

KOSOVO: TOWARD FINAL STATUS

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KOSOVO: TOWARD FINAL STATUS

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Time is running out in Kosovo. The status quo will not hold. As evidenced by the deadly rioting in March 2004, Kosovo Albanians are frustrated with their unresolved status, the economic situation, and the problems of dealing with the past. The Albanian majority expects the international community to begin delivering this year on its independence aspirations. Without such moves it may act unilaterally. In such circumstances, given the dismal record of Kosovo Albanians with regard to minorities, Kosovo's Serbs may call upon Serbia's armed forces to protect them, and the region could be plunged into new turmoil.

Either 2005 sees major progress on a future status solution that consolidates peace and development, or the danger is that Kosovo will return to conflict and generate regional instability. This report, seeking to fill the blanks left by Security Council Resolution 1244 at the conclusion of the 1999 conflict, shows how that progress might be made.

As a first step, the six-nation Contact Group should issue as soon as possible a statement spelling out a timeline for the resolution of the status issue and four crucial ground rules: that the protection of minority rights in Kosovo is the issue on which progress will most depend and that neither Kosovo's return to Belgrade's rule, nor its partition, nor any possible unification of Kosovo with Albania or any neighbouring state or territory will be supported. At the same time, a Special Envoy should be appointed by the UN Secretary-General to begin consultations on the content of a settlement accord and the process by which it should be implemented.

In mid-2005 the UN is due to assess the Kosovo government's commitment to democracy, good governance and human rights standards. If the assessment is positive, the Special Envoy should prepare a draft settlement text -- the 'Kosovo Accord' -- and the details of an international conference to endorse it.

If Kosovo's new government is to lead its people to the independence destination they desire, there must be complete respect and protection for Kosovo's Serb and

other minorities. The Kosovo Assembly, with international assistance, must immediately begin to draft a constitution, fully satisfying these concerns, the text of which would, if accepted by the international conference, form part of the proposed Kosovo Accord. Overall the object of the Accord, together with the new constitution, would be to create the conditions for acceptance of Kosovo as a full member of the international community.

It would be appropriate, given everything that has happened in the past and the uncertainties about behaviour in the future, for the Accord and constitution, between them, to set some limits -- important in content, but few in number and relatively limited in scope -- on an independent Kosovo's freedom of action, in particular:

- Kosovo would be explicitly committed not to unify with Albania, or any neighbouring state or territory, other than in the context of EU integration;
- there would be a number of internationally appointed judges in Kosovo's superior courts, and certain international parties would have the standing to ensure that certain key matters relating to minority rights and other agreed obligations can be brought before those courts;
- Kosovo would accommodate an international monitoring presence -- the 'Kosovo Monitoring Mission' -- to report to the wider international community and recommend appropriate measures if Kosovo were to backslide on its commitments.

Before the end of 2005 the international conference should take place, under UN chairmanship and attended by representatives of the Contact Group members, the EU, Belgrade, and Kosovo's government and opposition parties. In early 2006, approval of the constitution by Kosovo's citizens in a referendum would trigger the coming into effect of the Kosovo Accord. Desirably, to give it complete legal as well as political effect, the Accord would also be endorsed by the UN Security Council. Kosovo's de jure sovereignty, if not achieved

by Serbian agreement or Security Council resolution, should be recognised by the whole international community, or at least such of its member states (including the U.S. and EU members) as are prepared to do so.

It has to be contemplated that Serbia -- and perhaps Russia as well -- will refuse to cooperate with part or all of this. But the proposed process should not be held hostage to that eventuality: the situation on the ground in Kosovo is too fragile, and the status quo too unsustainable in too many ways, for the international community to allow its future status to be put on indefinite hold. While legitimate Serbian concerns should be taken fully into account, particularly about the status of Kosovo's Serb minority, Belgrade should be cautioned from the outset that "the train is leaving, with or without you", and encouraged to participate fully in achieving the best possible terms of settlement.

Complacency has guided policy on Kosovo for too long. The potential for renewed violence is very real. The international community, in particular the member states of the Contact Group, must decide whether to regain control of the agenda or allow matters to slip until unpleasant new facts are created on the ground that they will have to deal with. The agenda set out above requires political courage as well as energy. But the alternative is worse.

RECOMMENDATIONS

1. **As soon as possible:**
 - (a) The Contact Group countries (highly desirably including Russia, but if necessary without it), as a confidence and momentum building measure, should issue a statement identifying a timeline for the resolution of the status issue.
 - (b) That statement should make clear that the protection of minority rights in Kosovo is the issue on which progress will most depend and that neither Kosovo's return to Belgrade rule nor its partition, nor any possible unification of Kosovo with Albania will be supported.
 - (c) The UN Secretary-General, in consultation with the Contact Group, should appoint a Special Envoy to begin consultations on the structure of a final status process and the content of a draft settlement.
 - (d) The Kosovo Assembly, with support from international donors, should begin to draft a constitution, including provisions for the protection of minority rights and a number of internationally appointed judges in the Supreme and Constitutional Courts.
2. **By mid-summer 2005:** The SRSB should conclude a review of the PISG's commitment to meeting standards -- with subsequent steps being premised on that review being positive.
3. **By autumn 2005:**
 - (a) The Kosovo Assembly should finalise the text of the draft constitution.
 - (b) The Special Envoy should produce a draft settlement text -- the 'Kosovo Accord'-- and the details of an international conference to endorse both it and the Kosovo constitution.
4. **By end 2005:** The international conference should take place, under UN chairmanship and attended by representatives of the Contact Group members, EU, Belgrade, and Kosovo's government and opposition parties (or such of them as are prepared to do so), and endorse the texts, as negotiated, of the Kosovo Accord and constitution.
5. **Early 2006:**
 - (a) Kosovo should conduct a referendum on its new constitution.
 - (b) The Kosovo Accord should be put to the UN Security Council for approval (with that approval being a highly desirable, but not necessary, condition for subsequent steps).
6. **Mid-2006:**
 - (a) UNMIK should hand over its executive functions to the Kosovo government and its monitoring ones to a new international body (the 'Kosovo Monitoring Mission'). The continuing long-term role of KFOR, or a successor mission, should be confirmed by an accord agreed between NATO and Kosovo's government.
 - (b) To the extent this has not already been achieved by Serbian agreement or Security Council resolution, Kosovo's de jure sovereignty should be recognised by the international community, or such member states (including the U.S. and EU members) as are prepared to do so.

Pristina/Belgrade/Brussels, 24 January 2005

KOSOVO: TOWARD FINAL STATUS

I. INTRODUCTION: THE ISSUE THAT CANNOT WAIT

Time is running out in Kosovo. The status quo will not hold. As evidenced by the deadly rioting in March 2004, Kosovo Albanians are frustrated with their unresolved status, the economic situation, and the problems of dealing with the past. Either 2005 will see the start of a final status¹ solution that consolidates peace and development or Kosovo may return to conflict and generate regional instability.

In March 2002, twin Crisis Group reports² outlined parallel internal and external tracks for addressing future status. While they proposed benchmarks to chart institutional development -- an approach since adopted -- they also argued that decisions on Kosovo's future should not be held hostage to those benchmarks. Without any immediate new crisis to galvanise it, the international community grasped only the comfortable end of the package -- the internal benchmarks. Its "Standards for Kosovo" policy seemed designed to postpone final status consideration.

Now, the international community's room for manoeuvre is far more restricted than it would have been if decisive steps had been taken three years ago. The political capital of the UN mission in Kosovo (UNMIK) is all but exhausted. Reintroduction of violence into the equation has raised the very real possibility the process may be decided by brute force on the ground rather than peaceful negotiation.

Although diplomats from most Contact Group³ countries now admit in private that the final status issue has to be resolved, there is still insufficient political will to drive the agenda. The Contact Group has set mid-year 2005 as its target for deciding whether to proceed to a final status process but it must lay the groundwork immediately: the extremists are already preparing their agendas.

The prospects are not encouraging for the local actors themselves to reach an accommodation which the UN Security Council could endorse; still less so are the prospects for the Security Council to reach an agreement which could then be imposed. The international community must persevere with pressure on local actors to be more accommodating to each other,⁴ but Kosovo Albanians will only seriously engage with such efforts if they perceive them as a means by which to prove themselves worthy of a state, and they are assured the ultimate destination is not some residual connection to Belgrade. Without those crucial components, such incremental moves are more likely to corrode than to shore up stability.

The economy going into 2005 is, if anything, in a worse state than in 2003-2004, swathes of villages are being disconnected from the power grid for non-payment of bills, and the political scene is more fractious. Should Prime Minister Haradinaj in coming weeks be indicted for war crimes by the ICTY, as is presently speculated, the reaction from his supporters could be explosive. Social frustrations will be even more acute by spring, the traditional Kosovo season for violence. Newspaper publisher turned politician Veton Surroi warned in October 2004 that "If Kosovo continues with the present political structure and lack of economic policy, in six

¹ Although 'final status' is the almost universally used term of art to describe the Kosovo issue that remains to be resolved, UN Security Council Resolution 1244, and the Rambouillet accords which it incorporates by reference, do not actually use that expression, referring only to the need for a 'final settlement' to resolve Kosovo's 'future status': see footnote 9. It is possible to envisage a process, accordingly, which settles a future status for Kosovo which foreshadows, but does not actually achieve, its final status.

² Crisis Group Europe Report N°124, *A Kosovo Roadmap (I): Addressing Final Status*, 1 March 2002; Crisis Group Europe Report N°125, *A Kosovo Roadmap (II): Internal Benchmarks*, 1 March 2002.

³ The Contact Group, originally formed in 1994, coordinates the key states interested in the Balkans and played an important role in previous rounds of negotiations on both Bosnia and Kosovo. Its six members are the United States, the United Kingdom, France, Germany, Italy and the Russian Federation.

⁴ For example, with respect to the standards implementation plan, ikonline.org/pub/misc/ksip_eng.pdf; the reconstruction program adopted following the March riots, http://europa.eu.int/comm/externalrelations/see/news/ip04_445.htm; and various attempts to foster internal dialogue.

months we'll run into a social explosion".⁵ Many in Serbia⁶ consider such developments would justify a partition solution and will work to provoke them.

The Kosovo Albanian political establishment cannot be relied upon to act as a moderating force if, by mid-2005, the international community does not begin a process which clearly appears to be leading to some form of independence. It is more likely to act out of political self-preservation and align itself with calls for demonstrations or strikes, cease cooperation with UNMIK, perhaps even formally declare independence and thus set in chain a dangerous and unpredictable cycle. Former Prime Minister Rexhepi -- a moderate, and since March 2004 the international community's favoured interlocutor -- twice said that the provisional Kosovo government (the PISG⁷) will take unilateral action after that date if it does not see enough movement from the international community on final status. Present Prime Minister Haradinaj, who has previously favoured making a unilateral declaration of independence, has stated that he will work to create the framework of an independent state by the end of 2005.

If major violence ignites, the risk is that this will pressure UNMIK into evacuation, leaving behind the NATO-led military force, KFOR, and a Kosovo Police Service (KPS) with divided loyalties to maintain security. Serbs would likely call on Belgrade to protect them, but small, isolated areas of Serb settlement could be violently overrun. In such circumstances, Mitrovica would almost certainly erupt, creating enormous pressures for the Serbian army to enter to defend the northern half of the city and the three northern Serb majority municipalities, especially if KFOR was overwhelmed.

Neither Kosovo Albanians, nor Belgrade, nor Kosovo Serbs are currently able or willing to adopt more accommodating positions. Unless the international community begins to act decisively in the next few months to change their attitudes, violent breakdown threatens to swamp politics and negotiation.

⁵ "Surroi warns of more violence in UN-run Kosovo", Reuters, 18 October 2004.

⁶ For ease of reference and because the issue is really one that concerns only part of the union, reference is normally made in this report to Serbia, even though Serbia and Montenegro is the state whose cooperation is sought in resolving the Kosovo problem.

⁷ Provisional Institutions of Self-Government.

II. POSITIONS OF THE KEY PLAYERS

A. THE INTERNATIONAL COMMUNITY

The international community entered Kosovo in June 1999 without an exit strategy and has taken only a few uncertain steps toward defining one. Security Council Resolution 1244, which mandates an international administration, is ambiguous on the duration of the Federal Republic of Yugoslavia's sovereignty over Kosovo.⁸ But it did make clear that Belgrade, having violently expelled more than 700,000 Kosovo Albanians in 1999, had lost the right to administer the province, and that following a period of international administration, a political process would determine final status.

1. Standards and status

While UNMIK has put in place many attributes that usually apply to a sovereign state, it has also been careful not to explicitly address the issue of sovereign status. In early 2002 it adopted a policy of "standards before status".⁹ After the Contact Group, which had been a key player in the Balkan conflicts of the 1990s and was revived in spring 2003, said it would judge in mid-2005 whether progress on standards merited starting final status review, UNMIK produced a comprehensive standards plan.¹⁰

⁸ While in the preamble of Resolution 1244 the Security Council reaffirms "the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2", section 11c mandates "a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords". The Rambouillet accords envisaged "a mechanism for a final settlement for Kosovo, on the basis of the will of the people, opinions of relevant authorities, each party's efforts regarding the implementation of the Accords, and the Helsinki Final Act" to take place within three years, from 1999. Among other on-line sources, the text of UNSCR 1244 can be found at <http://www.un.int/usa/sres1244.htm> and the Rambouillet Accords at <http://www.commondreams.org/kosovo/rambouillet.htm>

⁹ See the then SRSG Michael Steiner's speech to the UN Security Council, 24 April 2002, on the UNMIK website, <http://www.unmikonline.org/>; although he did not use the precise "standards before status" formulation on that occasion, it became common currency almost immediately.

¹⁰ The full Standards Implementation Plan is published on the UNMIK website, <http://www.unmikonline.org/>. It is not yet clear how precisely the mid-2005 standards review will be carried out. The simplest procedure would be for the SRSG to make his assessment and report it to the UN

Few in Contact Group ministries believe Kosovo can be returned to Belgrade's rule without re-igniting an armed rebellion from the province's near-90 per cent Albanian majority. If no significant new violence erupts by mid-year, some movement on status -- though what, as yet, remains quite unclear -- can probably be expected. But opinion is divided on what the response should be if there is more violence. Some emphasise that: "We have publicly linked status to standards. If new violence occurs then 2005 is lost. We would lose all credibility if we just caved in on status".¹¹ Others, more cynical, suggest renewed violence may be the only way to produce enough international political will to take tough decisions on final status.¹² Few believe there is a viable long-term containment option. With calls on resources from the Iraq and Afghanistan theatres, pressures to downsize KFOR are growing.¹³ Willingness to sustain the roughly \$350 million annual cost of UNMIK is also not infinite.

Two recent key UN appointees have shown refreshing clarity on the need to move forward on transfer of powers and final status. In a hard-hitting report on the political situation submitted in July 2004, the Secretary-General's Special Envoy, Kai Eide, argued that further delay would reduce the international community's leverage to deliver a managed, negotiated solution and recommended that "serious exploratory discussion of the future status question should be undertaken by the UN beginning this fall".¹⁴ On his mid-August 2004 arrival in Pristina, the Secretary-General's new Special Representative (SRSG), Soren Jessen-Petersen, declared that resolving status was the key to stabilising the wider Balkan region, chided lack of initiative, and noted "I think there's a limit to how long you can keep a place in limbo".¹⁵

2. The 22 September Statement

Consultations with Secretary-General Kofi Annan during the General Assembly session in New York on 20-22 September 2004 enabled the Contact Group to put out a promisingly realistic statement on the way forward. The most important paragraph, with its crucial last sentence, was:

Secretary-General, who would in turn communicate the conclusions of the review to the Security Council.

¹¹ Crisis Group interview, London, June 2004.

¹² Crisis Group interviews, Brussels and Berlin, June 2004.

¹³ Though in December NATO pledged to keep KFOR's strength constant through 2005.

¹⁴ The Eide report was eventually published by the UN in November 2004, see S/2004/932, Annex I. Eide, who is Norway's Ambassador to NATO, previously held a number of international posts in the Balkans.

¹⁵ Press conference, Pristina, 17 August 2004.

The basis of any settlement must include the promotion of security and stability in the Balkans. As the "Standards for Kosovo" document states, the future for Kosovo must be one in which all people, "regardless of ethnic background, race or religion, are free to live, work and travel without fear, hostility or danger, and where there is tolerance, justice and peace for everyone". The Contact Group's attitude toward the future of Kosovo will depend heavily on the extent to which this statement matches the reality on the ground in Kosovo, particularly in regard to Kosovo's Serb and other non-Albanian communities. The emergence of such a Kosovo will contribute to moving the Western Balkan region toward European integration. These indicators mean that Kosovo would not return to the situation prevailing there before March 1999.¹⁶

The Contact Group agreed to leave decisions on practical preparations for final status talks with the Secretary-General, who indicated he would quickly present them; at last the international community appeared to be developing a viable common strategy. But the auguries for further progress in the next months are mixed at best. Secretary-General Annan's letter to the Security Council on 10 November 2004¹⁷ failed to add momentum to the Contact Group statement and stepped back from the Eide report's recommendations on the need for immediate moves to prepare for final status talks. The decision of the largest Kosovo Albanian party, Ibrahim Rugova's LDK, to embark on a narrow coalition with the AAK and offer the prime minister's chair to Ramush Haradinaj, has alienated the international community and isolated the PISG.¹⁸

¹⁶ Statement available from several Contact Group member states' foreign ministry websites, including at <http://www.state.gov/p/eur/rls/or/37535.htm>.

