

# Appendix 1A. Status and statehood in the Western Balkans

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## I. Introduction

The Western Balkans region has experienced turbulent times since the end of the cold war.<sup>1</sup> The massive violence that followed the break-up of the multi-ethnic Socialist Federal Republic of Yugoslavia (FRY) has now ended and the risks of its recurring have diminished significantly. Not all the consequences of the violent break-up of Yugoslavia have been successfully accommodated, however. Europe's security is affected in various ways by the outcomes of earlier wars between and within the successor republics, of international interventions, and of other internal tensions (notably, in the Former Yugoslav Republic of Macedonia, FYROM). The ultimate statuses of Kosovo and, to a different extent, Montenegro, are unclear. In the case of Kosovo the question is whether the entity will gain independent statehood, whereas in the case of Montenegro it concerns the framework in which state sovereignty will be realized. Meanwhile, a massive international presence—by the United Nations (UN), the European Union (EU), the North Atlantic Treaty Organization (NATO) and the Organization for Security and Co-operation in Europe (OSCE)—remains in the area, carrying out some direct administration functions as well as 'peace-building' (including programmes for economic and social development).<sup>2</sup> This in itself shows how far the area remains from any kind of normalization.

There is a certain rhythm in the evolution of the history of the former Yugoslavia, with major events and course corrections every five to six years. One such major event came when, in parallel with the end of the cold war, Serbian President Slobodan Milosevic eliminated the autonomous status of Kosovo (and that of Vojvodina) in 1989. The wars of liberation, which began in 1991, ended in 1995 with the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement),<sup>3</sup> which guaranteed not only the *de jure* but also the *de facto* independence of Bosnia and Herzegovina (BiH). Between 1999 and 2001 a further set of unsolved problems spilled over. As well as Serbia's loss of control over Kosovo following the NATO military operation of March–June 1999, three major leaders of post-Yugoslav history left power before the end of 2001: presidents Franjo Tudjman of Croatia, Alija

<sup>1</sup> 'The Western Balkans' is the term which the European Union (EU) has used since 1999 to refer to those countries of South-Eastern Europe which are not yet EU members and have not yet received a specific commitment or date for future membership, but which enjoy a credible prospect of membership once political stability in the countries is restored. The region consists of Albania and 4 successor states of the former Yugoslavia—Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, and Serbia and Montenegro, including the international protectorate of Kosovo, a province of the Republic of Serbia. Slovenia is not included, as it has joined the EU (May 2004) and the North Atlantic Treaty Organization (Mar. 2004).

<sup>2</sup> On peace missions in the region see appendix 3A in this volume.

<sup>3</sup> General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement), Dayton, Ohio, 14 Dec. 1995, Annex 1-B, Regional Stabilization, URL <<http://www.oscebih.org/overview/gfap/eng/>>.



**Figure 1A.1.** Map of the Western Balkans

Izetbegovic of BiH, and Slobodan Milosevic of the FRY. The chances of lasting peace in the Western Balkans, and of the region's eventual full incorporation in European institutions, were improved overall by this round of events; but a further consequential set of policy challenges and choices faces the international community in 2006.<sup>4</sup>

Decisions about new statuses for the territories of the former Yugoslavia need to have, among other things, a viable economic basis. At present it is hard to speak of economic progress except in Croatia and Slovenia. Economic recovery has not been adequate to compensate for the losses caused by war, turbulence and oppression in the 1990s. High unemployment,<sup>5</sup> insufficient investment and large 'grey' and 'black' economies contribute to the persistence of problems. Per capita gross domestic product in Serbia and Montenegro was about €2240 in 2003, whereas in Kosovo it was barely €1000.<sup>6</sup> Levels of corruption continue to be high: BiH is ranked 88th and

<sup>4</sup> See also chapter 1.

<sup>5</sup> The data are most dramatic in Kosovo: according to official data, unemployment continues to run at 50% in general and at 70% among people under 25 (half the population). Pond, E., 'Kosovo and Serbia after the French *non*', *Washington Quarterly*, vol. 28, no. 4 (autumn 2005), p. 29. It is difficult, however, to take account of work done in the 'grey' and 'black' sectors.

<sup>6</sup> For data on Serbia and Montenegro see European Commission, 'Serbia and Montenegro: 2005 Progress Report', Brussels, 9 Nov. 2005, SEC (2005) 1428, [COM (2005) 561 final], URL <[http://europa.eu.int/comm/enlargement/report\\_2005/index.htm#pcc](http://europa.eu.int/comm/enlargement/report_2005/index.htm#pcc)>, p. 60. For data on Kosovo see Commission of the European Communities, 'Communication from the Commission: a European future for Kosovo',

Serbia and Montenegro is 97th on Transparency International's Corruption Perceptions Index for 2005.<sup>7</sup> Such an economic situation does not provide a favourable environment in which to reconcile old grievances.

The year 2006 should help to shape the future for three remaining problematic parts of the region. First, negotiations have taken place about the final status of Kosovo (with a green light from the UN Security Council<sup>8</sup>) since early 2006. Second, Montenegro will hold a referendum in the spring of 2006 on whether or not to maintain the Serbian–Montenegrin federal state.<sup>9</sup> Third, parliamentary elections in late 2006 in BiH should provide evidence about the direction that state is taking and, in particular, whether it is necessary to move beyond or modify the Dayton Agreement as a framework for further progress. Although these three events are only loosely interrelated, their outcome taken together will help shape the Western Balkans for the future.

