ethnically defined constituent entities within an independent Kosovo (similar to the Federation and the Republika Srpska within Bosnia and Herzegovina). A federalisation of Kosovo as a province of Serbia would be food for thought for experts in international and constitutional law. With the haphazard distribution of pockets of Serb population over Kosovo the territorial shape of the two entities would surpass the worst versions of the Vance-Owen plan for Bosnia. As the lessons of Dayton indicate, in either case the net result would probably be a political system deadlocked by ethnic loyalties, a plethora of practical problems and a multiplication of public institutions without corresponding increase in the functioning and output legitimacy of the 'state.'

*Cantonisation* originally refers to the classic and unique Swiss example of plural constituent parts of the state that are not ethnically defined. Since Dayton, cantonisation refers to a state arrangement consisting of multiple ethnically defined territorial units. The distribution of the Serb population in Kosovo would seem to favour such a way out over federalisation. The price to pay would be the same: an uncontrolled multiplication of institutions and politics to the detriment of socio-economic realities - again a lesson learned from Bosnia.

Typically, the workability of sub-state arrangements to accommodate minority communities requires a strong and prosperous state as well as a historical tradition. Otherwise, the outcome tends to be a weak, dysfunctional and de-legitimised state. The argumentative fallacy of both cantonisation and federalisation concerns the principle of *reciprocity*. The Albanian Kosovars argue that, because of their right to national self-determination or wartime atrocities, they cannot be part of or be ruled by a Serb-dominated state. Reciprocally (albeit on a smaller scale), Serbs in Kosovo argue that, because of *their* right to national self-determination or post-war atrocities, they cannot be part of or be ruled by an Albanian-dominated state. Consequently, all state politics is ethnic politics. Cooperation between Serbs and Albanians is relegated either to the individual level or to the inter-state and the European level. In an independent Kosovo it would be hard to argue why the Serbs in Mitrovica should not have a claim to maximum autonomy. In a re-integrated Serbia it would be equally hard to argue why the province of Kosovo should be partitioned ethnically with federal autonomy for the Serbs, whereas statehood should be refused to the Kosovo Albanians.

Assuming that the status process were to result in acceptance of either conditional independence or autonomy within Serbia by the negotiating parties, then it would be up to the international community to apply the three fundamental principles of functionality, finality and fairness mentioned above. *Functionality* of Kosovo as a state or autonomous entity would be highly problematic in any constellation, if only because of obstructionism by the Albanian Kosovars in the first or the Serb minority of Kosovo in the second case. Territorial solutions would create too many non-cooperative and rivalling levels of government, e.g., a Serb autonomous province within a Kosovo autonomous entity within the state of Serbia (itself a constituent republic of a State Union). The criterion of *finality* does not refer to the sustainability of such an arrangement, but rather to potential precedents for the region. A federalisation or cantonisation of Kosovo would be a precedent for Albanians in Macedonia. Independence would be a wake-up call for Serbs in Bosnia and Herzegovina. Eventually, 'precedent' in this context is not a legal category, but rather the readiness of one or more parties to instrumentalise a specific case for their own ends. As a consequence, precedents can always be construed – the issue is rather how credible they are as a factor of public mobilisation and indignation. Conversely, the international community has to be able to make the case for the consistency and righteousness of its approach to various cases of nation and state building in the region. Lastly, although no binding legal norms and uniform practices exist for minority regimes in Europe, the criteria of state functionality and a finality to state fragmentation imply a certain correlation between distribution, relative and absolute size of a minority, on the one hand, and the extent of minority arrangements, on the other hand.

Functional statehood hardly figures in the Belgrade and Prishtina visions of the future of Kosovo. It is either considered to be of secondary importance or an automatic consequence of restored statehood or national statehood. Whereas a reintegration of Kosovo in whatever form would certainly unhinge the fragile political structures in Belgrade, Kosovars are inclined to show off their parallel underground institutions of the 1990s as a basis of statehood. In order to ground the extremely emotional and zero-sum debates in political reality, it would be advisable to challenge both parties to produce a concrete platform for future status - much along the lines of the initial negotiations between Belgrade and Podgorica (van Meurs 2002). Platforms specifying constitutional arrangement for Kosovo autonomy in Serbia or minority protection regimes for Serbs in Kosovo respectively might have a sobering effect.