¹⁷ Letter of Secretary-General Kofi Annan to the Security Council on "The way forward in Kosovo", 10 November 2004, published as S/2004/932, Annex II. Eide's report had bluntly stated that "[t]he current 'standards before status' policy lacks credibility", and recommended that "[s]erious exploratory discussion of the future status question should be undertaken by the United Nations beginning this [2004] autumn"; Annan's letter implied that the standards policy remained unchanged and gave no hint as to when the serious exploratory discussions proposed by Eide might begin.

¹⁸ The paucity of high profile foreign visitors to Pristina since Haradinaj's appointment is evident - part of an uneasy interregnum while everybody waits to see whether he is going to be indicted by the ICTY for war crimes, which would create a new political crisis in Kosovo. Ironically, Haradinaj has in his first few weeks in office exhibited

Avoidance of the hard issues cannot much longer be sustained. Relying solely on interim efforts to create mutual accommodation among the Kosovo Albanians, Serbs and Belgrade will not point the way to a final status agreement. Results are virtually impossible without clarification in advance of the end destination. Moreover, without some basic fiats and guarantees, the foundations for institution-building are too unstable -- Kosovo's social arena is one of slow motion warfare, not a peace-building environment. The less the international community raises its voice about final status, the more locked into their mutually exclusive visions of Kosovo's future each of the local parties will remain.

3. Shoals ahead

Russia. It remains to be seen whether Russia's scepticism on Kosovo independence will translate into blocking decisions in the Contact Group. Its stance appears to take little account of realities on the ground; indeed, there almost seems to be a certain pride in distance.¹⁹ Impatience with this rigidity is growing in Western European capitals.²⁰ It may be that Russia can be persuaded to endorse a Contact Group position specifying that Belgrade can never again rule Kosovo if the possibility of the union of Kosovo with Albania is also excluded at the same time,²¹ but this remains to be explored.

Serbia. A basic decision has to be made on how to deal with an increasingly uncooperative Serbia, now that it has stimulated a boycott of the Kosovo Assembly elections. Serbia is heading in the wrong direction on other important fronts such as cooperation with The

impressive leadership, determination, and urgency in pursuit of the standards and decentralisation agendas urged by the Contact Group and Security Council.

¹⁹ President Putin has said: "We have withdrawn our army from Kosovo not because it is all the same to us what is happening there, but because we couldn't influence the situation to change. Had we stayed, we would have provided cover for misdeeds as well. Our presence would not have even prevented the things that occurred in March, and we would have been responsible. And that is unacceptable for Russia". Remarks to media on the occasion of Serbian Prime Minister Kostunica's visit, Sochi, 3 June 2004, UNMIK Belgrade Media Update, 4 June 2004.

²⁰ "The Russians now want martial law in Kosovo if any more Serbs are killed. That's easy for them to say with no troops there". Crisis Group interviews, Western European capitals, June 2004.

²¹ For Russian concerns about a potential Greater Albania, see for instance Boris Shmelev's paper, "Powder - magazine of Europe or Zone of peace and stability: European Future for Balkans", submitted to the 25 October 2004 meeting of the CEPS/IISS European Security Forum in Brussels.

Hague Tribunal. Appeasement would risk existing international community investments in the Balkans. Jessen-Petersen used tough language to criticise Belgrade's stance, rejected its attempt to insert itself into the decentralisation debate, and dismissed its request for separate elections for the Kosovo Serbs. The SRSG's visit to Belgrade on 17 January marked a near complete breakdown in dialogue between UNMIK and the Serbian government. Unless the international community supports Jessen-Petersen, his credibility in Pristina will be damaged. Belgrade's position -- and the scope for modifying it -- is discussed in detail in section D below.

UNMIK Credibility. Despite Jessen-Petersen's impressive performance, UNMIK's public approval rating is proving virtually impossible to raise from the floor.²² For all his robust defence of Pristina's red lines, his administration remains hostage to local opinion, which could easily be mobilised against it. Should Haradinaj be indicted by The Hague Tribunal, the potential for protest and violence is evident.²³ However, Kosovo Albanians' cooperation with The Hague should not be held to a lower standard than Serbia, Croatia or Bosnia. Risks of violence or rebellion apart, the simultaneous challenges of internal reform, competency transfer, capacity-building, and decentralisation that need to be met by summer 2005 may prove overwhelming.

The new UNMIK leadership is better attuned than its predecessors to the need to create as much independence-like "virtual reality" as possible within the limited time and mandate available. In a July 2004 meeting, Crisis Group urged to little effect that UNMIK dedicate a unit or senior staffer to work systematically at resolving Kosovo's missing club memberships: telephone and bank codes, a travel document and so on. Jessen-Petersen's deputy, Larry Rossin, now intends to pursue these topics.²⁴ However, the best that can be hoped for by mid-summer is some window dressing.

UNMIK does not have the capacity to pull Kosovo out of its worsening economic recession. UN Secretariat

²² While regular quarterly opinion polling sponsored by UNDP/Riinvest showed UNMIK's approval rating in July 2004 lodged at 20.7 per cent -- its lowest point so far -- by November Jessen-Petersen's effect had raised it only marginally, to 24 per cent. By contrast, approval of his personal performance stood at 70 per cent.

²³ The risk of violence is particularly high from Haradinaj's home area of Decani. Crisis Group research in Decani has shown that many there would interpret an ICTY indictment of Haradinaj as a blow against Kosovo's prospects for independence.

²⁴ Crisis Group interview, Pristina, 21 October 2004. Rossin said he hoped for early success in securing Kosovo its own telephone code.

assertions that "quick-impact projects at the municipal level will be implemented with donors and United Nations agencies in order to lay the groundwork for the recovery of the economy" are contradicted by the international financial institutions' conclusion that Kosovo's economy cannot recover unless its final status is resolved.²⁵ Worse, the Secretariat failed to consult with the European Commission prior to Secretary-General Annan's call for the EU "to urgently design and implement an economic development strategy".²⁶ A Commission official confirmed that the EU has no intention of imposing any economic development plan on Kosovo, let alone of assuming any responsibilities for its governance.²⁷

Decentralisation. The ill-defined issue of decentralisation of powers to municipal or sub-municipal units, which the international community made a priority after the March riots, is a particularly tricky issue for UNMIK to manage in the months ahead. The insistence on decentralisation as a response to the riots cast it as punishment for the Albanians, which is difficult to square with the message that it could benefit all. With Serbia showing increasing interest not in decentralisation but in partition, however, Kosovo Albanians are wary of awarding new municipal or sub-municipal status to Serb areas unless they get a more explicit guarantee that Kosovo's borders will not change. The international community has regularly underestimated Albanian fear that the Serb minority is Belgrade's bridgehead for a return to the province,²⁸ and

its own ambiguity on final status six years into its stewardship has fed that fear.

In July 2004 a joint UNMIK-PISG working group chaired by a PDK minister, Jakup Krasniqi, produced a framework document on decentralisation, but hesitated to designate locations for the pilot projects required by the Contact Group. In contrast, Prime Minister Haradinaj has startled many observers by embracing the principle of pilot projects, expressing readiness to grant municipal status to the enclave of Gracanica and to move quickly on implementation.²⁹ His engagement with the issue has drawn fire from the PDK, now in opposition.³⁰

Although Serbian President Tadic's call for Serb police chiefs to be in place in Serb municipal or sub-municipal units³¹ by early March 2005 was unrealistically one-sided, since it would mean security-related powers were devolved to the minority before they were available to the majority, UNMIK has nevertheless tailored its policy accordingly, by accelerating its plans for transfer of policing competencies across the board. It remains to be seen how this will be handled. Some have expressed concern that the Kosovo Police Service is not yet sufficiently developed for (or indeed, willing to undertake) a devolution of command from the present regional level down to municipal level.³²

Although Jessen-Petersen has insisted that Belgrade cannot negotiate directly with the PISG on decentralisation, the success of the former's call for Serbs to boycott the October 2004 Assembly elections has removed all other potential Serb partners from the scene. At the same time, some in the international community wish to reward Tadic for his unsuccessful appeal that Kosovo Serbs vote in those elections.³³ UNMIK's chief faces pressure from them to move the decentralisation process from Pristina to a Belgrade-

²⁵ See the World Bank's *Kosovo Economic Memorandum* 17 May 2004, available online at: www.worldbank.org/kosovo. Although the Bank's conclusion met resistance from its institutional interlocutors prior to publication of the Memorandum, most have since embraced it. The International Monetary Fund's report of 18 November 2004, "Kosovo - Gearing Policies Toward Growth and Development" took a more explicit line: "Resolution of Kosovo's final status would provide the right enabling environment to the extent that political uncertainty may hinder investment and economic activity more generally." Online at: <http://www.imf.org/external/pubs/ft/kosovo/2004/eng/111804.pdf>.

²⁶ Letter of Secretary-General Kofi Annan to the Security Council on "The way forward in Kosovo", 10 November 2004, S/2004/932, Annex II. While the Secretary-General has urged the EU to take fuller responsibility for economic development, it has been asking that "Pillar IV" of the UNMIK structure be known not as "the EU Pillar" but only as "the EU-funded Pillar".

²⁷ Crisis Group interview with European Commission official, Brussels, 3 December 2004.

²⁸ A senior UN Secretariat official revealed the complete failure to consider this factor with the nonchalant comment: "Surely nobody in Kosovo seriously thinks they are going to be returned to Belgrade?" Crisis Group interview, New York, 17 May 2004.

²⁹ To balance this project and encourage the perception that decentralisation will benefit all communities, Haradinaj's government is also mulling pilot projects respectively in an exclusively Albanian area, (Junik); a mixed Albanian-Gorani-Turkish locale (Mamusha/Mamusa); and some large Albanian and Serb villages south of Gjilan/Gnjilane.

³⁰ See PDK Assembly member Enver Hoxhaj's comments to *Lajm*, 11 January 2005.

³¹ The communiqué issued after the July 2004 Contact Group visit to Pristina invited the PISG and UNMIK to consider devolving policing functions to municipal level.

³² Crisis Group interview with UNMIK Department of Justice official, November 2004.

³³ Tadic's appeal was explicitly linked to promises of progress on decentralisation based on Belgrade's policy for a Serbian "Region", a policy most fully described in the plan Serbia's parliament approved on 29 April 2004; and available at http://www.mfa.gov.yu/Facts/plan_kim_e.html.

Pristina negotiation, which would risk converting the issue into a preparation for partition.

Although all the foreign ministries of the Western nations in the Contact Group are understood to have concluded that partition of Kosovo would be undesirable, none have yet come out publicly with this position. SRSJ Jessen-Petersen himself began to fill the void with a clear statement of opposition to partition at the Security Council on 29 November 2004, which he has reinforced with increasingly strong statements since in Kosovo.

B. THE KOSOVO ALBANIANS

Ramush Haradinaj's record as a KLA commander during the war will make it hard for the new Kosovo prime minister to develop dialogue with Serbs and Serbia, although some Kosovo Serbs have been encouraged by his statements of intent on accommodating them, and it is precisely his war record that gives him the leeway with his own society to go down this road. More difficult for the international community is the fact that he has been under investigation for war crimes by The Hague Tribunal. At this writing it is still in the balance whether the ICTY will or will not issue an indictment against him. If indicted, Haradinaj would be likely to resign, make calming statements to his supporters, and give himself up. Nevertheless, such an event would generate unpredictable outcomes -- a government crisis, of course; but also street protests and, particularly if Haradinaj were no longer on the scene to restrain them, likely violence from former and potential new fighters from his home area of west Kosovo, directed at UNMIK. This is an issue with immense destabilising potential.

The new UNMIK leadership has tried hard to preempt other threats to stability. After the election boycott, Jessen-Petersen accused Belgrade government and clerical circles of blocking a multi-ethnic society in Kosovo, adding he was less afraid of new Albanian violence than of Serb tactics.³⁴ Kosovo Albanian media and politicians credited him with "defending Kosovo" in his first quarterly appearance at the UN Security Council on 29 November 2004. In Brussels that month Jessen-Petersen sought NATO support for his stance that Kosovo institutions should not be held responsible when progress on standards was blocked by Belgrade or Kosovo Serbs.³⁵ Nevertheless, the next few months are

replete with potential for UNMIK to end up on the wrong side of Kosovo Albanian discontent.³⁶

1. Identity and independence

The core of Kosovo Albanian demand for independence lies in aspirations for security, dignity, and an escape from poverty: averting a return to Belgrade's repression and avoiding humiliation in a state where they would be lowest in the pecking order. Yet there is little debate on state identity.³⁷ Most Kosovo Albanians blithely assume their ethnic identity is sufficient. Flag, anthem, and independence day are borrowed from Albania; one of Albania's national football team's most militant support groups is from Kosovo.³⁸ Kosovo Albanians contributed much historical militancy to the Albanian national cause; many consider it absurd that Albania alone should inherit the national symbols, including the double-headed eagle which they were imprisoned for displaying under Milosevic.

Kosovo Albanians fear the security implications of exchanging Albanian identity for a new Kosovo identity.³⁹ Even aside from supporters of the small fringe parties that advocate an immediate greater Albanian union, many see independence as a provisional solution and hope for eventual unity with other Albanian

blocks progress], *Zeri*, 11 November 2004. Rossin, his deputy, told a Brussels conference on Kosovo's economy on 22 November 2004 that the changes in the PISG would not delay standards implementation but lack of cooperation from Belgrade and the Serbs was doing so. Augustin Palokaj: "Pa kthim prapa ne politiken standardet dhe statusi"[no turning back in the policy of standards and status], *Koha Ditore*, 24 November 2004.

³⁶ The planting of two explosive devices in Prizren on 13 January may mark a new targeting of international personnel. That morning a Nigerian UNMIK police officer was killed by a grenade rigged to the underside of his police car. In the evening an improvised explosive device found behind UNMIK's district headquarters was defused. The methods used bear resemblance to incidents in Pristina from December 2003 through early March 2004 (See Crisis Group Europe Report N°155, *Collapse In Kosovo*, 22 April 2004, p.13).

³⁷ The most sustained debate has been in the pages of the low-circulation, Pristina-based magazine *Java*.

³⁸ Its website is at www.tifozatkuqezi.com. The designer, Fisnik Ismaili, told Crisis Group that even if an independent Kosovo gains its own national team, he will continue to support Albania.

³⁹ See Hajredin Kuci's comments in *Java*, 29 January 2002: "Since the fragmentation of Albanians, there has been fear of losing national identity as a pillar of defence, while the creation of a new identity presented a risk of 'sliding' into another identity, not of our own".

³⁴ Matthew Robinson, "UN governor says Belgrade blocks Kosovo progress", Reuters, 25 October 2004.

³⁵ Ekrem Krasniqi and Perparim Isufi, "Jesen-Petersen: Institucionet e Kosoves nuk duhet te bartin pergjegjesi nese dikush tjetër bllokoi procesin" [Jessen-Petersen: Kosovo institutions should not be held responsible if somebody else

territories.⁴⁰ Most would take President Rugova's position that Kosovo's independence has existed since 1991 but awaits "discovery" by the international community, as if it were an archaeological find.⁴¹

The lack of a wider vision of what a Kosovo state might be is partly a reflection of the way the Kosovo Albanian parties have developed, as vehicles for patronage and advancement of group interests, and partly bound up in Kosovo Albanians' difficulty in distancing themselves from the posture of victim they settled into in the 1990s. There is still enough elasticity in this view of independence for the international community to influence it. However, that elasticity also carries dangers -- if not guided toward multi-ethnic accommodation, it can easily transmute into border-unravelling ethnic nationalism. To gain leverage over the Kosovo Albanians' aspirations, the international community will have to be more explicit about engaging with them.

It is increasingly accepted that effective control of territory entails not merely the ability to defend it, but also responsibility to protect its inhabitants. The EU's approach to recognition of the post-Soviet and post-Yugoslav republics in 1991 incorporated requirements for democracy, rule of law, human and minority rights, and good neighbourliness, with additional emphasis on maintaining existing republic borders to discourage irredentism and territorial conflict.⁴² A final status process should move the sovereignty issue between the Kosovo Albanians and Serbia entirely to this question: which of the two projects greater capacity and will to govern and protect all Kosovo's inhabitants? Serbia's record and continuing disregard for the Albanian majority make it highly implausible to see it as a future legitimate ruler. But Kosovo Albanians have not sought enough accommodation with the Serb minority: they have not fully grasped, nor has the international community made fully explicit, as both must, that the

final status outcome should be grounded in inclusion, accommodation and protection of the Serb and other minorities.

