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## Kosovo after 10 December 2007: What's at stake for the European Union

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Is the ghost of the Balkans coming back to haunt us? Will there be a new crisis in the heart of the western Balkans after 10 December 2007? On this date the troika mandated with a last-ditch mediation between Serbs and Kosovars turned in its report. The document describes a failure: the positions of the two parties are irreconcilable. Open war in the short term is unlikely, but the blockage threatens the stability of the whole region. The laboriously constructed Dayton and Ohrid settlements will be brought anew into question. This impasse, and the worries it is causing for the near future, are an invitation to fresh thinking. The EU has perhaps not made enough use of its trump card: the difficulty of the two protagonists to imagine their futures outside of the Union.

Bertrand Rioust de Largentaye's note on the issues at stake for the EU in Kosovo, and his policy paper published by *Notre Europe* in May 2006 on Balkan regional cooperation, throw light on the ins and outs of a complex and tense situation.

## Table of Contents

Introduction	p. 1
I - Past and current situation	p. 3
II - Prospects for a settlement	p. 9
III- Some constraining factors at the moment of decision	p. 13
Conclusion	p. 17
Bibliography	p. 19

## Introduction

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The deadline set for the troika, comprising representatives of the United States, the European Union and Russia, to find an agreement on the future status of Kosovo is now behind us. What will happen next is surrounded by great uncertainty. The risks of a new conflagration are far from negligible. Ibrahim Rugova, the apostle of non-violence, is no longer with us, and his party has recently been outflanked by one belonging to the head of the Kosovo Liberation Army (KLA).

The political problem posed by the province is one of the thorniest yet faced by the international community, and in particular by the European Union: it is a fight of legitimacy, opposing two parties with pretensions to the same territory. Similar dilemmas arose during decolonisation, but at that time the question was not so starkly framed in terms of legitimacy. Addressing Serbs nearly a half-century ago, André Malraux said, “Kosovo is your Algeria, but an Algeria in the middle of the Beauce [a wheat-growing region near Paris].” The comparison was somewhat lacking, to the extent

that Serbs see Kosovo as the cradle of their nation. Kosovo is old Serbia. It is there that one finds the most ancient and prestigious monasteries, symbols of the resistance of the Serbian nation to Ottoman occupation. And yet one thing is certain: history will not provide a solution to this problem.

To illuminate this complex situation we will examine the main features of the current situation in Kosovo, the plans for a settlement which either are on the table or might end up there, and finally some constraining factors which will prove important at decision time.

## I - Past and current situation

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**Kosovo** is the last piece of the Balkan jigsaw puzzle, and without doubt the most complex. This can be seen by considering the situation on the ground, the main actors, and what is at stake.

For an overview of the situation we must look at the main events of the past few years, and consider the central questions of demography and economics.

### From the post-war period to 10 December 2007

Tito's post-war Yugoslavia bore little in common with the inter-war creation of the Treaty of Versailles. This state had been essentially unitary, a characteristic which became more pronounced until the period immediately before the Second World War. In contrast, post-1945 Yugoslavia was a federation of six republics and two autonomous provinces. The clear trend towards decentralisation reached a conclusion in the constitution of 1974, which transformed the federation into a virtual confederation: federal govern-

ment power was once more diluted and that of the constituent republics increased. The autonomous provinces, Vojvodina and Kosovo, gained the status of quasi-republics. In the federal institutions the provinces frequently opposed the position of the republic, Serbia, to which they belonged. Tito's Yugoslavia aimed to resolve the question of nationalities by recognising the distinct characteristics of constituent communities while organising solidarity between republics and provinces by means of a mechanism for financial transfers - of which Kosovo was the most important beneficiary.

Milosevic used Serb nationalism in his pursuit of power. He cancelled the autonomy of the two provinces, which allowed him to control their votes in the federal institutions and thus to shift the balance in his favour - a factor not coincidental to the break up of the federation in 1991-92. The erosion of the rights of the majority population exacerbated Albanian nationalism in Kosovo. Clashes with the Serbian police became more common. Repression deepened, accompanied by the fear, and then the reality, of a new episode of the ethnic cleansing which had marked the conflicts in Croatia and Bosnia. This development triggered the NATO military intervention of 23 March to 10 June 1999. At the suspension of hostilities Serb forces withdrew from Kosovo, accompanied by more than 200 000 non-Albanian residents; Resolution 1244 was passed on 10 June by the United Nations Security Council. A NATO force called KFOR (Kosovo Force) was deployed, to number up to 45 000 troops. A provisional UN administration was installed in the province (UN Interim Administration Mission in Kosovo, or UNMIK), led first by the German Michael Steiner, who emphasised the need to raise legal and other standards before tackling the ultimate question of status ("standards before status").