All in all, the various options championed by Albanian and Serbian politicians are fatally reminiscent of the famous one-liner, 'Why should I be a minority in *your* country, if you could be a minority in *mine*?' (cited in Woodward 1995: 108)



### **Negotiating Kosovo**

As the endogenous capabilities in Belgrade and Prishtina to initiate a constructive process aimed at a mutually acceptable compromise arrangement for the final status of Kosovo are strictly limited, much if not everything depends on the 'international community.' Although Russia and China also factor in as potential veto powers in a UNSC authorisation of a final status for Kosovo, constructive engagement mainly concerns the USA and the EU (or key EU members). With the international community equally deadlocked and largely unwilling to tackle the thorny Kosovo issue head-on, a breakthrough will likely depend on shifts in EU and/or US interests outside the Balkan conundrum. The recent shaping-up of the EU's Common Foreign and Security Policy and its increased willingness and improved capabilities to handle military and policing operations has consequences for the Balkans and the transatlantic division of labour, but hardly impinges on the deadlocked status issue.

Resolution 1244 assigns UNMIK and the SRSG the task of 'facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet Accords.' (Rambouillet Accords 1999) The ambiguity of the accords' text, however, is unsurpassed: 'Three years after the entry into force of this Agreement, an international meeting shall be convened to determine a mechanism for a final settlement for Kosovo, on the basis of the will of the people, opinions of relevant authorities, each Party's efforts regarding the implementation of this Agreement, and the Helsinki Final Act.' This one sentence raises a plethora of questions: What if the will of the people and the opinions of the relevant authorities turn out to be irreconcilable? Is the reference to the Helsinki Final Act a reminder that state borders are inviolable or does it make any solution conditional on a larger set of standards concerning human and minority rights, democracy and the rule of law?

Even though Res. 1244 highlighted Yugoslav sovereignty over Kosovo and failed to mention the timeframe, Michael Steiner's 'standards before status' speech at the UN in April 2002 marked the end of this three-year time-out. His proposal was generally considered the best possible option given the circumstances, defining eight standards or benchmarks: (Address 2002)

1. functional state institutions;
2. enforcement of the rule of law;
3. freedom of movement;
4. right of return for all Kosovars;
5. market economic development;
6. clarity of property title;
7. normalised dialogue with Belgrade; and
8. reduction and transformation of the Kosovo Protection Corps (KPC).

Most of these benchmarks are related to state functionality and have to be addressed by the PISG. From a Kosovar perspective, making the opening of status negotiations conditional on fulfilling certain standards is an incentive only if independence is the guaranteed or prejudiced outcome of the negotiations. Conversely, from a Serb perspective the 'standards before status' formula provides no incentive for cooperation whatsoever and might even be understood as an invitation to obstruct and thwart progress on issues such as the Prishtina-Belgrade dialogue or refugee return and freedom of movement. Thus, the fundamental flaw of 'standards before status' is that it can unfold its incentive function for one party *only* and *only* if it prejudices the final status outcome. Although local Serb communities would certainly profit from full implementation of the 'standards', they are not the addressees of the 'standards before status' conditionality. There even is a 'moral hazard here: In the competition of two

mutually exclusive status options, any obvious and/or provoked failure on the part of the Albanians to meet the standards might be seen as boosting the Serbian option for the status of Kosovo.