The Kosovo Albanian party leaders have built careers on achieving independence. Both the March riots and relatively low voter participation in October 2004, particularly among young people, underline that these politicians and their approach to politics have only a limited shelf life, and support may soon again flow away from the official political stream. Reaching final status and maintaining stability are shackled together.

Kosovo Albanian society is in poor shape to make offers to the Serb minority that would facilitate a status resolution. While the international community looks to the majority to take a responsible stance toward the minorities, Kosovo Albanians do not feel they have sufficient security to afford generosity. With the legitimacy of their hold on Kosovo still under siege from Belgrade, and with the international community remaining non-committal, concessions to a hostile "fifth column" are not a top priority.

The political constraints against easing conditions for Kosovo Serbs, of course, also have other roots. Albanians who have usurped Serb property find it easy to wrap in the flag their personal interests against Serb returns.⁴³ In most urban areas the best apartments belonged to Serbs; a significant group of usurpers has an interest in maintaining a level of hostility that makes it impractical for the owners to return. Municipal authorities, the police, and Kosovo Albanian society in general find it difficult to resist such interest groups. Kosovo Albanians' need for spatial expansion, driven by rapid population growth, is another factor. The momentum for pushing out Serbs is most difficult to stop precisely in newer urban environments, where communities are less established or coherent and there has been significant recent migration from rural areas. Pristina and the satellite towns of Kosovo Polje/Fushe Kosove and Obilic to its west (both established only during the Yugoslav period) were some of the worst-hit during the riots.⁴⁴

Albanian hostility toward Serbs also rests on the unresolved psychological effects of the war, including, for some, guilt for failing to engage in it.⁴⁵ For Kosovars,

⁴⁰ Several participants expressed this view in a Crisis Group focus group with University of Pristina summer school students, 28 July 2004.

⁴¹ A crash program of Kosovo Albanian post-war archaeology has unearthed pre-medieval, pre-Serb sites and artefacts from the Illyrian era. They were the subject of a recent long-running exhibition at the museum in Pristina. One figurine from this era has over the last year or so become a leitmotif of the newly unearthed Kosovo identity, and even features on the cover of UNDP's Kosovo Human Development report, released in July 2004. Dardania (land of pears) is a complementary ancient identity, ready for Kosovo to take on. President Rugova has styled his proposed Kosovo flag as a representation of Dardania.

⁴² See Roland Rich, "Recognition of States: The Collapse of Yugoslavia and the Soviet Union", *European Journal of International Law*, <http://www.ejil.org/journal/Vol4/No1/art4.html>.

⁴³ Crisis Group interview with UNHCR official Misko Mimica, 6 November 2003.

⁴⁴ Crisis Group interviews. Several mayors recounted trying to hold back angry crowds, yet failing to recognise most of the faces.

⁴⁵ The large burden of post-traumatic stress disorder (PTSD) carried untreated by Kosovo Albanians locks in hostility and

Serb guilt for war crimes remains collective, not individual. Few war criminals have been prosecuted, whether at The Hague or in Serbia, or Kosovo. Several convictions of Kosovo Serbs were thrown out in Pristina by international appellate judges, because prosecutors who learned their trade in the Communist system were unable to build a case up to international standards.⁴⁶ The regional distribution of ethnic hostility partly reflects the war's patterns: west Kosovo is a difficult environment while east Kosovo, which experienced little fighting, is relatively relaxed. But paradoxically, some villages that suffered casualties are more welcoming environments for returning Serbs than those which largely avoided the fighting and feel a need to make up for it now.⁴⁷ The PDK, the larger KLA successor party, has been more pragmatic at both municipal and central levels regarding Serb returns than Rugova's LDK.

Kosovo Albanians have not produced political leadership able to unify them around a transforming vision. Broadly the society looks backwards, viewing the future through grievances about past injustice and present security worries, rather than taking a problem-solving attitude toward the Serb minority, Belgrade, and neighbouring states. However, a growing, albeit small number of civil society organisations, including some women's groups, are trying to generate a more inclusive, multi-ethnic vision.

2. Lack of practical preparation for independence

Given the impatience for independence, the Kosovo Albanian polity and PISG have made little practical preparation for it. An enclave mindset holds them back, in which they treat UNMIK as the major international actor, failing to appreciate the perceptions and expectations of the key countries and international institutions that hold Kosovo's fate in their hands. This was evident in the LDK-AAK coalition deal following the October 2004 elections that produced as prime minister for the crucial period ahead a controversial

hatred toward the Serbs. See UNDP "Kosovo Human Development Report 2004", pp. 83-84. The Kosova Rehabilitation Centre for Torture Victims estimates that up to 25 per cent of the population suffers from PTSD. Of course this applies equally to the Serb population.

⁴⁶ See OSCE Pillar, Legal Systems Monitoring Section: "Kosovo's War Crimes Trials: A Review", September 2002. The report described how international judges reversed convictions for war crimes in eight of the eleven cases brought before Kosovo's Supreme Court for appeal.

⁴⁷ Crisis Group interview with Bujar Hoxha, CARE, Pristina, 17 November 2004. CARE has a program of inter-ethnic reconciliation in roughly twenty Kosovo locations.

warlord -- Haradinaj -- who may be subject to indictment on suspicion of war crimes.

Kosovo Albanians' dialogue with surrounding states is underdeveloped. This leaves their independence project devoid of contacts which could reassure and ease its passage in the region. As a pre-electoral manoeuvre, Veton Surroi toured Macedonia, Albania, Montenegro, Croatia and Slovenia in September 2004 to "prove that Kosovo can communicate with its neighbours and other states, and it should not wait for somebody else to speak on its behalf". With varying success, some of Kosovo's sports associations have shown it is not necessary to wait for permission to negotiate a place in the region. While several European associations rejected the Kosovo basketball association's attempt to enter the European league, the handball association overcame resistance from Serbia, gaining entry to the European federation in December 2004.

Many Kosovo Albanians doubt their own capacity to handle independence well and favour a continued international presence, albeit only in an advisory, monitoring capacity. There is much cynicism about the venality and limited abilities of the political class. Some intellectuals fear that lack of experience could lead to a failed state and criminal haven, "Colombia in Europe ... an El Dorado for organised crime".⁴⁸

Institution-building does not come easily. Lack of a state tradition, continuing insecurity, lack of trust in international intentions, and the hermetic nature of the Kosovo Albanians' own narrative of their independence struggle all create diversions. UNDP's Kosovo Human Development Report 2004 charts a failure to route popular expression through institutions.⁴⁹ Instead, as one leading intellectual acknowledges, violent eruptions such as the riots of April 1981 and March 2004 and the rapid shift to insurgency in March 1998 remain: "our society's modus vivendi ... all our major decisions are made in illegality".⁵⁰

Their custodians still tend to regard Kosovo's new institutions as part of the frontline of an unfinished war, pushing them forward into combat while neglecting what they are there to serve. The Kosovo Assembly has devoted much energy to symbolic declarations rather

⁴⁸ Crisis Group interview with Blerim Reka, Pristina, September 2004. Another said, "With these politicians and this governance, I'll leave if we get independence". Crisis Group interview with Dukagjin Gorani, Pristina, October 2004.

⁴⁹ This failure is the dominant theme of the report. A survey conducted for UNDP showed that the predominant mode of citizen participation in Kosovo remained public protests.

⁵⁰ Crisis Group interview, 24 May 2004.

than patiently assembling the laws a new state will need. University professors and the main student organisation are preoccupied with "the national question", while RTK public television declares itself "independent" and "100 per cent Kosovan".⁵¹ Reasons for the constant mobilisation and distortion of institutions into resistance mode include the persistent fear of being pushed back into Belgrade's orbit, but also a failure to imagine the contours of the putative state and so construct reliable institutions to animate it.

A collective defence reflex is triggered whenever a Kosovo institution or personality is censured by the international community. Thus, the assembly and government rushed to defend RTK against criticism for news coverage on 16 March 2004 that helped trigger the violence of the next two days. RTK, the government, and the entire political spectrum have mobilised behind actual and potential war crimes indictees. Instead of hindering Haradinaj's appointment as prime minister, the possibility of his indictment cemented it.

Key institutions are failing to prepare Kosovo Albanians to cope with state-building. An RTK journalist says of its programming: "Instead of enlightening and educating, it faithfully reproduces our society's stupidities".⁵² A senior PISG civil servant and academic lamented that the University of Pristina: "is dominated by thugs with an institutional orientation. They cannot survive through free and fair competition. It's part of a pattern here: people like that become loyal party lackeys so they get cover to run public institutions".⁵³ At RTK and the university, unions appear far less oriented toward dealing with management on internal matters than closing ranks to fight external political battles.⁵⁴

The PISG's budgetary missteps have become chronic, piling up unfulfilled projects and surpluses throughout

most of the year that artificially withhold money from a liquidity starved economy, and following this with a binge of dubious spending in December. An internal Ministry of Finance and Economy document broadcast by KTV on 27 November 2004 revealed that as of the end of September, ministries and municipalities had disbursed only 45 per cent of the annual consolidated budget. In January the Ministry claimed that nearly all funds had been disbursed.⁵⁵

Arbitrary ministerial behaviour has added to Kosovo's democratic deficits. After investigative journalist Fatmire Terdevci exposed the number of relatives former Minister Ali Sadriu had working in the Ministry of Finance and Economy, he banned her from the building and withdrew advertising from her paper.⁵⁶ The attempted assassination in September 2004 of Terdevci - - who has uncovered many other scandals -- will be a powerful disincentive to other journalists to challenge corruption and criminality. The previous broad coalition government produced a tacit understanding between the parties not to expose each others' corrupt practices but this may change in the new political environment.

Criminality and limits on competition are barriers to business confidence and economic growth. The head of the Chamber of Commerce noted, "There is a tendency for the creation of monopolies".⁵⁷ Destruction of the new "Ben Af" shopping mall in Ferizaj/Urosevac by a car bomb on 10 November 2004, which was preceded by two weeks of intermittent gangland shoot-outs, was followed on 26 November by the wounding of west Kosovo tobacco magnate Ekrem Lluka.

There is a worrying lack of the human resources that sustain a democracy -- from an engaged and critical public through highly educated specialists to staff the higher ranks of the civil service.⁵⁸ A Kosovo Albanian

⁵¹ Crisis Group's Kosovo Project Director is a member of the RTK Board. This report's discussion of RTK does not necessarily reflect the policy of the RTK Board as a whole.

⁵² Crisis Group conversation, September 2004.

⁵³ Crisis Group interview, Pristina, 11 November 2004.

⁵⁴ For example, in September 2004, the first public pronouncement of RTK's new union signalled intention to mobilise resistance against the Temporary Media Commissioner's planned indictment of the station before the Media Hearing Board for its coverage of the riots. Buoyed by this, RTK's deputy director threatened that "this conflict will be relentless and public and will broaden". See *Epoka e Re*, 14 October 2004, p. 2 for the trade union announcement, and *Kosova Sot*, 20 October 2004, p. 6, for the interview with former Deputy Director Astrit Salihu. In the event, a last-minute agreed settlement was reached between RTK and the temporary Media Commissioner in mid-December, which prevented the escalation of the situation.

⁵⁵ In December 2004 official estimates gave a €150 million budget surplus for the year, and €220 million still awaiting disbursement. Yet in early January new minister Haki Shatri stated that revised figures gave no budget surplus and €60-70 million still to be disbursed. Ylli Kaloshi: "Suficit ne buxhetin e vitit 2004 nuk do te kete, thote ministri Haki Shatri [There will be no 2004 budget surplus, said minister Haki Shatri], *Zeri*, 4 January 2005.

⁵⁶ Crisis Group interview with Fatmire Terdevci, June 2004.

⁵⁷ Ismail Kastrati, "Kush e mbron biznesin privat ne Kosove" [Who is there to defend private business in Kosovo?], *Zeri*, 12 November 2004.

⁵⁸ In this regard it is worth noting that despite this report's critique of public broadcaster RTK's present level of programming, the development of vigorous public television in Kosovo needs support. Present legislative proposals contained in the draft Independent Media Commissioner law

commented: "Every time I come back I see this society has degraded more. People are in such a hurry, but morality, honesty are being forgotten in the rush". Education and excellence are not particularly prized values. The same observer noted unwillingness among the young to read and study.⁵⁹ University of Pristina lecturer Enver Hoxhaj lamented: "Too many of my students study in order to occupy a position in the society we have, to gain privileges, and not for the intrinsic value of thinking".⁶⁰ Daily newspaper circulation among Kosovo's 2 million Albanians is under 30,000.

Kosovo's politicians, institutions and media tend regularly to call up history to explain events in a narrative which is both hermetic and circular. Thus, on 30 March 2004 *Epoka e Re* led with the headline: "Arrests like in '81". Assembly President Daci also compared the post-riot situation to 1981.⁶¹ The more extremist elements of the media and civil society, like *Epoka e Re* and The Council for the Defence of Human Rights and Freedoms, draw comparisons between UNMIK and the regime of the 1980s and 1990s.⁶² A senior international official noted that even former Minister of Public Services Jakup Krasniqi described UNMIK as "the new Milosevic": "So it's easy for people to figure out what to do with us".⁶³ A script of resistance is the reflexive response to the repeated experience of weapons searches, undergone alike by previous generations under the Ottoman Empire, Yugoslav and Serbian regimes through to the 1990s and now under NATO and the UN. The lack of institutional orientation means that for some who are practised in armed resistance a continuation of the methods of 1998-1999 is the only way forward, and they see the present situation through the lens of that war.

appear geared toward emasculating both the principle of an independent public broadcasting sphere and its funding.

⁵⁹ Crisis Group conversation with former Institute for War and Peace Reporting (IWPR) coordinator for Kosovo Agim Fetahaj, Pristina, 23 August 2004.

⁶⁰ Crisis Group interview, London, 24 May 2004.

⁶¹ In televised remarks on 13 April 2004.

⁶² A 30 April 2004 deadline put by UNMIK into the Standards Implementation Plan for the PISG to remove: "municipal authorities and political party branch leaders who contributed to violence against community members through public statements and actions" elicited deep worry from the prime minister's office that the PISG was being pushed toward a 1980s and 1990s situation of being "expected to fire people on the basis of their political beliefs". See IWPR article: "Kosovo: UN Lays Down Conditions", by Artan Mustafa and Jeta Xharra, 8 April 2004.

⁶³ Crisis Group interview, former Acting SRSB Brayshaw, 6 July 2004.

3. Into 2005: An agenda for the Kosovo Albanians

Kosovo Albanians need urgently to reach a consensus among themselves that retaining the whole of Kosovo's territory in an independent state will depend on their capacity to accommodate the Serb minority. Starting now, they need an activist program of concrete steps linked to conditional offers for the future -- a problem-solving and modernising approach to multi-ethnicity, rather than a grudging, quota-fulfilling, grievance-tinged one.

The publisher of *Zeri* appealed in a recent editorial for society to embark on a second dramatic change of direction, similar in scale to its resort to war in the late 1990s:

...such a big change in Kosovo's situation, after the war of 1998 and 1999 was not accompanied ... with changes in our mentality, our political concepts, nor in our behaviour and actions. In those years before the war each and every one of us swore that we shall be the best in Europe, in every respect, if only we can get free from Serbia....But now we realise that we did not know ourselves so well. And what is crucial is that reaching our final goal, Kosovo's independence, is directly dependant on making this second sea change....If back then we needed to show courage and make sacrifices to liberate Kosovo, now we need brains, calm, and political pragmatism. And we do not have much time in which to acquire these political features; only a few months.⁶⁴

To move Kosovo Albanian society in the necessary direction, the PISG will need to give strong emphasis not only to formulating policies, but also to packaging them and driving home to its constituency that they form part of a bargain. The strategic aim should be threefold:

- to develop an overarching approach to minority accommodation -- a civic contract or bill of rights;⁶⁵
- to habituate Kosovo Serbs to the possibilities of working with and through the PISG; and
- through proposals and conditional offers to outline to both Serbia and the Kosovo Serbs a model for future support of the minority community grounded in cross-border cooperation

⁶⁴ Blerim Shala: "Kthesa e dyte e madhe", 29 November 2004.

⁶⁵ Crisis Group Europe Report N°143, *Kosovo's Ethnic Dilemma: The Need for a Civil Contract*, 28 May 2003.

and mutually supporting and reinforcing actions between Pristina and Belgrade.

Such policies couched as project proposals can attract donor funds and contain immediate deliverables, with more ambitious later stages that might be made conditional on Belgrade's cooperation in maintaining Kosovo Serb communities. In such a way they could begin to turn a standards spotlight upon Belgrade, too, and be wielded as political tools with which to bargain with the international community over final status.

Preparing for final status negotiations. Creation of a *final status committee* -- probably in the Assembly - could soften the partisanship of the first government/opposition constellation Kosovo has ever experienced. The committee should include experts from civil society, particularly from previously marginalised minorities, women and youth. It might become the Kosovo Albanians' vehicle for producing unity around a strategy for final status.⁶⁶ Once formed, donor funds could be solicited to equip the committee with a standing secretariat and the capacity to hire foreign experts in diplomacy and international law, and perhaps to maintain offices in New York and Brussels. This would offer a way around UN and Contact Group strictures against the PISG conducting international relations.