## II. Pending status and statehood issues

### Kosovo

When the NATO military operation ended in June 1999 the UN Security Council passed Resolution 1244.<sup>10</sup> It did not address the final status of Kosovo but had the following key elements: (a) a reaffirmation of the sovereignty and territorial integrity of the FRY and the other states of the region; (b) a reference to the 1999 Interim Agreement for Peace and Self-Government in Kosovo, known as the Rambouillet Accord,<sup>11</sup> which had been signed by the Kosovan side although not by Belgrade; and (c) a statement that the international presence had the aim *inter alia* to 'determine Kosovo's future status'.<sup>12</sup> Some analysts see this text as a typical case of constructive ambiguity,<sup>13</sup> but it can also be read as a product of realism since it would have been impossible for members of the Security Council to agree on Kosovo's status at the time. The reference to the territorial integrity of the FRY aimed to reassure Belgrade that it had not lost Kosovo by default, while applying the same principle to other states of the region hinted that changes in Kosovo would not mean any wider redraw-

Brussels, 20 Apr. 2005, [COM (2005) 156 final], URL <[http://www.eu.int/comm/enlargement/docs/pdf/COMM\\_PDF\\_COM\\_2005\\_0156\\_F\\_EN\\_ACTE.pdf](http://www.eu.int/comm/enlargement/docs/pdf/COMM_PDF_COM_2005_0156_F_EN_ACTE.pdf)>, p. 4.

<sup>7</sup> The Transparency International Corruption Perceptions Index 2005 ranked 159 states in 2005. Except for Palestine, it does not measure the performance of quasi-independent territories, such as Kosovo. See the Transparency International website, URL <<http://www.transparency.org/>>.

<sup>8</sup> UN Security Council, 'Statement by the President of the Security Council', UN document S/PRST/2005/51, 24 Oct. 2005. The statement contained the approval to start negotiations on the future status of Kosovo. For background see UN Security Council, 'Security Council presidential statement offers full support for start of political process to determine Kosovo's future status', 24 Oct. 2005, URL <<http://un.org/News/Press/docs/2005/sc8533.doc.htm>>.

<sup>9</sup> International Crisis Group, 'Montenegro's independence drive', Europe report no. 169, 7 Dec. 2005, URL <<http://www.crisisgroup.org>>, p. 1.

<sup>10</sup> UN Security Council Resolution 1244, 10 June 1999.

<sup>11</sup> US Institute of Peace, Peace agreements digital collection: Kosovo, Interim Agreement for Peace and Self-Government in Kosovo, Rambouillet, France, 23 Feb. 1999, URL <[http://www.usip.org/library/pa/kosovo/kosovo\\_rambtoc.html](http://www.usip.org/library/pa/kosovo/kosovo_rambtoc.html)>.

<sup>12</sup> UN Security Council Resolution 1244 (note 10), preamble, points 11 a., e.

<sup>13</sup> The ambiguity lies *inter alia* in juxtaposing reference to the territorial integrity of the FRY with a reference to the Rambouillet Accord, hinting that 'independence was not ruled out'. Batt, J., *The Question of Serbia*, Chaillot Paper no. 81 (EU Institute for Security Studies: Paris, Aug. 2005), URL <<http://www.iss-eu.org/>>, p. 35.

ing of boundaries. Although the Dayton Agreement of 1995 did not redraw international borders, it secured the recognition of the independence of BiH by the FRY and gave legal recognition to the entities of BiH whose borders were the product of war. Moreover, Resolution 1244 means that no other state (*vide* Albania) should think of using Kosovo's open status to extend its own sovereign territory. At the same time, the leaving open of the future status (plus the international presence) has reassured the Kosovan Albanian community that they would not return to *de facto* Serbian rule.

### *Stability versus status*

Since 1999 Kosovo has been run by the UN Interim Administration in Kosovo (UNMIK) and security has been provided by NATO's Kosovo Force (KFOR)—with no remaining organic link with Belgrade, except for the northern parts of Kosovo with a majority Serb population. Those who shaped the 1999 settlement expected time to have a major 'healing effect'. The population of Serbia would get used to the *de facto* secession of Kosovo, and the two ethnic communities in Kosovo would be reconciled with the help of new economic prosperity.

Against this background the UN administration developed a policy of '[meeting] standards before status'. Progress was supposed to be made on, notably, functioning democratic institutions, the rule of law, freedom of movement, refugee returns and reintegration, the economy, property rights, dialogue with Belgrade, and the role of the Kosovo Protection Corps (for internal order) before the final status issue could be put on the table. The assumptions on which this approach was based have proved partly unsound, however, in that non-status-linked progress has proved inadequate; has not had the desired effect; and, in some cases, has been blocked by the lack of clarity over status. For example, the separation of ethnic Serbs and Albanians could have contributed to accommodation of the two ethnic groups. However, the *de facto* separation of Kosovo from Serbia did not produce reconciliation and had an adverse bearing on cooperation and coexistence—as the outbreak of violence in March 2004 and some less visible subsequent events have shown. The lack of economic prosperity combined with the Kosovo–Serbia divide, including the closure of the Kosovo–Serbia border, did not provide healthy ground for coexistence between the ethnic communities. Meanwhile, the absence of a clear final status and uncertainty over Kosovo's future degree of sovereignty have precluded the clarity and predictability regarding the local legal framework that is an essential precondition of any lasting, large-scale business interest, particularly of foreign direct investment. This uncertainty also makes it difficult to address property rights: another factor that obstructs economic development and especially privatization. The standards before status policy has not, however, been entirely without merit. It has put pressure on Kosovo's political class to make efforts to respect certain standards, while the UN has gradually transferred some responsibility to it for managing the affairs of the territory.

A long-awaited report presented in October 2005 by the Special Envoy of the UN Secretary-General, Ambassador Kai Eide, concluded that the aims of the UN's policy had been only partly met.<sup>14</sup> The Serbian Government's Council for Kosovo made a similar point more forthrightly, estimating that 'standards are far from being met in the province, especially regarding the non-Albanian communities' basic rights and

<sup>14</sup> See, e.g., Eide, K., 'A comprehensive review of the situation in Kosovo', reproduced in UN Security Council, Letter dated 7 October 2005 from the Secretary-General addressed to the President of the Security Council, UN document S/2005/635, 7 Oct. 2005.

the creation of a multi-ethnic society'.<sup>15</sup> In the face of these realities, international policy makers had to consider whether to make greater efforts for full compliance with the standards, or effectively give up on the concept—and what that would mean for the final status.

