

Final Status for Kosovo Symposium: Untying the Gordian Knot



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Overview and Summary

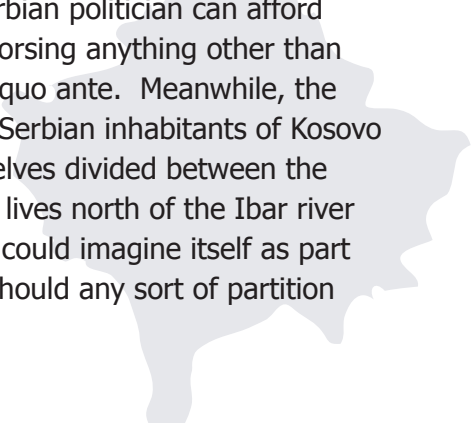
The current stalemate in Kosovo is unstable. UNMIK cannot continue much longer as the structure for international trusteeship of the territory. If political leaders in Kosovo and Serbia as well as the international community continue to adhere to their past—irreconcilable—positions, agreement on final status will become less likely as time passes, and outbreaks of violence more likely. Negotiations between Pristina and Belgrade are the only channels likely to produce a stable solution, but successful negotiations will almost certainly not take place in the absence of some action-forcing strategy pursued by the international community, most probably

one that sets a deadline for negotiated agreement to be followed by an international withdrawal in the absence of agreement. In the meantime, preparatory efforts should focus on developing an economic program, defining alternative constitutional structures—especially ones for effective protection of minority rights, defining mechanisms for regional security, and solving the Mitrovica problem as a “practice round” for final status negotiations. Eventual independence of Kosovo is inevitable, but whether it can occur peacefully and whether it will result in prosperity and security for all the inhabitants of Kosovo is very much in question.

The Current Stalemate

The situation on the ground now in Kosovo could be described as a stalemate. De facto, Kosovo is an independent state in many respects but de jure prospects for independence are cloudy. Kosovar Albanian political leaders believe that both international law and the facts on the ground entitle them to de jure statehood and insist that the international community should provide an unambiguous timetable for independence. At the same time, Serbian political leaders in Serbia proper and in Kosovo insist that they must have a say in determining any future political arrangements for the area,

claiming that according to UN Security Council Resolution 1244 the territory remains a sovereign part of Serbia. Serbian leaders in Belgrade appear intent on delaying final status consideration for as long as possible, most likely because the Kosovo issue is so loaded internally that no Serbian politician can afford to risk endorsing anything other than the status quo ante. Meanwhile, the remaining Serbian inhabitants of Kosovo are themselves divided between the group that lives north of the Ibar river and which could imagine itself as part of Serbia should any sort of partition



occur, and those south of the river who will end up a tiny minority in an independent Kosovo. The United Nations administration seems intent on avoiding the issue entirely. It has proclaimed a policy of "standards before status," but has set such a high bar for "standards" that few believe these standards could ever be reached.

None of these positions by itself can lead to a long-term solution that serves the legitimate interests of Kosovar population and of the entire region. Rather all three groups will have to modify their positions.

The history of Kosovo reflects centuries of conflicting ethnic myths and nationalist aspirations. The historic conflict infects political analysis, poisoning efforts to focus on a 21st Century solution and instead attempting to redress insults from centuries before. The energies of the Serb and Kosovar Albanian stakeholders must be focused on the future rather than on developing and presenting competing interpretations of history.

Flaws in existing positions

1) Kosovar Albanian arguments for independence are not sufficiently powerful by themselves to guarantee international support for a Kosovar state. Why not?

The Preamble to Security Council Resolution 1244 acknowledges the

sovereignty of the Federal Republic of Yugoslavia, while giving the civil administration (now known as "United Nations Interim Mission in Kosovo" or "UNMIK") plenary powers to govern the territory of Kosovo. The Resolution also mandates the transfer of these powers to local Kosovar institutions as they develop under international tutelage and prove capable of exercising them. The Resolution mandates, without setting a deadline, a determination of "final status" for Kosovo through a process influenced by the Rambouillet Accords.

Disagreement continues over the proper interpretation of UN Security Council Resolution 1244. Some legal commentators read it unambiguously as providing for restoration of full sovereignty in Serbia if some other final status is not agreed to by Serbia or formally mandated by the UN Security Council. Others read it as contemplating only formal retention of sovereignty by Serbia during the period of UN administration and clearly contemplating some other sovereign arrangement as a part of final status.

