

## **Kosovo: a messy denouement**

By Laza Kekic

As the international status talks on Kosovo begin, risks abound and much remains uncertain with one exception: it is certain that the end-outcome will not be a neat and tidy "once-and-for-all" solution that is accepted by all sides. Several issues have, however, been clarified in recent months. A high level of agreement has been reached among the five Western members of the Contact Group (UK, US, France, Italy and Germany--the remaining member is Russia). France and Italy, and to an extent Germany, had been previously ambivalent. Now, although still cautious in their public statements, they all appear to have swung behind the longstanding UK/US position of independence for Kosovo as the preferred solution. Formally, and integral to the unfolding process of negotiations, all options are on the table (except partition, which has been ruled out). In reality, the likelihood of the Western powers backing any option other than independence appears to have diminished greatly.

Clarity is also being achieved on the fact that independence means independence. Terms such as "partial", "full", "some sort of" or even "conditional" and other adjectives that are still being bandied around and attached to independence are meaningless. The US Contact Group envoy Frank Wiesner has dismissed the concept of "conditional independence"--the phrase that is still favoured by many international supporters of Kosovo independence. For example, any commitments made by the Kosovo Albanians to secure independence can subsequently be renounced or watered down. That could lead to international sanctions of one kind or another, but the revocation of independence once granted would hardly be a viable option.

Despite widespread insistence that all the members of the Contact Group are united and cont stream of ostensible "leaks" that Moscow has promised not to block Kosovo independence, it has become clear that Russia stands apart from the rest of the Contact Group--although crucially it remains unclear how Russia will behave at the end of the present process. Russia has so far kept a low profile on this issue. It signed up for the January 31st Contact Group statement which--although not prejudging final status--was on the whole weighted against the Serbian position. For example, it placed most of the onus for reaching a solution on Serbia, it dwelt on Serbia's responsibility for the present situation and it noted that the outcome has to be acceptable to the majority of Kosovo's people (so not the majority in Serbia as a whole).

Russia has thus far obstructed other members of the Contact Group in only minor ways--for example, in rejecting the strong preference for settling the Kosovo issue before the end of 2006. However, the clearest sign of Contact Group disunity has come from Russia's President, Vladimir Putin. At the end of January he warned that the solution for Kosovo had to be based on general principles and that it would have universal implications, including for frozen conflicts in the former Soviet Union. Kosovo could not be treated as a case apart. The statement has been widely misinterpreted as reflecting a Russian aim to recognise breakaway statelets from CIS states such Georgia and Moldova. Instead, Mr Putin was laying down a marker concerning Russia's position on Kosovo and international law, and spelling out the likely consequences in the CIS if the West insisted on making Kosovo independent.

Finally, it is belatedly becoming clear that no Serbian government will sign an agreement that grants Kosovo independence. Negotiation and agreement were meant to be the means for resolving Kosovo's status. This was seen as the key to a lasting and stable settlement. Many appear to have genuinely believed that it would be possible to entice or bribe Serbia into giving its assent to "conditional independence" for Kosovo. The illusion may have been fed by "private admissions" by Belgrade officials that "Kosovo is lost" and perhaps signals that Belgrade really would go for the compensation of "accelerated Euro-Atlantic integration" (at least until the French non and Dutch nee put a dampener on further EU enlargement). Few, though, expect this any longer.

## **Why independence**

Several factors explain why independence, rather than the retention of even purely formal Serbian sovereignty, is the preferred Western option. First of all, there is the assumption (only privately articulated) that the Serbs have neither the will nor the means to fight for Kosovo, something which would likely involve a clash with international powers. The Albanians by contrast have both the will and the means to resume a low-level insurgency, which in this case would involve shooting Western peacekeepers. Indeed, the decision to address Kosovo's status and abandon the previous formula of "standards before status", came after the March 2004 ethnic Albanian riots in the province and the implicit threat that the next time around the targets would no longer be just Kosovo Serbs but could also include the internationals.

Second, there is an urge to wind up or greatly scale down the costly international presence in, and commitment to, Kosovo which has since 1999 been run as an international protectorate. The US in particular wants to redeploy its troops elsewhere. Any alternative arrangement for Kosovo reflecting the Serbian position of "more than autonomy, less than independence" is deemed to be unworkable and unsustainable. Third, there is a widespread belief that only independence will provide the conditions for effectively addressing the enormous economic and social problems of Kosovo. Fourth, there is a sense of an unfinished mission among some of the key actors who were also heavily involved in the 1999 war--in particular, the Blair government in the UK and the US State Department in which many of the present staffers for the Balkans also served under Mr Clinton in 1999. Although preventing a humanitarian disaster rather than redrawing borders was the stated aim of the 1999 NATO intervention, there is also a belief among many that the Kosovo Albanians have a moral right to independence because of the repression they suffered in the past, and that this has been only slightly attenuated by Albanian reprisals and behaviour towards minorities in Kosovo since 1999. Furthermore, the loss of Kosovo is sometimes seen as a "price" that the Serbs must pay for the Milosevic era. Finally, a perceived need to appease a restless Muslim population can, especially in present global circumstances, not have escaped policymakers' thoughts.

