

KOSOVO'S CONTROVERSIAL INDEPENDENCE

Kosovo's declaration of independence has triggered controversial reactions. Advocates of statehood for this former Serbian province argue that it is the best among a number of unsatisfactory options. It remains to be seen whether the disputed clarification of the status question will lead to a sustainable stabilization of Kosovo and the Western Balkans. Long-term and comprehensive peacebuilding is indispensable for the viability of Europe's youngest state. The challenge for Europe and its partners is daunting.



Paintings of flags of countries that supported Kosovo's independence on a wall in Gnjilane, Kosovo

Kosovo's unilateral declaration of independence on 17 February 2008 marks an at least temporary end to the years of struggle over the status of this former province of Serbia. During the violent disintegration of Yugoslavia in the 1990s, the conflict in Kosovo initially remained off the international community's radar. After its escalation in 1998/99, followed by NATO's military intervention and the enforced withdrawal of Serbian forces, Kosovo was placed under UN administration. While the NATO-led Kosovo Force (KFOR) was able to stabilize the situation militarily, the political status talks between the Kosovo Albanian and the Serbian delegations remained inconclusive. A plan submitted by Finnish UN negotiator Ahtisaari that envisaged a conditional and internationally monitored independence for Kosovo was rejected by Belgrade in 2007.

The subsequent unilateral declaration of Kosovo's independence was prepared by the US and many EU states. However, controversy remains over whether this seventh state to emerge from the ruins of former Yugoslavia has a right to exist. Russia and China as UN veto powers, six EU states, and more than two dozen other countries concur with Serbia in rejecting statehood for Kosovo or demand further negotiations (see Table p.2). However, since Washington and the majority of EU states have recognized Kosovo's independence, it has become an irreversible political fact.

No alternatives?

Certainly, for some states, specific national interests have also been involved in the recognition of Kosovo. The US, for example, hopes to gain credibility in Muslim countries through its engagement on behalf

of the Kosovo Albanians. Other states are speculating that a resolution of the status question will accelerate the return of Kosovo Albanian migrants. Fundamentally, however, the arguments of independence advocates are based on three elements: First of all, they claim the status talks have shown that there is no adequate alternative to statehood; secondly, that a clarification on status is indispensable for avoiding new unrest in Kosovo and stabilizing the Western Balkans; and third, that the separation of Kosovo from Serbia is consistent with international law.

All three of these points are disputed. In the case of the first argument, it is true that the status talks did not lead to any results. While Serbia was only prepared to grant Kosovo broad autonomy, the Kosovo Albanians insisted from the start on being granted independence. On the one hand, this insistence is rooted in historic grounds. Since the integration of Kosovo into the Serbian state in 1912, the Kosovar Albanians have felt themselves to be disadvantaged and suppressed. In particular, since the beginning of the war between the Kosovo Liberation Army (KLA) and the Serbian security forces controlled by Slobodan Milosevic, remaining part of Serbia was no longer an option for them. On the other hand, some Western countries were already exhorting them towards independence at an early stage. Because these states had already been discussing independence as a possible option years ago, alternative solutions became unattractive for the Kosovo Albanians. From the point of view of those who opposed independence, however, there were certainly

conceivable alternatives, such as a freezing of the conflict in conjunction with further negotiations and a credible and rapid integration of Serbia into the EU.

Security risks

The second argument is also the subject of controversy. On the one hand, a postponement of clarification in the status question might have led to creeping destabilization of the situation in Kosovo. The unresolved status issue would only have extended the political stalemate, which would have been detrimental not least to the urgently required economic development of Kosovo. However, the prospect of increased stability through statehood for Kosovo is currently no more than a vague hope. The security risks associated with the status resolution as it now presents itself are considerable.