Once they have reconciled their own conceptual differences over independence, the PISG and political parties should try to forge a binding connection between their position and the international community's agenda. The Kosovo Assembly's moves to date in this respect - its near declaration of independence in 2003 and its July 2004 adoption of sweeping amendments to the Constitutional Framework and presentation of them as a "provisional constitution" - have been opposed by UNMIK as beyond the stipulated parameters for the Assembly's work and defiance of the international community. The key need is for Kosovo Albanians to be willing, and be seen to be willing, to respect their Serb and other minorities.

Accommodating Kosovo's Serbs and other minorities. The PISG should use the template of the priority standards agenda to launch distinct programs aimed at accommodating the Serb minority. With plain speaking and heavy marketing to its own electorate, it should emphasise that a viable Kosovo state can only be built

upon such bargains. These would have to include opening up institutional space for Kosovo Serb communities, such as through decentralisation; making Pristina and the rest of Kosovo friendly environments in order to counteract the de facto partition of the north; and proactively launching dialogue and mechanisms for cooperation with Serbia in supporting and preserving the Serb minority.

Vigorous pursuit of such policies would simultaneously give more distinct structure to Kosovo Albanian society. Prime Minister Haradinaj has already shown impressive potential to lead such an approach. On 6 December 2004, he told the Serbian news agency Beta: "Now I want to build a society. Over the last five and a half years I have understood the process needed. I have around me experts not only from Kosovo, and Kosovo is going to be modern". He stated he would move to devolve powers to a new Gracanica municipal unit as a pilot decentralisation project, and he was prepared for dialogue with the Serb parallel structures of north Mitrovica and to go to Belgrade or welcome Serbian leaders to Kosovo.

The PISG should develop a budget line for immediate measures and gestures, which might be small, symbolic, and perhaps even with little hope of immediate take-up by Kosovo Serbs. For instance, it should immediately start working on a "*Pristina - Open City*" campaign. This would include practical measures to attract residents of nearby Serb enclaves into the capital by introducing a regular bus service; distribution to shops of window stickers declaring, against a background design of the Albanian flag, that "we speak Serbian"; erecting signs at entry points of the city with a similar design declaring "Pristina -- otvoreni grad"; asking TV and radio to promote freedom of movement in the capital; ensuring that films in Pristina's cinemas have Serbian in addition to Albanian subtitles; offering support to develop a strategic large bookstore with significant stocks of Albanian, English and Serbian, Bosnian, and Croatian language books; and removing constraints keeping Serbs from accessing the hundreds of thousands of Serbian books in the "national" library (in the process making it more user-friendly for everyone). The University of Pristina might offer courses in Serbian/Bosnian and English.

The new government's healthy emphasis on drawing in civil society and foreign experts should be used to ensure the plan's enrichment and its presentation to the international community in a way that attracts new resources. In turn the plan's results should be held up for emulation in other areas of Kosovo life, for instance establishment of centres to bring together women from both communities for income-generating activities.

⁶⁶ One task might be to build on the joint letters that all major Kosovo Albanian party leaders have signed in the past eighteen months supporting decent treatment of the Serb minority. The joint letter on returns of summer 2003, and the joint letter of April 2004 following the March riots were both the initiative of PDK leader Thaci.

Attempts to make Pristina more Serb-friendly would look hollow without concerted effort to bring Serbs back to the nearby urban centres they were burned out of in the March riots: Obilic and Kosovo Polje/Fushe Kosove. PISG work on this has not been results-oriented or well coordinated with KFOR. Serbs interviewed by Crisis Group claim they have been unable to return to Obilic due to PISG inattention, "blackmail", arbitrary non-payment of the €2,000 promised each victim for re-equipping their homes, and poor security coordination. The PISG cannot leave important return sites to the vagaries of municipal working groups. Dedicated personnel and a dedicated approach at a central coordinating level are needed.

The PISG should similarly lay the groundwork for an infrastructure of tripartite (Kosovo/Serbia/international) institutional and financial support for the Kosovo Serb community. Especially important would be a core unit at the Ministry of Finance and Economy to act as the main receipt and disbursement point for program funds.⁶⁷ Senior representation could be hard-wired for minorities in key public institutions -- such as an additional deputy director of RTK and vice rector at the university -- as well as at municipal level.

One area where change could come quickly is representation of Serbs and other minorities on Kosovo-wide TV and radio. If Kosovo Albanians see no minorities on TV, they tend to assume Kosovo is "licensed" to be Serb-free.⁶⁸ If folk dancing in traditional Albanian costumes remains a staple, it reinforces a sense that ethnicity remains in the mobilisation mode of the 1990s, with emphasis on a backward-looking, tradition-oriented nationalism.⁶⁹ Serbs should be invited onto

news and current affairs discussion programs. Minority journalists should contribute to the main evening news programs. RTK should revamp its Serb community programming unit, which to many Kosovo Serbs seems pre-occupied with producing "idyllic stories of village life" so as not to offend the Albanian majority. ("Why don't we ever see reports from IDP collective centres?", asked a Kosovo Serb IDP.) The two private Kosovo-wide TV channels have no minority programming. Kosovo Serb community programming on RTK should not become a voice for either Belgrade or local extremists but rather provide a forum where the community can articulate its interests and ultimately mould its identity. The Kosovo Assembly could legislate minimum minority language programming requirements for the private broadcasters.

Speaking out for tolerance. The PISG, political leaders and civil society need to take responsibility for and begin concerted steps toward establishing the foundations of a moral community that bridges the ethnic divide. At the most basic level that means each side -- but the majority community in particular - must demonstrate it values human lives on the other side, reacting appropriately to deaths and murders,⁷⁰ treating the missing and disappeared of both sides as a shared problem, and making symbolic gestures with regard to past violence. The purpose would be both to reassure the other community of intentions and to reinforce those intentions within its own community by investing leadership authority in them. Without the beginnings of such a moral community, prospects for even a loosely unified administration are dim.

Civil society and political networks need to be prepared to react with symbolic acts and public demonstrations when suspected ethnic attacks occur. The failure of leaders to step up has allowed Kosovo Albanian responses to attacks upon Serbs to be guided by unwillingness to acknowledge ethnic motivation and by locally generated, cynical, blame-diverting rumour.⁷¹

⁶⁷ One Western expert has suggested that such a unit could evolve to cater for a model of non-territorial "cultural and personal autonomy", with: "self-governing functional institutions providing services for the minority (education, health, cultural heritage management etc.), along the lines practised in Belgium, for example. Individual members of the minority would register for inclusion in the scheme, and would contribute to the costs by a form of taxation. Current Serbian government support for "parallel institutions" could be folded into the scheme by a transparent system of donations. Crisis Group interview, Judy Batt, EU Institute of Strategic Studies, Paris, January 2005

⁶⁸ Benedict Anderson, in his path-finding account of the growth of nationalism, *Imagined Communities* (London/New York, 1991), attributes to newspapers the founding of national narratives. Their role has arguably been superseded by television, particularly in a location like Kosovo where its penetration is so strong and newspaper circulation is small.

⁶⁹ By way of analogy, a change in state TV presentation of the "other" community made a constructive difference to White perceptions of Blacks and eased a settlement in South

Africa at the outset of the 1990s. Herbert Adam and Kogila Moodley, "The opening of the apartheid mind", in John McGarry and Brendan O'Leary (eds.), *The Politics of Ethnic Conflict Regulation* (London, 1993), pp. 229-230.

⁷⁰ An indication of the depth of the gulf separating the two communities is the banner erected by Gracanica Serbs in response to the drive-by murder of Dimitrije Popovic. Facing the main road passing through the village, it makes no attempt to address the majority community from which the perpetrators came, but instead addresses itself to international staff, in English: "Internationals - what will you tell your children about what you were doing in Kosovo?"

⁷¹ For example, while the August 2003 shooting of young Serbs swimming in a river by Gorazdevac made world news, Kosovo Albanian opinion in the nearby urban centre of

Political leaders should take the initiative to start virtuous circles. To use a recent example, the PISG could have prompted selected Kosovo Serb politicians to join in the public mourning for sixteen Malishevo high school children killed when their tour bus fell into a ravine in northern Albania on 14 October 2004. Albanian politicians could have responded with commemorative acts for the young Kosovo Serbs murdered at Gorazdevac and Gracanica, and Kosovo Serbs could have reciprocated by commemorating the three Kosovo Albanian children drowned in the Ibar on 16 March 2004. An Assembly committee or unit in the prime minister's office could specialise in organising such inter-ethnic reconciliation.⁷²

The PISG needs to understand that these are vital elements in building a case that it can exercise effective control of Kosovo's territory. Unfortunately, activity in this direction will be more difficult with Haradinaj as prime minister than it would have been under the former coalition since he will be denied the measure of political space that his predecessor, Bajram Rexhepi, had from both the Serbs and the international community. On the other hand, he can bring to the task the credibility of a party leader and KLA warlord with an earthy popular touch.

PISG leaders should also make larger gestures signalling commitment to Kosovo Serbs' security such as public acts of commemoration or establishment of memorials to Serb victims of previous waves of violence, for example Serb professor Dragoslav Basic⁷³ and his mother-in-law,

Peja/Pec coddled itself in the certainty that the injuries were self-inflicted from play with grenades. Crisis Group interview with Sophie Cooper, a locally-based activist who, at the time of the Gorazdevac killings, had just taken part in a demonstration against gangland violence in Peja/Pec and tried unsuccessfully to organise a similar demonstration protesting the Gorazdevac shootings, Pristina, September 2004. Similarly, in the days following the June 2004 drive-by murder of Dmitrije Popovic in Gracanica, the Pristina rumour mill worked overtime to produce stories that victim and perpetrators were linked by drugs or deals in stolen cars.

⁷² Donald Horowitz makes the point that contrition, pacification and conciliation rituals and tools to deal with killings and violent transgressions within communities can be and are built into their social fabric. But such social resources are missing when it comes to inter-community killings and transgressions and need to be crafted virtually from scratch. *The Deadly Ethnic Riot* (Berkeley/Los Angeles/London, 2001), pp. 372-373.

⁷³ Basic, 63, returned to teach civil engineering at the University of Pristina in 1990 after studying on a Fulbright scholarship at University of California, Berkeley. He was reportedly critical of Milosevic, learned Albanian, advocated that "every non-Albanian in Kosovo should speak their beautiful language", and believed higher education could heal ethnic divisions in Kosovo. See www.webwm.com/kosovo/h/fall.shtml.

who were killed by a celebrating crowd on Flag Day 1999 on Bill Clinton Boulevard in central Pristina, which could form part of the open city initiative. Headline gestures would also impress international officials judging Kosovo's progress toward the key standard of accommodating the Kosovo Serb community.

Some measures aimed at accommodation will likely not be taken up by Serbs but the PISG should propose them anyway. Having invested in its initial round of offers, the PISG would gain credibility to present a larger, more structured program of minority accommodation and call for help from both donors and Serbia to fund and implement it.⁷⁴ The PISG could also make conditional proposals, for instance reintroducing elective learning of the Serbian language into post-independence Kosovo's schools if Serbia would similarly support Albanian language instruction in the Kosovo Serb curriculum.

Kosovo Serb politicians occupy different spaces on the spectrum from the most to the least disposed to cooperation, starting with the engaging maverick Slavisa Petkovic and his Serbian Citizens Initiative, which enjoy negligible support, through the former Povratak politicians whose successor slate, the Serb List for Kosovo and Metohija, was boycotted at the Assembly election, to the nay-sayers of the Serbian National Council, who championed that boycott. The PISG should not do Petkovic the disservice of treating him as a token "good Serb", but rather should strengthen him by giving him results to show constituents, and thereby bid for the engagement of the next layer. The ultimate goal is to engage the Serbian National Council. It is not impossible. In Northern Ireland the recent coalition negotiations between Sinn Fein and the Democratic Unionist Party would have seemed preposterous even two years ago.⁷⁵

C. THE KOSOVO SERBS

Many Kosovo Serbs cling to the idea -- and Belgrade's rhetoric does not disabuse them -- that Serbia will eventually regain Kosovo, and they need only hang on for that day. Similar to the Albanians, Kosovo Serb society is deeply traumatised and fragile, frightened by

⁷⁴ For example, having demonstrated concrete progress in the quality of minority coverage and programming, RTK and the PISG would be in a stronger position to seek donor co-funding to introduce a teletext service, enabling subtitling of all recorded programs in Serbian. Having demonstrably secured Kosovo Serb access to the "national" library, the PISG could request that the Serbian government provide new volumes from its own public library procurement scheme.

⁷⁵ See Jonathan Freedland: "Locked in an Embrace", *The Guardian*, 1 December 2004.

eighteen years of anti-Albanian propaganda from Belgrade and violence from Albanians especially since 1998. Once a privileged ruling group within their own ethnic state, Serbs have become a threatened minority within a potential Albanian-majority state. They have seen columns of refugees leave for Serbia and fear a similar fate. They fear also for personal safety, even at home. High unemployment and few economic opportunities further exacerbate Serb feelings they are an endangered species in Kosovo.

Given the unwillingness of Albanian politicians to address its concerns and UNMIK's failure to provide a safe environment, the community grasps at what it believes is the last branch available: Belgrade. The boycott of the October 2004 elections marginalised Kosovo Serbs who sought electoral legitimisation. Hard-line leaders outside the institutions who promoted the boycott claim to represent the community.

A more sophisticated layer of Kosovo Serb politicians, officials and professionals believe the delay in defining Kosovo's final status is their best chance both to preserve what remains of the community and encourage IDP return. They hope an extended international regime will tarnish the Albanian image and rehabilitate the Serb, resulting in a re-alignment of policy in Serbia's favour. They further hope that Kosovo Albanian nationalist passions will dull, and eventually mechanisms can be found to accommodate Kosovo within Serbia. They are anxious to avoid what the Kosovo Albanians most want, namely early signals from the international community that Kosovo will be independent. That could shatter their morale and push many into leaving.

Not having developed the private enterprise economy Albanians were forced to resort to in the 1990s, Kosovo's urban Serbs in particular have gravitated toward state employment. Some earn salaries from both Belgrade and UNMIK-PISG, and no resolution of the Kosovo issue is likely to match those financial benefits. The PISG lacks the funds to attract and integrate Serb specialists. Its wage levels - roughly €200 per month -- are a quarter those of Serbian parallel structures.

While Kosovo Albanians complain that the Serbs are excessively loyal to Belgrade, they have made little attempt to mount a counter-bid. The crass decoration of the renovated Kosovo Assembly with murals commemorating Albanian history in early 2004 provoked the Povratak group into what became an extended boycott. Over the summer RTK public television news still appeared not to take the Kosovo Serb perspective into account. In June 2004 RTK's afternoon news ignored the funeral of murdered Gračanica teenager Dimitrije Popovic and the large Kosovo Serb demonstration, prioritising

instead a news item about a blind boy in Iran who had learned to ride a bicycle.⁷⁶ Kosovo Serb IDPs who had been burned out of Obilic in March 2004 complained to Crisis Group in September that no PISG representatives had visited them, while the Serbian Red Cross had come three times.

Belgrade's stance toward the community pre-empts local political leadership but Kosovo Serbs, who have little independent political tradition, on the whole do not object. The boycott of the October elections has kept most of the bargaining power in Belgrade should a final status process begin in 2005. A group of Kosovo Serb IDPs defied Belgrade's orders and registered their "Serbian Citizens' Initiative" to contest the October elections prior to President Tadic's 5 October call for participation.⁷⁷ The success of the boycott has weakened former Povratak leaders such as Oliver Ivanovic and Dragisa Krstovic, temporarily reducing them to the status of failed dissidents, and also damaged pragmatic regional leaders such as Strpce's Sladjan Ilic.⁷⁸ Pro-boycott Serbian National Council figures like Milan Ivanovic and Rada Trajkovic have laid claim to dominance.

Although some international officials have alleged that the boycott was achieved by coercion and intimidation, such factors were marginal to its success. Kosovo Serbs readily went along. Through its line ministries, Serbia extends a tangible lifeline to the community. Kosovo Serb specialists such as teachers and doctors receive salaries double the Serbian standard. These subventions have kept Serb-dominated municipalities at the top of UNDP's human development index for Kosovo⁷⁹ and have induced many specialists to stay on, preserving a community that might otherwise rapidly crumble.

⁷⁶ Two Albanians were arrested by KPS officers within hours of the 5 June 2004 killing and on 13 September were formally indicted for aggravated murder. In fairness to RTK, Gračanica Serbs themselves prevented RTK from filming the funeral and protest. RTK's efforts - in conjunction with the OSCE - to renovate its news reporting have begun to yield results in the early days of 2005: calm coverage was given to President Kostunica's surprise visit to the Pec Patriarchate for Orthodox Christmas, and a positive item about Serbia's humanitarian relief effort for the victims of the Indian Ocean tsunami was broadcast.

