

Jolyon Naegele

GUIDELINES FOR RESOLVING KOSOVO'S FUTURE STATUS³¹⁵

When President Slobodan Milošević finally capitulated to NATO at the height of the air strikes against Yugoslavia nearly five years ago, the International Community was far from united on how to deal with Kosovo's status. The issue was put off indefinitely and an interim solution was imposed.

Over the first four years of UNMIK's and KFOR's mandate, the reason for their deployment -- ethnic violence -- had become statistically insignificant thanks to a robust policy by KFOR, the deployment of an international civilian police force and the development of an indigenous, OSCE-trained Kosovo Police Service. Extremists launched occasional but well-timed acts of violence which helped ensure that the number of displaced Serbs returning to Kosovo remained a trickle. Since 1999, large numbers of Serb IDPs concluded that returning to Kosovo was not realistic and sold off their properties to Kosovo Albanians.

By early this year, the overall crime rate in Kosovo was on par with western Europe. Ethnic violence was an occasional occurrence that appeared to have been committed with a political goal in mind. The problem was how to interpret that goal when no one claimed responsibility, when there was little if any forensic evidence and the public was refusing to cooperate with investigators for fear of retribution.

³¹⁵ The views contained in this paper are the author's and do not necessarily reflect official UNMIK policy.

With public opinion polls indicating at least 95% of the Serbian public opposed to independence for Kosovo, Belgrade politicians have sought other less controversial options. Nevertheless, Serb-Montenegrin President Svetozar Marović, a Montenegrin, suggested last year that if Serbia wanted to join Europe it should free itself of the burdens of Montenegro and Kosovo. But Serbia's Deputy Prime Minister Nebojša Cović responded that given the choice between Europe and Kosovo, Serbia would choose Kosovo.

Many Serbs in Serbia proper continue to perceive Kosovo as a sort of holy land temporarily occupied by aliens from Albania. The fact that Albanians make up some 90 percent of Kosovo's population and that they coexisted with Serbs in Kosovo for centuries plays little if any role in their view.

At the launching of the Direct Dialogue between Pristina and Belgrade in Vienna last October, Serbia's Prime Minister at the time, Zoran Živković, was the epitome of the Serb misconception. Živković declared that the only thing UNMIK and KFOR had accomplished in four and a half years in Kosovo was to boost Kosovo's population by 20 percent by allowing the influx of large numbers of settlers from Albania. In fact, the number of people from Albania living in Kosovo is negligible and would appear to be largely limited to a few academics and television and radio announcers.

For their part, Kosovo Albanians perceive Belgrade as their former colonial master whose discriminatory and violent policies of the 1990's rule out any chance of Kosovo ever agreeing to subordinate itself in any way to Serbia.

Under the previous Special Representative of the Secretary General or SRSG, Michael Steiner, a set of eight Benchmarks and five Standards were drawn up in 2002 that were to serve as a series of guidelines for Kosovo to enable Serbs and Albanians to live together and create the conditions for resolving Kosovo's status. Unfortunately, the Benchmarks and their relationship to the Standards were somewhat confusing.

Growing impatience and rising expectations led the U.S. State Department,

with the tacit support of the other members of the other members of the Contact Group last November to announce a review of Standards implementation in mid-2005 that would enable talks on final status to be launched if Kosovo passed the review. That announcement by US Undersecretary of State Marc Grossman was something of a turning point in the relationship of Kosovo Albanians with the International Community. Suddenly there appeared to be the semblance of a timeline to the next step toward independence, a roadmap rather than an obstacle course. The response of the public and the local news media was enthusiastic. Warnings by Mr. Grossman and the head of UNMIK, Harri Holkeri, that this was not a short-cut to independence – that the Standards had to be implemented – were all but ignored.

The Standards and Benchmarks were subsequently consolidated into eight Standards for Kosovo that were launched last December. Thorough implementation of the Standards for Kosovo is intended to ensure the rights of all communities in Kosovo, that is to say that the Serbs and members of other minority communities would feel sufficiently safe and secure to remain in Kosovo even in the event that the Security Council were to grant Kosovo independence.

It has been said repeatedly that no country could meet all the standards. What is expected from Kosovo is significant progress, in the former of greater stability, accountability and responsibility and active respect and support by the Provisional Institutions of Self-Government (PISG) and the majority Albanian population of minority rights.

