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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. Talks on Kosovo’s status could begin in January 2006, and are expected to be concluded by the end of the year. The second session of the 109th Congress may consider legislation on Kosovo’s status. 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*, by Steven J. Woehrel and Julie Kim.

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. The resolution 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.

“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. This policy has been dubbed “standards before status,” and it formed the basis of U.S. and international policy in Kosovo for over three years. 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.

The international community’s nearly five years of efforts to bring stability to Kosovo suffered a serious blow in March 2004. The death of two ethnic Albanian boys near the divided city of Mitrovica sparked two days of rioting throughout Kosovo on March 17-18, in the worst inter-ethnic violence since the end of the 1999 Kosovo war. Ethnic Albanian crowds attacked several ethnic Serb enclaves as well as international security forces trying to control the rioters. In the course of two days, 19 civilians were killed, more than 900 persons were injured, and over 4,000 forced from their homes by the violence. The riots called into question the performance of UNMIK and KFOR, as well as Kosovo’s government institutions and media. The international community decided to streamline the standards process to focus on “priority” standards, mainly those involving the respect of minority rights. According to some U.N. officials and independent observers, one key purpose of streamlining the standards was to accelerate consideration of Kosovo’s status and the eventual departure of UNMIK from Kosovo.

“Year of Decision” for Kosovo’s Status?

In testimony before the House International Relations Committee on May 18, 2005, Undersecretary of State Nicholas Burns laid out a new U.S. policy initiative on Kosovo, in coordination with the U.N. and the Contact Group.¹ He declared that 2005 was the “year of decision” for Kosovo, meaning that the United States wanted a process to determine Kosovo’s future status to be launched. Burns said that the United States hopes that a U.N. Security Council resolution to endorse the outcome of the status talks will be approved before the end of 2006. He said that uncertainty over status is “not sustainable or desirable” because it “satisfies no one and leaves open the possibility of renewed ethnic violence,” threatening to undo U.S. successes in the Balkans over the past decade. Burns added that an international civilian and military presence would continue after a status settlement in order to ensure its full implementation, including provisions on minority rights. He said that the United States would like the European Union to lead this effort, although the United States would remain “an active partner.”

¹ For a text of Undersecretary Burns’s statement, see the State Department website at [<http://www.state.gov/p/us/rm/2005/46471.htm>].

U.N. envoy Kai Eide submitted a report to U.N. Secretary General Kofi Annan in October 2005 on whether Kosovo had made “sufficient progress” in implementing the standards for status talks to begin.² According to both Serbian and ethnic Albanian officials, the Eide report provides a relatively accurate and balanced assessment of the situation in Kosovo. The report praises Kosovo’s achievements in setting up political and economic institutions. On the other hand, he noted that the economic situation in the province is “bleak;” that Kosovo’s police and judicial system suffer from serious weaknesses; and that the prospects for a multi-ethnic society are “grim.” Nevertheless, Eide recommended that status talks should begin, noting growing impatience with the status quo within the ethnic Albanian community and “Kosovo fatigue” within the international community.

In November 2005, U.N. Secretary General Kofi Annan appointed Martti Ahtisaari of Finland to lead the status talks. In December 2005, the Administration announced that diplomat Frank Wisner will represent the United States at the status negotiations. Ahtisaari has said that he hopes talks will begin in January 2006.

Possible Outcomes

It is too early to say what Kosovo’s future status will be. The United States and the Contact Group have ruled out a return of Kosovo to full Serbian control, such as existed before the NATO bombing of Kosovo in 1999. They have also ruled out any changes in Kosovo’s boundaries and any partition of Kosovo. Other principles for a settlement include “full respect of human rights, the right of refugees and displaced persons to return to their homes, the protection of cultural and religious heritage and the promotion of effective means to fight organized crime and terrorism.” The United States and the other Contact Group countries “agreed to exclude those who advocate violence and that, once begun, the status process must continue without interruption.” The settlement must also “promote stability not only in Kosovo, but throughout Southeast Europe;” “provide full democratic rights for all people, especially minorities;” and “further the integration of the region with the Euro-Atlantic mainstream.”