Previously, Serbia appeared to be able to appeal to at least three arguments to back up its position. In most Western eyes, all of these have now been brushed aside or assume marginal importance. First is the risk of a backlash and instability in Serbia and the likelihood that extreme nationalists would be voted into power if Kosovo is detached from Serbia. The explicit answer to this from many Western diplomats is "so what". The view is that even if the Radicals came to power in Belgrade, they would have little capacity to cause mischief in the region and their rule would, in any case, not last long. Second is the threat of an exodus of the remaining Serb population from Kosovo. Again, this is not a prospect that is causing too much concern. Although likely if Kosovo becomes independent, the numbers involved would be relatively small--especially when compared with the size of population displacements that occurred in Croatia and Bosnia. It is also not something that would be likely to happen overnight in the form of a dramatic organised mass evacuation. International troops would remain for a time in the main Serb enclaves and any exodus would be gradual and spread over time.

Finally, the trickiest factor is the legal position and concern over the impact of precedent. Under UN Security Council Resolution 1244 of 1999, Kosovo remains officially part of Serbia. In the post-communist dispensation with respect to both the Yugoslav and Soviet disintegration, self determination and the integrity of borders has been applied to the constituent republics of the former federations. There have been no exceptions. The ruling of the international Badinter Commission in the 1990s on the Yugoslav dissolution and right to self-determination and statehood applied to the republics, not provinces like Kosovo. This also reflected the dominant interpretation of the position under the 1974 Yugoslav Constitution.

An attempt is being made to argue that Kosovo is a sui generis case and that the resolution of its status, including possible independence, will have no implications for any other situation or conflict. The argument, still to be developed, is to appeal to the fact that it has been under international administration since 1999, the special circumstances of the disintegration of Yugoslavia, and the ethnic cleansing and events of 1999. Satisfying ethnic Albanian demands in Kosovo might have a domino effect, with the ethnic Albanian minority in Macedonia, as well as Serbs and Croats in Bosnia and Muslims in Serbia's Sandzak region looking to secede. The West, however, appears confident that it can contain or prevent such a fallout.

### **The negotiations**

The first round of direct talks between Serbian and Kosovo Albanian representatives was held in Vienna on February 20-21st. The negotiators will reconvene on March 17th. The status issue is at this stage being sidestepped and the negotiations have begun by focusing on smaller questions that need to be resolved, especially regarding the rights of the Serbs in Kosovo.

The overall strategies of the Serbian and Albanian sides are clear. The Kosovo Albanians will agree to all formal commitments on respecting minority rights and on building a "multiethnic society", and as much on substantive issues (property rights, ties between Belgrade and the Kosovo Serbs, and devolved policing and judicial powers in Serbian areas) as they judge to be necessary to secure independence. On the latter, the aim would then be a gradual rollback or erosion once Kosovo became independent. The Kosovo Albanians expect that they will have a normal independent state like all other new post-communist states with all the attributes and trappings, including full formal sovereignty, UN membership, embassies and the rest. This is the case even if they have to put up for a while with a continued international civilian and military presence, which--it has been suggested--would be less extensive and intrusive than in Bosnia and Hercegovina.

On the Serbian side there is a symmetrical view of the position of Kosovo as a whole vis-a-vis Serbia and of the Serb-majority areas in the province in relation to Kosovo. Kosovo is to remain part of Serbia de jure, but the ethnic Albanians are to have just about near-complete self-rule (without UN membership, an army or control of external borders). The Kosovo Serbs are to be formally part of Kosovo, but the aim is to maximise their autonomy and limit to a bare minimum any links between them and Pristina, Kosovo's capital.

In part, this would be a formalisation of present arrangements. The local Serbs remain fiercely loyal to and dependent on Serbia. They use Serbian dinars (the rest of Kosovo uses the euro), carry Serbian documents and rely on Belgrade for the provision of all their basic services. They boycott the central "provisional Kosovo institutions and cannot move safely outside of their enclaves without heavy international troop escorts. The UN administration, which is supposedly meant to cover whole of Kosovo, in effect caters only for the ethnic Albanians.

