

Kosovo, no longer and not yet¹

Introduction

Kosovo's current situation is the best illustration of Hannah Arendt's observation that:

Thought and reality have parted company, that reality has become opaque for the light of thought.

Since 1999, the province has been experiencing an:

Interval in time which is altogether determined by things that are no longer and by things that are not yet. In history, these intervals have shown more than once that they may contain the moment of truth.²

The question is how to face this moment of truth, and it is tightly linked to standards and status.

State of affairs

The international civil and security presence in Kosovo was established by the UN Security Council in Resolution 1244 of June 1999:

For an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise.

The mission was also mandated, in a final phase, with:

Overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement.³

Seven years after Resolution 1244, it appears very doubtful that this experiment in controlled democracy has succeeded and that a political solution for the province's final status can soon be reached.

In his recent comprehensive reports, the UN Secretary-General paints a depressing picture. In February 2005, he stated that – despite international pressure – none of the eight standards previously established had been implemented completely.⁴ Subse-

1 This article was written in the framework of the conference "Kosovo, regione d'Europa. Il ruolo dei partenariati territoriali nella composizione dei conflitti", organised in Rome on 15 December 2006 by Osservatorio sui Balcani.

2 Hannah Arendt (1960) *Between Past and Future* Washington D.C: The Library of Congress, The Hannah Arendt Papers, pp. 3-11.

3 UNSCR *Resolution 1244 (1999)* New York: UNSCR, S/RES/1244 (1999), 10 June 1999.

4 UNSCR *Report of the Secretary-General on the UN Interim Administration Mission in Kosovo* New York: UNSCR, S/2005/88, 14 February 2005.

quently, the focus on status has led to the swift implementation of some standards but it has also delayed reforms and, above all, hampered the effective implementation and enforcement of legislation already passed. Indeed, on 25 January 2006, the Secretary-General noted that progress in the implementation of the standards was slower than during all other reporting periods and affected by numerous delays or setbacks.⁵ By mid-August 2006, only five out of 13 implementation priorities were considered completed.⁶

Similarly, even though the Kosovo government established an agency for European integration and adopted an action plan to address European Partnership priorities, key short-term priorities of the European Partnership have been only partly met.⁷ Despite this recent increased commitment to standards implementation – an effort to enhance Pristina's credibility in the Vienna status negotiations – the overall political and economic situation remains bleak.⁸

Kosovo Serbs continue to refuse to participate in the provisional institutions. In the summer of 2006, the municipalities of Leposavić, Zvečan and Zubin Potok cut all ties with the provisional institutions of Kosovo although they maintained co-operation with UNMIK. The key cabinet post of minister of agriculture, forestry and rural development, reserved for a Kosovo Serb, has remained vacant. This has led to an almost complete absence of Kosovo Serbs from the political and administrative scene. At the same time, Serbs from northern Kosovo are part of the Belgrade-led Serbian delegation to the status talks.

On the Kosovo Albanian side, there are barely any signs that it sees Kosovo as a multi-ethnic country: beyond the empty official rhetoric, there is no real overture towards the Kosovo Serbs, no willingness to include members of non-Serb minorities in the Kosovo negotiation team, no institutional guarantees or positive discrimination for non-Albanians. Property rights are neither respected nor enforced and there is no overall return process. More than ever, Kosovo is a deeply divided society – and far away from the vision of an inclusive and multi-ethnic Kosovo.

The EU's progress report on Kosovo published on 8 November 2006 recalls that:

Belgrade-sponsored parallel administrative structures continue to operate in most predominantly Kosovo-Serb municipalities. Two systems continue to operate in Kosovo in the fields of justice, education, health care, administration and postal service.⁹

- 5 These eight benchmarks – formulated in 2002 by SRSB Michael Steiner and presented in a 10-page document on 10 December 2003 – relate to: functioning democratic institutions; the rule of law; freedom of movement; returns and reintegration; the economy; property rights; dialogue with Belgrade; and the Kosovo Protection Corps. See UNSCR (2006) *Report of the Secretary-General on the UN Interim Administration Mission in Kosovo* New York: UNSCR, S/2006/45, 25 January 2006.
- 6 This refers to 13 priorities identified in June 2006 by the Contact Group; see SRSB (2006) 'Technical assessment of progress in implementation of standards for Kosovo' annexed to UNSCR *Report of the Secretary-General on the UN Interim Administration Mission in Kosovo* New York: UNSCR, S/2006/707, 1 September 2006, pp. 9-20.
- 7 In mid-2006, the European Partnership Action Plan replaced the Kosovo Standards Implementation Plan (KSIP), formulated in March 2004.
- 8 See Commission of the European Communities (2006) *Kosovo (under UNSCR 1244) 2006 Progress Report* Brussels: SEC(2006)1386, 8 November 2006.
- 9 *ibid.*, p. 9.