⁷⁷ Its initiator, IDP Slavisa Petkovic, went to the extent of not revealing the names on the list for as long as he could in anticipation of the pressure they would come under to withdraw.

⁷⁸ Ilic resigned as head of Strpce municipality on 26 October 2004, acknowledging that he had lost the confidence of his electorate after the Serb List for Kosovo-Metohija garnered only 23 votes there.

⁷⁹ See "Human Development Report Kosovo 2004", pp. 24-41.

The relative moderates still hope to use the decentralisation process to negotiate the terms of Kosovo Serbs' continuing existence in Kosovo from the ground up.⁸⁰ However, that ground may be cut from under them as Belgrade hardens a partition agenda, puts itself forward as the negotiator on decentralisation, and urges UNMIK to recognise its hard-line proxies in the Serbian National Council as the community's true representatives.⁸¹

D. BELGRADE

1. Public hostility: Private agonising

Due to the traumas associated with Milosevic's reign and the distortions of his propaganda machine, many Serb citizens have a highly skewed picture of political reality in the Balkans which affects their attitude toward Kosovo. They see themselves as victims of an unjust NATO "aggression" and an Albanian Islamic fundamentalist terrorist movement designed to create a Greater Albania. There is constant demonisation of Albanians in the media as "terrorists", criminals, and Islamic fundamentalists: If Serbia was measured on the standard of multi-ethnic tolerance in Kosovo that is demanded in Kosovo of the PISG, it would not get high marks.⁸² The rhetoric of victimisation is transmitted by most leading politicians, including Premier Vojislav Kostunica and President Boris Tadic,⁸³ both of whom show unwillingness to discuss the recent past realistically. Official Belgrade fights

every incremental step toward potential Kosovo independence. All leading politicians concur in public. Kosovo is the third rail of Serbian politics, and any politician who publicly concedes that independence is a possibility would face a quick political death.

Rhetoric and actions aside, many Belgrade politicians seem acutely aware that Kosovo is an open wound that must be healed. As the EU special representative for the region, Stability Pact Coordinator Erhard Busek, has noted, they rail in public against independence, yet during coffee breaks ask, "how can we get rid of Kosovo?"⁸⁴ Crisis Group interviews indicate that most leading politicians realise Serbia is haemorrhaging economic resources and political capital through Kosovo.⁸⁵ Dobrica Cosic, the godfather of Serbia's nationalist movement in the 1990s, wrote recently that:

the unresolved state-legal situation of Kosovo and Metohija slows down and threatens the democratic, economic and civilisational renewal of the Albanian and Serbian people. Delaying that resolution only heats up international tensions, prolongs the suffering of the remainder of Serbs in Kosovo and Metohija, brings new victims, and makes a positive outcome of the Kosovo crisis more difficult.⁸⁶

Nevertheless, Belgrade has matched its rhetoric with actions that have included opposing any and all UNMIK attempts to transfer greater competencies to the PISG, contesting Kosovo's privatisation program, briefly persuading Bosnia and Herzegovina to drop recognition of the UNMIK travel document that Kosovo Albanians use in lieu of a passport and, in August 2004, ordering its officials in every international forum to contest any policy that could be construed as condoning eventual independence. Serbia finances parallel civilian and military structures in the province and works to undermine UNMIK's authority among the Serb community. There has been no effort to seek constructive engagement with Kosovo Albanian politicians or the international community.

The strongest resistance to independence appears to originate inside the security structures: the army, interior ministry (MUP) and state security apparatus (BIA). Many there feel they were defeating the KLA prior to the ceasefire and withdrawal from Kosovo in July 1999. Since the 17-18 March 2004 riots, many

⁸⁰ Comments made by Dragisa Krstovic and Randjel Nojkic at roundtable discussion on security in Kosovo, Pristina, 6 November 2004.

⁸¹ On 26 October 2004, Serb National Council chairman Milan Ivanovic made this call in an open letter to SRSG Jessen-Petersen.

⁸² Meanwhile Kosovo Serbs remain at the receiving end of a Kosovo Albanian hostility that is stoked by media and official Belgrade scorn for majority aspirations. This reinforces a siege mentality among the Kosovo Serbs, binds them to Serbian political parties which promise a hard line, restricts their freedom of movement, and keeps ethnic tensions high. Disappointingly, President Tadic has made few moves to change this climate and has even reinforced official stereotyping of Kosovo Albanians as terrorists by trying in speeches and commentaries to lump them together with al-Qaeda: see for example his Washington Post Op-Ed: "Serbia's Fresh Start", 24 July 2004. Since the March riots, the state television station RTS has made Kosovo Albanian barbarism a daily programming staple. The May 2004 replacement of Povratak Kosovo Assembly member Gojko Savic as rector of north Mitrovica university by Radivoje Papovic, who purged the University of Pristina of Albanians in the 1990s, has been another slap in the face for Kosovo Albanians.

⁸³ "Tadic: nezavisnost neprihvatljiva", *B92*, 9 November 2004. "Kostunica: nema povratka 'beretki'", *B92*, 14 November 2004.

⁸⁴ Address given at Georgetown University, summarised in RTK news, 30 October 2004.

⁸⁵ The exceptions are from the Serbian Radical Party (SRS), the Socialist Party of Serbia (SPS) and the Democratic Party of Serbia (DSS).

⁸⁶ Dobrica Cosic, *Kosovo* (Belgrade, 2004), p. 253.

high-ranking officers have begun preparations to re-enter the province in the event of further violence.⁸⁷ Few politicians would be willing to stand up to them.

Yet, despite its emotional importance, Kosovo has not generated the militant settler movement seen in some other territorial conflicts. Few Serbs have been there or harbour pretensions of moving, and very few refugees wish to return. Prior to the troubles of the 1990s, Serbs were leaving the province in droves primarily for economic reasons. Kosovo Serbs complain justifiably that residents of Serbia regard them with disdain, and they find themselves second class citizens in Serbia's Sumadija heartland. This disdain is reflected in Belgrade's policies. Kosovo Serbs are not well regarded in society, tending to be stereotyped as backward. An official of the parallel institutions told Crisis Group: "I cannot move to Serbia because they consider us second class people. I have to say that our mentality has more in common with the Albanians than with Serbs. I do visit my relatives in Serbia, but just for a few hours and then I go to a hotel or somewhere else to sleep".⁸⁸ Official treatment of Kosovo Serb IDPs creates pressures for return to Kosovo, rather than offers viable options for integration into Serbian society;⁸⁹ some have been stuck in collection centres since 1999 and are now losing their places as the buildings become privatised. IDPs displaced in March 2004 have not been made welcome, and most have consequently not attempted to register. In effect, Serbia has been shutting the door on Kosovo Serbs.⁹⁰

Nowhere is the bickering in Belgrade more clearly on display than in relations between Premier Kostunica and the institution meant to coordinate and implement

government policy in Kosovo, the Coordination Centre, headed by Nebojsa Covic, a former Serbian vice president. Covic has little popular support: his party failed to pass the electoral threshold in the 28 December 2003 parliamentary elections. His political base is within the security services, particularly among hard-liners.⁹¹ He has also sought support among Kosovo's Serbs. Although the international community lauded his efforts in securing a settlement in Serbia's Presevo Valley in 2001, his stance toward UNMIK and the PISG remains hard-line.

Covic and Kostunica were allies but fell out in 2003. Once Kostunica became premier in March 2004, a parliamentary committee refused to accept the financial report submitted by the Coordination Centre, and funding was cut. This meant some employees of the parallel structures in Kosovo went months without receiving salaries.⁹² However, Covic survived and seems to have reached a truce with Kostunica, based in part on the government's realisation it needs him to help maintain the parallel structures. It appears funds have been restored to the Coordination Centre, and salaries in the parallel structures are again being paid.

At the end of December 2004 the Serbian government began to realise that its internal squabbling was counterproductive, and that it needed urgently to set its house in order prior to the start of discussions on final status in 2005. On 29 December the government formed a new advisory council for Kosovo that includes representatives from the Kosovo Serbs, the Orthodox Church, the Serbian Academy of Arts and Sciences, and which would have Kostunica as president. The purpose of this council was to bring together all competing interest groups under one roof and develop a common political consensus. It is too early to state whether or not this council will succeed in creating a more unified and proactive Serbian policy toward Kosovo.

2. Kostunica's government plan

Serbia's official "Plan for the Political Solution to the Situation in Kosovo and Metohija", authored by Kostunica's Kosovo advisors Aleksandar Simic and Slobodan Samardzic, was adopted by parliament on 29 April 2004 following little consultation and much publicity.⁹³ It is devoted entirely to the construction of autonomous Serb districts within Kosovo and barely

⁸⁷ Crisis Group interviews with Serbian army officers. A NATO source points out that the ACTORD (activation order) authorising military action against Serbia in 1999 remains in force and that according to the June 1999 Military-Technical Agreement, KFOR retains security authority in the 5-km Ground Safety Zone (GSZ) around Kosovo's border. (Crisis Group interview, Brussels, December 2004.) Whether NATO would be willing to exert this authority if Serbian forces ostensibly reacted to a failure of KFOR to provide security is a different matter. Very few KFOR troops are currently based north of the Ibar River, though KFOR insist that where troops operate is more important than where they are based, and that they are very visible on a day-to-day basis between the Ibar and the boundary with Serbia. (Crisis Group interview, Pristina, January 2005)

⁸⁸ Crisis Group interview, Lipjan/Lipljan, 15 September 2004.

⁸⁹ The UN Guiding Principles on Internal Displacement advance integration as a right for IDPs. Available online at: <http://www.unhchr.ch/html/menu2/7/b/principles.htm>.

⁹⁰ Crisis Group interview with an ICRC official, Pristina, June 2004.

⁹¹ Crisis Group interviews with Serbian politicians and diplomats stationed in Belgrade.

⁹² Crisis Group interviews with Serbian officials in Kosovo and with the Coordination Centre in Belgrade.

⁹³ For more on this "plan", see Crisis Group Europe Briefing, *Serbia's Changing Political Landscape*, 22 July 2004.

touches on the development of central institutions or ultimate dispositions. It proposes territorial autonomy for five districts where Serbs live and maintain religious monuments, consolidated to form a "Region", on the premise that the March riots demonstrated integration with the Albanians is impossible. The range of devolved powers - including police and judiciary - would create a near-complete separate system of governance and reduce the writ of any central Kosovo government in the "Region" to a minimum. Among its many omissions and ambiguities, the plan fails to say how Kosovo's central (Albanian-dominated) institutions would be tied to those of Serbia-Montenegro. Indeed, despite rhetorical nods to multi-ethnicity, it appears to provide for a partition that would abandon many Serb enclaves, stating that "in determining the territorial entities it would be prudent to consider those close to central Serbia, because they are safer than the areas in the Kosovo interior".⁹⁴

Despite a frosty reception from the EU, UNMIK and most Contact Group countries, no one in the international community has yet to state publicly what all say behind closed doors: that the Belgrade plan is unacceptable and no basis for a constructive discussion on the province's future. This reticence has allowed some inside Serbia's political establishment to imagine that it will pass muster.⁹⁵

3. Competing plans

Nevertheless, Belgrade's plan has recently come under criticism at home. In mid-October 2004 alternative proposals began surfacing, and it became evident that the political elite remains deeply divided over how to proceed.

Tadic. As the October 2004 elections approached, Kostunica took a stance reminiscent of previous Kosovo elections, calling on Serbs to boycott. The conditions he sought were improved security for the province's Serbs and for UNMIK to adopt his government's plan. The international community exerted strong pressure on Tadic to break with Kostunica. This included highly

publicised visits by U.S. Under Secretary of State Mark Grossman and Ambassador-at-large for War Crimes Pierre-Richard Prosper on 29-30 September and by EU foreign policy chiefs Javier Solana and Chris Patten on 5 October. Following the latter, Tadic broke openly with Kostunica and called for Kosovo's Serbs to vote. At the same time he announced that he would extract concessions that would essentially legitimise the parallel structures. If this did not happen within three months of the new PISG's formation, Serbs would walk out of all its institutions, including the parliament, he said. UNMIK and EU officials indicated Tadic's conditions were reasonable and could be met: this raised Tadic's stock in Serbia and made it seem as though he was able to win concessions where Kostunica could not. Tadic's statement was a political bombshell in Belgrade, the first time he had broken openly with Kostunica and the first significant public split over Kosovo policy at senior level since the overthrow of Milosevic in October 2000.

Cosic. Kostunica's plan also faced opposition from an unexpected quarter on 19 October 2004, when Dobrica Cosic began promoting his latest book - entitled simply *Kosovo* - at the Belgrade book fair. A novelist, former president of the Federal Republic of Yugoslavia and a prominent member of the Serbian Academy of Arts and Sciences (SANU), Cosic is widely regarded as the intellectual guide for Serbian nationalism in the late 1980s and 1990s. He was a key author of the controversial 1986 SANU draft memorandum credited with setting the tone for Serbian nationalism under Milosevic.

Cosic wrote that "Kosovo represents a demographic, economic and political burden which Serbia cannot successfully carry and develop normally ... [the] entire territory of today's Kosovo and Metohija within the Serbian state would represent a cancer for Serbia".⁹⁶ He indirectly criticised the government's plan, stating that "Serbia today needs to create a new, realistic, achievable and long-term policy toward Kosovo and Metohija".⁹⁷ Although an "independent Kosovo within today's administrative boundaries would be a forcible annexation of Serbian state territory",⁹⁸ he left the door open for independence by stating that keeping Kosovo Albanians within Serbian state structures is not acceptable for the Albanians. He concluded by calling for partition and stressing that any solution must be achieved through peaceful means and negotiations. Cosic is known to be close to Tadic's father, Ljuba Tadic, and it is widely thought that the president agrees with many of his ideas.

⁹⁴ The plan has many similarities to the ideas espoused by Branslav Krstic in his booklet "Kosovo: Causes of the conflict, reconciliation of rights", Belgrade; 2001.

⁹⁵ Serbia-Montenegro diplomats have emphasised that the plan is a starting point for negotiation and not a rigid blueprint. Crisis Group interview with Nebojsa Kaludjerovic, Serbia-Montenegro ambassador to the United Nations, New York, 18 May 2004; and Vladeta Jankovic, then Serbia-Montenegro ambassador to the United Kingdom, quoted by Tim Judah in "Serbia's Kosovo Policy", in *European and U.S. Policies in the Balkans*, Franz-Lothar Altmann and Eugene Whitlock (eds.), Stiftung Wissenschaft und Politik (Berlin, 2004).

⁹⁶ Dobrica Cosic, *Kosovo*, op. cit., p. 255.

⁹⁷ Ibid, p. 252.

⁹⁸ Ibid, p. 254.

Others. Other prominent politicians appear to have taken stances at odds with the government's plan. Foreign Minister Vuk Draskovic and Bogoljub Karic, leader of the Movement for the Strength of Serbia (PSS) have publicly supported resolving Kosovo status via an ill-defined process of European regionalisation that would permit all sides to avoid the sovereignty question. Deputy Premier Labus has repeatedly called for an international conference to resolve final status, perhaps believing that Serbian politicians could save face at home by claiming concessions were forced upon them at the negotiating table. President Tadic commented in November that "the Minister of Foreign Affairs has one position, Deputy Premier Labus has another -- the partition of Kosovo -- and the Premier has another that was adopted by the government".⁹⁹

Perhaps Belgrade's biggest problem is that its consistent unwillingness to cooperate with UNMIK and the international community on issues ranging from car licence plates to war crimes has painted it into a corner from which it is unable to affect Kosovo policy positively. Serbian politicians who are beginning to wake up to this find themselves trapped by their own rhetoric.

4. The attractions of catastrophe

Belgrade is highly ambivalent about the March 2004 riots and the risk of repetition. Alongside genuine distress at the killing and ethnic cleansing of fellow Serbs and the burning of churches, monasteries and homes, there has been satisfaction at seeing the Kosovo Albanians damage their chances to inherit from UNMIK a Kosovo with a unitary administration within present borders. Covic has ruminated publicly about the harm in store for Serbia should Kosovo's Albanians *not* riot if Prime Minister Haradinaj is indicted by the ICTY.¹⁰⁰ The longer Albanian aspirations are kept bottled up by international stewardship, the greater the chance of further violence that could strengthen the Serbian argument for partition.

Crisis Group research indicates the Serbian army and police commands -- having been caught somewhat unprepared in March 2004 -- are planning for such contingencies as early as this spring. Although the chief of the general staff Branko Krga was removed and a number of generals were pensioned in December 2004, the senior officer corps remains packed with Milosevic-era hardliners, who appear to have insulated themselves from consideration of the likely international ramifications of a new Kosovo adventure. The army and police could use renewed Albanian violence as an excuse to secure the Serbian majority municipalities in north Kosovo and perhaps also to intervene in support of a declaration by Serbs in north Kosovo of secession should the international community signal agreement to an independent Kosovo.

