

CRS Report for Congress

Received through the CRS Web

Kosovo's Future Status and U.S. Policy

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Summary

The future status of Kosovo is perhaps the most sensitive and potentially destabilizing political question in the Balkans. The Administration views "getting Kosovo right" as key to integrating the Balkans into Euro-Atlantic institutions. This report discusses the issue of Kosovo's future status; that is, whether it should become an independent country, or have some form of autonomy within Serbia. The United States and its partners in the international Contact Group proposed in November 2003 that Kosovo's status could be reviewed in mid-2005, if Kosovo meets certain standards. This report will be updated as events warrant. For more on the current situation in Kosovo, see CRS Report RL31053, *Kosovo and U.S. Policy*.

Background

The current status of Kosovo is governed by U.N. Security Council Resolution 1244, passed in June 1999 at the end of the Kosovo conflict. UNSC Resolution 1244 authorizes an international military and civilian presence in Kosovo, the duration of which is at the discretion of the Security Council. The NATO-led peacekeeping force KFOR is charged with maintaining a secure environment, while the U.N. Mission in Kosovo (UNMIK) is given the chief role in administering Kosovo on a provisional basis. The resolution provides for an interim period of autonomy for Kosovo of undefined length, until negotiations on the future status of the province take place. UNMIK is tasked with gradually transferring its administrative responsibilities to elected, interim autonomous government institutions, while retaining an oversight role. In a future stage, UNMIK will oversee the transfer of authority from the interim autonomous institutions to permanent ones, after Kosovo's future status is determined. UNSC Resolution 1244 provides little insight into how the status issue should be resolved, saying only that it should be determined by an unspecified "political process." However, the resolution explicitly confirms the territorial integrity of the Federal Republic of Yugoslavia (consisting of Serbia and neighboring Montenegro) and calls for "substantial autonomy" for Kosovo "within the Federal Republic of Yugoslavia." The FRY was dissolved in February 2003, replaced with a looser "state union" entitled "Serbia and Montenegro." Kosovars believe that the dissolution of the FRY invalidates this portion of UNSC Resolution 1244, while the international community views Kosovo as part of Serbia.

In May 2001, after consultation with local leaders, UNMIK issued a Constitutional Framework for Provisional Self-Government in Kosovo. The Constitutional Framework called for a Kosovo parliament and government, which was formed in March 2002 after parliamentary elections. UNMIK has oversight or control of policy in many “reserved competencies,” including law enforcement, the judiciary, protection of the rights of communities, monetary and budget policy, customs, state property and enterprises, and external relations. UNMIK can invalidate legislation passed by the parliament if it judges it to be in conflict with UNSC Resolution 1244. KFOR remains in charge of Kosovo’s security. The Constitutional Framework does not address the question of Kosovo’s future status, saying only that it would be determined through a process “which shall...take into account all relevant factors, including the will of the people.”

“Standards Before Status”

In 2002, UNMIK chief Michael Steiner outlined a series of standards of international expectations for Kosovo’s institutions and society, and said that they should be achieved before the issue of Kosovo’s future status is discussed. The policy has been dubbed “standards before status.” The standards are (1) the existence of effective, representative and functioning democratic institutions; (2) enforcement of the rule of law; (3) freedom of movement; (4) sustainable returns of refugees and displaced persons, and respect for the rights of communities; (5) creation of a sound basis for a market economy; (6) fair enforcement of property rights; (7) normalized dialogue with Belgrade; and (8) transformation of the Kosovo Protection Corps (KPC) in line with its mandate.¹

Kosovar Albanians have expressed reservations about the standards before status concept, which they believe is designed to block their aspirations for independence indefinitely. Moreover, they note that the Constitutional Framework does not give them enough authority to achieve the standards, especially in the area of law and order. UNMIK has transferred some of its powers to the Kosovo government, as foreseen in UNSC Resolution 1244. However, UNMIK retains control over many critical issues such as setting the “financial and policy parameters” for Kosovo’s budget, customs policy, law and order, and external relations.