On 11 November 2005 a former Finnish president, **Marti Ahtisaari**, was mandated to mediate talks on the province's future status and to prepare a plan. He came out in favour of internationally-supervised independence for the province, a plan which was abandoned in the face of the threat

of a Russian veto at the Security Council. In July 2007 a three-party group (**the troika** referred to at the beginning of this note) was put in place by the contact group (a liaison and coordination body comprising representatives of the United States, Russia, the United Kingdom, Germany, Italy and France, constituted at the beginning of the Yugoslav conflicts). It was charged with making a last attempt to find agreement. The troika published its conclusions on 10 December 2007, and the contact group must then make a report to the UN Secretary General. Kosovo's parliamentary elections, postponed, finally took place on 17 November 2007 at the same time as municipal elections. 44.77% of the electorate participated. The new parliament will choose a government, which will inherit the difficult dossier of Kosovo's status.

### Kosovar demography

Kosovo's current population is a little under 2 million, of which more than 90% is of Albanian ethnicity. After the exodus of 1999, Serbs make up barely more than 6% of the population (100 000); they are a majority in the province's north (46 000) and elsewhere dispersed into enclaves. The remainder of the population comprises Roms, Egyptians, Turks, Goranis, Bosniaks and Ashkalis. Goranis and Bosniaks are Muslim Slavs who speak the Serb language, whereas Ashkalis speak Albanian. The war of 1998-99 had the effect of consolidating the Albanian majority, to the detriment of Serbs - but also of Roms (200 000 before 1999, 30 000 after) and Goranis (18 000 before, 8000 after). This came after a massive movement of Albanians out of Kosovo during the crisis of 1998-99, followed by their return.

The Albanian population has always been somewhat dynamic: its birth rate is markedly higher than that of the Slav population. 50% of the population is aged under 23; 75% under 30. The balance of power on the ground is mainly a result of this Albanian demographic advantage. Support from the Albanian diaspora, particularly active in Italy and Switzerland,

has also played a role. It is in any case clear that this balance of power has never been so favourable to the Albanians: no-one today imagines a return to the unitary, Serb-dominated state of the kind that existed in the inter-war years. Humanists note an unfortunate fact: Serbs and Albanians, and more generally Slavs and Albanians, do not intermarry. They mix only with difficulty. In this they are distinguishable from Bosnian Slavs, to whom religious observance - or rather that of ancestors - has never been an obstacle to marriage. Serbs and Albanians form two almost entirely discrete communities.

### **Economic and monetary situation**

Kosovo has always been the least privileged part of the former Yugoslavia. The province had the lowest per-capita income and was the principal receptacle of Yugoslavia's federal solidarity transfers. Without jobs, many Kosovars were condemned to emigration and state assistance. Here the situation has changed little. 60% of the working-age population is unemployed. The average monthly wage is €200. The economy, mostly informal, is undermined by local mafia and trafficking. Society remains organised into clans and corruption is present at all levels. In the framework of the UN mission, the European Union has instituted a kind of economic separationism, by introducing the Deutsche Mark, and later the euro, to replace the Yugoslav currency.

### **A mosaic of actors with different aims**

Different actors are involved in the current episode of Kosovo's history which may be coming to an end: Kosovar residents, neighbours, and exterior actors. The Kosovars form the mosaic of Albanians, Serbs and other peoples which we have already seen. The principal neighbours are Albanians from Albania proper; Makedonians, of whom most are Slav but a third - near Kosovo - are Albanian; Serbs, with their Muslim minority -

which is Albanian in the south-east of Serbia and Slav in the south-west Sandzak region; and finally Montenegrins, these too with their Albanian minority. Macedonia was the only Yugoslav republic which didn't succumb to nationalism during the breakup of the federation in 1991-92. Kiro Gligorov, its first president, took care to associate Slavs and Albanians in the government. Coexistence has nonetheless never been easy, and open conflict was only narrowly avoided in 2001 with an EU intervention and the Ohrid accords. Macedonia and Montenegro are not opposed in principle to Kosovar independence.

The most important exterior actors are the members of the three-party group, the United States, the EU and Russia. The US has openly taken position in favour of Kosovar independence, even without agreement at the United Nations Security Council; it claims to be ready to recognise a unilateral declaration of independence. Russia, a traditional ally of Serbia and itself confronted with separatist demands, is not disposed to recognise independence - and was responsible for the failure of the Ahtisaari plan. The EU, divided on the question, is situated somewhere between the American and Russian positions; recently it has moved in the direction of the US. With its promise of membership, the EU probably holds the trump card in the affair. The EU members who have reserves about recognising Kosovo's independence are Romania and Spain, and more especially Slovakia, Greece and (most of all) Cyprus.