UNMIK and the PISG immediately began work on drafting a Kosovo Standards Implementation Plan or KSIP. The main Kosovo Serb political coalition, Koalicija Povratak, was divided over whether to participate and abstained, pending Belgrade's decision. As soon as the new Serbian government took office in early March it became clear that there would be no Serbian participation in the Standards. On the contrary, the new administration in Belgrade perceived the Standards as a superhighway to Kosovo's independence and thus supported the continuing boycott of KSIP.

UNMIK and the PISG were putting the final touches on KSIP when several days of widespread, ethnically based violence erupted on 17 March. The violence warranted changes to the wording of the draft KSIP and shortly after another visit to Pristina by US Under Secretary of State Grossman the Implementation Plan was launched jointly by SRSG Holkeri and Prime Minister Rexhepi on 31 March.

The Plan sets out in detail what actions are designed to meet the Standards, who is responsible for undertaking that action, who will support the principal actor and when the action is planned to take place, in other words, measurable actions.

The International Community which along with the foreign news media had lost interest in Kosovo in recent years was forced by the sudden outburst of violence in Kosovo in March to refocus its attention on Kosovo. In addition to the Contact Group, (US, UK, France, Germany, Italy, Russia and EU at the level of foreign ministry political director), there is now a “Contact Group Plus” also known as the Support Group, (Contact Group + NATO + EU at the level of foreign ministry department head or regional director meeting in Pristina) as well as various other constellations such as “Intensive Dialogue”, also known as “the Troika” (US/NATO/EU, meeting in Pristina and Belgrade), and the Security Advisory Board (UNMIK/PISG/KFOR, meeting in Pristina), which will meet at various levels, frequencies, and venues to offer guidance to the PISG.

Serbia's Prime Minister, Vojislav Koštunica, in his inaugural speech two months ago made the cantonization of Kosovo a cornerstone of his government's policy. However, in the face of criticism by some members of the International Community he subsequently modified that term to decentralization while insisting that regardless of what it was called, the policy would remain the same. Nevertheless, his call for cantonization, perceived as tantamount to partition by many Kosovo-Albanians, can be seen as a contributing factor in antagonizing the public mood among Kosovo Albanians in the

days immediately preceding the wave of violent unrest that erupted across Kosovo on 17 March.

On 29 April, the Serbian Assembly unanimously approved Government's plan for territorial autonomy for Kosovo Serbs. The authors insisted the plan would not imply the division of Kosovo or lead to a change of borders. Rather they say the plan aims to create sustainable conditions for the survival and return of Serbs and other non-Albanians to renew and develop multi-ethnicity.

In fact, the plan appears to be Belgrade's first salvo in the contest over final status. It does not call for direct rule from Belgrade but rather substantial autonomy for Serbs within the substantial autonomy allotted to Kosovo under UN SCR 1244. The PISG does not appear to have a final strategy beyond calling for the International Community to recognize Kosovo as an independent state. In fact the PISG, being an interim solution with limited powers is somewhat dysfunctional lacking in vision or sensitivity to the needs of non-Albanians. What prevails in Kosovo today, in the words of Assembly President Nexhat Daci, is "*mahalla* politics," that is, the primacy of local neighbourhood issues over all else. The needs of minority communities and of the International Community are either ignored, rejected or intentionally misinterpreted.

Meanwhile, UNMIK is engaged in an effort to determine what sort of a mission it needs to become over the next two years and how to move forward on Kosovo, for example by developing an indigenous judiciary acting responsibly under the rule of law. We are also considering ways of slimming down the mission, for example, by restructuring UNMIK to be better equipped to prepare Kosovo for status resolution.

However, it is questionable whether UNMIK is in a position to keep matters under control for much longer. The chance of another spontaneous outburst of violence is considerable. It can be sparked by anything. UNMIK may well be the chief target next time. The public perception of UNMIK has

become that of an unwanted colonial administrator that should pack its bags and leave or else face forcible eviction. Perhaps some of the resentment is justified. Most of it is not. For example, it is easier to blame the international community for daily electricity blackouts than ensure that all consumers of electricity pay their bills. A substantial shortfall in income from consumer electricity payments means a reduced ability by Kosovo's electricity distributor KEK to purchase electric power from neighbouring states to make up for the shortfall in domestic production.