The Kosovo Serbs are developing a parallel society supported by Belgrade – following the Kosovo Albanian model prior to 1999.¹⁰

To complete the picture, we have to consider that the judicial system is inefficient and corruption widespread at all levels. The human rights situation is miserable: women remain victims of discriminatory practices in economic and social life; protection mechanisms for children are inadequate; and minority communities face discrimination and serious restrictions, with Serbs and Roma being singled out for harassment and intimidation. Most Roma, Ashkali and Egyptians lack access to public services, income-generating activities and education. Last but not least, little progress has been made in the fight against the trafficking of human beings and Kosovo remains a source, transit and destination point for trafficking.

This situation did not dissuade Ambassador Kai Eide, the Special Envoy of the UN Secretary-General, from recommending in October 2005 that status negotiations should be launched, notwithstanding his expressed opinion that it would be premature to hand over key competencies to local authorities and that there would never be a good moment for addressing the future status of Kosovo.¹¹ Eide's key argument was that a postponement of the status process was:

Unlikely ... [to] lead to further and tangible results in the implementation of standards.¹²

In consequence, the Secretary-General decided on 7 October 2005 that:

The time has come to move to the next phase of the political process,

emphasising at the same time that:

Standards implementation must continue with greater commitment and results.¹³

Negotiations but no compromise

The future status process began in Vienna on 20 February 2006 under the auspices of UN Envoy and former Finnish President Martti Ahtisaari. However, these talks focused essentially on decentralisation and other, rather technical aspects such as community rights, protection of the Serbian Orthodox Church and state property and debt, rather than on the final status. Worse, they have not yet yielded any concrete results. The widely-anticipated outcome of some sort of independence for Kosovo clearly undermined the negotiations. Despite the presence of the Prime Ministers and Presidents of Serbia and Kosovo in Vienna on 24 July 2006, no breakthrough occurred and the summit ended in deadlock. Additional direct talks between the parties revealed that they remain far apart on most issues.¹⁴

10 See Shkëlzen Maliqi (1998) *Kosova: Separate Worlds Pec*: Dukagjini.

11 UNSCR (2005) *A comprehensive review of the situation in Kosovo* New York: UNSCR, S/2005/635, 7 October 2005.

12 UNSCR, *ibid.*, pp. 18.

13 UNSCR (2005) *Letter dated 7 October from the Secretary-General addressed to the President of the Security Council* New York: UNSCR, S/2005/635, 7 October 2005.

14 UNSCR (2006) *Report of the Secretary-General on the UN Interim Administration Mission in Kosovo* New York: UNSCR, S/2006/707, 1 September 2006, p. 1.

On the Kosovo Albanian side, as observed by the International Crisis Group (ICG):

The idea of preparing options for accommodating Kosovo Serbs or sweetening the pill for Serbia so it is easier for the international community to bring a recalcitrant Belgrade to accept Kosovo's independence has not really percolated into political thinking.¹⁵

On the Serbian side, everything was done to delay independence, to detach Serb territories from Kosovo and to oppose formal independence in line with Belgrade's slogan 'more than autonomy, less than independence.'

This outdated and legalistic approach disregarded that the bond between citizens and state is obviously broken in Kosovo and that Kosovo Albanians are certainly not interested in any kind of wide-ranging autonomy within Serbia; but also that Serbia – itself in a critical financial situation – cannot afford the financial burden of Kosovo's development. If Serbia does not want to sell Kosovo, it is equally unable to pay for it. A catharsis induced by the loss of Kosovo appears utopian today, but what about tomorrow?