### **The geopolitical and diplomatic stake**

What is at stake behind the decisions which will be taken on the future status of Kosovo? International law will once more be disregarded if a unilateral declaration of independence is made outside the framework of the UN Security Council: what the Security Council has defined - in this case the attachment of Kosovo to Yugoslavia - can only be undone by a further resolution of the Council. Furthermore, Kosovar independence would quickly

be cited as a precedent for the Republika Srpska in Bosnia, by the Bosnian Serbs themselves and probably by other Serbs too. It is possible to imagine similar situations in the separatist republics of the Caucasus, and in Spain, where many Basques and Catalans hold comparable aspirations.

For the European Union the first imperative is to guarantee regional stability and to pre-empt new conflicts. The EU cannot allow itself to repeat the error it made in admitting Cyprus without first ensuring an end to the country's communal divisions. The EU's relationship with Turkey, already difficult, was not helped by this mistake. For the regional actors, another important issue is the need to avoid exacerbating nationalism within their own frontiers: only the will and the desire to join the EU will overcome these nationalist reflexes.

## II - Prospects for a settlement

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**W**hat plans for an agreement are on the table, and off it? We know the positions of the two main protagonists: an overwhelming majority of Kosovo Albanians are in favour of independence; while the Serbs propose a large measure of autonomy which would nonetheless preserve at least the semblance of Serb sovereignty. It is possible to imagine variants of these two positions, and one can try to put them aside completely as a means of breaking the impasse.

**Independence** might take several forms. The first, sanctioned by the United Nations and therefore conforming to international law, seems unrealistic now that Russia has opposed its Security Council veto to the Ahtisaari plan – even though it only envisaged a guided, supervised version of independence. In these circumstances, the most likely scenario today - following the parliamentary election of 17 November 2007 and the victory of Hashim Thaci, ex political head of the Kosovar-Albanian militia (UCK) - is a unilateral declaration of independence followed by recognition of the new state

by a part of the international community. There are questions over the long-term viability of two Albanian states living side-by-side, one with 3 million inhabitants and a relatively large territory, the other with 2 million people and a little more advanced economically. In time will Kosovar independence not appear a mere stop on the road to a Greater Albania? The question is a reasonable one. Leaving aside its regional impact, an independent Kosovo does not necessarily represent a stable and sustainable situation.

**Autonomy**, the idea to which Serbs are attached, has numerous precedents. Even after being hollowed out by Milosevic, Kosovar autonomy persisted in a legal sense. It is clear in any case that autonomy within an independent Serbia must be interpreted differently to autonomy within a Serbia which is itself a member of a federation. All else being equal, the new version of autonomy would be somewhat less robust. Its framework would be narrower, the room for manoeuvre reduced and financial transfers more limited. To take account of this situation and the realities on the ground, the Belgrade government is promoting a formula which would allow more than autonomy but less than independence; it would amount to “95% independence and 5% sovereignty”. The current status of Hong Kong or the Åland Islands would serve as a reference.

Besides the settlements proposed by the two main protagonists, other solutions are envisageable. The first is partition: northern Kosovo could be transferred to Serbia, perhaps in exchange for a few majority-Albanian communities in southern Serbia.

Then there is a more audacious and ambitious solution which should not be rejected out of hand, and which would at least respond to the commonly-held aspiration for European Union membership: **the creation of a territory under European supervision**. This would allow the EU to grab the bull by the horns, avoiding entirely the charge that it is shirking its obligations. Such a territory would in some ways resemble a long-term protectorate. The super-

vising power would be responsible for (in broad terms) security, justice and culture - including such areas as education, public administration, the protection of religious freedom and of religious sites of historical interest. The Commission’s SIGMA programme (Support for Improvement in Governance and Management), managed by the OECD, might be involved. The supervision mandate would be time-limited but not necessarily short-term. It would aim to counter nationalism and the clan reflex through the development of a European culture of law and citizenship. Europe’s task would be to create the conditions for this change: by assuring security, tensions might be calmed; and by promoting economic development and external trade Europe would be investing in a future less prone to political polarisation.

A third solution, founded on the idea that a durable co-existence of the Serb and Albanian communities is only possible in a context of **strict equality**, is to invent a new federation or condominium taking in Serbia and its two autonomous provinces, Vojvodina and Kosovo. The upper chamber of a bicameral federal parliament would host the same number of deputies from each of the three constituent entities. After the persecution, discrimination and - the word is not too strong - racism that the Albanians have endured, this is perhaps the only form of integration that they might be willing to envisage. But after the dissolution of the federation of Serbia and Montenegro it is highly likely that this solution would be unacceptable to the Serbs; it also seems unlikely that it would create political stability.