By the end of 2005 the view was gaining ground in international circles that a rigid interpretation of the standards before status policy would not produce the desired goal of a well-governed, self-sufficient and stable Kosovo. As one senior US official put it, 'we are effectively moving to an approach of "standards with status"—recognizing that only with a resolution of the status question will we bring the kind of stability to Kosovo necessary for the building of the kind of advanced democratic and market-oriented institutions that the standards process has sought to achieve'.<sup>16</sup> This realignment of Western policy opened the way for agreement that talks on the future status of Kosovo could begin, with standards only partially met.<sup>17</sup>

During the months before the opening of these talks, the parties made efforts to consolidate their pre-negotiating positions by addressing a number of different audiences. Both the Serbian leadership<sup>18</sup> and the political establishment of Kosovo have addressed themselves to the states and institutions that will have a decisive say in any accord on the final status. At the same time, they have been sending messages to each other and to their respective electorates. Although the messages to the three constituencies have overlapping elements, they are not identical. Communication between Belgrade and Pristina and with the domestic audiences can be summarized as signalling resolve not to shift from their fundamental positions of, respectively, 'no surrender of Serbian sovereignty' and 'independence'. Messages to the international community have been crafted more carefully. Each party, despite clearly expressed positions, seeks some degree of flexibility in order to bridge the difference during the talks. One example may lie in the ways each side currently defines what is 'acceptable' domestically: Belgrade arguing that any solution unacceptable to Serbia would radicalize its own population and perhaps destabilize the state. In reality, however, increasingly broad strata of the Serbian population seem not to have strongly negative feelings on an independent Kosovo state, although the issue of how it would treat its Serbian minority is far more sensitive. It is thus open to debate when and under what conditions Serbian politics would be able to recognize that 'Kosovo is lost'. However, no Serbian politician would like to have his name associated with the loss. Various

<sup>15</sup> 'Serbian Government's Council for Kosovo: standards far from being met in the province', *V.I.P. Daily News Report*, no. 3133 (1 Aug. 2005), p. 1.

<sup>16</sup> US Department of State, Burns, R. N., Under Secretary of State for Political Affairs, 'Ten years after Dayton: winning the peace in the Balkans', Address at the Woodrow Wilson Center, Washington, DC, 19 May 2005, URL <<http://www.state.gov/p/us/rm/2005/46548.htm>>. The EU, in turn, refers to 'status with standards'. See 'Summary note on the joint report by Javier Solana, EU High Representative for the CFSP, and Olli Rehn, EU Commissioner for Enlargement, on the future EU Role and Contribution in Kosovo', Information for journalists, S412/05, Brussels, 9 Dec. 2005, URL <[http://ue.eu.int/ueDocs/cms\\_Data/docs/pressdata/EN/reports/87565.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/EN/reports/87565.pdf)>, p. 1.

<sup>17</sup> Consultations have begun with the parties as well as in the capitals of some Contact Group countries (France, Germany, Italy, Russia, the United Kingdom, the United States and the EU). This stage of 'shuttle diplomacy' will be followed by the drafting of an agreement that will then be discussed with the Serbian and Kosovan Albanian negotiating teams in the spring of 2006 at the earliest. The formal opening of the talks has been delayed so that the two parties do not state their positions publicly and thus 'tie their own hands'. See Judah, T., 'Kosovo's moment of truth', *Survival*, vol. 47, no. 4 (winter 2005–2006), p. 79.

<sup>18</sup> The leadership of Montenegro has declared itself disinterested in the Kosovo talks and their outcome. This is understandable in light of the referendum to be held about the future relationship of Serbia and Montenegro.

analysts have drawn the same conclusion: 'If the Contact Group pushes for independence, it could face a Serb walk-out and will then have to decide whether to impose a settlement. Such a scenario might even suit . . . the Serb prime minister. He will be able to claim he fought as hard as he could then retreated without surrendering.'<sup>19</sup> Meanwhile, Kosovo naturally argues that depriving it of its right to self-determination (and hence, independent statehood) would risk a breakdown of order in Kosovo itself.

On paper there is an unbridgeable gap between the opening bids. The Serbian side argues *inter alia* that Security Council Resolution 1244 is based on territorial integrity: since Kosovo has never attained independent statehood, the only answer is to restore the sovereignty of the successor state to Yugoslavia (Serbia and Montenegro).<sup>20</sup> This position offers no more than some type of *sui generis* solution for Kosovo that might offer 'more than autonomy'. Kosovan Albanian politicians for their part argue that such a solution is unacceptable, because they view Kosovo as having a moral claim to independence in the light of its population's suffering at Serbian hands. The autonomy Kosovo once enjoyed under Yugoslavia's 1974 constitution is, for them, no solution: Kosovo lived 'under the control of Belgrade much too long' and its case is similar to that of 'the oppressed people of Iraq and Afghanistan after their liberation'.<sup>21</sup> At bottom, the Kosovan Albanian case, as presented, is grounded in the right to self-determination, which implies nothing less than the right to independent statehood. Kosovan Albanian politicians are reluctant even to discuss solutions involving decentralization within Serbia, fearing that Kosovo might inadvertently lose the chance of full independence.