UNMIK is coming to the conclusion that the PISG needs more empowerment and more coaching by the International Community. It makes little sense to transfer competencies if those who are to manage these competencies are inadequately prepared or are subject to political or criminal intimidation.

For example, Kosovo now has 26 international judges and prosecutors and 380 local judges and prosecutors. However, there is no ministry of justice. Security is a reserved competence unlikely to be transferred to the indigenous authorities until final status is resolved. Rather UNMIK is in charge of the judiciary and serious cases are handled by the internationals due to the threat of intimidation of local staff. According to UNMIK justice officials, all escapes by prisoners at Dubrava prison have occurred at times when no international supervisor was present, in other words, an atmosphere has prevailed which is conducive to the intimidation of local employees by prisoners or their friends and relatives. The answer in this case was to ensure an international presence at the prison around the clock.

Similarly, the PISG's attitude toward communities and multi-ethnicity tends to be one of disinterest. The Kosovo Serb Coalition Return/Koalicija Povratak -- when not boycotting the Assembly and Government cabinet sessions -- invariably finds itself outvoted or overruled. There is, in the words of the head of the OSCE mission, "a lack of generosity" in the way the Kosovo government deals with the minority communities.

There is a growing belief within UNMIK's senior echelons that the confrontational tone that has developed over the years – the “them and us” approach -- has to end because it is counterproductive. However, transferring competencies without conditionality, without proof that the PISG is doing a better job sends the wrong message -- that transfer and status resolution are givens. They are not. Ideally, partnership between UNMIK and the PISG rather than pressure is how we should move forward.

Nevertheless, Kosovo Albanian politicians should try to improve their behaviour, cease shirking responsibility and instead cooperate actively in areas in which until now they have been decidedly passive, such as on returns of refugees and IDPs. Issuing nicely worded joint declarations calling for tolerance or welcoming returns while repeatedly boycotting key meetings with UNMIK on returns issues leads nowhere and fools no one. Promising to repair or reconstruct property destroyed in the riots last March and then when the victims complain of delays and insincerity, accusing the victims of seeking to gain more than what they lost is disingenuous. Such actions by government ministers do little to gain the support and understanding from the international community, which, after all, will be the final arbiter on Kosovo's future status.

The timing of any resolution of Kosovo's status thus will depend to a considerable extent on the people of Kosovo and their leaders. If the Standards are implemented, above all, if the conditions for sustainable returns are ensured; if the minority communities are able to feel secure and unthreatened in their own homes, then the timeline to status resolution will be far shorter than if the Standards are not implemented and Kosovo Serbs continue to be the targets of ethnic violence. In such a case, the International Community is likely to postpone any decision on status for a fixed time before a further review.

When the time does come, however, to resolve status it will be the decision of the UN Security Council, with the Contact Group playing a key role.

Predicting the future is all but impossible. But we can formulate some basic questions and draw some conclusions from the answers.

Is independence for Kosovo the only acceptable option?

As far as Kosovo Albanians, who make up about 90 percent of the population, are concerned, the answer is yes. In their view and that of most of the International Community, there can be no return of Kosovo to Serbia. However, in addition to Kosovo's Serbs, members of the other minority communities are also deeply concerned about the impact an independent Kosovo would have on their ability to lead normal lives in peace and security in Kosovo. Kosovo Albanian leaders insist that independence would end the uncertainty and tension and result in full respect of the rights of communities. The International Community is sceptical.

However, a large share of Kosovo's Serb community, chiefly those living south of the Ibar river which bisects Mitrovica, might well decide to leave the province for good unless they can be certain that their rights would be respected and that they would be able to live in a safe and secure environment. The violence in March seriously damaged many Kosovo Serbs' belief that they have a future in Kosovo.

Under full independence there could be no question of extra-territoriality of Serb cultural heritage sites such as the Peć Patriarchate or Visoki Dečani and Gračanica monasteries. Would these cultural monuments of universal significance be secure in an independent Kosovo? What would stop a mob as in March from trying to lob Molotov cocktails over the monastery walls? Obviously, independence would still mean limited sovereignty since foreign military peacekeeping forces would have to remain in Kosovo for years to come.

What about limited independence for Kosovo?