The status talks are now expected to conclude in early 2007;¹⁶ after being postponed once, it is hard to see how UN Envoy Ahtisaari can achieve his 'mission impossible.' Contrary to what the most recent ICG report suggests,¹⁷ it seems doubtful that Ahtisaari will be able to present any settlement package resulting from, or endorsed at, the Vienna talks. The Kosovo talks may thus end in a settlement imposed by international pressure based on a new UN Security Council resolution.¹⁸ This would very probably not mention the word 'independence' and only suggest conditional or limited sovereignty, constraining the Kosovo Albanian majority to guarantee a package of rights for Kosovo's Serbs and other minorities in three spheres: central institutions; decentralisation; and cultural heritage. It is by no means certain that such a status would bring all parties together.¹⁹

The expected UN Security Council resolution, expected for March 2007, will in all likelihood also mandate the transfer of most UNMIK responsibilities, though probably fewer than first expected, to Kosovo's government, and task a post-status mission with overseeing this transition process and taking over UNMIK's follow-up. The Contact Group²⁰ will probably co-ordinate this planned International Civilian Office (ICO), initially supposed to be an EU-led mission. It remains to be seen if any international presence will be effective with fewer powers than the High Representative in

15 ICG (2006) *Kosovo: The Challenge of Transition* Brussels: ICG, Europe Report No. 170, 17 February, p. 19.

16 Tim Judah (2006) 'Fresh Delays Likely to Kosovo's Independence' *Balkan Insight* 23 November.

17 ICG (2006) *Kosovo Status: Delay is Risky* Brussels: ICG, Europe Report No. 177, 10 November.

18 Editor's Note: This article was written on 30 December 2006: the talks did in fact conclude in early March, without agreement.

19 A condition mentioned by Kai Eide; see UNSCR (2005) *A comprehensive review of the situation in Kosovo* New York: UNSCR, S/2005/635, 7 October, p. 5 and 19.

20 Set up in 1994, the Contact Group gathers key states interested in the Balkans: the US, the UK, France, Germany, Italy and Russia.

Bosnia and Herzegovina. For example, it is a mystery how the northern part of Kosovo can be incorporated without at least some coercive powers. It is obvious that the post-status mission cannot focus only on monitoring but will have to intervene in some key areas, especially those discussed in Vienna.

An EU region, what else?

A robust framework conducive to social and economic development and the consolidation of sustainable and democratic structures, as well as regional stability, can only be established on the basis of specific status. But are the protectorate or sovereignty options realistic at all – might they not lead Kosovo towards a failed state?

The quasi-protectorate scenario, as it has been implemented in Bosnia and Herzegovina, may appear to some – especially in Belgrade – as the best possible way out of the quagmire and would allow one Kosovo entity to have special links to Belgrade.²¹ If this option is chosen, the post-status mission would end up holding much more authority than first imagined. However, if full independence seems out of the question, we may ask if, under current circumstances, conditional independence is really a viable outcome, not to mention whether Kosovo Albanians would welcome it. If independence is in their hearts, they have less understanding of the requirements of qualified statehood. Indeed, Kosovo's state-building process has not been successful enough – if at all – for the construction of a sustainable and democratic state.

The tacit consensus that the Contact Group seems to have reached behind closed doors – that conditional independence is the solution – is counterbalanced by none of these countries being prepared to impose a solution without Belgrade's acquiescence. At most, the UNSCR may endorse a follow-up package on the international successor presence and welcome an act of self-determination. In that case, recognition may not follow immediately, defying the expectations of the Kosovo Albanians, while Serbia's posture could still threaten the entire post-status presence as well as Kosovo's future.

However, independence with full or limited sovereignty will provide no guarantee that the 'illiberal democracy syndrome' that currently affects Kosovo can be overcome. Could the time have come to abandon nineteenth-century concepts of the nation state and national borders and move towards transnational integration, a process that has been shaping Europe for the past decades? As Carl Bildt has suggested, the alternative

To setting up new nation-states in the region is setting up new European and regional structures.²²

Indeed, modern states have to confront – in Kosovo as elsewhere – the reality of multi-nation states, and:

Learn to live with cultural pluralism, and to devise strategies for co-existence that are consistent with the principles of freedom, justice and democracy.²³

21 See Christophe Solioz (1996) 'L'avenir du Kosovo à la lumière des Accords de Dayton' *Diagonales Est-Ouest* 38, January, pp. 28-9.

22 Carl Bildt (2001) 'A second chance in the Balkans' *Foreign Affairs* 80(1): 157.

23 Will Kymlicka (1995) *The Rights of Minority Cultures* Oxford: Oxford University Press, p. 157.

In this field, the Lund Recommendations²⁴ may provide basic principles and best practice on how to implement these integrative strategies as well as on how to promote options for self-governance short of sovereignty and secession.²⁵

In order to escape the current dead end of independence vs. autonomy, an innovative settlement must be found. It is indeed time to imagine Kosovo's future on a completely different basis: Kosovo as an autonomous European region, within a regional legal framework based on EU legislation, could provide real prospects for future progress on the 'status process'.²⁶ Accordingly, the degree of external intrusiveness would decrease and the mission progressively shift from full-fledged international administration – including the currently existing co-administration and the ongoing limited transfer to local self-administration – towards a mission with a light footprint concentrating on monitoring and advising local authorities.