The international community—notably, the Contact Group of France, Germany, Italy, Russia, the United Kingdom, the United States and the EU—has considered various options. Some have been excluded *expressis verbis*: (a) returning Kosovo to Serbian dominance, (b) permitting a union with Albania, or (c) partitioning Kosovo.<sup>22</sup> It is clear that the return to Serbian dominance is neither feasible nor desirable. An eventual union with Albania, a step towards a greater Albania, would have major regional repercussions unacceptable to most parties. Allowing Kosovo to unite with any other neighbouring Albanian-inhabited territory (e.g., parts of Macedonia and southern Serbia) has also been excluded. Partition, apart from local objections, might have dangerous domino effects leading to border revisions elsewhere in the Western Balkans. These three considerations combined mean that all internationally acceptable solutions assume the territorial integrity of Kosovo.

Defining what the final status of Kosovo should not be leaves the question of what options are left. Currently, independent statehood as well as a *sui generis* status short of it remain equally possible. Responsible officials have denied 'that the international community has a solution which has already been established and written and should just be implemented. There is no such thing. Furthermore, a solution is to be found at

<sup>19</sup> Wagstyl, S., 'Struggling towards stability: why Kosovo may hold the key to the Balkans' future', *Financial Times*, 20 Feb. 2006, p. 11.

<sup>20</sup> This is why there are forces in Kosovo which argue that first the entity should practice its right to self-determination (gain independent statehood) and only then negotiate bilaterally with Belgrade. Judah (note 17), pp. 81–82.

<sup>21</sup> Thaci, H., 'My people deserve their independence', *International Herald Tribune*, 26–27 Nov. 2005, p. 4.

<sup>22</sup> Rasmussen, N. A., Danish Institute for International Affairs (DIIS), 'Kosovo independence—de jure versus de facto', DIIS report 2005:14, Oct. 2005, URL <<http://www.diis.dk/sw15761.asp>>, p. 13. Other sources add a 4th 'no' for immediate full sovereignty for Kosovo. See Pond (note 5), p. 23.

the end of a long and hopefully constructive negotiation process.<sup>23</sup> Bearing in mind the distance between the starting positions of the parties, the negotiation process now beginning is unlikely to be particularly constructive or amicable and the aim of concluding the talks in less than a year appears ambitious.<sup>24</sup>

### *The issue of minority rights*

Establishing the final status of Kosovo should contribute to stability in the Western Balkans, but it will require the regulation of a broad range of issues. If partition is indeed off the agenda, respect for minority rights becomes a central issue. It is probably the major issue to be settled at the negotiations on future status, irrespective of whether Kosovo becomes a sovereign entity de jure or only de facto. The legal framework will be quite different in the two cases, however. If Kosovo attains independent statehood it will have a state's responsibility for guaranteeing minority rights, whereas if it acquires a status short of independent statehood it will not have such responsibility—a paradoxical situation from the viewpoint of Serbian concerns. Regardless of the outcome, it is the assumption of the international community that some form of international presence will continue in Kosovo, with particular responsibility for minority rights.

There are no reliable data available on the ethnic composition of Kosovo,<sup>25</sup> but it is certain that it has changed gradually. According to the census of 1981 less than 80 per cent of the population of Kosovo was Albanian; now it is close to 90 per cent. According to estimates, 7 per cent of the population was Serbian in 2003.<sup>26</sup> Experts have estimated the current size of the ethnic Serb population of Kosovo as approximately 70 000, equivalent to 3.5 per cent of the population.

The record in Kosovo since 1999 regarding respect for minority rights, particularly that of the Serbian minority, has been uneven at best. It can be argued that a 'multi-ethnic Kosovo does not exist except in the bureaucratic assessments of the international community'.<sup>27</sup> In the forthcoming talks, the Kosovan authorities can be expected to make promises about respect for human rights, including minority rights: but it is another question how sincere and how enforceable such pledges will be. As things stand, a continued international presence in Kosovo and a role in enforcement appear to be the only way to guarantee minority rights.<sup>28</sup> The dilemma is that accepting a continued international responsibility in this sphere (perhaps also in a status settlement) does nothing to promote better behaviour by the Kosovan authorities. On the

<sup>23</sup> An interview with the German Ambassador to Serbia and Montenegro, Andreas Zobel, in the daily *Dnevnik* (Novi Sad) is cited in Serbian and Montenegrin Ministry of Foreign Affairs, Daily survey, Belgrade, 15 Apr. 2005, URL <[http://www.mfa.gov.yu/Bilteni/Engleski/b250405\\_e.html#N16](http://www.mfa.gov.yu/Bilteni/Engleski/b250405_e.html#N16)>.

<sup>24</sup> Various estimates have been made, usually mentioning a 6–12 month period of negotiations. Some analysts predict even more protracted talks. See *V.I.P. Daily News Report*, no. 3215 (23 Nov. 2005), p. 1. The first round of talks between representatives of Belgrade and Pristina started on 20 Feb. 2006. See 'Kosovo talks start in "polite" tone, no rapprochement of stands', *V.I.P. Daily News Report*, no. 3277 (21 Feb. 2006), p. 1.

<sup>25</sup> It is partly for this reason that the Albanian population of Kosovo boycotted the census in 1991. The next census is scheduled for 2006.

<sup>26</sup> European Centre for Minority Issues, 'Statistics', URL <<http://www.ecmi.de/emap/download/KosovoStatisticsFinalOne.pdf>>.

<sup>27</sup> International Commission on the Balkans, *The Balkans in Europe's Future* (Centre for Liberal Strategies: Sofia, 2005), URL <<http://www.balkan-commission.org>>, p. 14.

<sup>28</sup> It has been suggested that a centralized international power should be established in Kosovo temporarily similar to that which existed in BiH under Lord Ashdown, who represented the EU and the UN.

other hand, the kind of decentralization solutions proposed by Serbia would not help with this aspect either, and it is hard to see how protection of the Serbian minority by Belgrade could work. At present, the Serbian side maintains that 'autonomy for Serbs in Kosovo must be secured within the framework of Kosovo's political autonomy'.<sup>29</sup>

The riddle of rights for the Serbian minority might be simplified by one other factor: the role of reciprocity. There is not only a Serbian minority in Kosovo but also an Albanian minority in the south of Serbia, in the area of Presevo. If Kosovo gains independence and, with it, state responsibility to enforce minority rights, any possible mistreatment of the ethnic Serbs in Kosovo could have obvious repercussions for the treatment of the Albanian minority in Serbia. This creates an element of interdependence, but may also add to the volatility of the situation.