These standards could take a long time to achieve, in part due to continuing enmity and suspicion between Serbs and Albanians, and the lack of experience of Kosovars with self-rule, at least in a modern, democratic sense. Kosovo has held the most free and fair elections in its history, and has set up autonomous institutions, but these continue to have limited effectiveness. The rule of law is far from established. Violence against political opponents and minorities has declined, but continues to occur. Crimes involving property and business interests continue to be a problem. Ethnic minorities have great difficulty in receiving justice in any court not presided over by an international judge. Kosovo is a center for prostitution, human trafficking, drugs and weapons smuggling, money laundering, and other illegal activities. Official corruption is a serious problem. International reconstruction aid has helped rebuild much of the infrastructure destroyed in the war, but the economy suffers from low foreign investment and high unemployment. There has been little progress toward the return of Serbs and other minorities to Kosovo.

¹ See “Standards for Kosovo,” UNMIK Press release UNMIK/PR/1078, December 10, 2003 at the UNMIK website [<http://www.unmikonline.org>], accessed on January 22, 2003.

The first direct meeting between Kosovo and Serbian government representatives took place in October 2003, but little was accomplished. Some members of the KPC have been involved organized crime and ethnic Albanian insurgencies in southern Serbia and Macedonia.

From Standards to Status?

In November 2003, U.S. Under Secretary of State Marc Grossman announced, with the support of the other members of the international Contact Group (Britain, France, Germany, Italy, and Russia), a formal review in mid-2005 on Kosovo's progress toward meeting the standards. If in the judgement of the Contact Group, the U.N. Security Council and other interested parties, this progress is "sufficient," a process to determine the province's status may begin. An effort is also being made to "operationalize" the standards — that is, to make them more precise and detailed so that progress toward them can be more easily measured.

While the review date strategy may have clarified to some extent the international community's policy on the relationship between standards and status, many questions remain. One is whether local leaders will be motivated to meet the standards. Kosovo Serbs and the Serbian government condemned the standards, saying that they did not have sufficient input into their drafting and that as currently conceived they do not provide a sufficient basis to safeguard the rights of Serbs in the province.² Although many of the standards are designed to bolster the freedom and security of ethnic minorities, it is possible that Belgrade and local Serbs may attempt to stall or hinder implementation of standards, if it appears that the international community is leaning toward independence for Kosovo, which they vociferously oppose. According to UNMIK, Serbian institutions continue to function in Serb-majority regions of Kosovo. In an effort to disrupt the standards, they might cause trouble in and around the northern town of Mitrovica, which is divided into Serb and Albanian districts.

Kosovar leaders hailed the review date strategy and praised the idea of clarifying the standards. However, they may also see an advantage in not pursuing them vigorously. Efforts to truly encourage Serb refugee returns, promote a multiethnic Kosovo, and launch a serious dialogue with Belgrade could be unpopular with hardline nationalists and many ordinary ethnic Albanians. Substantial efforts to foster the rule of law could run afoul of powerful organized crime groups. Given the political risks involved in fulfilling some of the standards, Kosovar leaders could be tempted to "run out the clock," making some gestures toward meeting the standards, while hoping that by mid-2005 the international community will tire of ruling Kosovo and will permit the province to become independent anyway. On the other hand, the consequences of a negative international evaluation in mid-2005 could be destabilizing, due to the dashed expectations of Kosovars, who may well see the review date strategy as inevitably leading to independence, despite warnings of the international community to the contrary.

Political developments in Serbia could also have an impact on the status question in Kosovo. Nationalist hardliners gained strength in Serbia's December 2003 parliamentary elections. While the government is still in the hands of pro-reform forces, their political

² Discussions with Serbian officials, January 2004.

weakness could lead the government to take a rigid stance on cooperation with UNMIK and the Kosovo government, as well as on status talks. Increased hardline sentiment in Belgrade could spark a rise in nationalism in Kosovo, which will hold elections later this year. A hardening of positions on both sides would make the work of the international community on status and other issues more difficult.