The Serbs that still remain in Kosovo, estimated at some 100,000, live in small enclaves scattered across the province and in the north, which shares a border with the rest of Serbia. An estimated 200,000 are refugees in Serbia. There is an attempt to force Belgrade to make a choice between concentrating on the welfare of the local Serbs and extracting the best deal possible for them and pursuing Serbia's emotional attachment to the province and abstract state interests by trying to block an independent Kosovo.

This is a futile effort. First, the numbers of Serbs still left in Kosovo and their overall influence is too small to outweigh the stronger considerations of wider national and state interest in the thinking of the Belgrade elite. Second, the presumed dichotomy between the two strategies may be false. The continued protection of local Serbs by international forces in Kosovo will only be transitional and temporary, whatever institutional and other guarantees are agreed on paper. The much heavier international presence during the past seven years than

is envisaged in the future has barely been able to protect those Serbs that have remained in Kosovo. As for the talk of building a "multiethnic Kosovo", it would take decades to build up the institutions, traditions of tolerance and experience, not to speak of necessary reconciliation, before such sentiments could become a reality. In Croatia and even in Bosnia, with its huge and intrusive international presence, such commitments have meant little and refugee returns (other than quick visits to reclaim and sell properties) have been minimal. It may thus be the case that Serb interests and a presence in the province over the long term are only consistent with continued Serbian sovereignty.

### **No partition**

The Contact Group has foreclosed the option of partition for Kosovo. This may at one stage have been a solution which might have been accepted by both sides. Retaining sovereignty only over northern Kosovo, together with protective arrangements for Serbian religious sites scattered throughout the rest of the province, would probably have been acceptable to most Serbs--although many would still be loath for Serbia to renounce claims to the whole province. And the Albanians may also have agreed if that was the price for independence of the rest of the province and of getting rid of suffocating international tutelage that has replaced Serbian rule, and that will continue. In addition, some Albanian groups appeared ready to entertain the notion because of a belief that it would set the stage for laying claim in the future to adjacent Albanian-inhabited territories. But partition is very unlikely to return to the agenda, barring another 2004-style violent outburst.

### **Breaking taboos**

Serbian spokesmen state that in this day and age it would be unthinkable to flout international law and forcefully detach a part of the territory of a democratic state. However, not only is this "thinkable" it has in recent weeks become increasingly openly proclaimed by some representatives of the Contact Group. Independence was until recently still a taboo word in official diplomatic exchanges; by early February international officials were falling over each other in an eagerness to utter the "I" word. The flurry of increasingly explicit statements indicated that the end-result of the Kosovo status talks is to be an independent Kosovo. This is to be accompanied by, or be "conditional on", concessions to local Kosovo Serbs and there is to be a transitional EU-led supervisory body and extended NATO peacekeeping mandate.

On February 6th a British Foreign Office official, John Sawers, shocked Kosovo Serbs' political representatives when he told them that the Contact Group had already decided that Kosovo will be given independence. While visiting Belgrade a day later, the US special Envoy to the Contact Group, Frank Wiesner, was less open in public, but essentially repeated the same message. On February 19th, the main international mediator, Martti Ahtisaari, implied strongly in an interview with the German weekly *Der Spiegel* that Kosovo would be independent. He went a step further by effectively threatening that Serbia would suffer isolation and forego EU integration if it did not give its assent. On February 22nd, the outgoing deputy head of the UNMIK and former official in the Clinton administration, Lawrence Rossin, declared that Kosovo would be independent by the end of the year. And on March 10th the British Foreign Secretary, Jack Straw stated that independence for Kosovo was "almost inevitable" and that Serbia needs to accept this as a reality.

In any case, all this has increased greatly the pressure on the Serbian government. The comments by the British representatives in particular have caused much commotion in Belgrade and sharp official condemnations. At one stage, Tomislav Nikolic, leader of Serbia's nationalist Radical Party, blustered that if Kosovo were granted independence, Serbia should declare it "occupied territory." There is, of course, an awareness of the inflammatory nature of recent statements, that threaten even to derail at the start the talks between the Serbs and the Kosovo Albanians.

There are still sharp differences within the West over the tactics, if not necessarily any longer, the end-point of the process. Thus, the Straw statement resulted even in an explicit rebuttal by the EU's Foreign and Security Policies Chief, Javier Solana, who said that the Kosovo status discussions process is at its very beginning and that nothing has been decided as of yet--Mr Straw was presenting the UK view, not the EU's. The French Foreign Minister, Philippe Douste-Blazy, has also stuck to the EU official line by saying that negotiations should not be prejudged.