### *The allure of a 'return to Europe'*

The process of the status talks, and any subsequent period of phasing-in,<sup>30</sup> will provide an opportunity for external powers to observe how the authorities of Kosovo can 'grow into' their future responsibilities. The future rulers in Kosovo will need to reassure the international community that any given final status does not result in a weak entity that risks spreading instability beyond its borders and fostering transnational threats. At the same time, it should be noted that the talks are not traditional bilateral negotiations. The UN's appointed mediator, Martti Ahtisaari, the former President of Finland, will be working for compromise, while many powerful external actors are in a position to offer practical inputs. Such 'sticks and carrots' may include contributions to prosperity and welfare in both Serbia and Kosovo, but the largest single inducement is widely perceived as being the opening of the way for both entities to join the EU and NATO. It is necessary to note, however, that the failure to bring the EU Constitutional Treaty into force and the EU budget for 2007–2013 make any EU promise of future membership less credible than before.<sup>31</sup> In practical terms, the road to membership would lie first through joining NATO's Partnership for Peace (PFP), and the prospect of some status with the EU that would go beyond the current option of a Stabilization and Association Agreement.<sup>32</sup> If members of the Contact Group would like to achieve reconciliation between Serbia and Kosovo, they (and some of the international organizations where they play a key role) will have to make some sacrifices.<sup>33</sup>

<sup>29</sup> 'Serbian Parliament endorses resolution for Kosovo talks', *V.I.P. Daily News Report*, no. 3214 (22 Nov. 2005), p. 1.

<sup>30</sup> As in similar cases, there have been 'trial balloons' to test the reactions of the parties. Slovenian President Janez Drnovsek put forward a plan whereby the international community would hand over all prerogatives to the authorities in Kosovo over an 18-month period, during which general and presidential elections would be held. Kosovo would gain international recognition in 5 years, if the international community determined that fundamental democratic standards were being respected. Serbian and Montenegrin Ministry of Foreign Affairs, Daily survey, Belgrade, URL <[http://www.mfa.gov.yu/Bilteni/Engleski/b211005\\_e.html](http://www.mfa.gov.yu/Bilteni/Engleski/b211005_e.html)>. The Serbian authorities reacted strongly to this 'implied independence plan' for Kosovo and cancelled the visit of the Slovenian president to Belgrade.

<sup>31</sup> See Peel, Q., 'Address the constitution or abandon expansion', *Financial Times*, 19 Jan. 2006, p. 13. There are those who continue to argue, like Italy's Foreign Minister, that 'the carrot is EU membership'. See Fini, G., 'Kosovo and the Balkans: the carrot is EU membership', *International Herald Tribune*, 17 Jan. 2006, p. 7.

<sup>32</sup> Bildt, C., 'Europe's third chance to get it right in the Balkans may be its last', *Europe's World*, autumn 2005, URL <<http://www.europesworld.org/>>, p. 112.

<sup>33</sup> Further concretizing any entity's accession prospects is not a painless option for EU governments at a time when their publics are showing clear 'enlargement fatigue'. See section IV of chapter 1.



In this situation the international institutions have two types of means at their disposal: socialization and conditionality. Whereas the EU has relied more on the former vis-à-vis both Kosovo and Serbia and Montenegro, NATO has taken a more 'conditional' approach in its institutional relations with Serbia and Montenegro, insisting primarily on full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). It remains to be seen whether the NATO policy can be sustained without endangering the hopes of Serbian accommodation to an adequate final status for Kosovo. The EU has demonstrated significant commitment to the Western Balkans, both in declared policy and in the carrying out of projects. The EU–Western Balkans Summit of June 2003 went furthest, declaring that the 'future of the Balkans is within the European Union'.<sup>34</sup> It is widely advocated that the EU upgrade its commitment both in terms of political attention, for example by convening a Western Balkans summit in 2006,<sup>35</sup> and by the allocation of resources to back up its goals for the region. It remains to be seen, however, whether the EU is in a position to demonstrate sufficient determination for such purposes amid the lingering consequences of its failure to bring the EU Constitution into force.

Conversely, if policies short of guaranteed membership are to be adopted towards the Western Balkans, the EU will need to be extremely innovative in order to have any chance of securing long-term influence at an affordable 'price'. While the EU is contemplating various options, the official policy on membership remains unchanged and is underlined by the opening of EU accession negotiations with Croatia, the advancement of FYROM to candidate status and the opening of talks on Stabilization and Association Agreements with BiH and Serbia and Montenegro. It is particularly important that borders become more open and provide more for inclusion than exclusion. In principle—for Kosovo and the Western Balkans generally—divisions might gradually be eased if national separation could be reduced for purposes of human contacts, education and the movement of labour. Without such changes at the grass roots, increased external commitment to the development of Kosovo may fail to bring the switch in attitudes of the population and the political establishment that is needed to break out of the current situation. The need for such deep-reaching transformation, added to the concerns already mentioned that a hastily emancipated Kosovo could become a 'Colombia in Europe . . . an El Dorado for organised crime',<sup>36</sup> reinforces the logic of planning for a carefully managed transition phase before full statehood is attained. During this period Kosovo would have to be helped to develop structures to carry out basic state functions, including public safety, justice and social services. Some of the necessary steps have been under way for some time, but an agreement on final status would add a perhaps decisive impetus and clear end goal. Although it would be the easy way out to conclude that it is better to focus on 'future status' rather than on 'final status' when any further step is considered, the latter has to be borne in mind. The evolution of the issue is being followed closely not only by the direct stakeholders, but also by countries that have similar problems related to conflicts where the emergence of statehood may provide a solution. To quote the

<sup>34</sup> 'EU–Western Balkans Summit Declaration', 10229/03 (Presse 163), Thessaloniki, 21 June 2003, URL <[www.mfa.gr/english/foreign\\_policy/eu/EU-WBalkans\\_en.pdf](http://www.mfa.gr/english/foreign_policy/eu/EU-WBalkans_en.pdf)>, p. 2.

