

# **BEYOND CONFLICT OR DOMINATION: A PROPOSAL FOR A JUST AND VIABLE SETTLEMENT OF THE KOSOVO PROBLEM**

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It is increasingly evident that the settlement imposed on the Kosovo problem was not based on the postulates of international law, does not contribute to the stability of the region and does not represent a permanent solution<sup>2</sup>. Notwithstanding the fact that the final regime has not yet been implemented (this is going to happen only after the future elections and the establishment of the institutions of the broad autonomous regime provided by the peace treaty)<sup>3</sup>, the current state of affairs and the course of normilazation in this Province seems to be far from the standards which the International Community intended to apply.

## **A. An Analysis of the Current Situation**

The characteristics of the present situation in Kosovo are the following, in brief:

- There is complete absence of elements of Yugoslav-Serbian sovereignty. The customs offices and the border posts are controlled by the civil force (Protection Corps) of the former KLA (UCK) and the KFOR, there is chaos in the public administration, the police and the judiciary.
- There is an ethnic cleansing in process against all non-Albanian residents of Kosovo (mainly Serbs, Montenegrins, Romas). According to Yugoslav statistics approximately 132.000 non-Albanian residents of Kosovo had been expelled directly or indirectly (due to insecurity, threats or pressure)<sup>4</sup> in July 1999. At the same time, there is a systematic destruction of the Serbian national and religious monuments, despite the efforts of KFOR to protect them.
- There is no evidence of the development of a multi-ethnic and tolerant society. In the few areas where the Serbian populated enclaves exist (i.e. Mitrovitsa), bloody incidents frequently occur, there is no freedom of movement and whatever public order and security existing, is maintained only due to the presence of the forces of KFOR. Its soldiers nevertheless do not have adequate mandate, knowledge or training to exercise police duties. The United Nations' international police force, competent for these duties, has not yet been sufficiently deployed and therefore has little effectiveness.
- The economic activity in the province continues to remain at the stage of smuggling and is controlled

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<sup>2</sup> For selective views on the recent phase of Kosovo conflict see, *inter alia*, in: K.Drezov, B.Gokay, D.Kostovicova (Eds.), *Kosovo: myths, conflict and war*. Keele University, European Research Centre, Southeast Europe series, 1999. Authorities like Noam Chomsky and Tony Bean have severely criticized NATO's intervention, while even prominent U.S. analysts like Richard Haass have opted for an agreed diplomatic solution instead of the use of force (see, R.Haass, "What to do with American Primacy", in *Foreign Affairs*, Vol. 78, No5, p.47).

<sup>3</sup> See the relevant provisions of the Peace Agreement of June 3<sup>rd</sup>, 1999 and UN Security Council Resolution 1244 (10-6-1999).

<sup>4</sup> See Yugoslav Survey, Vol. XL, 1999, 1-2, p.9 et seq.