The main outcomes for the status talks, according to U.S. officials, is whether Kosovo should be independent, or will it continue under Serbian rule with a greater measure of autonomy.³ Kosovar leaders have said that they view their region’s independence as non-negotiable. They say independence for Kosovo would respond to the political preferences of the overwhelming majority of the province’s inhabitants and all of the ethnic Albanian parties in Kosovo’s parliament. They insist that the only issues to be discussed are the terms under which the international community will recognize that independence.

However, some international 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

² For a text of the October 7, 2005 Eide report, see the UN website at [http://www.un.org/Docs/sc/unsc_presandsg_letters05.htm].

³ Statement of Undersecretary Nicholas Burns before the Senate Foreign Relations Committee, November 8, 2005, [<http://www.state.gov/p/us/rm/2005/56602.htm>].

international support for Kosovar independence could undermine the democratic leadership in Belgrade and strengthen extreme nationalists there. There are also questions about the ability of the Kosovars to effectively run their own affairs in the near future or implement any commitments on minority rights, due to the country's poverty and the immaturity of ethnic Albanian political and social institutions. An effective Kosovo government is particularly important for the issue of dealing with powerful organized crime groups and political extremists in the province.

The Serbian government position is that Kosovo must never become independent. This view is backed by an all-party consensus in the Serbian parliament. Serbian leaders have encapsulated their current position on status with the phrase "more than autonomy, but less than independence." However, the terms of the autonomy offered by Serbia are likely to be unacceptable to the Kosovar Albanian side. Sanda Raskovic-Ivic, the Serbian government official in charge of Kosovo affairs, has said that Serbian police would control Kosovo's borders and that fiscal and customs policy in Kosovo would be "connected to" the central government. There would be "one defense minister, one foreign minister, one seat in the United Nations." Kosovo would be demilitarized, with "paramilitary troops" (presumably including ethnic Albanian ones) prohibited.⁴

Serbia has also put forward a decentralization plan for Kosovo. The plan would set up autonomous Serb regions in northern Kosovo and other Serbian-majority enclaves. Serbian-majority areas in Kosovo would be controlled by local Serb authorities, with their own police, and would be linked with each other and with Serbia. Ethnic Albanian authorities would control the rest of the province. 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. To a certain extent, the Serbian plan seeks to strengthen and ratify the existing situation, particularly in northern Kosovo. Since 1999, international officials and ethnic Albanians have criticized Serbia for supporting "parallel structures" that cement its control over Serb-majority areas at the expense of UNMIK's authority.

Some observers have speculated that Serbia's hard-line stance may be a negotiating tactic, with a possible fall-back position that would try to secure a partition of Kosovo, with northern Kosovo formally becoming part of Serbia and the rest becoming independent. However, the United States and other members of the Contact Group have ruled out a partition of Kosovo. Serbian leaders may also seek or be offered other forms of compensation, such as easier terms for NATO and EU membership, or at least increased aid from these institutions and their member countries. Serbian experts realize that such concessions, even if offered by the international community, may lack credibility due to "enlargement fatigue" in many European countries, among other factors.⁵ Moreover, Serbian experts warn that the current political situation in Serbia may make any public concessions on its part difficult. The Serbian government holds a narrow and unstable majority in parliament, and new elections are possible, even likely, in 2006.

⁴ "Sovereignty to Serbia, Executive, Legislative and Judicial Authority to Kosovo," Danas, September 27, 2005.

⁵ Discussions with experts on Serbia, October 2005.

If there is a backlash against a Kosovo settlement, the ultranationalist Radical Party is expected to benefit, perhaps even take power.

“Conditional Independence” for Kosovo?

Although U.S. and European officials have been careful to state publicly that they favor no particular outcome to the talks, press reports have quoted independent experts and unnamed diplomats as suggesting that Kosovo could receive “conditional independence.”⁶ Independence would be granted in exchange for pledges from Kosovo to rule out merger with Albania and other ethnic Albanian-inhabited regions of Serbia, Macedonia, and Montenegro in a “greater Albania.” Kosovo would also have to provide guarantees to respect the rights of ethnic minorities in Kosovo and agree to continued international oversight in this and possibly other areas. If the international community does settle on conditional independence as their preferred solution, much of the negotiation with the Kosovo government may revolve around the conditions and timetable for international recognition, the oversight powers of an international successor mission to UNMIK, and the extent of decentralization and the borders of municipalities.