<sup>35</sup> International Commission on the Balkans (note 27), p. 36.

<sup>35</sup> According to the Commission the summit meeting should present a 'Balkan audit' in order to get a clear idea about the commitment of the EU to the Western Balkans.

<sup>36</sup> International Crisis Group, 'Kosovo: toward final status', Europe report no. 161, 24 Jan. 2005, URL <<http://www.crisisgroup.org>>, p. 8.

Foreign Minister of Azerbaijan in December 2005: 'Next year is expected to be a decisive one in the process of the settlement of the Kosovo conflict. It is a firm and unequivocal position of the Republic of Azerbaijan that this process should be carried out in full accordance with the UN Security Council resolution 1244 and on the basis of the Helsinki Final Act, and regardless [of] its outcome it must not establish any precedent whatsoever'.<sup>37</sup>

## Montenegro

Montenegro is the last republic of the former Yugoslavia whose statehood remains formally, if loosely, associated with Serbia. The relationship is based on shaky foundations, however. According to the Constitutional Charter of the State Union of Serbia and Montenegro negotiated with EU assistance in 2003: 'Upon the expiry of a 3-year period, member states shall have the right to initiate the proceedings for the change in its state status or for breaking away from the state union of Serbia and Montenegro . . . The decision on breaking away from the state union . . . shall be taken following a referendum'. Each republic has the right to such a referendum.<sup>38</sup> According to the Constitutional Charter the two constituent entities of the state union are equal in other respects, too, although some of the related provisions have been systematically violated.<sup>39</sup>

Unlike the issue of the future status of Kosovo, the issue of Montenegro was not prominent until late 2005. During the Milosevic era Montenegro regularly received encouragement primarily from the USA to seek independence as a means to weaken the position of Belgrade and distract its leadership's attention from its other demands. Since the autumn 2000 revolution in Belgrade, however, the position of the world at large is far more ambiguous. Complications include the fact that ethnicity has been the foundation of statehood in the Western Balkans since the break-up of the former Yugoslavia, and it would be difficult to contend that there is a separate Montenegrin ethnic identity.<sup>40</sup> Second, Montenegro has been criticized for weakness in fighting trans-boundary criminality, and there is little reason to hope that it would deal better with this on its own. This may be a major reason for the EU's hesitation on the independence of Montenegro. Finally, there are doubts as to the economic viability of Montenegro, a country of 700 000 people.

Montenegro's referendum on independence will be held on 21 May 2006.<sup>41</sup> The biggest opposition party in Montenegro has opposed a referendum,<sup>42</sup> and the outcome is unpredictable. It is also not clear whether the de facto dissolution of the State Union of Serbia and Montenegro and thus de facto independence of the two constitu-

<sup>37</sup> Organization for Security and Co-operation in Europe (OSCE), 'Address by H. E. Dr Elmar Mammadyarov, Minister of Foreign Affairs of the Republic of Azerbaijan, at the 13th meeting of the OSCE Ministerial Council', OSCE document MC.DEL/18/05, 5 Dec. 2005, p. 2.

<sup>38</sup> The Constitutional Charter of the State Union of Serbia and Montenegro, adopted in Feb. 2003, Art. 60. It is available in English and Serbian at URL <[http://www.mfa.gov.yu/Facts/const\\_scg.pdf](http://www.mfa.gov.yu/Facts/const_scg.pdf)>.

<sup>39</sup> It suffices to note that the 'candidates for the Minister of Foreign Affairs and the Minister of Defence [in Belgrade] shall be from different member states' according to the Constitutional Charter of the State Union of Serbia and Montenegro, Art. 35. This rule has not been put into practice.

<sup>40</sup> See International Crisis Group (note 9), pp. 12–14.

<sup>41</sup> 'Montenegro referendum to take place on May 21, local elections in fall', *V.I.P. Daily News Report*, no. 3283 (1 Mar. 2006), p. 1.

<sup>42</sup> 'EU Ministerial Council urges against unilateral actions in Montenegro', *V.I.P. Daily News Report*, no. 3235 (21 Dec. 2005), p. 1.

ent entities must entail their de jure independence from each other (it would certainly leave practical issues like a custom union and other economic links outstanding). Nevertheless, the Prime Minister of Montenegro has ‘announced his withdrawal from politics if the project of independence is not backed by the majority of the citizens’.<sup>43</sup>

If the rule is observed that any referendum has to have a minimum of 50 per cent plus 1 of the votes cast (although some analysts advocate a weighted majority), the popular vote may well be inconclusive. The Montenegrin Government opposes this approach because opinion polls have indicated that it would be extremely difficult to achieve such a majority. If, despite expectations, the vote favours independence, it might still fail to obtain the endorsement by two-thirds of the parliament that is necessary according to some interpretations of the Montenegrin Constitution.<sup>44</sup>

Those international actors most concerned in the issue are giving mixed signals. Both EU member states and the USA emphasize that they would back ‘any decision the people of Montenegro should reach in a democratic referendum’. It has also been emphasized, however, that ‘both Montenegro and Serbia would fare better if they remained close’.<sup>45</sup> According to the British ambassador to Serbia and Montenegro, ‘the general assessment of EU officials was that Serbia and Montenegro would continue drawing closer to EU membership faster and more successfully if they would remain together in the same union’.<sup>46</sup> Cooperation between the EU and Serbia and Montenegro is held back by the limited cooperation of Serbia with the ICTY, which Montenegro cannot influence. Montenegro thus may conclude that its advancement towards EU membership would be accelerated were it to seek independence.