Ultimately, however, determining final status for Kosovo is not primarily a legal issue. If a new Security Council Resolution is required to replace or clarify 1244, the positions taken by Security Council members will not be determined on the basis of law but on the basis of political considerations within those countries. In our view, even if Kosovo demonstrates that it is "ready"

for independence by satisfying all of the UNMIK-articulated standards and makes compelling legal arguments in favor of its position, Russia and China are unlikely to agree in the UN Security Council over Serbian objections because of their concerns with Chechnya, Tibet, and Taiwan.

In sum, it is our view that Kosovar Albanian political leaders are making a mistake if they believe that the international community is simply going to declare that they will become a sovereign state. Recent threats by some leaders to propose a referendum on independence in order to force the hand of the international community, may help make it clear that the status quo is untenable, but a referendum in favor of independence by itself would accomplish little, leading at best to Kosovo's coming to resemble Northern Cyprus. A Kosovo that becomes independent through unilateral action would be challenged to build a sustainable economy, to maintain public order, to extend its writ into areas now under the practical control of parallel institutions taking their direction from Belgrade, as in north Mitrovica, and, no doubt, to protect its borders against military encroachments—all without international assistance.

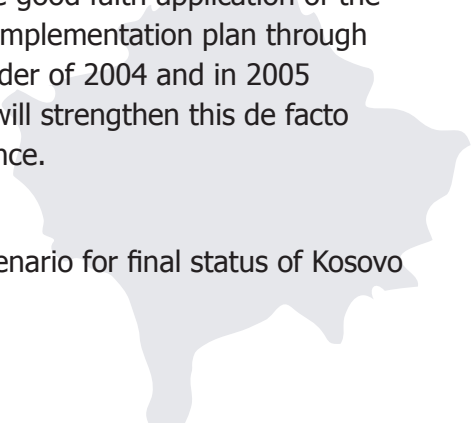
2) The insistence by political leaders in Serbia proper that Kosovo be reintegrated into Serbia is similarly unrealistic. Why?

Although few political leaders in Serbia proper dare to question the fantasy

that Kosovo should remain sovereign territory of Serbia, it is unrealistic to expect that the international community, having created a de facto independent Kosovar Albanian state, will return full sovereignty, given that almost 100% of the Kosovar Albanian population would be against such a move. Furthermore, even if the international community were to take the step of returning the province to Serbia, Kosovo would simply be ungovernable from Belgrade. Realistic assessment of the range of possibilities for final status of Kosovo must take into account the fact that most of Kosovo is already independent. Elected municipal governments and elected central political authorities increasingly exercise most of the day-to-day responsibilities for government, albeit subject to veto by UNMIK.

If the UN mandate for the international civil and military intervention were simply to be terminated and the international community decided to withdraw unilaterally, the practical reality would be an independent Kosovo (although not necessarily within its current borders). Therefore, continued devolution of power from UNMIK to the Provisional Institutions of Self Government ("PISG") and any conceivable good faith application of the standards implementation plan through the remainder of 2004 and in 2005 inevitably will strengthen this de facto independence.

No scenario for final status of Kosovo



is worthy of serious consideration unless it takes these “facts on the ground” into account.

Any plan for restoring sovereignty to Serbia must explain what assertion of that sovereignty would mean with respect to local political institutions determined to resist it. It is our view that the Serbian political leaders who make claims for simple reintegration of Kosovo into Serbia can do so only because they know that they will never be given the opportunity to exercise sovereignty in Kosovo. That is, they make these claims purely for internal consumption in Serbia.

3) The international community's position is moribund. Why?

The international community, through UNMIK, has adopted a gradualist policy that avoids as much as possible dealing with the final status of Kosovo. The present course envisions the PISG continuing to develop its civil governance capacity and intensifying its work on technical issues related to final status through the Prime Minister's working groups, involving Kosovar Serbs and contact with Belgrade. It envisions UNMIK monitoring progress under the standards implementation plan and determining, sometime in 2005, whether explicit discussions of final status are appropriate in light of that progress. This scenario would include further devolution of competencies from UNMIK to PISG, possibly involving transfer of competence in the justice sphere to the PISG, which

would allow local political and legal institutions to demonstrate their capacity to protect the physical security of Serbs and other minorities.