Other questions have to do with the relationship between UNMIK and the Kosovo institutions. As noted above, Kosovar leaders believe the Constitutional Framework does not give them sufficient powers to achieve the standards and that, moreover, UNMIK frequently imposes its will in areas that are already supposedly under the Kosovo government's control. This points to the need for UNMIK and the Kosovar government to cooperate more effectively in order to achieve the standards and improve the ability of Kosovo institutions to govern effectively.³

International factors will play a large role in determining Kosovo's status. One issue is how long the international community is willing to remain engaged in the region. The international community is increasingly preoccupied with other global challenges, and may seek to move forward on the issue of a future settlement in order to begin to wind down the international peacekeeping mission in Kosovo. A decision by the international community to rapidly reduce its presence in the region could accelerate status talks with less insistence on meeting standards. Recognizing this fact, some Serbian leaders have called for UNMIK to remain in Kosovo for 10 or 15 years, despite their vocal dissatisfaction with UNMIK's performance.⁴ A declining international presence could also encourage hardliners on both sides, resulting in an upsurge in violence and instability. This may be particularly true of the U.S. presence, since the United States is the only country that many ethnic Albanians trust.

Another concern is the unity of the major international actors on the status issue. Although presented as a Contact Group policy, the review date strategy is widely viewed as a U.S. initiative. Indeed, the most important aspect of the review date strategy to local and international actors may not be in its particulars, which may not mark a dramatic change from previous policy, but its possible signal of active U.S. engagement in dealing with the status issue. United States involvement may be required to make sure the process does not lose momentum or get off track. The views of the members of the Contact Group could diverge as the 2005 review date draws closer. This difference could be expressed in differing views on whether Kosovo has made "sufficient" progress on standards. In announcing the new policy, Secretary Grossman said that "all options are on the table" as far as status is concerned. However, other Contact Group countries who at least rhetorically support the review date policy may be less willing than the United States to consider Kosovo independence as one of the options.

Options for Kosovo's Status

Although it is too early to say what Kosovo's future status will be, direct rule of the entire province from Belgrade is unlikely, since it could only be accomplished by violent

³ Discussions with U.S. Balkans experts, December 2003.

⁴ Discussions with Serbian officials, January 2004.

actions similar to those taken by Milosevic in 1998 and 1999, which triggered international intervention in the first place. Another possible outcome, currently opposed by the international community, is independence. Between these two poles lie some form of complete or near-complete self-government for Kosovo, while retaining some degree of Serbian sovereignty, the exact contours of which would be subject to negotiation between Belgrade and Pristina. These outcomes could stand on their own or be accompanied by cantonization or partition of Kosovo into a small, Serbian-controlled area in northern Kosovo and an ethnic Albanian-controlled south. Each of these possibilities could have positive or negative consequences for Kosovo and the region.

Independence for Kosovo would respond to the political preferences of the overwhelming majority of the province's inhabitants. However, some observers fear that an independent Kosovo could destabilize the region by encouraging separatist ethnic Albanian forces in Macedonia, as well as Serbia's Presevo Valley, where many ethnic Albanians live. Some also fear international support for Kosovar independence could undermine the democratic leadership in Belgrade and strengthen extreme nationalists. There are also questions about the ability of the Kosovars to run their own affairs in the near future, due to a lack of technical competence as well as political infighting among ethnic Albanian political parties. The importance of creating an effective Kosovo government is particularly important for the issue of dealing with powerful organized crime groups in the province. An independent or fully autonomous Kosovo may not be strong enough to fight the powerful organized crime groups in Kosovo, whose tentacles reach into Western Europe and the United States. Many observers believe that it is therefore critical for the international community to move rapidly to dismantle these groups before status is resolved.⁵ Some have suggested that negotiations for Kosovo's status begin soon, offering Kosovo independence, in exchange for some limitations on Kosovo's sovereignty, for example to prevent the establishment of a greater Albania.⁶