The security implications of an eventual separation of Serbia and Montenegro are twofold. It may compound the perception of the Serbian population that their country has been punished unjustly. This may generate some adverse political reactions, particularly if no satisfactory compromise is found in the talks on the final status of Kosovo. A further concern is that the transnational risks especially of organized crime and corruption may not be managed adequately by an independent Montenegro, although current performance by the ‘state union’ is not inspiring either. Generally, criminal structures seem to have cooperated more effectively than states in the Western Balkans.

### **Bosnia and Herzegovina**

In contrast to Kosovo and Montenegro, the statehood of Bosnia and Herzegovina was reaffirmed in the 1995 Dayton Agreement—but with provision for significant autonomy to its constituent entities. During the 10 years that have passed since the signing of the peace arrangement, some steps have been taken to strengthen the central state authorities. They have included symbolic measures, like the standardization of licence

<sup>43</sup> Serbian and Montenegrin Ministry of Foreign Affairs, ‘Montenegro—referendum in spring of 2006, Vujanovic’, Daily survey, Belgrade, 15 Apr. 2005, URL <[http://www.mfa.gov.yu/Bilteni/Engleski/b250405\\_e.html#N16](http://www.mfa.gov.yu/Bilteni/Engleski/b250405_e.html#N16)>.

<sup>44</sup> International Crisis Group (note 9), p. 13.

<sup>45</sup> Serbian and Montenegrin Ministry of Foreign Affairs (note 43) cites US Ambassador to Serbia and Montenegro, Michael Polt.

<sup>46</sup> See ‘Gowan: partitioning of Kosovo would be a mistake’, *V.I.P. Daily News Report*, no. 3245 (6 Jan. 2006), p. 2. It is open to question, however, what time frame for EU membership would motivate local politicians and electorates to act in accordance with external expectations.

plates, and measures of major import such as the unification of the intelligence services and the armed forces.<sup>47</sup>

On the other hand, it is widely recognized that the Dayton Agreement and the subsequent constitutional arrangements have ‘cemented divisions’ and made further progress difficult. The US foreign policy establishment, in particular, seems unified in thinking that Bosnia should be heading towards more state unity. This requires that the ethnically Serbian entity, the Republika Srpska, should recognize ‘once and for all that it is part of a single country’.<sup>48</sup> ‘Bosnia’s leaders and citizens need to break down the last political and ethnic divisions that have persisted since the end of the war . . . it is time for constitutional reform . . . to create a single presidency from the three men who hold the office now, a strong Prime Minister and a more effective Parliament’.<sup>49</sup> The position of the USA is straightforward and understandable in the light of the potential broader implications for the Western Balkans. The EU has been less demanding and has expressed the view that it has no blueprint for constitutional reform and will satisfy itself with the agreement achieved by the parties.<sup>50</sup> When specifically asked about a revision of the borders of BiH in favour of Serbia, UN mediator Ahtisaari has expressed the view that: ‘The answer to this is quite simple: the one who does not hold to the rules of the game should forget about his own objectives.’<sup>51</sup>

Various objectives have been mooted for a new phase of change. Among them is to improve the stability of Bosnia and Herzegovina in the interests of its population and to make it less dependent on external forces to provide that stability (the unusually strong powers wielded by Lord Ashdown while UN High Representative and the EU High Representative in BiH have been one focus for questioning here). The pace of consolidation of the central state structures has become linked with concerns that Serbia might consider seeking compensation at the expense of BiH (i.e., through change in the current status of the Republika Srpska) for its possible impending ‘losses’ in Kosovo and Montenegro. Such worries, even if not always prominent, are kept alive by the perception that ‘the Serb republic remains a Serb citadel and joint, central institutions do not function’.<sup>52</sup> Those who are working to prevent any further slide towards partition are also concerned that human rights, including minority rights, should be respected. While these last issues—as well as the potential role of leverage linked with the prospects of EU and NATO accession—recall what has been said about Kosovo, the key difference is that the statehood of BiH was ‘settled’ in the Dayton Agreement and certain elements of a unified statehood have existed there since the mid-1990s. This not only gives a practical basis to build on, but also means that the international community is more solidly biased towards the defence (or, more

<sup>47</sup> On this and other challenges of security governance in the Western Balkans states see Caparini, M., ‘Security sector reform in the Western Balkans’, *SIPRI Yearbook 2004: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2004), pp. 251–82.

<sup>48</sup> Richard Holbrooke is cited in Knowlton, B., ‘Bosnians reach deal to modify charter: the leaders agree to press for stronger national government’, *International Herald Tribune*, 23 Nov. 2005, p. 8.

<sup>49</sup> US Department of State, Burns, R. N., ‘Bosnia ten years later: successes and challenges’, Address at the United States Institute of Peace, Washington, DC, 21 Nov. 2005, URL <<http://www.state.gov/p/us/rm/2005/57189.htm>>.

<sup>50</sup> European Union @ United Nations, ‘Speech by Commissioner Rehn—from peace-building to state-building’, Geneva, 20 Oct. 2005, URL <[http://europa-eu-un.org/articles/en/article\\_5172\\_en.htm](http://europa-eu-un.org/articles/en/article_5172_en.htm)>.

<sup>51</sup> Interview with Martti Ahtisaari about the future status of Kosovo, reported in Ertel, M. and Kraske, M., ‘Es Wird keine Teilung geben’ [There will be no division], *Der Spiegel*, 20 Feb. 2006, p. 114 (author’s translation).

