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Kosovo 2005/06: Phased Independence?

Franz-Lothar Altmann

At the end of May, UNMIK chief Jessen-Petersen addressed the UN Security Council presenting a generally positive picture of the situation in Kosovo. Now, a special envoy of the UN Secretary General will prepare a full-length report by September 2005 that addresses whether the most important human rights and democratic standards in Kosovo have been fulfilled. It is expected that this report will ascertain that the necessary progress has been made so that, as early as this autumn, the UN Security Council can give the green light for starting negotiations on Kosovo's final status. Whether the carrot of EU membership can be dangled as the most enticing political incentive for Belgrade and Prishtina is questionable in light of the increasing wariness within the EU over expansion.

At the end of May, two reports about the situation in Kosovo were presented to the UN Security Council. The first, dated 23 May 2005, is a report of the UN Secretary General Kofi Annan about Kosovo's interim administration, known as UNMIK. According to the requirements of Security Council Resolution 1244 (1999) from June 10, 1999, the Secretary General must report regularly about the implementation of the UN mandate in Kosovo. This report covers the period 01 February – 30 April 2005. The unique thing about this year's report is that it includes an annex, which is a second paper. This annex is a technical progress report in which the SRSG (Special Representative of the Secretary-General) for Kosovo and UNMIK head, Søren Jessen-Petersen, assesses the fulfilment of the basic standards in Kosovo. This special report of the

SRSG was presented to the Security Council on 27 May 2005.

In the course of the last few months, there has been increasing pressure to begin discussions over Kosovo's final status. The argument for opening such negotiations so soon is that economic development in Kosovo, as well as the possibility of regional cooperation, has been consistently hindered by the undeclared state form of the former autonomous province. After many meetings of the Contact Group for Kosovo (Germany, France, Great Britain, Italy, Russia, USA and EU) the US Undersecretary of State for Political Affairs, R. Nicholas Burns, in a widely noted speech before the House Committee for International Relations in Washington, presented for the first time a timeline for the negotiations and deliberation process. Burns said that Kosovo

vo's status should be determined by the end of 2006.

A non-negotiable precondition for beginning status talks is, however, concrete progress in the establishment of democratic standards and the rule of law in Kosovo. This means, above all, the formation of democratic institutions, including a functional judiciary, refugee return, economic development, the clarification of property rights, the transformation of the Kosovo protection force (TMK), security and freedom of movement for minorities and the establishment of a dialogue between Prishtina and Belgrade on every level.

The Report of SRSG Jessen-Petersen

The overall tone of Jessen-Petersen's report was positive. He stressed that the March 2005 government crisis after the ICTY's indictment of Prime Minister Ramush Haradinaj had been peacefully resolved and that the general political life in Kosovo has been normalized through the clear division between government and opposition.

Jessen-Petersen reported on the first meetings of the different levels of working groups in the "direct dialogue" between Belgrade and Prishtina. The working group "missing persons" met for the first time on 16 March 2005; in April and May followed the meetings of the working groups engaged on the issues of energy and refugee return. However, attempts to establish a location and date for the talks at the highest political level ("political dialogue") have not yet been successful. At least, though, the Serbian Orthodox church, which claims an important political role in the Kosovo question, and the Kosovar government met for a first discussion which led to the 25 March 2005 signing of a memorandum of understanding. It addressed the rebuilding of Serb Orthodox religious sites, for which the Kosovar government last year allotted 4.2 million euros. Recently it promised another 1.5 million euros for the repair of the March 2004-damaged sites.

The SRSG's only serious criticism was reserved for Belgrade, which, he claims, talked about dialogue but at the same time stops the Serbs in Kosovo from cooperating with Kosovo's institutions. That said, the SRSG had to admit that the number of return refugees has remained disappointingly low: since 1999 only 12,000 persons have returned, among them 5,000 Serbs from an estimated 80–120,000 who fled Kosovo. While the Serbian side cited serious security deficits as the reason, Jessen-Petersen sees as the main reason the unresolved issues around the ownership of property and the lack of any economic or social future for minorities in Kosovo. In its conclusion, the SRSG report nevertheless maintains that there is definite progress in the fulfilment of the standards and he requests the beginning of status talks.