'Standards before status' opened the prospect of a mediated bilateral dialogue on non-status issues and UNMIK finally took its courage in both hands and sought to cut through the legal complexities of ownership and sovereignty. In June 2002, the Kosovo Trust Agency was established to administer publicly-owned firms and begin the privatisation process on the basis of laws approved one month earlier. The fact that UNMIK no longer shuns status-related questions and since November 2003 even envisages a corresponding political process also reinvigorated political activity in Belgrade and Prishtina. Albanian politicians reiterated their position that Kosovo is independent and only awaits international recognition. They criticized that Steiner's formula did not contain a roadmap and a timetable for independence. In Belgrade the Kosovo issue had been handled by Deputy Prime Minister Nebojsa Covic, who heads the government's Coordination Centre for Kosovo (CCK). In January 2003, it was publicly announced that status negotiations should no longer be postponed, as further delays would only consolidate Kosovo's *de facto* statehood, a trend unacceptable to Serbia. To underline his claim, Djindjic demanded the stationing of Serbian security forces in Kosovo and proposed the ethnic federalisation of Kosovo under Serbian sovereignty (Beta News 27 February 2003).

The ceremonial opening of 'technical' negotiations between Prishtina and Belgrade in Vienna on 14 October 2003 constituted a belated satisfaction for Michael Steiner, who had left Kosovo in the summer of that year. His political mantra of 'standards before status' had brought Kosovars and Serbs to the Austrian capital. At the EU-Western Balkans Summit in Thessaloniki in June 2003 the mutual readiness to open negotiations had been celebrated. Irrespective of the question, whether Kosovo becomes an independent state in the medium terms or not, numerous *practical* questions thus far remained unanswered between the two neighbours, ranging from transport and license plates to energy supplies and telecommunication. In the harsh political realities of today, however, each and every protocolary decision and technical issue appears as the status question in disguise. In the UN mediated negotiations, each party to the conflict watches its opponent with eagle eyes to prevent the other from prejudicing the final status of Kosovo in his favour, while striving to do just that himself. The number of pitfalls awaiting the UN negotiators is plenty.

In the run-up to the negotiations, both parties – as was to be expected – brought out their big guns. In spring, the Kosovar Parliament threatened to declare independence and the Serb communities in northern Kosovo countered with the options of unification with Serbia or the creation of their own 'Republika Srpska' within Kosovo. The Serbian parliament and government in Belgrade declared on 27 August that the only acceptable future status for Kosovo would be that of a province of Serbia, adding the return of Serb refugees and the Serbian army as conditions. In order not to negate the emotional next to the legal dimension, the Orthodox Church in Belgrade simultaneously epithetised Kosovo as 'Serbia's Jerusalem.' The parliament in Prishtina refused to debate the substance of the Vienna negotiations, to give the Rexhepi government a mandate and thereby assume responsibility for the upcoming bilateral talks.

The breakthrough of sorts concerned the readiness of the Kosovar leadership and Belgrade to accept each other as negotiating parties. For Belgrade negotiations with Prishtina undermined the alleged status of Kosovo as merely a province of Serbia, whereas it had symbolic importance for Prishtina whether representatives of Serbia or Serbia and Montenegro were sitting on the opposite side of the table. Thus, on 14



October 2003, the delegations met under the vigilant eye of the revived Contact Group and representatives of NATO, the EU and the OSCE. Zoran Zivkovic, Prime Minister of Serbia, and Nebojsa Covic, his Deputy and President of the Coordination Centre for Kosovo and Metohija, represented Serbia and Montenegro. The last-minute withdrawal of Kosovar Prime Minister Bajram Rexhepi was a major setback. Only President Ibrahim Rugova and Nedžad Daci, Chairman of the Assembly, arrived in Vienna. After a short meeting with high media coverage it was formally decided to install four working groups that were to meet alternately in Prishtina and Belgrade, starting in November, to deal with (1) electricity supply for Kosovo; (2) transport and telecommunications; (3) refugee return; and (4) missing persons. Meanwhile, the representatives of the Belgrade and Prishtina working groups have held their first meetings under international chairmanship. The first meeting of experts on 4 March 2004 in Prishtina dealt with the least politicised issue – energy supply and environmental protection. The working groups for missing persons met on 9 March 2004 in Prishtina with the Kosovar delegation including both Milorad Todorovic as the responsible minister and UNMIK staff. The working groups on transport and telecommunications as well as the most controversial issue of the return of displaced persons are yet to hold their first meeting.