Under this approach the majority Kosovar Albanian population is encouraged to meet standards which they often perceive as being unrealistically lofty, not merely for Kosovo but for any modern state. And the Kosovar Serbs are told that the goal is the creation of a multi-ethnic state despite little evidence that there are any realistic possibilities for their security. Despite being unpalatable to both Kosovar Albanians and Serbs, this route remains attractive to the international community because it appears to present the fewest short term risks and requires the fewest hard decisions. This scenario is likely to be seen as maintenance of the status quo by the population of Kosovo, especially if privatization is not restarted promptly and effectively and if statements by UNMIK and major powers indicate skepticism about Kosovo's ability to move past the standards implementation plan into a significantly different phase of final status negotiations by mid 2005.

As the violence of March 2004 shows, however, the international community cannot control what has been going on in either Kosovo or Serbia proper, where growing public frustration and alienation from the democratic political process have demonstrably led to a hardening of positions and fragmentation of practical political

authority. Continued slow movement on the present course is likely to produce economic implosion, a pulling apart of local political institutions and increasing unrest, phenomena beyond the ability of the existing KFOR, UNMIK, OSCE, and EU institutions to manage. Gradualism is likely to lead to further outbreaks of violence, with unpredictable effects on the security of minorities and on international political opinion. Eventually, the international community will just give up, increasingly sending less-talented people to staff its institutions in

Kosovo, diminishing economic support, and retreating further into defensive bureaucratic obscurity.

It is easy to see from the above analysis not only that each of the positions described above cannot lead by itself to a solution for Kosovo but, even worse, that they work at cross purposes and lead to a situation that makes finding a solution ever more difficult.

Confronting Reality: The Way Forward

It is hard to escape the conclusion that Kosovo eventually will become independent. Different as they are, the three positions we have described above are all predicated on an expectation that final status for Kosovo will be achieved by an act from above—a kind of “grant” from the international community. But as we have also indicated, such an act is unlikely. There is, however, a second route to determining the final status of Kosovo: direct negotiations between Pristina and Belgrade which result in an agreement on the part of Serbia and Montenegro to grant independence to Kosovo. If such a bilateral solution were to be achieved it would have enormous advantages, not only over the obviously unstable status quo but even over an international decision should it be forthcoming. By voluntarily ceding all or some of the territory of Kosovo, Serbia

would show that it has understood its inability to exercise sovereignty over a hostile, majority Kosovar Albanian population. By showing flexibility in negotiating (even, potentially, on issues of territory) Kosovar Albanian leaders would demonstrate that they are indeed mature political statesmen determined to do their best for their countrymen. Such a bilateral agreement would make moot any need for a new UN Security resolution. Finally, such a negotiated solution would be far less likely to create a destabilizing precedent for other countries in the region and elsewhere faced by similar problems.

It will be immediately argued, however, that current political realities in Serbia proper and in Kosovo preclude successful negotiations. We agree, and



it is our view that the proper role of the international community should be to confront this reality, and to adopt the right kinds of action forcing strategies to get the parties to negotiate. Absent adoption of an action-forcing strategy, the international community cannot control what has been going on in either Kosovo or Serbia proper, where growing public frustration and alienation from the democratic political process are demonstrably leading to a hardening of positions and fragmentation of practical political authority.

Action-forcing strategies

Human experience in all kinds of negotiations—international, litigation-settlement, and labor-management—shows that parties are not likely to make the hard decisions and significant concessions necessary to negotiate resolution of a difficult issue in the absence of some action forcing event—a strike or lockout in the labor-management context, the possibility of an adverse jury verdict or an expensive trial in the lawsuit settlement context, the fear of military hostilities or withdrawal of economic aid in the international context. Presently, in Kosovo there is no such action forcing event. Things will continue pretty much as they are in the absence of a negotiated agreement, and neither side finds continuation of the status quo acutely intolerable.

Accordingly, an effective strategy to induce serious negotiations between

Pristina and Belgrade almost certainly will require more than orders from UNMIK, “decisions” by the UN Security Council, or recommendations by think tanks or NGOs.