The Beginning of Negotiations in Autumn 2005

In reaction to the SRSG's report, on 3 June 2005 the UN Secretary General named the Norwegian diplomat Kai Eide as his special envoy for Kosovo and mandated him to prepare a full-length report about the fulfilment of the basic standards. (The SRSG report is only six-pages long and relatively general.) The UN Security Council, to which Eide will present his report in September 2005, will then determine whether final status negotiations will go forward in the autumn. The UN Secretary General will then name a top negotiator for the shuttle diplomacy between Prishtina and Belgrade. In his 18 May 2005 address, Nicholas Burns signalled the readiness of the US to nominate an experienced European politician for this mission, while, from its side, the US will appoint a deputy from the ranks of its diplomatic service. In the meantime, it will also be considered whether a second, Russian deputy should be appointed.

The Starting Positions of Belgrade and Prishtina

The starting positions of Belgrade and Prishtina are far apart from one another. In Prishtina, no political party is prepared to accept a solution other than full independence and sovereignty for Kosovo. Belgrade, on the other hand, which until recently insisted that the Kosovo province still belongs to Serbia, but with some kind of negotiated autonomy, now endorses the formula: "more than autonomy but less than independence."

Since Belgrade has recognized that the autumn 2005 negotiations will also begin on the political level, the democratic parties in Serbia, which take different positions on different questions concerning Kosovo, for example for or against the participation of the Kosovo Serbs in Kosovo's political life, no longer express them publicly so as not to undermine Serbia's negotiating position through a public display of disunity. Only Vojislav Sheshely's Radical Party continues to openly espouse clear nationalistic positions. It goes so far as to threaten the march of the Serbian army on Kosovo. As of 14 March 2005, there are regular meetings of Serbia's leading politicians (Union president Marovich, Serbia's president Tadic, Serbia's prime minister Koshtunica, Union foreign minister Drashkovich and Kosovo coordinator Chovich, but no representative of the Radicals) so that they will go into the negotiations with one voice.

It appears to be more difficult to come up with a common negotiating position in Prishtina. The SRSG's proposed Kosovo Forum (President Rugova, Prime Minister Kosumi and LDK representative Berisha from the side of the government coalition; PDK chief Thachi and ORA party leader Surroi from the opposition) met for the first time after many attempts on 7 June 2005. Its foremost task is, above all, to assemble a Kosovar negotiating team. But exactly that has proven quite difficult because, recently, heated exchanges between the governing coalition and the opposition have been on

the increase, above all between Rugova and Thachi. This has thrown into question the participation of the opposition as an equal in the negotiating team, which is absolutely necessary. Thachi wants the Forum itself (including the opposition's participation) to have the final say, while the government coalition wants this power to lie with elected institutions.

The Guidelines of the International Community

The international community, represented in this case through the Contact Group, has defined four clear premises for the negotiations:

- ▶ There will be no return to the pre-March 1999 (pre-war) status, in other words, to Serbian rule;
- ▶ The partition of Kosovo into ethnically pure Serbian and Albanian parts will not be accepted;
- ▶ Immediate and unconditional independence is not on the table (in other words, also not for the end of 2006);
- ▶ Finally, there will be no union of any kind between independent Kosovo and other Albanian-populated areas (such as those in southern Serbia or north western Macedonia) or with Albania itself. There will be no Greater Albania.

Implicit in these conditions is that a future Kosovo respects the territorial integrity (borders) of all other states in the region and guarantees that it does not pose a military or security threat to its neighbors.

In order to determine Kosovo's status, the Albanian side has to meet the following four major criteria:

- ▶ Multiethnicity with unequivocal respect for human rights, including the right of return for everyone;
- ▶ constitutional guarantees for insuring minority rights;
- ▶ special security measures for the protection of cultural and religious property; and
- ▶ the capacity to effectively combat organized crime and terrorism.

Which Final Status?