Those who favor dividing Kosovo believe it would be a more realistic alternative than trying to impose multi-ethnicity. Leaders in Belgrade and in the Kosovo Serb community have floated a cantonization plan for the province, similar in some ways to the current division of Bosnia into two "entities" under weak central control. Under the proposal, Serbian-majority areas in Kosovo would be controlled by local Serb authorities, with their own police, and possibly with the deployment of Serbian police and army troops. Ethnic Albanian authorities would control the rest of the province.⁷ Such a plan would have the benefit, from Belgrade's point of view, of consolidating its control over northern Kosovo, where most Serbs in the province now live, and where important economic assets, such as the Trepca mining complex, are found. Ethnic Albanian leaders strongly oppose the idea for these very reasons. International officials fear that partition of the province along ethnic lines could spark renewed violence over disputed areas. They also believe it could set a bad example for the region, resulting in renewed calls to partition Bosnia, southern Serbia, and Macedonia.

⁵ Testimony of FBI Assistant Director Grant D. Ashley before a hearing of the Senate Foreign Relations Committee, Subcommittee on Europe, on "Transnational Crime and Corruption in Europe," October 30, 2003, and discussions with U.S. Balkans experts, December 2004.

⁶ Discussions with Balkan officials, January 2004.

⁷ Discussions with Serbian officials, January 2004.

Another option could be to maintain a version of the status quo in Kosovo, perhaps with gradually decreasing direct international control of the province. This option would postpone potentially destabilizing decisions on status and could preserve the unity of the international community on the issue. However, some experts believe that it is unrealistic to try to indefinitely ignore the clearly expressed desire of the majority of the population of Kosovo for independence. Some also believe that the lack of clarity created by postponing the resolution of this issue will have a negative impact on Kosovo's political and economic stability, including on such issues as the rule of law, privatization and attracting foreign investment, and prospects for European integration. Some argue an indefinite delay in dealing with the status issue creates mistrust of the international community among ethnic Albanians and strengthens extremists.⁸

One important question is the mechanism for resolving the status question. Internationally-mediated talks between Belgrade and Pristina would likely be the first step, capped by a new U.N. Security Council resolution to endorse the result. A requirement for a UNSC resolution could give Russia a veto on the issue. This could give Serbia important leverage in status talks, if Russia strongly backs Belgrade. If the United States or other countries decided to reverse current policy and favor independence, a step which is not currently contemplated by the Administration, it might have to pursue unilateral recognition, which could provoke recriminations from Russia and U.S. allies, such as those that bedeviled Western policy in the Balkans in the early 1990s.

Congressional Concerns

The issue of Kosovo's future status has been of significant interest to Members of Congress. Some Members favor independence for Kosovo as soon as possible, a view not shared by the Administration. They say Kosovars should enjoy the same right of self-determination enjoyed by other peoples in the region and throughout the world. On the other hand, other Members are more skeptical about pushing strongly for Kosovo independence in the near future. They say that moving too quickly could destabilize the situation in the Balkans.

In the first session of the 108th Congress, three resolutions were introduced that advocate U.S. support for Kosovo's independence. H.Res. 11 and H.Res. 28 express the sense of the House that the United States should declare support for Kosovo's independence. H.Res. 11 conditions this support on Kosovo's progress toward democracy, while H.Res. 28 supports independence without prior conditions. S.Res. 144 expresses the sense of the Senate that the United States should support the right of the people of Kosovo to determine their political future once "requisite progress" is made in achieving U.N. standards in developing democratic institutions and human rights protections.

⁸ International Crisis Group, "A Kosovo Roadmap," March 1, 2002, at ICG website, [<http://www.crisisweb.org>].