Those interested in resolving the final status issue for Kosovo must be more energetic in exploring the variety of “carrots” and “sticks” that could be action forcing. Under all the scenarios we envision, a failure to achieve a negotiated solution within the time allotted would trigger a reconfiguration of the international presence in Kosovo. If both sides were perceived as contributing more or less equally to the failure of negotiations, the international community would simply pull out, leaving a small force just south of the Ibar river to prevent Serbian incursions into almost 100% Albanian territory and to protect the most historically and culturally valuable Serbian monasteries. Failure under this scenario likely would be accompanied by a formal declaration of independence and statehood by the Assembly of Kosovo, possibly accompanied by a referendum, hoping for recognition by a critical mass of states of Kosovo’s status as a sovereign state. It would then be up to individual world governments to recognize or not to recognize the rump Kosovo as an independent state. If sufficient numbers of them did so, Kosovo would have achieved de jure independence under international law. Thus, the results of a pullout under these circumstances would be the partition of Kosovo along ethnic lines and a bleak future for Serbs (approximately some 75,000 of them)

who live south of the Ibar river. It would also put off for a very long time any consideration of EU membership for both Serbia and the newly independent Kosovo.

It is easy to imagine that neither side would be happy with such an arrangement, thereby leading them to negotiate seriously to find a better solution. It is also easy to imagine, however, that for a variety of reasons one side or the other would not act in good faith. If this were to be the case, the international community must also have articulated differentiated “sticks” to punish the bad faith actor as well as “carrots” to reward the good faith actor. If the former turns out to be the Serbian leadership, it is not hard to conceive of a proper incentive package. The international community would recognize Kosovo in its 1974 borders, and move its forces to control those borders, dismantling the parallel structures that have been set up from Belgrade to govern the entire province. Simultaneously Serbia, and possibly Montenegro, would again become subject to economic and diplomatic isolation. It is a bit more difficult to think of the proper incentive package to control bad faith behavior by the Kosovar Albanian leadership. After all, giving sovereignty back to Belgrade, while it might sound threatening in theory and while it might be welcomed by certain nationalist politicians, would lead to complete chaos if implemented, precisely the kind of chaos that the original NATO invasion of 1999 was launched to prevent. Still, such a threat, along with

a promise that some international troops might remain, but now to help the Serbs create a modern European regime in the province, would probably be sufficient to get the Kosovar Albanian leadership to the table and keep them there.

The mediation process

Negotiations between Pristina and Belgrade are unlikely to succeed without mediation. Even a well-crafted announcement of a deadline associated with an appropriate, but static, package of carrots and sticks is unlikely to be sufficient to prod the parties into a bilateral dialogue that can produce agreement.

Competing perceptions of history and current reality, enormous mistrust, and lack of experience in participating in tough international negotiations would likely undermine negotiations without skillful mediation.

The international community must find a way to engage Serbian and Kosovar Albanian representatives through an ongoing mediated process, in which the parties and the mediator allow all options to be “on the table,” and the mediator credibly can adjust incentives depending on the possible failure, as the process evolves, of one or the other party to negotiate in good faith. If the Kosovar Albanians, for example, refuse to respond with constructive proposals to apparently legitimate Serb concerns on a particular

issue, the international mediator must be in a position to threaten a scenario in which statehood for Kosovo is less likely. Conversely, if Serb negotiators are intransigent, the mediator must be in a position to threaten a scenario in which the Serb minority is left to its own devices in an independent Kosovo dominated by ethnic Albanians.

Moreover, the international community, as well as the local stakeholders, must accept a negotiation in which everything is "on the table." In order to mediate final status negotiations, the international community must abandon its preoccupation with the possibility that final status for Kosovo would have a kind of "domino effect" on other countries in the Balkans, inviting a variety of claims to redraw borders in an attempt to create mono-ethnic states. Final status negotiations for Kosovo widely are perceived as presenting special risks for the future stability of Bosnia and Macedonia. Resolution of Kosovo's final status can have significant impact on success in these two other Balkan states, but it may be positive.

In Bosnia, nationalist parties emphasize keeping the country separated rather than united. The three main entities included in two structures, the Bosnia & Croat Federation on one hand and the Serbian Republic on the other, are stronger than the federal institutions. The two federal entities have their own armies and police forces as well as some formal and informal fiscal institutions. Local

nationalist authorities inhibit the process of returning refugees and displaced persons. It is far from clear, however, that progress in Bosnia would be undermined by a negotiated solution in Kosovo. Indeed, a negotiated final status for Kosovo could set a constructive precedent for Bosnia: aspirations of major ethnic groups in the same territory must be realized through good faith negotiations between and among the stakeholders, with international mediation.