Serbia's Domestic Constraints

Serbia managed to shift its underlying premises concerning the Kosovo question when its political elite came to recognize that Kosovo, as an autonomous province under Serb rule, was lost. For one, it was clear that the Albanians would answer every attempt by the Serbs to bring Kosovo back under its direct control with violence. But, also, Serbia itself would have to accept too many compromises and endure too many disadvantages if Kosovo, as an autonomous entity, remained part of Serbia in some kind of tight political and economic constellation. Today, for example, if the Albanians were part of a common state with Serbia, Kosovo's 1.8 million ethnic Albanians, a good 20% of Serbia's population, would also comprise 20% of MPs in the Serbian parliament, a proportion, which, because of the differences in population growth, would quickly change to the further disadvantage of the Serbs. If the present demographic growth continues as it is, in 40 years the then roughly eight million Albanians would constitute the most populous ethnic group in the common state. But before then Serbia would have to bear a large financial burden (the per capita income in Kosovo is not even €1000, about half of that in Serbia.) At the same time, it can be anticipated that there would be massive immigration from densely populated Kosovo into the neighboring and thinly populated regions of central and southern Serbia, where at the moment one can witness (Serbian) depopulation in progress.

Such considerations, however, have only been aired once with sufficient clarity and publicly in Serbia, and that was in late March 2005 in the newspaper *Danas*. In April, when the former Foreign Minister of Serbia-Montenegro, Goran Svilanovich, as member of the International Balkan Commission, expressed his support for Kosovo's independence for the above-mentioned reasons, he was branded a betrayer of the

fatherland and as someone who sold out Serbia's interests. In addition to the well-known arguments against independence for Kosovo, some new ones have recently emerged. First, the known arguments: that UN Security Council Resolution 1244 internationally recognizes Serbia's sovereignty over Kosovo (actually, it's not Serbia but the former Yugoslavia which is expressly named, whose present successor is the Union of Serbia and Montenegro); that one has to consider the domino effect in Republika Srpska and in Macedonia; and that an independent Kosovo would turn the Balkans into a permanent conflict region. Another warning which has emerged recently is that not only is the population in Kosovo frustrated but that the same is true for the people of Serbia and that the Radical Party, which is the biggest faction in parliament with a third of the seats, is playing a role in fuelling this frustration. A scenario in which Serbia is forced to accept an independent Kosovo, so runs the argument, is one which could present the Radicals with an opportunity to win even more support and seriously endanger Serbia's democratisation. Just as difficult to gauge is the position of average Serbs in Serbia. One opinion poll from 2003 shows the following: 62% of those asked agreed that Kosovo was lost forever; but 70% simultaneously said that this should never be admitted!

The scenarios that exist for realizing the newest Belgrade formula for Kosovo (more than autonomy but less than independence) are based upon concepts of confederation, federation or union. In order to keep Serbia and Montenegro together, the concept "union" was consciously chosen because "federation" and "confederation" were considered to be too tight. In terms of real substance, Montenegro and Serbia have little in common: no common currency, no harmonized economic policy, different customs and tariffs. Montenegro even has its own foreign minister, while Serbia, in contrast, allows itself to be represented by the Union's foreign minister.

Something similar to this configuration

is imaginable for Kosovo, namely as a third entity in the Union. At the very least it would have the same currency as Montenegro, the Euro. But Montenegro has now finally decided to hold its long-awaited referendum to separate from Serbia in spring next year. If this were to happen, then only a two-entity Serbia-Kosovo union would be possible. This, however, cannot include financial transfers and must include restrictions in the area of migration or otherwise the above-mentioned threats would materialize. Some common features could only exist on paper. The formation of an all-union parliament, for example, would be predictably dysfunctional (just look at the Union of Serbia-Montenegro) and thus be nothing more than an unnecessary waste of money. More realistic, one could imagine a kind of "union committee," made up of MPs from both parliaments which addresses common interests and projects in fields like the economy, infrastructure, education and culture. There, MPs from both entities could discuss and prepare issues for bilateral government negotiations, at which decisions on these issues would be made.