To many in the Serbian establishment, their best tactics appear to be to provoke violence, undermine the credibility of the international guarantees to the Albanians on Kosovo's unity, and tempt the Albanians into unilateral action. The readiness of Russia to advocate postponement of the mid-summer 2005 standards review is consistent with such tactics. While the international community is staking hopes for a settlement on Serbia recognising reality in 2005, its softly-softly approach to Belgrade - fearing to hand election victories to the Serbian Radical Party (SRS) - has not paved the way for such a development. Tadic's break with Kostunica in October 2004 was over tactics, not strategy. In any case, UNMIK and the PISG are unlikely to give the concessions Tadic linked to his call for participation in the elections, so he and his party are expected to harden their positions on Kosovo.

5. Into 2005: An agenda for Serbia

Reasoned analysis suggests a number of considerations which should be paramount for Serbia's political leaders as they position themselves for the discussions ahead -- making progress on EU accession, avoiding spillover effects internally from the course of events in Kosovo, and maximising the bargaining position associated with Belgrade's present retention of formal sovereignty over Kosovo. They should all have resonance, but it remains to be seen how many of them will.

Making progress on EU accession. Serbia will find that EU accession and blocking progress in Kosovo are not compatible. On 13 October 2004, two days after EU foreign ministers authorised the European Commission to make a feasibility study of Serbia-Montenegro's candidacy, the Serbian parliament passed a Resolution on Accession to the EU, stating that memberships in the

⁹⁹ "Tadic: različiti stavovi o Kosovu," B92, 30 November 2004.

¹⁰⁰ In an interview published by *Vecernje Novosti* on 9 January he stated: "Imagine that it so happens that Haradinaj goes to The Hague voluntarily, and that it does not cause any riots. Albanians would show themselves to be extremely cooperative, while Belgrade still lags with the fulfilment of its obligations. It is clear to everybody what, in this turn of events, would the position of Belgrade be. And a lot depends on this position: negotiations on Kosmet, problems with The Hague, the fate of the state union. Everything goes in one package. He who thinks that everything is not interlinked either does not know his job, or does not want to know."

EU and NATO's Partnership for Peace are strategic national objectives,¹⁰¹ obliging the government to formulate a strategy for EU accession and report on progress quarterly. But at the same time, the government, the Serbian Orthodox Church, and every parliamentary party except the DS and SPO continued to criticise Tadic's call for Kosovo Serb participation in the Assembly elections: the SRS only just failed to gain enough support to begin an impeachment procedure, while 1,000 demonstrators bussed from Kosovo by the government mounted an organised protest in Belgrade, accusing the president of betrayal and demanding his dismissal.

EU emissaries have been reluctant to confront Serbia forcefully, as ultimately they must, with the need to choose between keeping accession hopes alive and being wholly obstructive about Kosovo. The difficulty, however, even with such a clear message is that those in Belgrade who support European integration on the EU's terms are a small minority. They do not even dominate democratically oriented parties, let alone the DSS and SRS, the church and army. The international community, on the reasonable assumption that EU membership is wholly in Serbia's ultimate interests, hopes that prospect will alter Serbia's behaviour prior to the beginning of final status discussions, but it overrates the influence of that carrot.¹⁰²

Avoiding internal ethnic strife. With Serbia still one of the most multi-ethnic states in the region, the continued pursuit of ethnic Serb territory in Kosovo threatens to boomerang in areas within the country that are dominated by other ethnic groups: the Sandzak, Presevo Valley and Hungarian-majority parts of Vojvodina are the areas that would be most affected.¹⁰³ In the past ethnic tensions in one part of Serbia have tended to lead to increased attacks against Serbia's minority groups, as Serb nationalists ascribe the sentiments of one ethnic minority to all ethnic minorities and view them all as dangerous unwanted irredentist organisms in Serbia's

body politic. On the other hand, minority politicians often use such opportunities to push for resolution of their grievances. The mid-January 2005 unrest in the Presevo Valley following the shooting of an Albanian youth by the Army has already had a spill-over effect in Vojvodina, as some Hungarian leaders are now calling for Hungarians in Serbia to enjoy the same degree of autonomy as Serbs are afforded in Kosovo, i.e., if the Serbian government succeeds in territorial autonomy for Kosovo Serbs, Hungarians will seek similar territorial autonomy for Hungarian areas within Vojvodina.¹⁰⁴

If even a marginally credible case is to be made for retaining Kosovo within the Serbian state, a huge amount of social and institutional change will be necessary, on which few if any Serbian politicians seem to have focused. It is not just a matter of making a convincing break from Milosevic-era attitudes toward Kosovo Albanians, and thoroughly addressing the war crimes issue, but proportionately representing and giving rights to them in central state institutions. Were Kosovo to be reintegrated into Serbia, Albanians could hold up to 20 per cent of parliamentary seats and (with their much younger age profile) would constitute a much higher proportion of army recruits. They would need to be represented proportionately in all government organs, including police. Most Serbs would be horrified at the prospect of Kosovo Albanians heading government ministries or as the late Premier Djindjic put it, enjoying the right to buy Serbian companies or properties on Belgrade's central street, Terazije.¹⁰⁵ But Serbia's treaty obligations to the Council of Europe and EU accession conditions would oblige it to offer those rights and more. Having been ethnically cleansed from Nis and areas to its south and west in the 1912-1913 war, Albanians would regain the option of demographic expansion out of Kosovo into south Serbia, and by weight of their numbers (2 million of a population of 10 million), lay claim to making Albanian Serbia's second official language.

Since virtually nobody in Serbia (let alone Kosovo) would support such reintegration, the debate has coalesced around the negative principle of denying

¹⁰¹ 129 deputies from the DSS, DS, G17 Plus, and SPO/NS parties voted for the resolution. The SRS and SPS boycotted the vote. The resolution has not yet been followed by concrete action.

¹⁰² One European diplomat's autumn 2004 reaction to intelligence reports that the Serbian army is preparing for possible intervention to secure northern Kosovo epitomised the disconnect between Western governments' faith in the potency of the EU accession incentive and the Serbian security establishment's insulated and particular mindset: "every such report we hear makes us want to add an extra six months to Serbia's EU candidacy waiting time".

¹⁰³ This point was made to Crisis Group by a senior Montenegrin politician in an interview on 7 December 2004.

¹⁰⁴ "Agoston: Kosovo utice na Vojvodinu," B92, 11 January 2005. On the Presevo Valley, see also Crisis Group Europe Report N°152, *Southern Serbia's Fragile Peace*, 9 December 2003; Crisis Group reports are being prepared on both Sandzak and Vojvodina.

¹⁰⁵ See Crisis Group Europe Report N°143, *Kosovo's Ethnic Dilemma: The Need for a Civic Contract*, 28 May 2003, p. 6. A timely illustration of this came with the recent annulling of a Presevo Albanian's purchase in a privatisation tender of a brick factory in the Serbian town of Vladicin Han. B-92: "BIA proverava kupce preduzeca", 28 December 2004.

Kosovo independence, as if this were the paramount aim of Serbian diplomacy. Thus, President Tadic portrayed engagement with the international community over Kosovo as the best tactic to oppose Kosovo's independence.¹⁰⁶ By orientating its politics to fighting a rearguard action against independence, Serbia is setting itself up for a defeat it lacks the leverage or vision to avoid. In fact, such an approach virtually guarantees a greater loss. The longer Serbia maintains its hostility to Kosovo Albanian aspirations, the more corrosive will be the effect on the Kosovo Serb community, whose numbers will decline faster, and on its chance to negotiate the terms and character of Kosovo nationalism.

Playing the sovereignty card effectively. Serbia needs to assess its limited resources soberly and harness them to a realistic strategy for influencing the future of Kosovo. It still holds formal sovereignty over Kosovo, enjoys the loyalty of nearly all Kosovo Serbs, controls parallel structures and has budget lines to support them. If played skilfully, these cards could soften the outcome. Willingness to parlay its human, institutional and budgetary resources in Kosovo into negotiated contractual relationships with the PISG could deflect immediate pressures to concede formal sovereignty. Alternatively, Serbia could play its sovereignty card up front, offering it to the PISG in return for a grand bargain of compromises on territorial autonomy for Kosovo Serbs, economic relations and property rights, extraterritoriality for Serb religious monuments, Kosovo-wide Serbian language TV, and guarantees of Serb representation in institutions.

Unfortunately the debate has bogged down over tactics rather than broaching a new design for the future: it is serving as a proxy for the partisan political struggle as Serbia faces possible new parliamentary elections early in 2005. The Kosovo issue has isolated the DS and Tadic, with the rest of the political spectrum - from G17 Plus to the SRS - ranged against it.¹⁰⁷ In contrast, the EU and Partnership for Peace accession issue locates the DS in a democratic and

conservative consensus, with the SRS and SPS outside. It is uncertain which alignment will dominate the political scene in the coming months.

It appears Belgrade has given little thought to how it will respond to the options presented by the international community. With the government in Kostunica's hands and the DS politically isolated over this issue, Tadic's ability and willingness to engage UNMIK will be limited, especially in the wake of Haradinaj's election. Given the political fragmentation, much policy-making may be by default: for Kosovo that means rigidity. The wild card factor is Albanian patience. Should there be new violence against Serbs or the international community, Belgrade's security forces could take matters into their own hands and enter the Serbian-majority north: Serbian politicians would be hard pressed to object to such a *fait accompli*, one that, to put it mildly, would pose grave new challenges for the international community.

¹⁰⁶ The struggle "will be very difficult", Tadic said. Beta news agency report, 11 October 2004, comments by Tadic on his return from a NATO inauguration ceremony in Naples. Similarly, in supporting dialogue and Kosovo Serb election participation, Foreign Minister Draskovic has spoken out against independence without specifying what Serbia could offer Kosovo instead.

¹⁰⁷ In his 5 October 2004 speech, Tadic explicitly linked Serbia's approach to Kosovo with the need to cooperate with The Hague Tribunal. Although his gambit arguably extended the political life of the 29 April plan for Kosovo, all other political forces attacked him for breaking Serbia's unified front.

III. A PROCESS FOR 2005

A. PROPOSED TIMELINE

Taking into account all the pressures and positions analysed in the first sections of this report, Crisis Group believes that the following steps can and should now be taken, in the sequence described, to bring the final status issue to peaceful resolution in 2005. The key elements in this timeline are discussed in the following section.

As soon as possible:

- The Contact Group countries,¹⁰⁸ as a confidence and momentum building measure, should issue a statement identifying their timeline for the resolution of the status issue, making clear that the protection of minority rights in Kosovo is the issue on which progress will most depend and that neither Kosovo's return to Belgrade rule, nor its partition, nor any possible unification of Kosovo with Albania will be supported.
- The UN Secretary-General, in consultation with the Contact Group, should appoint a Special Envoy to begin consultations on the structure of a final status process and the content of a draft settlement.
- The Kosovo Assembly, with support from international donors, should begin to draft a constitution with provision for minority rights and international appointments to the Supreme and Constitutional Courts.
- The PISG should launch a series of specific programs aimed at accommodating the Serb minority, including a "*Pristina -- Open City*" campaign.

By mid-summer 2005:

- The SRSG should conclude a review of the PISG's commitment to meeting standards (with subsequent steps being premised on that review being positive).

By autumn 2005:

- The Kosovo Assembly should finalise the text of the draft constitution.

- The Special Envoy should produce a draft settlement text -- the "Kosovo Accord" -- and the details of an international conference to endorse and finalise both it and the Kosovo constitution.

By end 2005:

- The international conference should take place, under UN chairmanship and attended by representatives of the Contact Group members, EU, Belgrade, and the Kosovo's government and opposition parties (or such of them as are prepared to do so), and endorse the texts, as negotiated, of the Kosovo Accord and constitution.

Early 2006:

- Kosovo should conduct a referendum on its new constitution. The Kosovo Accord should be put to the UN Security Council for approval.¹⁰⁹

Mid-2006:

- UNMIK should hand over its executive functions to the Kosovo government and its monitoring ones to a new international body (the "Kosovo Monitoring Mission"). The continuing long-term role of KFOR, or a successor mission, should be confirmed by an accord agreed between NATO and Kosovo's government.
- To the extent this has not already been achieved by Serbian agreement or Security Council resolution, Kosovo's de jure sovereignty should be recognised by the international community, or such member states (including the U.S. and EU members) as are prepared to do so.

B. KEY PROCESS ELEMENTS

1. The Contact Group

Kosovo's future status cannot be fully and definitively decided by the Contact Group, let alone the proposed Special Envoy. Under Resolution 1244 that prerogative lies with the Security Council, which will be reluctant to divest Serbia of sovereignty over Kosovo without its acquiescence, and unable to do so without Russian support. This should not, however, preclude the Contact Group and UN Secretariat from playing a strong role, working together as described below.

The Contact Group statement of 22 September 2004 was an encouraging start. But in order to generate momentum

¹⁰⁸ Highly desirably with Russia, but if necessary without (ie. in 'Quint' formation)

¹⁰⁹ With approval -- without a Russian veto -- highly desirable, but not a necessary condition for subsequent steps.

and, to the extent possible, confidence, the language on Kosovo's future and the steps required from the PISG should be amplified as soon as possible, by the Contact Group (or that Group without Russia if Moscow's cooperation is not forthcoming) making a major scene-setting statement both laying out the intended process for 2005 and stating four substantive positions:

- that the pace of progress on status transformation will be dependent on Kosovo meeting the standards (in particular in relation to minority rights protection) already set for it (to place the necessary pressure on Kosovo to put its house in order);
- that there will be no support for Kosovo being returned to a constitutional relationship with Serbia-Montenegro (to concentrate the minds of Serbian politicians and people on the realities of the situation to which they need to adjust); and
- that there will be no support for any partition of Kosovo as an element in the negotiations;¹¹⁰
- measures will be taken to ensure that any unification of Kosovo with Albania¹¹¹ or any other neighbouring state or territory is precluded (to set at rest fears in Serbia and elsewhere about the emergence of a 'Greater Albania').

An ungenerous reading of the 22 September position is that Kosovo's progress on standards will determine its future relations with Belgrade. That is not sensible, or even logical. Progress on standards can and should inform the Contact Group's view on Kosovo's capacity or lack of it for statehood. But an implied threat to return Kosovo to Belgrade's rule if it fails to comply on standards is likely to be counterproductive. Changing the independence question to "when", depending on the pace of transformation, rather than "if", will be much more likely to deliver a Kosovo that its neighbours will want to live with.

The mid-2005 review of progress on standards should be linked convincingly to the independence agenda; it will otherwise be impossible to keep attention focused on it as expectations rise about final status decisions. One way of doing this would be to make the pace of international community consultation with local partners on a draft Kosovo constitution dependent upon the seriousness with which the PISG approaches the standards review process.

Advances in Contact Group positions will not necessarily come from all members deciding to move at the same time. Individual members and concerned observers such as the other EU member states and the international financial institutions should be prepared to push the envelope on status, as British Minister for Europe Dennis MacShane has done.¹¹² A rising chorus of calls upon Serbia to be more accommodating would help prepare the ground.

In addition to honing and articulating their own positions on Kosovo's future, Contact Group members should immediately begin instituting final status-related processes and capacity-building. In Kosovo itself, they should give a green light and technical and financial assistance for formation of the previously mentioned Kosovo Assembly committee for final status in order to enable the Kosovo Albanians to formulate their views in step with the international community. The Contact Group should take or facilitate certain additional measures in these next months to demonstrate unequivocally its determination to solve the Kosovo impasse. Donor funds should be pledged to lubricate a final status settlement. A stable KFOR troop level adequate to deal with all contingencies should be maintained -- the recent habit of briefly reinforcing that mission for special occasions while allowing its regular complement to decline does not inspire confidence. Failure to demonstrate energy on all these fronts -- diplomatic, financial and military -- will tempt extremists to conclude that whatever framework the international community develops for Kosovo, the way

¹¹⁰ See III.C.3 below for further discussion of the partition issue.

¹¹¹ Observers in Tirana object, stressing that such an assurance is unnecessary, because nobody in official political circles in Albania has any ambitions for unification with Kosovo. Crisis Group interview with former Albanian foreign minister Arian Starova, 7 January 2005. That indeed is the case; but the distinction between an independent Kosovo and a Greater Albania is lost on some in Serbia. See, for instance, the evidence given at the war crimes tribunal in The Hague in defence of Slobodan Milosevic by Slavenko Terzic, 7 and 9 December 2004, in the course of which Crisis Group's Europe Report N°153, *Pan-Albanianism: How Big a Threat to Balkan Stability?*, 25 February 2004, was discussed.

¹¹² On 4 May 2004 MacShane announced new approaches toward Kosovo in the British Parliament. He suggested that Kostunica's call for Serb territorial autonomy in Kosovo had heightened insecurity among Kosovo Albanians and stated that it was: "like Germany reclaiming parts of the Czech Republic, Silesia or Pomerania". He further declared: "that the time has come in which there can be no question of a return to 1999, 1989 or 1979 in terms of Serb control over Kosovo. If we do not say that honestly and on the record, as I am doing today, in my judgment we will encourage the wrong approach". He also, however, warned Kosovo Albanian politicians off any obsession with independence rather than "interdependence".

will remain open for them to throw it aside and create their own facts on the ground.