Macedonia provides mixed lessons. Although some political parties in Macedonia reflect the European model, not being based purely on ethnicity but mostly on modern political alternatives, these parties remain small and not influential. Despite the domination of the political sphere by ethnically based political parties, however, Macedonia has, with the help of an active international community, managed to maintain peace, stability, sovereignty and territorial integrity. Signed after the violence that took place during the Spring of 2000, the Ohrid Agreements provided substantive democratic reforms to preserve the independence, sovereignty and territorial integrity of the Macedonian State. These reforms respect Macedonia's multiethnic character through pluralistic approaches that ensure full respect for fundamental freedoms, including human and national rights. In particular, Ohrid has led to reformed state institutions that include all ethnic groups and decentralized local power structures that are in accordance with the European principles of subsidiarity. The Ohrid Framework

Agreement, if correctly implemented, will reintegrate all ethnic groups, minorities and individuals into one democratic society within Macedonia.

Kosovo's final status will undoubtedly influence Macedonia's future. If a negotiated solution for Kosovo includes a partition along ethnic lines it would strengthen arguments for federalization or full partition of Macedonia as well. On the other hand, resolving the status of Kosovo as an intact territory within current borders would also strengthen the unity of Macedonia, leading to greater political stability there. But in any case

the Kosovo precedent would have been set that any border changes would have to be negotiated and agreed to by the parties themselves, rather than imposed by the international community in a manner reminiscent of 19th-century great power politics.

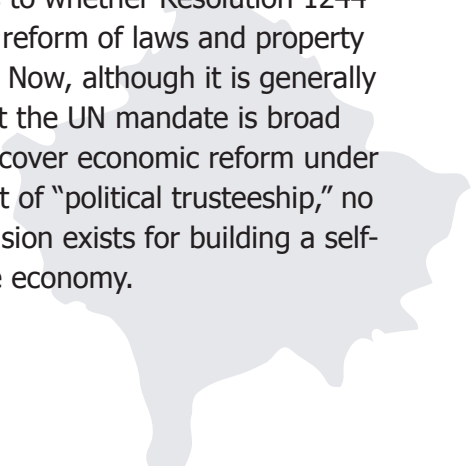
Fear of movement toward creation of a "Greater Albania," which long has encouraged paralysis in international efforts to address final status, should be set aside. No credible evidence exists that political leadership in Kosovo, Albania, or in the Albanian parties in Macedonia, desires any such thing.

In the Meantime

Formulating an action-forcing strategy and gaining sufficient support for it, and structuring adequately sophisticated mediation, will take some time. In the meantime, important work can proceed on issues that must be resolved in any event, including formulating an economic program for Kosovo, developing deeper legal analysis of constitutional alternatives, including frameworks for protecting minorities, organizing regional security arrangements, and making progress on the Mitrovica problem.

Develop an Economic Program

Kosovo presently experiences nearly 60% unemployment and a balance of payments deficit of similar magnitude. Early international efforts to reform the economy were stalled for several years because of uncertainty among UN legal advisers as to whether Resolution 1244 authorized reform of laws and property ownership. Now, although it is generally agreed that the UN mandate is broad enough to cover economic reform under the concept of "political trusteeship," no coherent vision exists for building a self-sustainable economy.



Any viable final status for Kosovo, regardless of its political acceptability, depends upon Kosovo having a sustainable economy, one capable of producing about 30,000 new jobs per year. Given Kosovo's size and lack of access to ocean commerce, economic success depends upon regional integration. It also depends upon attracting foreign investment, which in turn requires continuing and accelerating the privatization process, which got off to a successful start in 2003, but has since been stalled for nine months by uncertain UNMIK leadership. Privatization must be resumed promptly, not only because some enterprises may attract investment as going concerns, but because privatization is essential to free up substantial amounts of real property now controlled by non-operating socially owned enterprises on the privatization list.