- by the local mafia. At the same time, there is plenty of information for intensive activities of radical islamic activists both in Kosovo and in the neighboring Albania and FYROM.
- The borders between Kosovo and Albania are practically open and movement of people and transportation of goods is carried out virtually without control.
  - The process of the implementation of the Stability Pact is far behind schedule concerning the relation to the establishment of the necessary institutional framework and the preparation of reconstruction projects, as well as securing the adequate financial means.
  - Kosovar-Albanians obviously consider the current situation (with the autonomy and international presence) as temporary and believe that the only natural evolution of the current phase would be their complete independence and the creation of a new state entity. Even more than they did in the past, they declare their steady and non-negotiable claim to obtain independence. The present state of the *de facto* secession of Kosovo from Yugoslavia (in the form of an international protectorate) contributes to their aspirations, as well as the views expressed frequently by certain US and European officials, who directly or indirectly refer or imply to the permanent secession of Kosovo from Serbia as the only realistic final solution. The complete international economic blockade and political isolation of Yugoslavia (directed against the Federal and Serbian authorities and tending to overthrow the Milosevic regime) brings up more arguments and incentives to the Albanians to pursue their independence aim.
  - Albanian irridentism in Kosovo has a tendency to spill-over to the Albanians of FYROM (roughly one fourth of the population) who are not satisfied with the existing status quo in their country, which gives a dominant position to the Slavic majority. The coalition between the Prime Minister L.Georgievski and Arben Tzaferi (head of the main Albanian Party, the PDP) in view of the November 1999 presidential elections in FYROM, though might be short-living, has raised serious concerns among the Slavic population of the country, and even more so the recent (Febr. 2000) visit of Tzaferi to Sofia (Bulgaria), which was interpreted as a move tending to undermine the integrity of FYROM.
  - In the same line, the Albanian opposition leader Sali Berisha declared his claim for the establishment of a Federation between Albania, Kosovo and the Western, albanian populated, provinces of FYROM. Moreover, the Academy of Arts and Sciences of Tirana, last year, published a study on the Albanian national integration, which, in order to satisfy this need, claimed the refashioning of the international borders of Albania with its neighbouring countries (Serbia, Montenegro, FYROM and Greece), and included *inter alia* of big part of Greek territory. Western reaction to this growing Albanian irridentism is either non existent, or ambivalent and verbal, thus allowing its continuation.
  - The West insists in the condition that Milosevic is overthrown from power as a prerequisite to allow Yugoslavia be reinstated in the international community. This is also linked to the lifting of the economic embargo and the inclusion of Yugoslavia in the reconstruction process of the Stability Pact<sup>5</sup>. The recent assassinations of the notorious war-lord "Arkan" (Zeliko Rasnjatovic) and the Yugoslav Defense Minister Pavle Bulatovic, added to the tension as well as to the existing rumors that the Milosevic regime is about to collapse. There are no clear indications as to the perpetrators of the killings nor of a realistic possibility of a change at the top of the Belgrade leadership, as President Milosevic still controls many aspects of Yugoslav life, he manages to survive over various crises and obviously still enjoys enough popular support (mainly in the country-side), despite the overall corruption of his regime. NATO's military intervention of last year together with the multi-fragmentation of the Serbian opposition and its very low credibility, have led a big segment of the Serbian public opinion to unite with Milosevic and to continue supporting him.
  - On the other hand, there is an open effort by the West to break the cohesion of the Yugoslav Federation, encouraging the secessionist intentions of Milo Djukanovic, the President of Montenegro, through various economic incentives. There is a revealing statement of the former

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<sup>5</sup> The Stability Pact was signed in Cologne, (June 10<sup>th</sup>, 1999) as a comprehensive plan for the reconstruction of S.E. Europe.

commander of KFOR, the British General Sir Michael Jackson, that Montenegro should follow the example of Kosovo and be treated alike<sup>6</sup>.

## **B. The main features of a new draft settlement**

1. The political regime of Kosovo should be the one of an autonomous province in the framework of the Republic of Serbia. The degree of autonomy should safeguard self-government of the province (based on generally accepted international standards) on the one hand, and the unity and cohesion of Serbia on the other hand. Granting a genuine, even broad, autonomy is in line with the abolished regime of the province, in 1989, as it restores the *status quo ante*, and represents the ideal medium solution between the extreme claims of the two conflicting sides, the independence (Albanians) and the simple minority regime or limited autonomy (Serbs). The solution based on a broad autonomy takes also into consideration the long rooted Serb-Albanian conflict in the region.

The Kosovar-Albanians should not enjoy the right of veto in major issues, because such a right would give them the power of a federal constituent unit of Yugoslavia and would open the way for malfunction of the state, encouraging centrifugal trends. The central (federal) Yugoslav authorities is reasonable to maintain their primacy over the local provincial bodies (legislative, executive and judicial) except on matters which fall into the sphere of competence of the autonomous provincial regime, according to a new Constitution to be agreed. The eventual conflict of interests and decisions between provincial and republican/federal bodies can be balanced and resolved by the function of an Ombudsman. A foreigner to be appointed by the U.N., EU or OSCE. A canton-system might also be helpful in the few areas where Serbs and non-Albanians constitute the local majority.

The independence option should be ruled out because, besides its non-compatibility with fundamental principles of International Law, would constitute a precedent for other areas with minority or ethnic problems and would jeopardize the fragile stability in FYROM, “feeding” the Albanian irridentism and undermining the overall status quo in the Balkans.