<sup>52</sup> Joseph, E. P., ‘Back to the Balkans’, *Foreign Affairs*, vol. 84, no. 1 (Jan./Feb. 2005), p. 121.

correctly, active consolidation) of the status quo. The difficult question, as already indicated, is what mix of direct international aid and 'localization' policies—and of faithfulness and flexibility regarding the terms of the Dayton Agreement—might offer the best hope of a stable and self-sustaining BiH for the future.

### **The Former Yugoslav Republic of Macedonia**

The impact of the changing status of Kosovo on FYROM is infrequently mentioned nowadays, although the Albanian ethnic component in the Macedonian state provides a link. The assumption is that the 2001 Ohrid Framework Agreement<sup>53</sup> has resulted in adequate political reconciliation to allow the country's affairs to be managed without open talk of partition. This optimism is somewhat surprising given the findings of a recent opinion poll that 76 per cent of Macedonian respondents 'rather agreed' with the view that 'there are still military conflicts to come' in their country.<sup>54</sup> The disparity between public pronouncements and concerns expressed behind closed doors is apparent. Although some dissatisfaction is noticeable with respect to the implementation of the Ohrid Agreement,<sup>55</sup> it seems 'stability for democracy' works. When the spectre of an eventual internal division of Macedonia along ethnic lines is raised by local politicians, it is mentioned in a passing manner in the hope that the coexistence of three factors will help avoid it: (a) the reluctance of the population of Macedonia to use violence to change the status quo; (b) the declared success of the implementation of the Ohrid Agreement; and (c) the advancement of the integration of the country into the EU.<sup>56</sup>

It is interesting that the EU has qualified FYROM as a candidate country and at the same time has upgraded its commitment to contribute to the development of FYROM's state capacity in policing, including border police, public peace and order and accountability, the fight against corruption and organized crime. The EU police advisory team (EUPAT) was initially established for six months, starting its activity in mid-December 2005.<sup>57</sup>

## **III. Conclusions**

The Western Balkans region is currently speeding up its movement towards lasting solutions of several pending problems of statehood and status. The interrelated nature of the various outstanding issues makes it logical to address them at about the same

<sup>53</sup> See Association for Democratic Initiatives, 'Framework Agreement', 13 Aug. 2001 URL <<http://www.adi.org.mk/frameworkagreement.html>>; and Caparini (note 47), pp. 270, 272, 281.

<sup>54</sup> Based on a comparative survey in the Western Balkans, published in Apr. 2005, the population of every other country and entity in the region assessed the likelihood of military conflict as much less. International Commission on the Balkans (note 27), p. 46.

<sup>55</sup> *Inter alia* the International Crisis Group reports on the severe shortcomings of police and judicial reform. International Crisis Group, 'Macedonia: wobbling toward Europe', Europe briefing no. 41, 12 Jan. 2006, URL <<http://www.crisisgroup.org>>.

<sup>56</sup> As the European Council concluded, 'the European Council decides to grant candidate country status to the former Yugoslav Republic of Macedonia'. Council of the European Union, 'Presidency Conclusions', Brussels European Council, 15–16 Dec. 2005, URL <[http://ue.eu.int/ueDocs/cms\\_Data/docs/pressData/en/ec/87642.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/87642.pdf)>, point 24.

<sup>57</sup> Council of the European Union, 'Council establishes an EU police advisory team in the former Yugoslav Republic of Macedonia', 14912/05 (Presse 313), Brussels, 24 Nov. 2005, URL <[http://ue.eu.int/ueDocs/cms\\_Data/docs/pressdata/en/misc/87118.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/misc/87118.pdf)>.

time, although to solve them all in such a time span is a tall order. What is clear is that, without such efforts, there could be entrenchment of the stalemate that has so far failed to bring either consolidated statehood, or the prosperity so badly needed, to the territories concerned. Each entity affected by the forthcoming changes poses its own dilemmas, and no option can be seen as unambiguously positive and without risk. The dynamic of events may result in a critical realignment of forces in the region. The four challenges mentioned above—Kosovo's status, Montenegro's referendum, the parliamentary elections in Bosnia and Herzegovina, and the stability of FYROM—are all linked in some sense with Serbia's role and status. This is not least because, if BiH consolidates its statehood on its current territory and if Montenegro chooses independence and Kosovo also gains it, Serbia will become a considerably smaller and less central player in the Western Balkans than before. Serbian influence has shrunk significantly since the early 1990s, and the question now is whether it can accept this reality and learn to make its influence felt in a different fashion. In addition, if Albanian-populated areas, such as Kosovo and a part of FYROM, associate themselves with the state of Albania in the long run, the Western Balkans may acquire a bipolar structure where both Albania and Serbia will appear to carry the potential to compete for regional hegemony. The absence of EU membership prospects for the two states in the medium term may not be conducive to stability in the Western Balkans.

The members of the Contact Group and the main Euro-Atlantic institutions are well aware of the intricate interrelationship of the issues. The USA seems to be the external actor pushing hardest both for rearrangement of elements of the Western Balkans puzzle and for measures to contain and mitigate the possible adverse consequences. This is obvious in its recent policies on Montenegro and on Bosnia and Herzegovina. Paradoxically, however, both the strongest long-term levers available to move local actors—and the ultimate bill to be paid for bringing these nations into the European mainstream—belong to the EU rather than to the USA (or even to NATO).

Currently, Kosovo is driving events. Political reality offers a fairly clear idea of the final status it will acquire. Its likely progress towards statehood will demonstrate the continuation of the post-cold war process of state creation in the Balkans, based crucially on ethnic composition. The practical implications are more troubling. It is not clear how the transition towards statehood for Kosovo could be regulated and implemented, how the acquiescence of Serbia could be guaranteed and what the EU, NATO and their members are ready to offer to accommodate Serbia and the Kosovo entity in the process. While the immediate concern must be to prevent instability in the transition process, Europe's longer-term security will rest more on the success or lack of it in creating properly functioning states (and economies) in the region.