After the meeting, Rugova underlined that Kosovo's mind was firmly set on joining the EU and NATO as an independent country. In return, Covic noted that the past meeting had brought together representatives of the Republic of Serbia and the province of Kosovo. The uneasy mediating role of UNMIK is not only due to the single-mindedness with which the rivals had dug their heels in even before the 'negotiations on issues of joint interest' had actually started. Paradoxically, the opening of technical negotiations as such not only constitutes a victory for the 'standards before status' approach, but also its demise: In order to avoid the absurd situation of Kosovars and Serbs fighting at the negotiation table about issues that actually belong to the prerogatives of the third quasi-neutral party of UNMIK, Steiner had to transfer some more competencies to the institutions of provisional self-government. This transfer collided with the 'standards before status' logic, even though the opening of negotiations was one of the eight standards.

In order to further complicate the pre-negotiations for the Vienna meeting, additional 'parties' demanded access. The Serb minority in Kosovo insisted on having its own representative at the table. Following the same ethnic (versus state) logic, the Albanian minority in the Preshevo Valley reciprocally insisted on having its own representative present. In the Kosovo delegation the Serb Milorad Todorovic officially did not represent the ethnic minority, but was invited *ex officio* as minister. With Rexhepi's withdrawal, Harri Holkeri felt compelled to disinvite Todorovic as well (Meurs 2003).

The conclusion from the Vienna meeting is that the political leaders in Belgrade actually had no master plan for a sustainable and domestically acceptable solution for Kosovo. Nor had their interlocutors from Prishtina a concept for the Serb minority in the envisaged independent Kosovo. The fact that the international community seems equally helpless in dealing with the status question, however, is more worrisome. A resounding victory for G17 and other reformers unwilling to let the status question block Serbia's road to Europe in the December 2003 elections might have been helpful to unravel the Gordian knot. The victory of the nationalist Serbian Radical Party (SRS) has tied the hands of even the most liberal politicians in Belgrade. To top it all, voices linking a possible loss of Kosovo to the partition of Bosnia and Herzegovina have already been heard from Banja Luka and Belgrade. Albanians from Preshevo Valley or the Tetovo region might be tempted to use violence to state their claim in the negotiation process or to stop the talks altogether. Recent unrest in Southern Serbia and Macedonia and violent

clashes in Kosovo seem to indicate that the opening of a negotiation process more readily invokes the forces of the past than peaceable visionaries.

As political constraints dictate and as several international simulations have proven, neither Serbs nor Albanians have any motivation to cooperate and initiate compromises. No incentives (economic assistance or even EU integration) and arm-twisting is likely to reach beyond bringing them to the negotiation table. Both sides will drive the internationalists up the wall by quarrelling over procedures and modalities and stonewalling any talks on substantive, status-related issues. Even if, in an unthinking moment, the two parties were to agree – their 'solutions' involving partitionings and land-swaps would be blatantly unacceptable for the international community. By all appearances, with acknowledging the loss of Kosovo a political taboo in Belgrade, reformers tend to favour partitioning or federalisation and thus give up all but formal sovereignty over the rest of Kosovo. Conversely, nationalists talk of cantonisation, which implies an ambition to control all of Kosovo in one way or another. Overall, the Belgrade argument seem to have shifted from a historical claim to the protection of the Serb minority, pointing an accusing finger at the track record of the PISG, UNMIK and KFOR in minority protection and insisting on full implementation of Resolution 1244 (The Independent 24 March 2004: 1).

In sum, with 'standards before status' and the opening of a negotiation process the status issue is back on the agenda (assuming it ever was 'off the agenda'—see Table 3) and here to stay. The classic post-conflict approach of holding off on controversial issues while re-establishing normal relations has run its course. If the logic of the State Union of Serbia and Montenegro was at least partly linked to Kosovo, the end of the moratorium by early 2006 and the likely dissolution of the Union set a firm time limit for the status of Kosovo. In the meantime, the various entries in the regional timetable (e.g., the upcoming elections in Serbia, Kosovo and Serbia and Montenegro) will keep the status issue in the newspapers.