Kosovo has been participating constructively in a variety of regional economic activities through its Prime Minister's Office, but because it lacks sovereign status, it is not a formal member of the Southeast European Stability Pact. This often means that Kosovo gets left out of consideration for strategic planning as for transportation routes and may lack the "clout" to insist that other countries in the region pay attention to Kosovo's need and potential. Serious work is necessary on allowing Kosovo to participate in its own name in international regimes governing telecommunications, air transportation, international finance and regional economic planning, even without it

formally being a "state." The operating procedures of the Stability Pact should be revised to permit Kosovo to participate as a full member without waiting for further action on final status.

Discussions about institutional mechanisms to promote regional economic integration should be intensified. Trade and customs policies for Kosovo and for all the countries in the region should be shaped by the concept of a "Balkans Without Borders."

The UN and the EU should give much higher priority to market-oriented economic development. Economic development still tends to take a back seat to other priorities for Kosovo, even in the recent Standards Implementation Plan.

Resolution of final status will almost certainly require the establishment of some mechanism to resolve claims arising from the Kosovo conflict and the period of UN administration. The Yugoslav Succession Agreement will represent a persuasive model for apportioning governmental assets and debts, but this agreement does not cover private claims, such as pensions, and business and residential property, which are especially important in the case of Kosovo. A broader mechanism to encompass these claims must fill gaps in the existing Special-Chamber and Housing Property Directorate regimes, and usefully can be modeled on the International Claims Commission established by the UN after

the first Iraq war, and on the Iran-US claims Tribunal.

Privatization of socially-owned and publicly-owned enterprises in Kosovo is necessary to attract investment and create jobs. Regardless of the number of SOEs and POEs that can be viable as going concerns, privatization is necessary to remove clouds on the title of real property with access to infrastructure. The nine-month interruption of privatization beginning in October 2003 was a serious blow to economic development and to public confidence in the ability of existing institutions to produce economic progress.

Privatization must be restarted immediately, without the delays certain to result from fundamental reworking of operating or bidding policies. Any gaps in effective recourse of claimants to remedies for deprivation of property rights in the Special Chamber of the Kosovo Supreme Court should be fixed forthwith.

Define legal structures

Essential preparatory work for final status negotiations should be undertaken, including review of alternative constitutional frameworks, giving special attention to protection of minorities, and to decentralization

Although the content of any constitution for the final status of Kosovo will emerge only from negotiations, it

would be helpful for opinion leaders and political and legal experts to begin sketching the outline of such a constitution. In particular, they should evaluate the constitutional framework under UNMIK Regulation 2001/9 and identify specific features of that framework that would be unsuitable for final status.

They also must begin some serious work on identifying concrete options for decentralization of governmental power, drawing on the experience so far with distribution of power between central PISG institutions and municipal governments, and evaluating the suitability of foreign models such as the German, U.S. and Canadian federal and municipal "home-rule" systems and the Swiss and Belgian models for distributing political power in a multi-linguistic polity.

Attention must be given to legal structures that would back up formal legal protection of minority rights with internationally-supervised and backed enforcement mechanisms, such as linkages to the European Court of Human Rights.

Protect minority rights

Final status negotiators must understand their options for protecting the rights of minorities in Kosovo, including Serbs, Roma, Turks, and Bosniacs, to equal treatment under the law, to be free of physical threats to



their security, and to equal economic opportunity. Experts must develop sophisticated alternative proposals for a mix of local and international legal regimes to assure protection of human rights.

There are four basic ways to protect minority rights in the Kosovo context:

1. Under a robust rule of law in an independent democracy embracing values common across the European Union;
2. Under a special rights regime
3. Through proportional representation or co-governance arrangements in political institutions
4. Through territorial autonomy

None of these approaches is sufficient by itself. Ultimately, of course, the best protection for minorities is a pluralistic, democratic political culture in which multi-ethnic tolerance is the norm. While this is surely the long-term goal for Kosovo, it is insufficient in the context of Kosovo's transition from its present status to a more independent status because of uncertainty with respect to the eventual political makeup of an independent Kosovo and because of mistrust in the political process.

A special rights regime comprises criminal and civil laws that impose duties on public institutions and private persons not to single out minorities for adverse treatment. These laws can be local ("municipal") or they can be international in origin. Whatever the source of minority rights protection, special-rights regimes will not be effective without meaningful enforcement institutions, backed up by international authority.