The most important area for balancing and realizing common interests remains the protection of minorities, in particular the remainder of the Serbian population in Kosovo. The legitimate concern of Serbia for its co-nationals in Kosovo is at the center of every negotiating position that Belgrade presents. The political activities of the Serbian government are based on this and the question of the maintenance and preservation of its cultural heritage in Kosovo. The proposals that Belgrade has made in recent months, at first for partition, then later for the decentralization of Kosovo along ethnic lines, has had this concern foremost in mind. This is why the pilot project for the reform of local government (decentralization), which will be taking place in five municipalities as of June 2005, among them two with majority Serbian populations, is of such essential importance for further discussions. Initially, it is above

all the Albanian side (the still-wavering Kosovo parliament) which is called upon here to cooperate in a constructive way.

Prishtina Demands Full Sovereignty

The Kosovar Albanian side has a clear position on final status: Kosovo must be an independent, internationally recognized state, which would first be a member of the UN and then of the EU. Nevertheless, the politicians in Prishtina know very well that an international military presence would remain for some time in order to guarantee internal security and freedom of movement as well as to monitor the borders. International public prosecutors and judges will also be needed in the future, in order to adjudicate interethnic crimes. Also, the Kosovo police (KPS) is for quite some (longer) time not imaginable without international supervision. The politicians (with very few exceptions, like Veton Surroi) don't admit this (yet) in public, although this point certainly belongs among the concessions that must be demanded of the Kosovar side. A solution to the status question can only be found through compromises from both sides, and this is particularly problematic for the Albanian side. Without exception, all Kosovar Albanian politicians are, as in the past, set on independence and sovereignty for Kosovo. Just as the Belgrade politicians have to reject the full independence scenario, the Kosovar politicians' failure to back full independence would amount to political suicide. The difference is that in Serbia, the maximal demand, to keep Kosovo as a province, has been scaled back. While Serbian politicians know that the ultimate loss of Kosovo as a province is a fact, and keeping it would only result in the above-mentioned difficulties and complications, on the Albanian side they see no reason to back down from the demand for full independence. From Prishtina's perspective there are no obvious disadvantages stemming from a final, internationally recognized separation from Serbia.

Why then should they compromise on their maximal goal?

The International Community

The international community (IC), represented through the UN Security Council and the Contact Group, has so far—and understandably—avoided clearly answering the question of what kind of final status Kosovo should have. In other words, this is also the question of what goal the IC should set for itself in the shuttle diplomacy. Although it is clear to everybody involved that there is going to be no getting around independence for Kosovo, there are nevertheless differences in how that will affect national interests, which in turn influences the kind of solution aimed at and the rate at which a solution will be found.

The US is clearly showing its impatience. Its foreign policy imperatives have shifted in the direction of the Middle East and Afghanistan, as well as toward combating international terrorism. In Washington, one senses that the inclination to leave the for-the-most-part completed job in the Balkans to the Europeans, without relinquishing all of its influence in the region. A relatively active pro-Albania lobby in Washington is making the most of this position, arguing that the creation of an independent Kosovo is the most important contribution for an ultimately stable order in the Balkans. In addition to that, there is in the Balkans the widely held conviction that the US can effectively create solutions with clear and dynamic initiatives, like that, for example, that the Americans took recently in the controversy over Macedonia's name.

The EU, from its side, is particularly uneasy about taking up the offer of the International Balkan Commission, also that of Nicholas Burns, to take over all responsibilities in Kosovo after the end of the UNMIK mandate. In particular, it is against transforming UNMIK into EUMIK, in other words turning Kosovo into an EU protectorate. One argument from Brussels is that it lacks the administrative capacity to do so. An-

other is that Moscow is not prepared to relinquish its say in this very central Balkan question, which it will then have only indirectly through its participation in the UN Security Council. Russia is not only an important and sensible partner of the EU in general, but particularly so in the Kosovo status question because Russia is expected to help prod Belgrade to make necessary concessions. This creates the situation in which Moscow, in the UN Security Council, can only give its consent to one of Belgrade's negotiation results. Or, formulated otherwise: Moscow cannot vote against a solution proposal that Belgrade has already accepted, because otherwise that would make it clear that it is acting in its own interests with an eye toward Chechnya and Abkhazia, where it fundamentally rejects any kind of separation. The same goes for China.