Table 3: The Political Calendar of Serbia, Montenegro and Kosovo, 1999-2006

June 1999	UNSC Res. 1244		December 2003	Parliamentary elections in Serbia
October 2000	Local elections in Kosovo		April 2003	Presidential elections in Serbia
November 2001	Central elections in Kosovo		October 2004	Parliamentary elections in Kosovo
March 2002	Belgrade Agreement between Serbia and Montenegro		Spring 2005	Elections for the parliament of Serbia and Montenegro
February 2003	Proclamation of the State Union of Serbia and Montenegro		Mid-2005	Review of standards for Kosovo, opening of status negotiations
October 2003	Opening of UN-mediated negotiations between Belgrade and Prishtina in Vienna		February 2006	End of the 3-year moratorium on the Montenegro referendum
November 2003	Announcement of mid-2005 as the timetable for status negotiations by the Contact Group		???	UNSC Resolution on the final status of Kosovo

The benchmarks as specified by the current SRSB are a tall order if not a mission impossible for the Kosovar leaders with little more than a year to go. A public commitment and the implementation of corresponding policies for a multiethnic Kosovo by Albanians leaders in Prishtina feature high on the list of tasks. Some of the benchmarks are rather general, e.g., the promotion of civil society, but others are highly demanding, e.g., a legal framework for investment or conditions for safe returns. Predictably, the outcome of the review of mid-2005 will have to be positive despite serious shortcomings on most benchmarks, with the Kosovars pointing to their limited competencies and Serb obstructionism and the Serbs arguing that the UN assessment is biased in favour of Kosovo independence. Political expediency and timetables are strongly against a further postponement of final-status negotiations, even though the non-status dialogue will not have shifted either partisan position on the status issue one



inch. It seems a safe bet that no intense and 'robust mediation', no international package of incentives and pressure will bring the two parties closer to a consensual outcome for final status negotiations. In the end, the parties to the conflict can wait, the international community cannot. Most likely, at the end of the day, the UN and the Contact Group will have to define a final status single-handedly.

### **Final Status**

Finding middle ground between Prishtina and Belgrade positions might involve 'independence without full sovereignty' or 'full sovereignty without independence.' Precedents for such constellations are rare, but some have proven quite stable. *Taiwan* acts as an independent state, but is not a member of the UN and *de jure* remains a province of mainland China. Taiwan largely refrains from pushing the issue of recognised independent statehood, whereas Chinese threats to reassert its sovereignty by force have also subsided. After more than 30 years, *northern Cyprus* continues to exist as a *de facto* state without international recognition. Fruitless negotiations kept the border between the two halves of the island closed for decades, although violence subsided. Only the immediate prospect of EU membership seems to have opened a window of opportunity for a rapprochement and new status talks. The *Ostpolitik* of West Germany vis-à-vis the GDR is another example of accepting overriding international realities and creating possibilities for mutually beneficial cooperation and pragmatic coexistence without prejudicing fundamentally incompatible positions on state sovereignty. The British *Commonwealth* stands for a minimum of symbolic integration without a real transfer of sovereignty. The more or less constructive and at least stabilising outcome in each of these cases depended primarily on the willingness of the protagonists to respect the opposing claim, to accept the impossibility to find a functioning compromise and to work with the ensuing constellation. Typically, in each case the protagonists were state (or state-like entities) without violent 'pressure groups', ethnic minorities or 'age-old' ethnic hatreds.

As the Kosovo status issue definitely does not fulfil any of these preconditions, the international community has to prepare a scenario for the likely case of deadlocked status negotiations on the basis of its own principles – functional, final and fair. Postponing either the deadline for the beginning of status negotiations or the one for their conclusion is not an option with so many actors interested in blocking the negotiation process. As vested interests ranging from nationalist politicians to organised crime thrive on fuzzy arrangements and fuzzy timetables, the new status of Kosovo would have to be clear and enforceable. 'Standards before status' has no incentive for Belgrade and as the issue of state functionality in Kosovo is unlikely ever to have an impact on the status debate in far-away Belgrade (but may one day in Prishtina and Mitrovica). The UN should fix an end date for status negotiations in advance and define an authoritative alternative: 'no' to the Belgrade agenda and 'no' to the Prishtina agenda.