Such a truly unique status, which would be endorsed by the Council of Europe and the European Union, would introduce the Euro currency, achieve an effective demilitarisation supervised by an EU-led police force, and provide visa liberalisation, an extensive education programme, debt relief and substantial pre-accession development assistance.²⁷ A facilitated membership of the International Monetary Fund, the World Bank, and some specialised UN agencies (such as the World Health Organisation or the International Labour Office), would complete a package that would be attractive for Kosovo Albanians and could smooth sensitivities in Belgrade, paving the way for broad acceptance in Serbia.

Such an approach, focusing on status and standards, would clearly represent a compromise that would require equal concessions from both sides. Populist forces both in Belgrade and Pristina would have to find a middle ground and leave behind extremist positions that belong to another century. What might be considered a concrete utopia could well be immediately integrated into already-existing structures such as the Council of Europe's Congress of Local and Regional Authorities and the EU's Committee of the Regions; it also corresponds to a rising awareness of the importance of developing and strengthening the political relevance of EU regions and of regional innovation strategies.

We said earlier that the regional approach – as a truly dynamic concept – could accompany the shift from an UNMIK follow-on mission towards a monitoring mission using less intrusive powers and more conditionality. It could also facilitate a well-regulated hand-over and exit strategy, as well as the next steps towards EU membership and full independence – both processes requiring much more time than initially

24 Foundation on Inter-Ethnic Relations (1999) *The Lund Recommendations on the Effective Participation of National Minorities in Public Life* The Hague, September.

25 See Walter A. Kemp (2000) 'Between assimilation and secession: Integrating diversity in multi-ethnic states' in: Daniel Warner & Valérie Clerc (eds.) *The OSCE in the Landscape of European Security* Geneva: HEI, PSIO, No. 1, pp. 37-67.

26 Kai Eide insisted on the concept of 'status process' – something that most observers overlooked – and pointed out that 'entering in future status process does not mean entering the last stage, but the next stage of the international presence' see *op. cit* p. 22.

27 Some of these aspects were mentioned by ICG (2006) *Kosovo: The Challenge of Transition* Brussels: ICG, Europe Report No. 170, 17 February, p. 30.

thought, due both to the slow implementation of the *acquis communautaire* in Kosovo and to Europe's enlargement fatigue.

Kosovo as an autonomous European region – conceived as part of a status process – would thus provide the EU with a clear strategy that would avoid a clash of approaches: during the time when Kosovo would have the status of a region, the EU-led mission would have some executive powers focusing on a set of achievable benchmarks; once Kosovo gains access to full independence, the EU's actions would be based only on monitoring and reform implementation.

The region framework – as a clearly defined status – could, firstly, help to overcome the imposition-ownership gap by mandating a consistent transfer of powers and ownership-driven strategies and, secondly, provide a common framework for the integration of north Kosovo and the establishment of cross-border relations on the model of European examples such as the Euregio Tirol-Alto Adige-Trentino and the Regio Basiliensis. This re-integration would be achieved by a transitional mission north of the Ibar along similar lines as the successful 1996-1998 UN mission in Croatia's region of Eastern Slavonia (UNTAES). In that way, relations with Serbia would no longer threaten the integrity of Kosovo and contribute to an overall normalisation.

The added value of such innovative and flexible approaches for the Contact Group and EU countries would be that they would allow the international community to move towards a political settlement and cost-efficient post-crisis intervention. This is especially welcome since it is doubtful that these states will increase the resources they commit to Kosovo. The status outlined above would favour a reallocation of funds from the military sector towards state-building and development priorities.

Innovating regions in Europe, also a concept familiar to the business community, could now provide a powerful tool to solve pending conflicts not only in Kosovo but also in Spain (the Basque conflict), in Turkey (the Kurdish question), and in Nagorno Karabakh, Abkhazia, South Ossetia and Transdnestr.²⁸ In each case, a regional approach adapted to the specificities of each situation and embedded in the framework of EU membership or the EU's Neighbourhood Policy could help to bring about political – instead of military-based – solutions.

28 See Christophe Solioz (2006) 'Décréter le Kosovo région européenne serait une solution originale et innovante' *Le Temps*, 10 October, p. 19 (also referred by *eurotopics* Berlin, 10 October 2006; <http://www.eurotopics.net>).