Systems for ensuring proportional representation in legislative bodies or co-governance and executive bodies may be an appropriate part of an overall program for protected minority rights but such approaches are insufficient by themselves. Minority representatives in an assembly may be out-voted every time. Co-governance arrangements in executive institutions often lead to paralysis in decision-making, as they did in Bosnia after the Dayton Accords were implemented or Former Yugoslavia immediately preceding disintegration.

Territorial autonomy envisions protecting minorities by allowing them to concentrate in certain geographic areas and to have substantial political autonomy over their own affairs. The efficacy of such decentralization approaches depends upon the geographic distribution of population by ethnicity and on the practical workings of institutions designed to maintain the intended balance among multiple levels of government. Relying mostly or entirely on territorial autonomy to protect minority rights will lead to

further relocation based on ethnicity, with its attendant disruption of lives and spawning of disputes.

Ultimately, any negotiated solution likely will include a combination of the four approaches, a political commitment by independent sovereign institutions to equal protection, special rights regimes, backed up by international enforcement machinery, proportional representation in legislative, if not executive institutions, and decentralization to allow local governance according to the political will of local populations with differing ethnic make ups. Protection of minority rights will be at the center of any discussions or negotiations over final status for Kosovo. Progress will require abandoning simple positions such as, “make us independent first and then we will erect the institutions to protect minority rights,” “you can’t even negotiate final status until minority rights are fully protected,” and “the only way to protect minority rights is to partition Kosovo.”

Provide for regional security

More work needs to be done to define the alternatives for regional security after KFOR leaves Kosovo. How can an independent Kosovo be protected from overwhelmingly superior military power possessed by Serbia and Montenegro? How can Macedonia and the Presevo Valley in Serbia be protected from a renewal of insurgency campaigns buoyed by militant ethnic Albanian elements within Kosovo? How can the

TMK—which most Kosovar Albanians view as the future Kosovo “army”—be integrated into a security regime that promotes rather than threatens stability? What role should NATO continue to play?

Solve the Mitrovica problem

Mitrovica is a microcosm for all of Kosovo. Mitrovica’s division and unresolved political status reinforce its social and economic crisis and fuel ethnic tensions. The uncertainty over Mitrovica’s future keeps the town trapped in a downward spiral, and poisons Kosovo’s future.

The Mitrovica problem provides an opportunity for confidence building. An urgent effort by Kosovar Albanian and Serb political leaders, assisted by international mediation, to negotiate a solution for Mitrovica could be a “practice round” for broader-scale final status negotiation and mediation.

Local Mitrovica political leaders and the international community need to show leadership in confronting the double challenge of state-building and economy-building. The Kosovar Albanian leadership needs to offer a credible and realistic proposal to the Serbian community living in Kosovo and engage in direct negotiations with Belgrade immediately. Kosovo’s leaders need to demonstrate that they understand the fears and concerns of the Kosovar Serbian community and both sides—Pristina and

Belgrade—need to work hard on reaching compromise agreements addressing the issues of returns and property rights as well as the future role of Serbia in Kosovo. Serious efforts need to be made by domestic and international actors to turn this major setback into an opportunity.

A significant breakthrough in returns, property restitution and transforming the role of the Republic of Serbia in Kosovo from parallel government to long-term donor in Mitrovica could prepare the ground for real progress Kosovo-wide. A successful negotiation over the future of Mitrovica could adopt

the approach suggested in the February 2004 package proposal presented by the NGO ESI (European Stability Initiative) to local leaders, or it could result in mono-ethnic separation.

The ESI package, <http://www.esiweb.org/>, comprised three elements: full resolution of property rights and restoration of freedom of movement in 2004, the development of a joint development and assistance strategy for Mitrovica region and the redrawing of municipal boundaries to create a majority Serb but multi-ethnic North-Mitrovica and Zvecan municipality.

Conclusion

A lot is at stake in Kosovo. What is at stake is fulfillment of the aspirations of 2 million Kosovar Albanians for democracy and self-determination, as well as the aspirations of 7 million Serbians to be accepted fully in Europe. That should be enough, by itself, to embolden other members of the international community to fulfill their United Nations mandate to broker a viable final settlement.