Within Kosovo, tensions have increased between Kosovo Albanians and the remaining approximately 130,000 Serbs living in the north and in enclaves. It is particularly worrying that Serbian police officers are leaving the Kosovo Police Service, which was frequently presented by the international community as the prime example of a functioning multi-ethnic authority. The importance of parallel institutions for Kosovo Serbs, controlled by Belgrade, can be expected to increase further. At least in the short and middle term, the new government in Pristina and the international civil administration will find it difficult to assert their authority in the Serb-dominated areas. Already now, it is unclear when the EU officials withdrawn from northern Kosovo due to threats and attacks will be able to return. Even if the countries extending recognition to Kosovo invoke the multiethnic character of the new state, their support for Kosovo's independence means de facto recognition that the multiethnic option has not been feasible in this case and that accordingly, a change in borders has become inevitable. In doing so, they have weakened a core paradigm of the West's policies toward the Balkans.

This signal will have an impact beyond Kosovo itself. Assertions that the case of Kosovo does not constitute a precedent may apply with a reasonable degree of plausibility to the Turkish Republic of Northern Cyprus, the Pridnestrovian Moldavian Republic, or the Republic of South Ossetia – though the declaration of independence by Pristina has whetted their appetites as well. Elsewhere, however, for example in the Western Balkans, the notion of ethnically determined statehood will gain new virulence, and may,

| Kosovo's Independence: International Reaction (5. 3. 2008) | | | | | | |
|--|---|----------------------|---------------|--|---------------------|--------------|
| | Recognition (bold = already officially pronounced) | | | Non-recognition | Negotiate consensus | |
| European Union | Austria | Hungary | Slovenia | Cyprus Romania Slovakia Spain | Greece Malta | |
| | Belgium | Ireland | Sweden | | | |
| | Bulgaria | Italy | UK | | | |
| | Czech Republic | Latvia | | | | |
| | Denmark | Lithuania | | | | |
| | Estonia | Luxemburg | | | | |
| | Finland | Netherlands | | | | |
| | France | Poland | | | | |
| | Germany | Portugal | | | | |
| | Other States | Afghanistan | Norway | | | |
| Albania | | Pakistan | | Azerbaijan | Moldova | Chile |
| Australia | | Peru | | Belarus | Russia | China |
| Costa Rica | | Senegal | | Bolivia | Serbia | India |
| Croatia | | Switzerland | | Bosnia | Sri Lanka | Kuwait |
| Iceland | | Turkey | | Cuba | Tajikistan | Mexico |
| Japan | | United States | | Georgia | Venezuela | Philippines |
| Macedonia | | | | Kazakhstan | Vietnam | South Africa |
| Malaysia | | | | Kyrgyzstan | | Ukraine |

for example, give rise to endeavors to create a Greater Albanian state. It is true that the Ahtisaari Plan excludes this possibility. Also, representatives of the ethnic Albanians constituting more than one third of the population in Macedonia affirm that they do not question the status quo of their country. Nevertheless, Kosovo's independence has highlighted the possibility of redrawing borders. The consequences can already be seen in Bosnia and Herzegovina. While the International High Representative in Sarajevo can dismiss politicians who violate the Dayton Agreement, for example by calling for a referendum on separation from the rest of the country, and while Bosnian Serb politicians would lose influence if their entity should join the Serbian state, the case of Kosovo is nevertheless reinforcing centrifugal tendencies within Bosnia.

International law: Treading on thin ice

The third reason for supporting independence is no less problematic. The right of national self-determination can only serve to justify secession claims in very rare circumstances. The principle of territorial integrity, which is also enshrined in the UN Charter and the Helsinki Final Act, is legally equivalent and has, as a rule, been given priority politically by the international community. Neither is it easy to dismiss the arguments of some experts on international law who say that the Kosovo Albanians do not constitute a separate people. Furthermore, the right to change borders under the provisions of the Helsinki Final Act requires an agreement of the parties involved.

It is a matter of judgment whether or not Kosovo's independence violates UN Security Council resolution 1244, which is still in force.

The first of two references in the resolution to Serbia's territorial integrity can be found in the preamble, which is not legally binding, while the second reference is linked to a political process that no longer exists as such. The argument that independence corresponds to the spirit, if not the letter of the resolution is neither false nor convincing. There seems to be little disagreement that the resolution continues to mandate the KFOR mission. Its applicability is less clear in connection with the international civil administration and the EU Rule of Law mission.