In the same vein, just as the international community expects Russia to use its influence with Belgrade, the United States must use its with Prishtina. This is the case because the option of EU membership for both sides became more distant after the failed referenda in France and the Netherlands. In general, there is an increasingly obvious weariness within the EU about expansion. This development is particularly disappointing to Serbia which just recently took a very important step towards the EU when Brussels accepted its feasibility study for a Stabilization and Association Agreement. On the other hand, the option of EU membership is the one real incentive that can be offered to Belgrade in exchange for the concessions it will have to make: in exchange for the real option of EU membership, Serbia is expected to relinquish territory and (also when only theoretically, but nevertheless relevant by international law) existing territorial claims. Prishtina, on the other hand, can only win. For Prishtina, although EU membership is its only real hope for economic development, its foremost priority is statehood. If EU expansion is called into question, then US is all the more obliged to exert its influence

on Prishtina in order to extract the necessary concessions from the Kosovar side.

Summary

Giving the present problems, it cannot be expected that the talks that will begin in autumn will quickly result in a final determination of Kosovo's status. There can not be an imposed solution from outside because this will not be sustainable and thus will not contribute to long-term stability in the region. It is thus realistic to expect a long process in which UNMIK will continue to hand over responsibilities to the interim Kosovo government (PISG). It is already clear that this will result in a final separation from Serbia, a process already in progress as one can see e.g. from the introduction of Kosovo license plates and of Kosovar postal codes from the beginning of June 2005.

The further developments should happen as a process with different phases, along the lines that the International Balkan Commission formulated as proposals in its April 2005 report. That said, the individual phases outlined in the report depend upon a very prominent role of the EU, which now are going to be difficult to realize in the previously planned form. The first phase, which has already been completed, is the de facto separation of Kosovo from Serbia. After that, the second phase should happen, namely "independence without full sovereignty" in which the protectorate will continue to be led by the UN but the EU will be given increasingly more authority. In this phase, UNMIK will relinquish all of the authorities that it still has to the Kosovo government PISG. The international community will, however, reserve the right to intervene, particularly in the areas of minority protection and general human rights.

The most problematic and most long-term third stage, as seen by the commission, is the so-called "guided sovereignty" which involves the recognition of Kosovo's EU candidate status and the beginning of

EU membership negotiations. In this phase, the EU would actually be a negotiating partner with itself, if it ever really comes to such negotiations. These days many politicians reject the idea of EU membership not only for Turkey but also for the western Balkans. Instead, they speak of some kind of privileged partnership!

In the fourth phase, "full and (with the EU) shared sovereignty", Kosovo receives EU membership.

The Balkan commission knows very well that this proposed path can only be realized when it at the same time includes the whole Balkan region as part of the EU expansion process, in particular Serbia. This is a precondition that has now been fundamentally called into question and whose constructive impact is more and more evaporating given the extended time frame. If the perspective of EU membership is no longer there in the medium-term, then it is all the more necessary to look for alternatives in order to bring the negotiations forward and eventually to produce results. A solution to the Kosovo question is closely bound with the general credibility of the EU in the western Balkans, where the EU is seen as a protector of peace, a stabilizer and economic developer. The EU reiterated these commitments to these countries at the 2003 summit in Thessaloniki by referring to them as "potential membership candidates." An important signal to strengthen the membership options of these countries (even if they are only long-term) would be opening membership talks with Croatia as soon as possible and, should there be a positive opinion from the EU commission, granting Macedonia candidate status. Other considerations can now also be brought into the discussion, like phased membership or concentric circles, which would above all facilitate economic integration and offer the Balkans a real chance to develop. Nevertheless, even these kinds of constructions must include the option of full membership at some point. For the countries without even middle-term options for membership (Albania, Bosnia-

Herzegovina, Montenegro, Serbia and Kosovo) the stabilization and association process should be expedited and at the same time deepened, so that at least the economic development components can be effective. Additional finances, for example, like pre-accession funds should be made available. However, just how difficult that is going to be can be seen by looking at the hard-going negotiations over the EU budget for 2007–2013. Substantial increases in resources for the western Balkans can only come from an expanded total budget or from a complicated redistribution process—neither at the present time remotely likely!

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