Privately, various Western officials, especially from the UK, have been talking about Kosovo independence for some time. But why now the sudden openness which would indeed seem to render meaningless any negotiations, if the end-result has already been predetermined? Furthermore, this greatly strengthens the already strong expectation among the Kosovo Albanians that independence is the only possible outcome, foreclosing the possibility for the international community to even delay the outcome.

There are several possible explanations. First, private assurances to the ethnic Albanians on independence may not have been sufficient to elicit sufficient concessions from them on other issues. Second, there may be an effort to demoralise the Serbian side and prepare the ground for what might otherwise appear too much of a shock if left for later. An atmosphere of inevitability is thereby also created in which Serbia becomes isolated and its insistence on territorial integrity is portrayed as "legalistic", unrealistic and backward-looking. Finally, given the late realisation that Serbia will in fact not agree to independence under any circumstances, it may even be a case of trying to provoke the Serbian side into walking out now, placing more easily the blame on Belgrade for the failure of the talks and freeing the Contact Group to proceed on its own.

### **Breakdown of talks**

In any case, it is clear that the Viennese diplomatic dance is highly likely to break down at some later stage, without agreement. There is a small chance that the Albanians would walk out in the unlikely event that international mediators insist on extensive Kosovo Serb decentralisation demands that would be perceived as an effective or "soft" partition of Kosovo that could not be easily rolled back subsequently. Property rights claims by the Serbian side are extremely extensive and could have a similar impact in the, again unlikely, event that these claims are fully backed by the mediators. Far more likely, however, is that the Serbian side will walk out once independence is raised by the Western mediators as the final status recommendation. The big question is what will happen then and it is here that the now well-nigh inevitable messiness of the situation becomes apparent.

A recommendation by the West for an independent Kosovo would by no means be easy to push through given a guaranteed Serbian rejection. This would require a new Security Council resolution. The big question then is what Russia would do. The prevalent assumption that Moscow would not oppose the Western decision, that it would abstain, may very well not prove correct. Russia is genuinely troubled, as revealed by Mr Putin's recent strong statement, by the precedent. So is China, which would act not alone, but might be tempted to support Russia on this. Today's assertive Russia is not the Russia of the 1990s which backed most Western decisions on the Balkans. Again contrary to usual assumptions, Russian opposition on this issue would not entail "conflict" with the West. A range of other issues affect Russo-Western relations, which are now a mixture of cooperation and rivalry.

Nor would it be that simple for the Russian government to abandon Serbia. There is not much sympathy in Moscow for Serbia's present government--indeed many see the present Serbian rulers as the product of the very same "Orange revolutions" which have affected the CIS, about which Russians obsess. There is also dissatisfaction in Moscow with a perceived lack of receptiveness of the Serbian authorities to Russian foreign investment in Serbia. However, there is sympathy for a friendly Slavic country and among the Russian elite there is still a

sense of humiliation in that Russia was not able to protect a traditional ally from NATO in 1999 and a view of Serbia as "a small Russia"--also the former centre of a collapsed federation, prey to predatory Western power and even a surrogate target for an anti-Russian strategy.

All this might mean that the Western members of the Contact Group might have to fudge the solution and at the very least delay considerably the implementation of any envisaged Kosovo independence in order to get Russia on board. Alternatively, they would have to bypass the UN altogether--hardly a novel approach for the US and UK, in any case. But this would mean a messy process of bilateral recognitions of Kosovo and would mean Kosovo could not become a UN member.

Even Russia aside, pushing through Kosovo independence in the face of Serbian opposition would not be straightforward. As even a strong supporter of Kosovo independence, the International Crisis Group, recently noted, stripping a country of sovereignty over a part of its territory against its will would be a huge step for the Security Council to take. This would be even more so if there is no UN imprimatur. In the closest possible parallels--Bangladesh in 1971 and Eritrea in 1993--both these countries gained UN membership, but only after their formal recognition by the states from which they seceded (Pakistan and Ethiopia).

Even if all these obstacles are overcome the absence of Serbian agreement poses risks. On the one hand, Serbian rejection may not have any practical consequences, especially in the short to medium term. The Serbian position would become a classical revisionist one--to simply wait until and when international circumstances change. Although the issue could be a distraction and even poison Serbian political life for years, the claim might assume the same character with little practical significance as, for example, the constitutional commitment of the Republic of Ireland to the island's unification. However, there could also be more immediate destabilising consequences, and the present equanimity with which the risks for Serbia and the fallout for the region are viewed may not prove justified.