### **III - Some constraining factors at the moment of decision**

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Looking at the situation in Kosovo of early December 2007, perhaps only days ahead of a unilateral declaration of independence, we are invited to consider closely the constraints surrounding any EU action. These must be clearly identified. The first constraint concerns the limits of partition as a means of solving territorial disputes. The second is the question of the potential extent and limits of the European Commission's role. The third is linked to the difficult relationship between the national, Westphalian conception of Balkan politics, and the postmodern, post-Westphalian tenets of the European Union, where the idea of the nation state has been partially eclipsed by that of shared sovereignty.

#### **Partition: an unconvincing solution, going by historical precedent**

It is useful to ask the value of partition as a way of resolving territorial conflict. The United Kingdom resorted to it several times in the last century: Ireland, India-Pakistan, and Israel-Palestine. Cyprus, a former British pos-

session, headed down the same road in 1974. The results are clearly not encouraging. The border changes caused by partitions have caused population displacements, often massive and sometimes tragic. New problems of minorities and refugees have been created. The conflicts have been frozen rather than solved.

### **European institutions' limited room for manoeuvre and their need for a result**

Only by measuring the Commission's real room for manoeuvre can realistic objectives be set. The European Union and the European Commission have received criticism for their lack of imagination and audacity when handling affairs in the former Yugoslavia. The coherence of their action has also been questioned. For example, the EC (later EU) began by defending the territorial integrity of Yugoslavia, before changing its mind and recognising the constituent republics. Even before the worrying turn of events in 1990-91, certain observers had advised it to open its doors to the whole Yugoslav federation, with conditions and a time-frame. After all, one of the motivations of the Slovenian and Croatian separatists was the prospect of joining the European project more quickly. This calculation turned out to be correct, but its consequences - in terms of conflict - were disastrous for all of the former Yugoslavia (with the possible exception of Macedonia). The common foreign and security policy of the EU was discredited before it had even come into effect.

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It seems true therefore that the European Union lacked vision when it failed to discern the medium-term effects of decisions it took - or rather of initiatives it did not take. The EU must not repeat this error in Kosovo. This time it must cash in, carefully and with precision, on what Serbs and Albanians hope for the most, namely membership. In this particular case the EU will need to go well beyond the

Copenhagen criteria. A far more detailed and demanding set of requirements must be envisaged, extending for example to obligations regarding the restitution of archives. This particular question is an important one, in part because of the interests for peace in an open and free re-examination of certain supposed historical truths, and in part for simple reasons of identity: the Kosovars have lost the public records which detail their civil status. The two questions will need to be linked at first, by excluding all prospect of European Union membership in the absence of a settlement on Kosovo.

But the EU must not stop there. It must make clear that the solution to the Kosovo dispute lies with the protagonists: it is not the EU's job to provide this solution. Short of receiving a blank cheque from the two parties to set in motion the kind of supervision regime detailed above, the EU should withdraw from the negotiation and adopt a role of facilitator and mediator - except in the area of security, where its military and police presence will probably remain indispensable for a number of years to come, to halt any return to violence. The EU should find it easy to limit itself to this modest, non-interventionist role, given that European public opinion is now somewhat more reserved than previously about the prospect of new enlargements (so-called "enlargement fatigue").

### **Polarisation around the idea of the nation state**

In recent years and to different extents, the Serbian and Kosovar societies have demonstrated their attachment to a repellent form of nationalism which does not sit well with European values. These remain strongly polarised societies. Examples on the Serbian side include the amendments to the country's constitution - which, pointedly, were not submitted to the Kosovo Albanians - and obstructiveness over the implementation of Resolution 1244. The recent choice of Kosovar voters is a sign of the same intransigence. In these conditions, access to the European Union

should become a possibility only after a long period of apprenticeship. We are a long way from Germany's broad-minded acceptance of the fate of Königsberg, transformed from the town of coronations and Kant into Russian Kaliningrad. A long way also from the idea of civic patriotism, so dear to Habermas.

## Conclusion

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All the signs suggest that the countries of the European Union, or at least a large majority of them, are preparing to recognise a unilateral declaration of independence by Kosovo some time after 10 December - perhaps as early as January 2008. Wolfgang Ischinger, the seasoned German diplomat who is directing the negotiations of the troika, had no illusions about the chances of an agreement before 10 December, nor about the usefulness of pursuing talks beyond this date.

Yet it is perhaps not too late to turn around, to avoid kicking off a chain of events which in some ways resembles the Iraq affair - in that the consequences of exterior action, in this case not an invasion to be sure but the recognition of unilaterally declared independence, have not been sufficiently analysed nor even perhaps correctly identified. The European Union should not simply follow the lead of the United States, whose interests in the region are different.

In January the EU presidency will be taken over by Slovenia, a republic of the former Yugoslav federation. Another former Yugoslav republic, Croatia, will occupy a seat at the United Nations. Slovenian and Croatian diplomats understand Balkan history, and the short history of their own states, well enough to be very wary of taking any action which might pour oil onto the fire.

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