Moreover, the territorial partition of Kosovo into an Albanian and a Serbian part would inevitably lead to the annexation of the Serbian part to Serbia and the creation of an independent Kosovo with Albanian identity and therefore should also be ruled out being against International Law provisions. Notwithstanding that the partition seems realistic in the context of the acute and long standing Serbian-Albanian conflict (especially in view of the recent brutal war), it would have a distabilizing effect. We should also keep in mind that in spite of the different context, the Dayton/Paris Accords preserved the unity of Bosnia-Herzegovina as a state, even by giving strong competences to the two entities comprising the new hybrid state. It's only logical that the developments in Kosovo and Bosnia-Herzegovina will have mutual interdependence. Concluding, it should be stressed that if the West genuinely wishes to build a multi-ethnic and tolerant society in Kosovo it should insist on the permanent character of the autonomy of Kosovo, which constitutes the optimum legal framework for the province<sup>7</sup>.

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<sup>6</sup> See an interview of General Sir M.Jackson in the Greek newspaper “Kathimerini”, Febr. 2000.

<sup>7</sup> See more for the various approaches to the solution of the Kosovo conflict, *inter alia*, in: ELIAMEP, *Kosovo: avoiding another Balkan war*, Athens, 1998. – ELIAMEP, *Kosovo and the Albanian Dimension in S.E.Europe: the need for regional security and conflict prevention*, Athens, 1999. – E. Kofos, *Kosovo and the Albanian Integration* (in Greek), Ed. Papazisi, Athens, 1998 – V. Karakostanoglou, “The Kosovo Question: starting and concluding the Yugoslav crisis?”, in L.Tritle (Ed.), *Balkan Currents*, Loyola Marymount University, Los Angeles, California, 1998, pp. 47-77.

**2.** The autonomous regime should be decided and characterised as the permanent and definite regime of Kosovo so that the local ethnic groups (mainly the Albanian majority) realise that they must co-exist under the same state roof, with the assurances given by the autonomy. This is the only social model on which the European perspective of the area can be based on. The clause which had been included in the draft Rambouillet agreement (and is tacitly inherent in the agreement of June 3rd, 1999, which was finally imposed on Kosovo), which provides that the political regime of the province may be reviewed after three (or more) years, functions as a distabilization factor and maintains the aspirations for an independent Kosovo. Although nobody can halt the course of political history, we should, at least, attempt to pose the terms for its rational and legitimate evolution, even if its final outcome can not be predicted.

**3.** KFOR should remain for a period of i.e. five years (with the option that this term could be prolonged) for maintaining peace and security in the province, but with an agreed timetable for its gradual reduction from the current level of 38.000 troops to lower levels which however would ensure its effectiveness and the security of its personnel.

Based on the condition of a real progress of normalization, a certain number of Serbian security forces should be allowed to return in the province (and later of the federal Yugoslav army) while their activities would be carried out in consultation with and under the strict monitoring of KFOR. A critical point would be the control of the border line to Albania and FYROM, in order to avert the resumption of guerilla penetrations. The continuation and conclusion of a complete disarmament of all non-military or police personnel from all sides and the creation of a modern police, manned by Albanians and Serbs in ratio agreed and defined for each region, are also of crucial importance.

**4.** The free and unimpeded return of all displaced or refugees constitutes another vital pre-requisite for normalization, followed by an independent international investigation for the atrocities committed by all sides.

**5.** The establishment of the new institutions of the autonomy and of a modern democratic rule of law in Kosovo, should be done with international assistance and monitoring by the United Nations and the Organization for Security and Cooperation in Europe (OSCE), with emphasis on the conduct of free and fair elections. The problem of democratization of Serbia has to be resolved only by international support to the all democratic forces in the country and initiatives for Yugoslav compliance with international standards of democracy and human rights. This process would be assisted by the restoration of the international position of Yugoslavia which, in any case, is not the only country in the region which has similar deficiencies. Whatever other means, like bombardment or other forceful interventions would be counter productive.

**6.** The course of institutional and economic reconstruction of the area has to speed up, based on the provisions of the Stability Pact, which has to be adequately modified in line with the aforementioned proposals. The role of Greece, a stable and democratic country of the region, belonging to both the European Union and NATO, should be fully utilized in the above process. The necessary financial and other resources must be granted to the countries of the area, including Yugoslavia. Inter-Balkan cooperation and coordination should intensify and a Pact for South East Europe, to be signed by the respective states, should reaffirm the existing inter-state borders, human and minority rights and the establishment of various institutions of cooperation, preparing for their future integration in the European Union.