Limited independence is a concept that would have an extensive definition. Essentially, this would mean that Kosovo would remain an international protectorate with only limited powers in such key areas as Defense and domestic security. Lack of authority, however, tends to result in an unwillingness on the part of local authorities to commit themselves to action, let alone to take responsibility for their actions.

Is partition of Kosovo acceptable as a solution?

The international community is generally opposed to partition. However, if Kosovo's main communities were to agree on a mutually acceptable partition, the International Community might well acquiesce. Partition would satisfy the Serbs in northern Mitrovica and the adjacent Serb-majority northern municipalities of Zvečan, Zubin Potok and Leposavić.

Partition would not resolve the fate of the Serbs in what are essentially ethnic enclaves in the rest of Kosovo. In fact, these Kosovo Serbs south of the Ibar would be weakened because the loss of the North to Serbia proper would reduce the overall population of Serbs in Kosovo by at least one third. Moreover, partitioning Kosovo would set a precedent for breaking up Macedonia and Bosnia-Herzegovina, which could result in renewed armed conflict.

Partition need not mean Serbia's annexation of northern Kosovo but rather establishment of a highly autonomous region north of the Ibar that would nominally remain a part of Kosovo. But just as Serbs south of the Ibar would need firm guarantees for the full respect of their rights, including freedom of movement and local self-government, the few remaining non-Serbs north of the Ibar would require similar guarantees.

Could Kosovo remain an international protectorate in the long term?

The international community is divided on this. Although, for example, Beijing would prefer to see UNMIK remain in the lead of Kosovo's civil administration for a long time to come, most other key members of the International Community want to end the large and costly international civil presence in Kosovo sooner rather than later. The UN has spent some \$1.8 billion on UNMIK for the five years ending 30 June 2004.

The rising expectations of Kosovo's Albanian majority, fed by impatient remarks by key members of the PISG, may well contribute to renewed, longer-term violence as in Gaza unless some form of independence is granted soon and the international presence is significantly reduced. Nevertheless, some Kosovo-Albanians confide that a robust and visible long-term international presence is the only guarantee that Kosovo will not turn into a rogue state, the "black hole of Europe," where organized criminal activities, already well entrenched, could flourish.

What is the likelihood of a groundswell of support for a Greater Albania?

A Greater Albania, incorporating into Albania Albanian-inhabited lands in Kosovo, southern Serbia, western Macedonia and eastern Montenegro, is not an option. Tirana looks down on Kosovo as provincial in every sense. Albania's northeast, which borders Kosovo is underdeveloped, depopulated and crime-ridden. Proximity thus loses significance. Albanians in Macedonia are interested in a close relationship with their cousins in Kosovo but they too are not interested in a common state. Those in Kosovo who advocate a Greater Albania are a tiny minority of fanatics with no significant political influence. But they have the power under certain circumstances to contribute to widespread unrest.

The International Community may well pour hundreds of millions more dollars and euros into the region in the hope of buying peace and goodwill. The EU may try to buy off Serbia with promises of membership and generous investments in order to allow Kosovo to gain independence. However, without the commitment of Serbs and Albanians to put the legacy of ignorance and intolerance behind them and embrace European standards and values, these lands risk becoming tragic monuments to folly and provincialism.

Jolyon Naegele
UNMIK
Pristina

References

Analysis of the Events of 17 & 18 of March 2004, Office of the Prime Minister, Provisional Institutions of Self-Government, 14 April 2004

Collapse in Kosovo, ICG Report No. 155, Brussels, 22 April 2004

Decision to Establish a Plan for the Solution of the Current Situation in Kosovo and Metohija, National Assembly of the Republic of Serbia, Belgrade, 29 April 2004-05-11

Notes of author from the launching of the Direct Dialogue between Pristina and Belgrade, Vienna, 14 October 2004

Report on the March Violence and TV, Temporary Media Commissioner, OSCE, Pristina, 23 April 2004

Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, April 2004

Speech of the Special Representative of the Secretary General in Kosovo to the UN Security Council, 11 May 2004

Resolution 1244 (1999), adopted by the UN Security Council at its 4011th Meeting on 10 June 1999

UNMIK Media Monitoring, Daily International News Clippings, DPI, Pristina

UNMIK Media Monitoring, Headlines, DPI, Pristina

UNMIK Media Monitoring, Local Media Analysis, DPI, Pristina

V.I.P. Daily News Report, VIP News Services, Belgrade