An important element that the Contact Group could introduce into the policy mix in the initial period would be formulation of a set of standards for Serbia respecting its approach to Kosovo and the Albanians. The rationale would be that if Belgrade became more cooperative, it would gain proportionately in influence as the international community developed its positions.¹¹³

2. The PISG and the Kosovo Constitution

The Kosovo Assembly committee for final status should quickly take up as its most sensitive task drafting a new constitution that has the support of both government and opposition, in close consultation with the Contact Group, UNMIK and the EU and assisted by the Council of Europe's Venice Commission.¹¹⁴ The most important and controversial elements of that document will be structures and mechanisms to ensure minority rights, including effective decentralisation arrangements, a competent and unbiased judiciary and a way of ensuring that international concerns are properly addressed.

In addition to the normal protections for Serbs and other minorities living anywhere in Kosovo, provisions should be drafted to protect the Serb-dominant patterns of settlement in the three northern municipalities, where residents fear that they will be overwhelmed by Albanians acquiring property if Kosovo becomes independent.¹¹⁵ Northern Mitrovica may have to be the subject of a similar institutionalised compromise for the express purpose of providing a Serb-dominated urban reservoir that would serve as the educational, healthcare, and media centre for Kosovo's Serb communities.¹¹⁶

¹¹³ One step the international community should seriously consider in this regard is the dispatch of a mission to Serbia by the OSCE Representative on the Freedom of the Media, to monitor and report upon media treatment of Kosovo and Albanians.

¹¹⁴ The European Commission for Democracy through Law, generally known as the Venice Commission, is the Council of Europe's advisory body on constitutional matters.

¹¹⁵ Perhaps by drawing upon the arrangements that safeguard the Swedish majority on Finland's Åland Islands. Despite concerted resistance from the local mainly Swedish population, those islands came under Finnish sovereignty in the wake of the First World War. Among other provisions for local autonomy, non-Ålanders are heavily restricted in their rights to buy property or settle in the islands, an exception to the principle of free movement enshrined in the *acquis communautaire* of the European Union.

¹¹⁶ The European Stability Initiative has proposed merging the northern part of the Mitrovica municipality with the Serb-majority municipality of Zvečan, in the context of an overall

The new constitution should make provision for Kosovo's Supreme Court and a new Constitutional Court to have carefully weighted mixes of Albanian, Serbian, and international judges.¹¹⁷ There are a number of precedents for the external appointment of judges.¹¹⁸ In the case of Kosovo, the international judges could be appointed by the President of the European Court of Human Rights, as in Bosnia, and play a significant role in reviewing complaints about officials deviating from or violating the mandates for Kosovo written into its constitution. Designated international bodies, including perhaps the proposed international monitoring mission, as well as Kosovo's residents of any ethnicity, should be vested with the standing to raise such complaints.

3. The Special Envoy

The UN Secretary-General, in consultation with the Contact Group, should immediately appoint a special envoy to conduct exploratory discussions on Kosovo's final status with all relevant parties -- the Kosovo Assembly and PISG ministers, Belgrade, the Contact Group member states themselves, the EU and NATO, and the governments of other neighbouring states.¹¹⁹ This would move the issue into high gear.

plan for the revitalisation of the area. It is probably appropriate for this to be addressed in the context of the current dialogue on decentralisation.

¹¹⁷ Under Kosovo's present Constitutional Framework, all judges and prosecutors are appointed by the SRSJ from lists of candidates proposed by the Kosovo Judicial and Prosecutorial Council and endorsed by the Assembly, with no explicit guidance on the representation of different ethnic groups or international appointees. There is no Constitutional Court, though there is a Special Chamber of the Supreme Court charged with Constitutional Framework matters.

¹¹⁸ For example, Bosnia's Constitutional Court has three members (of nine) appointed by the President of the European Court of Human Rights after consultation with the Presidency of Bosnia and Herzegovina, and Hong Kong's Court of Final Appeal includes judges appointed from other common-law jurisdictions. Stephen D Krasner, "Sharing Sovereignty", *International Security*, Vol. 29, pp. 85-120, Fall 2004, proposes that states where the rule of law is "sketchy" might contract out their commercial court systems to external actors (pp. 116-117). In smaller sovereign states with less available talent, more drastic measures may be necessary: the constitution of San Marino specifies that no citizen of that tiny republic may serve as a judge in the lower courts (most of its judges are, therefore, Italian citizens).

¹¹⁹ The envoy should have credibility both in Russia and with Kosovo Albanians. If an American, he or she should have a European deputy. If a European, he or she should have an American deputy. Soren Jessen-Petersen, who is an excellent SRSJ, should not be tasked with this role, as his responsibilities for managing Kosovo's internal situation

The special envoy should prepare the ground for a final status solution by offering a fair outcome to both Belgrade and Pristina, with a crucial element being very strong guarantees and protections for minorities, combined with significant continuing international monitoring. While it would not be realistic to hold out any prospect of return to Belgrade rule, and the division of Kosovo's territory between different states should also be excluded (the partition issue is discussed further below), the special envoy should make it clear that Serbia will be in a position to significantly affect the outcome if it is a serious participant in the negotiations.

On the basis of those discussions with all stakeholders, the envoy should produce a draft 'Kosovo Accord' settlement addressing all relevant final status issues, including outlines of the many technical cross-border agreements that Pristina and Belgrade should conclude. This would be prepared following a positive evaluation of progress on standards in mid-summer 2005 by SRSJ Jessen-Petersen, and form the basic negotiating text for debate in the lead up to and at the international conference to be held by the end of 2005. The special envoy's role would also be to recommend, after consultation with all relevant parties, the modalities of that conference -- how it would be structured and proceed.

4. The International Conference and the Kosovo Accord

The Conference, under the chairmanship of the UN, would bring around the table the representatives of Pristina (including both government and opposition), Belgrade, the Contact Group member states, and the European Union.¹²⁰ It would aim to agree, and have all its participants sign, a Kosovo Accord guaranteeing Kosovo's independence but also including provisions on minority rights and a bar on any future unification with its Albanian neighbour and indeed with any other territory.¹²¹ The Accord would include other provisions

require his full attention. However the envoy should, of course, consult regularly with Jessen-Petersen so that they can coordinate their actions for maximum effectiveness.

¹²⁰ If the Security Council was prevented from calling the conference because of a Russian veto, the other members of the Contact Group should call it on their own authority (see below).

¹²¹ In a manner analogous to the Austrian State Treaty of 1955 which prohibited any union with Germany. For the Austrian State Treaty, see for instance Barbara Jelavich, *Modern Austria: Empire and Republic, 1815-1986* (Cambridge, 1987), pp. 262-268. That treaty also forbade Austria to restore the Habsburgs to power. It was signed on 15 May 1955 by the four allied occupying powers and by the government of the Austrian state, although the latter regained its sovereignty only when the treaty came into force on 27 July. (The Austrian

for relations between Kosovo and Serbia, including a mechanism for resolving both public and private property rights, and the writing off by Serbia's creditors of a generously calculated proportion of Serbia and Montenegro's international debts.

The Accord would include as one of its annexes the Kosovo constitution, as drafted by the Assembly committee and with terms finally agreed at the conference. The constitution, whose later adoption by referendum would be a condition of the Accord coming into force, together with the Kosovo Accord itself, would include major provisions for minority protections, including international judicial appointments, and standing for certain external parties to challenge legislative and executive actions in the Kosovo courts.

In order to be of binding political effect, the proposed Accord would not need to be a treaty -- with all the difficulties and complexities that it raises in terms of ratification, not least in the U.S.¹²² Useful models here may be the Helsinki Final Act or, closer to home, the Dayton Accords, settling the status of Bosnia and Herzegovina.¹²³ Legal effect would be achieved in Kosovo for the Accord's most important terms by virtue of their inclusion in the text of the constitution to be approved by referendum. Further legal effect, in relation to both Kosovo and the other signatories to the Accord, might also be achieved through an approving resolution of the Security Council if that is obtainable. Otherwise, the various parties would simply go about implementing what they had committed to politically, including establishing diplomatic relations, implementing the Monitoring Mission, and providing economic support.

National Day, 26 October, celebrates the departure of the last occupation troops.) Compare also the 1960 Cyprus Treaty of Guarantee, signed by Cyprus, Greece, Turkey and the United Kingdom, in which the Republic of Cyprus "undertakes *not* [emphasis in original text] to participate, in whole or in part, in any political or economic union with any State whatsoever".

¹²² If the agreement on Kosovo is to have less than treaty status, it should obviously have a title which avoids the usual ones associated with a treaty (such as treaty, convention or covenant), and would not contain certain formal clauses found in treaties, notably in relation to ratification. For the Accord not to be legally enforceable under international law is a secondary consideration in this case, where the key factors are speed of implementation and the political and moral suasion of the outside guarantors of the agreement

¹²³ For the Helsinki Final Act, see <http://www.osce.org/docs/english/1990-1999/summits/helfa75e.htm>; for the Dayton Accords, see http://www.ohr.int/dpa/default.asp?content_id=380.

5. The international monitoring presence

Part of the settlement package to be agreed at the international conference would be for Kosovo to accommodate until further notice an international monitoring presence -- the 'Kosovo Monitoring Mission' -- financed by the international community, and designed essentially to ensure that Kosovo actually performs in accordance with the norms to which it subscribes. While the international community will always have multiple instruments at its disposal, including economic and political pressure, targeted sanctions and the like, to deal with Kosovo (or any other country) which is perceived to be backsliding on its commitments on human rights and democracy, the situation here justifies a specific continuing Mission to ensure that stability is maintained and the massive financial investments in reconstructing Kosovo by international donors are not wasted.

Although components of this Mission would be drawn from European multilateral organisations such as the EU and OSCE, its structure and mandate should unambiguously stem from the agreed Accord, perhaps with reference also in the Kosovo constitution adopted by referendum (to the extent, for example, that the Mission was given standing to bring certain matters before the -- partly internationally staffed -- Kosovo courts.)

The experience of "hard-wiring" particular international organisations' post-settlement organigrams has not always been a happy one. However, some choices are fairly obvious: for instance, the OSCE should take over the leading monitoring role on the treatment of minority communities, while an EU police monitoring mission should complement the OSCE's observation work on the rule of law and include specialist units coordinating with NATO to monitor Kosovo's efforts in combating organized crime -- which should be a prominent state commitment in Kosovo's new constitution.

The extent of the responsibilities of the Kosovo Monitoring Mission will be a key element of the final status negotiations. Indeed, ensuring a maximal role for it may be an important incentive for constructive Serbian participation in the final status conference. That said, it cannot really be contemplated that the role of the proposed Mission could be comparable to that of the Bosnian High Representative. Although on paper the SRSG's current powers in Kosovo are if anything greater, these powers have not been used; and the presence of an outsider wielding effectively unlimited executive authority may distort the domestic political

system so much as to negate much of the potential for its healthy evolution.¹²⁴

The longevity of the Mission should be defined by Kosovo's fulfilment of conditions, rather than a pre-set time span. Judgment on the fulfilment of these conditions, and Kosovo's readiness for its winding up or reduction, would remain, desirably, a decision of the UN Security Council, taken on the advice of the EU. The key role of the EU's advice would provide an umbilical link with Kosovo's fortunes and acceptance as an EU candidate. Once it eventually becomes an EU candidate, EU accession conditionality and monitoring would take over, as appears likely to happen in Bosnia in the course of 2005.

C. KEY POLICY ISSUES

1. How much independence?

Crisis Group believes that independence for Kosovo within its current frontiers -- albeit a somewhat conditioned independence as outlined here -- is the solution most likely to be capable of implementation and to lead to lasting stability in the region. There really is no acceptable alternative. The current protectorate cannot be continued indefinitely: even if Kosovo Albanians would tolerate it (which they would not), the international community is not prepared to fund it.¹²⁵ Trusteeship does not provide closure, and the UN Trusteeship Council belongs to an earlier age.¹²⁶ The EU itself would justifiably be reluctant to assume any trusteeship role, and nobody inside the European institutions is suggesting it.¹²⁷ *Koha Ditore's* Brussels

¹²⁴ One key difference should also be noted: Bosnia's High Representative has had to build the state structures established by the 1995 Dayton Agreement, starting from circumstances where few members of any of Bosnia's national groups felt much loyalty to the new institutions established by the treaty. A post-settlement Kosovo will have institutions supported by the vast majority of Kosovo's population, and only action by them, rather than international intervention, will convince Serbs and other minorities that it is a safe place for them to live.

¹²⁵ Krasner, *op. cit.*, describes a number of attractive approaches to maintaining partial or full protectorate regimes for failed states, including a new concept of "shared sovereignty", but admits that the international community is not yet ready to implement such ideas systematically.

¹²⁶ See the December 2004 report of the UN High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, pp. 92-93.

¹²⁷ This does not deter people from outside the European institutions from suggesting it; see for instance Doug Bereuter and Thomas E. Grant, "The EU Must Take Over Kosovo", *Wall Street Journal*, 25 August 2004. A prominent member of the European Parliament, Doris Pack, was widely quoted as

correspondent recently wrote: "No 'inventive idea' on Kosovo's status that excludes the possibility of formal statehood with international recognition can be called a solution, but only the buying of time ... If Kosovo does not become a state, then it cannot be an EU member".¹²⁸

Other solutions are even less likely or desirable. As has been outlined at length above, no state arrangement which includes Belgrade could be enforced. Union with Albania is not desired by either Tirana or Pristina.¹²⁹ And a unilateral international withdrawal, with or without recognition of Kosovo as an independent state, would give no incentives to Kosovo's new leaders to behave responsibly to their neighbours or to their own minorities.

Crisis Group has previously (in April 2001¹³⁰ and again

proposing a "European protectorate" for Kosovo in the Balkans media on 11 and 12 November 2004. This appears to have been a misinterpretation. Asked by Crisis Group on 7 December, she said that she supports conditional independence for Kosovo, as proposed in previous Crisis Group reports, not a protectorate.

¹²⁸ Augustin Palokaj: "An 'inventive idea' on Kosovo status", 15 November 2004.

¹²⁹ The possibility of Kosovo uniting with Albania is often raised by Serb commentators and their allies as an immediate and automatic result of Kosovo independence. Crisis Group has detected little interest in this in either Kosovo or Albania; see Crisis Group Europe Report N°153, *Pan-Albanianism: How Big a Threat to Balkan Stability?*, 25 February 2004.

¹³⁰ Crisis Group Balkans Report N°108, *After Milosevic: A Practical Agenda for Lasting Balkans Peace*, 1 April 2001, pp. 127-128. It was argued there that Kosovo's independence should be made conditional in three different ways:

First, the international community has a profound interest in ensuring the full protection of minority rights, and it is reasonable to insist that proper standards be met for a period of time before all the benefits of international recognition (including membership of international organisations like the UN, and access to international financial institutions and trade arrangements and the like) are awarded.

Secondly, Kosovo could be required as a condition of recognition to permanently renounce some kinds of action which would normally be within the competence of a sovereign independent nation. While we have described elsewhere as overstated the fears often expressed that independence for Kosovo would increase the threat of a "Greater Kosovo", the international community would also be in a position to require a binding commitment that it would not seek to expand its regional boundaries.

Thirdly, and most far-reaching, a form of trusteeship could be imposed on Kosovo by the UN, under which, for the duration of that arrangement, its government -- while exercising all normal day to day government powers, and not subject to either FRY or Serbian sovereign authority -- would be subject to the exercise of veto powers by the trusteeship representative, either at large or in certain defined areas. The

in March 2002¹³¹) suggested in some detail that the best solution for Kosovo would be a form of "conditional independence", based on the concept originally proposed in outline by the Independent International Commission on Kosovo in 2000.¹³² Almost three years have passed since our last report on the topic, and that concept now needs substantial modification.

The basic ways in which we now propose that Kosovo's independence be conditioned are first, that Kosovo would be explicitly committed, both in its own new constitution and by the terms of the Accord agreed at the international conference, not to unify with Albania, or indeed any of its neighbouring states or territories, other than in the context of EU integration. It would, moreover, importantly but less dramatically, be tied into a range of bilateral agreements with its neighbours (including Serbia as far as possible), and with the EU; and its future direction would be heavily programmed thereby toward EU values, norms, and ultimately accession. The Kosovo Accord and the new constitution would provide for a long-term agreement with NATO for KFOR to continue its role, and for KFOR to take responsibility for the local recruitment and training of such Kosovo armed forces as are agreed in the Accord.¹³³

Secondly, the independence of its judiciary would be ensured by including a number of internationally appointed as well as local judges in the superior courts. Moreover various international bodies -- including possibly the proposed international monitoring body, the Kosovo Monitoring Mission -- would have the standing under the Accord, or constitution, or both, to ensure that certain key matters relating to minority rights and other agreed obligations can be brought before those courts.

Thirdly, the presence of the international monitoring mission for an indefinite period, with a capacity not only to take internal legal action, but to report to the wider international community and recommend appropriate measures if Kosovo were to backslide on

notion here is that such powers would be exercised with a lighter touch than under the present protectorate arrangements in both Kosovo and Bosnia, but in a way that retained ample leverage for the international community.