The Eide report, which does not endorse a status option, suggests that a future international mission, led by the European Union, could be modeled on the international High Representative in Bosnia. The High Representative does not directly administer Bosnia but has powers to veto legislation and remove obstructionist leaders. In addition, Eide proposed that international police and judges continue to participate in Kosovo’s fragile legal system. Eide also called for a “wider decentralization” for Kosovo and “horizontal links” between Serbian municipalities without endangering Kosovo’s central institutions. On October 24, 2005, Kosovo Prime Minister Bajram Kosumi warned against “any conditions or new interim phases” to Kosovo’s independence. He said that he expected that an international “observation or advisory” mission in Kosovo could serve as “a psychological and practical guarantee for ethnic groups that their rights are observed” but that “Kosovo must be an independent and sovereign state.”⁷

Is A Negotiated Settlement Possible?

One important question is what to do if the parties to the negotiation cannot reach agreement, on the basis of conditional independence or another option. U.S. officials say that the international community would not try to impose a result. However, given Belgrade’s flat rejection of any form of independence for Kosovo and the Kosovars’ rejection of any outcome but independence, it may be difficult to reach a consensus. The United States and its allies may therefore be faced with an embarrassing deadlock, such as occurred at the failed Rambouillet negotiations that preceded the NATO bombing campaign against Serbia in 1999. In testimony before the House International Relations

⁶“U.S. Warns Against Violence as Kosovo Talks Loom, Reuters news agency, October 13, 2005.

⁷ “Kosovo PM Wants Full Independence After U.N. Talks,” Reuters news agency, October 24, 2005. See also Kosovo: Toward Final Status, International Crisis Group, January 24, 2005, at [<http://www.crisisgroup.org/home/index.cfm?>].

Committee in May 2005, Undersecretary Burns warned that “undue delay” or obstruction by Serbia in status talks could cause the United States to “reevaluate Belgrade’s role.”⁸

If the international community attempted to impose a settlement, it would be faced with difficult problems. If the Serbian side rejected a proposed settlement, it could prevail upon Russia to threaten to veto a Security Council resolution endorsing it. On the other hand, Russia might be reluctant to isolate itself on the issue, particularly since the presence of U.S. and European troops and administrators means that the EU and the United States have more influence on the situation on the ground in Kosovo than Russia has. A move by the United States or other countries to endorse a proposed settlement without the support of Serbia, Russia, other members of the Contact Group, or the Security Council could provoke recriminations such as those that bedeviled international policy in the Balkans in the early 1990s.

Leverage over the Kosovar side to accept solutions other than independence may also be limited. Kosovar leaders know that the international community has little desire to administer Kosovo indefinitely, particularly given the possibility that the ethnic Albanian majority in Kosovo could become more hostile to the international presence if their demands for independence continue to be rejected. However, Kosovo’s continued need for aid and security guarantees may be important levers for the international community in the talks.

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. 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. They favor continuing to press the people of Kosovo to implement the standards.

The 109th Congress has taken up the issue of Kosovo’s status. On January 4, 2005, Representative Tom Lantos introduced H.Res. 24, which expresses the sense of the House that the United States should support Kosovo’s independence. On October 7, 2005, the Senate passed S.Res. 237, a resolution supporting efforts to “work toward an agreement on the future status of Kosovo.” The resolution said that the unresolved status of Kosovo is not sustainable. It did not express support for any particular status option but said that it should “satisfy the key concerns” of the people of Kosovo and Serbia and Montenegro. Other resolutions may be introduced in second session of the 109th Congress, in anticipation or during status negotiations. An identical House resolution was introduced on December 17, 2005 (H.Res. 634). The second session of the 109th Congress may also consider legislation on Kosovo’s status.

⁸ For a text of Undersecretary Burns’s statement, see the State Department website at [<http://www.state.gov/p/us/rm/2005/46471.htm>].