Ideally, the issues of Belgrade's sovereignty over Kosovo and Prishtina's sovereign statehood should be separated. Currently, a triple deadlock exists. The international deadlock concerns the threat of a veto in the UNSC against national determination leading to secession and independence. The bilateral deadlock is Prishtina's and Belgrade's incapability and unwillingness to compromise on the status issue with no perspective whatsoever for the international community to sway leaders on either side. The local deadlock concerns the standoff between Albanians and Serbs in Kosovo. The Albanians insist on turning 'standards before status' upside down. The Serbs are well aware of the international deadlock, which reduces their already non-existent readiness to negotiate the status issue even further. Local Serbs are equally aware of Belgrade's unwavering support and pertinent position on the status issue, which reinforces their unwillingness to come to terms with Kosovo. As the bilateral deadlock cannot be broken,

the international deadlock is the key. As the case of Cyprus currently demonstrates, a third party may play a constructive role in the deadlocked local conflict if conflict resolution is linked to its own concrete interests (e.g. accession negotiations for Turkey). Conversely, if its position in the conflict is merely a chip in domestic politics without concrete implications or interests involved, the 'interested' third party is likely to support non-conciliate parties and perpetuate the deadlock.

The proposed alternative is the annulment of Res. 1244 and Belgrade's sovereignty to be replaced by a full UN trusteeship rather than conditional independence. The fake option or lever of a restoration of Belgrade's sovereignty over Kosovo should be scrapped. It nurtures political illusionism in Belgrade and provides Kosovar politicians with an excuse to dodge the real issues. The Contact Group ought to prepare the ground for new UN resolution annulling Res. 1244 and thereby ending Belgrade's sovereignty over Kosovo and transferring full sovereignty – not to Prishtina, but to the UN in New York. A UN trusteeship would eliminate the bilateral deadlock in status negotiations and create much better prospects for non-status negotiations. Similarly, once the Kosovo Serbs are in a situation similar to other Serb minorities (without parallel institutions or overriding loyalty to Belgrade), they will have to engage with Prishtina and might negotiate some form of autonomy within Kosovo. The 'reserved powers' of UNMIK and the SRSG would largely remain the same – international representation, minority protection and security. The normal political process and the functioning of the state would be put in the hands of a representative government under the oversight of a High Representative much like in Bosnia.

Such a UN trusteeship in Europe would have the advantage of clarifying (or at least simplifying) the issue of sovereignty and leave the negotiations on 'succession issues' with Belgrade to the UN. In Kosovo the trusteeship would create the basic preconditions for large-scale privatisation and economic development (but without the hollow promises of independence). The UN and its civilian and security institutions in Kosovo would have to provide and implement solid guarantees for the Serb minority and Belgrade would have every right to be particularly vigilant and demanding vis-à-vis the UN and UNMIK/KFOR in this respect. The Serb minority would have to engage with the PISG and abolish all parallel institutions. Belgrade's influence on Kosovo would be channelled via the UN, not back-channelled via Mitrovica. Undoubtedly, the new policy of aloofness on the part of Zagreb and Belgrade has contributed significantly to the improvement of the political relations between the three ethnic communities in Bosnia and Herzegovina in recent years. Back channels can be a constructive instrument in conflict resolution. Third parties rewarding and reinforcing parties to the local conflict for their uncompromising hard-line positions are bound to perpetuate the conflict, as the above cases of Cyprus or Bosnia and Herzegovina demonstrate. The Albanian Kosovars would not gain independence, but they would lose the threat of 'Yugoslav' restoration. The trusteeship would be a demanding strategy for the international community and the UN in particular, but it might produce a functioning state; it would be final by not creating a precedent for further state disintegration; and it would allow for fair arrangements with the Serb minority without upturning functionality or finality.

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