But more is at stake than that. This is a time for the shaping of a new international order based on peace and security, and a time to prove that international political missions—especially multilateral ones—can succeed. Kosovo is a highly visible experiment. Inertia

and fear of political risk will only give too much breathing space to cynicism and nationalist political forces, not only in Pristina and Belgrade, but in other capitals around the world. Whether we have charted the way forward correctly in this report is far less important than realizing that something has to change, and it is unlikely to change without courageous leadership on all sides, and a commitment to results: a commitment to get final status determined soon in a way that empowers local democracy, protects human rights, vindicates rule of law, and promotes economic prosperity for everyone in the Balkans.

Appendix

Kosovo Final Status Symposium: Untying the Gordian Knot

Contributing to the conclusions presented in this report was a policy and legal symposium on final status for Kosovo that was held in Chicago on April 16-17, 2004. Distinguished academics and policymakers from Kosovo, Serbia, elsewhere in Europe and the United States explored legal and policy issues that should shape Kosovo's movement from its current status as a "political trusteeship" under the authority of the United Nations to a political status in which the entity has more conventional relationships with the international community and states in the region. The symposium sought to provide intellectual and policy capital for discussions that already have begun at the technical level and which are expected to ripen into the final status negotiations mandated by U.N. Security Council Resolution 1244, which authorized U.N. intervention in Kosovo. Its purpose was to provide intellectual leadership for the policy community in the United States, in the Balkans and elsewhere who are recognizing that the question of final status for Kosovo must be addressed soon, and who need deeper analysis of interests and possible outcomes.

The symposium was jointly sponsored by the Chicago-Kent College of

Law at the Illinois Institute of Technology, the University of Pristina Law Faculty, the McCormick-Tribune Foundation, Northwestern University's Center for International and Comparative Studies and the Chicago Council on Foreign Relations, and organized by Henry H. Perritt, Jr. and Andrew Baruch Wachtel.

One-and-a-half days were devoted to presentations of papers, accompanied by discussion, allowing those presenting papers to interact with each other and with other interested persons. The proceedings took place at Chicago-Kent College of Law.

The symposium built on the results of a symposium on final status held in Pristina in July 2002, sponsored by the University of Pristina Law Faculty and the University of Graz, Austria. It also drew upon parallel activities of the United States Institute for Peace, the International Crisis Group, ESI and other institutions and commentators.

Symposium participants

Henry H. Perritt, Jr., Professor of Law and former Dean, Chicago-Kent College of Law, Illinois Institute of Technology (organizer and convener)



Andrew Wachtel, Professor and Director of Center for International and Comparative Studies, and Dean-designate of the Graduate School, Northwestern University (co-organizer and convener)

Abdulla Aliu, Professor, University of Pristina

Arsim Bajrami, Professor and Vice-Rector, University of Pristina

Lisen Bashkurti, Deputy Foreign Minister of Albania, and Director of Diplomatic Academy

Wolfgang Benedek, Professor of Law, University of Graz Austria

Besim Beqaj, Economic Adviser to Prime Minister and Stability Pact Coordinator

Bartram Brown, Professor of Law, Chicago-Kent College of Law

Zejnullah Gruda, Professor, University of Pristina

Enver Hasani, Professor, University of Pristina

Iliriana Islami, Professor, University of Pristina

Osman Ismaili, Professor, University of Pristina

Bozidar Jaksic, Researcher, University of Belgrade Institute for Philosophy and Social Theory

Zejnel Kelmendi, Rector, University of Pristina

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Publications

This report, authored by Professors Perritt and Wachtel, synthesizes multiple views and positions expressed as a “map” of interests and outcomes that can assist policy makers and commentators better to understand areas of agreement and disagreement. An issue of Chicago-Kent’s Law Review, to be published in the Fall of 2004, will contain law review articles prepared by some symposium speakers analyzing specific legal aspects of final status, accompanied by other formal submissions exploring historical, political and economics contexts within which final status must be addressed.

The Symposium website, <http://operationkosovo.kentlaw.edu/symposium>, contains other information about the symposium, the full text of papers prepared in conjunction with the Symposium, and links to other relevant materials.

Note on this report

This report draws upon diverse—and often, conflicting—views and opinions expressed at the symposium. It represents an effort to synthesize from those views an identification of major

areas of agreement, major areas of disagreement, a “map” of underlying interests, and to suggest various practical possibilities for moving forward.

The actual language used in the report is the work of the co-organizers, Professor Perritt and Professor Wachtel. The report does not necessarily reflect the views of any of the sponsoring institutions; nor does it necessarily reflect the views of any individual participant except for the co-organizers.



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