¹³¹ Crisis Group Balkans Report N° 124, *A Kosovo Roadmap (I): Addressing Final Status*, 1 March 2002.

¹³² The Independent International Commission on Kosovo was established in August 1999 by the Swedish government, with Justice Richard Goldstone of the South African Supreme Court as its chair and Carl Tham of the Olof Palme International Centre in Stockholm as co-chair. There were eleven other members. Its report was published by Oxford University Press in 2000.

¹³³ The question of Kosovo's long-term security arrangements will be addressed in depth in future Crisis Group reporting.

its commitments, is itself a significant limitation on the freedom of action a fully independent state would normally expect to enjoy.

Kosovo Albanians would buy into the conditioned character of Kosovo's independence through the proposed constitutional referendum, in which they would in effect agree to the international community's stated purposes in securing broad acceptance of Kosovo's independence and to a number of constraints on the exercise of that independence. While Kosovo's proposed independence should be seen as residing in the people of Kosovo -- not bestowed or loaned by some outside agency -- it would be brought about not only in an act of self-determination, but also through negotiating in advance with, and offering guarantees to, the international community and the neighbours.¹³⁴

The object should be to graduate Kosovo as swiftly as possible into the club of nation states, applying only those constraints which are necessary to ensure that it meets the standards, especially in the treatment of its minorities, that the international community expects of it. As discussed further below, if Serbia does not agree to transfer formal sovereignty to the new Kosovo, and the Security Council does not itself act to bring this about, there are bound to be some limitations on Kosovo's capacity to participate in the international community as a fully accepted state. But those limitations should be reduced to the maximum extent possible. Certainly Kosovo's economic situation is so dire that there can be no justification in delaying further the full engagement of the international financial institutions in Kosovo's economy.

2. What happens if sovereignty cannot be formally transferred?

If the international community acts vigorously to end the ambiguity surrounding final status, as recommended in this report, the situation in Kosovo itself can probably be kept stable. However it is quite likely that Serbia will refuse to cooperate with the process. And it is certainly possible that Russia would support this intransigence and block consensus within the Contact Group or even veto Security Council decisions. Such positions would mean that Serbia would formally retain a claim to sovereignty over Kosovo.

¹³⁴ This is also important in order to quench any residual legitimacy from the 1991 self-organised referendum establishing the "Republic of Kosova", just as the simultaneous referenda in both parts of Ireland on 22 May 1998 gained for the Belfast Agreement the legitimacy claimed by Irish republicans for their cause from the election results of December 1918.

The situation on the ground in Kosovo is too fragile, however, for the international community to allow the substance of the process described above to be put on indefinite hold. The EU, the U.S. and other states should in such an eventuality be prepared to convene the final status conference described above, even without Serbian participation; to negotiate and sign the Kosovo Accord; to recognise the newly independent state provided it ratifies the agreed constitution, even without Security Council approval; and to conduct normal diplomatic relations with it.¹³⁵

After years of efforts to engage Belgrade constructively on the Kosovo problem, this would not be a callous disregard of its rights so much as a prudent action to deny it a dangerous veto. A clean excision might produce pragmatic accommodation more quickly than would indefinite maintenance of an increasingly fictional legalism. To resolve the Kosovo problem definitively but peacefully without the Security Council -- a course that will have to be pursued if Russia proves uncooperative -- would be awkward but surely less so than it was to intervene in those circumstances with military force in 1999.

The international community should, of course, seek as much cooperation as possible from Serbia by cautioning it that "the train is leaving, with or without you" -- and also promising that if Serbia climbs aboard, it will be listened to seriously when it makes proposals respecting the Kosovo Accord and constitution. Some issues which Serbia will surely be interested in resolving include the question of disputed property rights, both private and public; the problems of the status of the Serbian Orthodox Church, in particular the most important historical sites such as the Patriarchate of Pec; and the question of assignment of Kosovo's share of Serbia's international debts.¹³⁶

The proposed process might also be tacitly welcome in Belgrade as the political cover the Serbian political system needs to rid itself of its Kosovo ball and chain. It could enable politicians to argue to their constituents that the international community had taken the decision out of their hands but they had done the best they could

¹³⁵ In this case, of course, the Kosovo Monitoring Mission would not have as strong a connection to the UN as in the best case scenario we propose. However even UNSCR 1244 allows the Secretary-General some latitude in how the UN presence in Kosovo should be structured, and a way might be found to give the post-settlement Kosovo Monitoring Mission a mandate from the international community as a whole.

¹³⁶ As suggested above, it would be sensible to reward Serbian participation in the process by writing off a substantial amount of Serbia's debt.

under the circumstances to help fellow Serbs. The question of handling a Serbian boycott of the conference is dealt with in greater detail below.

Although the international community is in a strong position to ensure that the gap between its conferral of *de facto*, albeit conditioned, sovereignty upon Kosovo and Serbia's eventual formal relinquishment of sovereignty would not be measured in decades,¹³⁷ it might still be necessary to allow for an incomplete solution of the sovereignty issue for the time being. Without Serbia's consent Russia, as already noted, and perhaps also China, might well not agree to recognition of Kosovo's independence by the UN Security Council,¹³⁸ which would mean, *inter alia*, Kosovo's inability to take a seat in the United Nations.

But the Kosovo Accord should deliver virtually everything that sovereign status would. That means wide and authoritative recognition that Kosovo is a state and commitments of sustained support to help it develop and succeed. At least the EU and the Contact Group states -- hopefully also the Security Council -- should ensure that Kosovo receives the key "club" memberships due a state as long as it acts responsibly. If necessary, the EU could act as guarantor for development bank lending that is more usually predicated on sovereignty. Even if full UN membership is blocked, Kosovo should have at least observer status there,¹³⁹ and leading nations should swiftly exchange diplomatic representatives with it. Each new decision in Kosovo's favour by an international body would make it easier for others to decide likewise. The EU already treats Kosovo as a separate customs territory and as independent for trade negotiation purposes.

¹³⁷ There are regional precedents whereby an external power's loss of control over a territory has been accompanied by a formal transfer of sovereignty only many years later. Serbia itself gained local autonomy in 1817, autonomy with Russian protection from the Ottoman Empire in 1830, the status of an international protectorate in 1856, and formal sovereignty in 1878. While the Congress of Berlin stripped the Ottoman Empire of control over Bosnia-Herzegovina and made it a protectorate of Austria-Hungary in 1878, it was not until 1908 that the latter annexed it.

¹³⁸ Other than the special circumstances of the disintegrating Soviet Union and former Yugoslavia, the international community has generally been unwilling to recognise the sovereignty of secessionist regions before mutual agreement has been secured with the former metropolitan country; cf. the recent examples of Bangladesh (1971) and Eritrea (1993).

¹³⁹ Observer status is determined by the General Assembly alone.

3. Partition?

Any partition of Kosovo as part of the final status settlement is undesirable. The internal disadvantages of a partition solution for Kosovo are that it would destroy the levers for positive social transformation -- toward non-discrimination, multi-ethnicity, and European values -- and even throws them into reverse, creating pressures for exchange of populations¹⁴⁰ and handing a new cause and source of authority to Kosovo Albanian extremists, who would seek territorial compensation in South Serbia. Externally, a partition solution would open up a new round of speculation and risk of Balkans border changes along ethnic fault lines, instead of bringing that question to closure and reinforcing the international community's other investments in the region. Macedonia might fracture, and the ambiguity of Bosnia-Herzegovina's unified *cum* partitioned state might resolve on the side of partition.

A territory swap of north Kosovo for South Serbia would have many of the same negative internal consequences as the above option, though removing Presevo-Medvedja-Bujanovac as the Albanian extremists' direct *casus belli* and source of authority. As with a partition option kept within the bounds of Kosovo, it would encourage (perhaps even more so) the re-drawing of borders along ethnic lines throughout the Balkans region, offering hope to Serbia of absorbing Republika Srpska, raising tensions in the Sandzak and Vojvodina, and creating fresh fracture pressure on Macedonia.

One question that has been posited is that if such an exchange were actually *agreed* between Pristina and Belgrade negotiators, should the international community stop it? At a practical level, all Kosovo politicians insist that they have nothing to negotiate with Belgrade regarding Kosovo's status, so this is a highly unlikely scenario for the foreseeable future. In any case, the Helsinki principles limit border changes to agreements freely reached between states -- so no such bargain should be allowed before Kosovo becomes a state, and can negotiate from that basis, rather than having its status as a state held hostage to agreement on a territory swap.

Integrating Kosovo's Serbs, north or south of the Ibar, into Kosovo government structures appears a tall order now. The north in particular is at present functionally part of Serbia in many ways, and as noted above, we believe that there is a serious risk of Serbian military intervention there in the event of future renewed

¹⁴⁰ See also in this context the European Stability Initiative paper, "The Lausanne Principle: Multiethnicity, Territory And The Future Of Kosovo's Serbs", 7 June 2004.

violence. Unfortunately for the remaining Serbs in Kosovo, the history of the 1990s suggests that Belgrade will cut its losses when the time comes; the question is, does the international community pay the price now, in terms of economic support for taking over the parallel Serb institutions and pressure on Belgrade at least to acquiesce in a deal offering Serbs a special status in an independent Kosovo, or does it pay the price later, by dealing with the consequences of yet another Balkan war?

The only circumstances in which it is conceivable that the international community would entertain forcing partition upon unwilling parties would appear to be as a drastic surgical damage limitation solution should the Kosovo Albanian majority clearly demonstrate, through mass violence or unilateral moves to throw out the international administration, that it is incapable of exercising effective, responsible control of Kosovo's entire territory, and that it does not deserve it. If Serbia's misrule of Kosovo carries a price of ultimately losing sovereignty over it, that goes equally for Kosovo itself.

4. Dominoes?

Some policy makers have expressed concerns that any movement toward granting sovereignty to Kosovo would be seized on by secessionists, irredentists and their supporters elsewhere -- not only in the Balkans -- as a precedent for their cause. But in fact the circumstances of the Kosovo case are rather unusual and unlikely to be matched by any other case currently troubling policy-makers.

The legal basis for discussing Kosovo's future status is UN Security Council Resolution 1244, which explicitly mandates "a political process designed to determine Kosovo's future status", thus indicating that the present *de jure* sovereignty of Serbia and Montenegro over Kosovo is not necessarily permanent.¹⁴¹ Resolution 1244 further holds that a final status process should recognise the importance of the 1999 Rambouillet accords, which

¹⁴¹ For a recent and balanced analysis of the various legal claims made by Kosovo Albanians and their supporters for self-determination, see Paola Marusich-Blancarte, "Kosovo juridical status: critical analysis to three claims to independence", Occasional Short Paper No. 2, Institute for Strategic Studies, Ljubljana. She concludes that while the arguments for basing Kosovo's claims to self-determination on past human rights violations of the Belgrade government and on the conclusions of the 1991-1992 Badinter Commission are flawed, the fact that Serbia retains title over Kosovo but exercises no governance over the territory is a compelling though not complete argument in favour of Kosovo's present *de facto* independence.

contained steps toward an independence referendum, albeit a non-binding one. This is completely different from the UN Security Council's approach to other secessionist regions in Europe: resolutions on Georgia and Azerbaijan have repeatedly stressed the need to find solutions to the Abkhazia and Nagorno-Karabakh conflicts within the existing frontiers of the respective states.¹⁴²

The only exceptions are Montenegro and Serbia, whose rights to leave the former Yugoslavia were recognised in the Badinter Commission report of 1992, and each of which under the 2002 Belgrade Agreement is now entitled to an independence referendum from 2006. Bosnian Serbs and Croats, by contrast, are bound to Bosnia and Herzegovina by the Dayton accords; Macedonian Albanians are committed to the Macedonian state by the Ohrid Agreement, and by their own leaders' declarations. Resolution 1244 makes Kosovo an exceptional case, whose future sovereignty is acknowledged to be undetermined. Kosovo's legal situation is thus quite different from would be secessionist territories elsewhere in the region (or indeed the world), whose right to independence, however firmly proclaimed, has not been internationally recognised.

The legal basis, then, is clear. What about Kosovo's neighbours? Do they prefer continued uncertainty and ambiguity, or a resolution of the problem? Changing attitudes in Kosovo's southern neighbour, Macedonia, have reduced concerns there that an independent Kosovo would destabilise the country. Increasingly the view on all sides in Skopje and in Tetovo is that definition of Kosovo's final status would be in Macedonia's interest, because it would remove uncertainty for potential foreign investors and close off opportunities for extremists. Once the border with Kosovo is clearly demarcated, Macedonian officials are prepared to be relaxed about what is on the other side, provided that the process of

¹⁴² See notably the Security Council's most recent resolution on Georgia, UNSCR 1554 (29 July 2004) which "Reaffirms the commitment of all Member States to the sovereignty, independence and territorial integrity of Georgia within its internationally recognized borders, and the necessity to define the status of Abkhazia within the State of Georgia in strict accordance with these principles". The Security Council's stance on Azerbaijan is less emphatic (and less recent), with UNSCR 884 (12 November 1993) referring to "the Nagorny Karabakh region of the Azerbaijani Republic" and to "the sovereignty and territorial integrity of the Azerbaijani Republic", but still does not open up the possibility of a different status in the way that UNSCR 1244 does. The UN Security Council has not passed any resolution on the Transdniestrian situation in Moldova, nor on any of the Western European situations sometimes mentioned in this context.

resolution is a peaceful one.¹⁴³ Similarly, Montenegrin officials observe privately that resolving Kosovo's status -- preferably by "amputating" it -- is essential for Serbia to achieve stability.¹⁴⁴

5. Conclusion: A reasonable chance of stability

What if it goes wrong? What if, after independence achieved by the process here described, Kosovo veers socially, institutionally, politically from the pre-programmed course, or simply fails to develop sufficiently to live up to it? What tools should the international community keep to intervene, and indeed, should it? Although the conditioned independence proposed here does not, and cannot, provide for "a return to seller" guarantee (neither did the UK's agreement with China over Hong Kong), if the international community becomes alarmed at the direction Kosovo is taking, it has multiple instruments at its disposal, including not only the judicial mechanisms we propose be built into Kosovo's own popularly endorsed constitution, but also economic and political pressure, targeted sanctions and the like.

No political accord or constitutional provision can ensure beyond doubt that all political leaders in Kosovo (or anywhere else) will demonstrate virtue and wisdom in everything that they do. What can be done, however, is to provide sufficient incentives for good behaviour, and disincentives for bad behaviour, to give a reasonable chance of future stability rather than chaos. That is the aim of our proposals.

Complacency has guided policy on Kosovo for too long. The potential for renewed violence is very real. The international community, in particular the member states of the Contact Group, must decide whether to regain control of the agenda or allow matters to slip until unpleasant new facts are created on the ground that they will have to deal with. The agenda set out above requires political courage as well as energy. But the alternative is worse.

Pristina/Belgrade/Brussels, 24 January 2005

¹⁴³ Crisis Group interviews with state and political party leaders, Skopje, 8 July 2004.

¹⁴⁴ Crisis Group interview with a senior Montenegrin politician, 7 December 2004.

APPENDIX A

MAP OF KOSOVO

Kosova / Kosovo

Produced by




The boundaries and names displayed on this map do not imply official recognition by the United Nations

Source: NIMA, WEF

APPENDIX B

GLOSSARY OF ABBREVIATIONS AND ACRONYMS

AAK	Alliance for the Future of Kosovo (Kosovo political party led by Ramush Haradinaj)
ACTORD	Activation Order
BIA	Serbian state Security Information Agency
CARE	Humanitarian agency
CEPS/IISS	Centre for European Policy Studies/International Institute for Strategic
DS	Democratic Party (Serbian political party)
DSS	Democratic Party of Serbia (Serbian political party)
EU	European Union
G17 plus	Serbian political party
GSZ	Ground Safety Zone
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally displaced person
IWPR	Institute for War and Peace Reporting
KFOR	NATO-led international peace-keeping mission in Kosovo
KLA	Kosovo Liberation Army
KPS	Kosovo Police Service
KTV	Kosovo Television
LDK	Democratic League of Kosovo (political party led by Ibrahim Rugova)
MUP	Ministry of Internal Affairs (Serbia)
NATO	North Atlantic Treaty Organisation
NS	New Serbia (Serbian political party)
OSCE	Organisation for Security and Cooperation in Europe
PDK	Democratic Party of Kosovo (political party led by Hashim Thaci)
PISG	Provisional Institutions of Self-Government
PSS	Movement for the Strength of Serbia (Serbian political party)
RTK	Radio-Television Kosovo
SANU	Serbian Academy of Arts and Sciences
SPO	Serbian Renewal Movement (Serbian political party)
SPS	Socialist Party of Serbia (Serbian political party)
SRS	Serbian Radical Party (Serbian political party)
SRSG	Special Representative of the Secretary General
UN	United Nations
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Mission in Kosovo
UNSCR	United Nations Security Council Resolution

APPENDIX C

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