A fragile small state

Whatever opinion one may have on Kosovo's independence, the stabilization of this fragile little state – four times smaller than Switzerland – is of central importance for the security of Europe. Up to 50 per cent of its two million inhabitants are unemployed. Kosovo has hardly any functional industry, is greatly dependent on imports, and suffers more from organized crime and corruption than any other European country. Its infrastructure is in bad shape, and power outages occur constantly. Additionally, the population is growing rapidly. Already today, more than half of the Kosovo Albanians are under 25 years of age. If expectations of rapid economic improvement are disappointed, the pro-Western sentiments in Kosovo will likely shift in the opposite direction.

The currently remaining restrictions on Kosovo's political sovereignty may also stoke feelings of discontent among the population. At the domestic level, international bodies will continue to have an important say in Kosovo's affairs. In the area of foreign policy, the new state will be facing closed doors for some time to come. Serbia and Russia will prevent its accession to the UN

and the OSCE. Without UN recognition, Kosovo will likely also remain excluded from other inter- and transnational bodies.

A difficult challenge for the EU

The status decision also implies changes for the international presence in Kosovo. The UN administration is expected to end its work in spring of 2008. The EU and its partners will take on the main responsibility for supervising independence and support the Kosovo government in building state structures and institutions. The meager record of the many years of expensive UN engagement shows the extent of the challenges the Europeans will have to confront.

At the end of February 2008, 15 states in favor of independence constituted the International Steering Group for Kosovo and nominated EU Special Representative for Kosovo Pieter Feith as the International Civilian Representative for Kosovo. The Dutch diplomat will be supported in this function by an International Civilian Office of about 75 international experts. One focus of the EU engagement will be its Rule of Law mission, EULEX. In this, the greatest civil crisis management operation in the history of European Security and Defence Policy (ESDP), up to 2,000 international police officers, legal experts, and customs officers are to support Kosovo in building rule-of-law structures. EULEX will also enjoy executive jurisdiction in this context and is authorized in certain cases to reverse decisions made by the Kosovo government.

The stabilization of Kosovo is a key test of European crisis management capabilities. In the 1990s, due to the EU's inability to act, the US had to step in to deal with the violence in the Balkans. In the past years, however, the EU has enhanced its structures and capabilities for civilian and military crisis management operations in the framework of ESDP and has conducted over 20 such operations since 2003. The EU's determination to stabilize the Balkans has been underlined by the fact that, despite differences in the matter of recognizing Kosovo independence, all EU members apart from Malta are expected to participate in EULEX.

The role of NATO

It should be emphasized, however, that KFOR will continue to bear significant responsibility for security in Kosovo. Due to its large presence and its reputation as a neutral institution, KFOR, which currently includes 16,000 soldiers from 24 NATO

states and 10 non-NATO states, is held in high esteem both by Serbs and by Albanians. KFOR is required to carry out policing tasks due to the fragility of the Kosovo police force and the relatively small number of international police officers. For example, religious buildings will continue to require military protection for many years to come; should the monasteries of Pec, Decani, and Gracanica be destroyed, the Serb backlash would be severe.

NATO has learned from the riots in March 2004, when 19 people – mainly Serbs – were killed and hundreds of houses and churches were destroyed. Subsequently, the five multinational units cooperated more closely and also enhanced their capabilities for dealing with violent demonstrations. One prerequisite for KFOR being able to continue to decisively confront violence in Kosovo is that troop-supplying countries do not introduce new national caveats. Such exemptions had impeded an effective response in March 2004. In the coming years, cooperation between NATO and the EU will also be of great importance. Tensions had frequently arisen between the UN police in Kosovo and KFOR over task-sharing.

Prospect of EU membership

A sustainable stabilization of Kosovo and the Western Balkans can only be achieved through the prospect of EU membership for these states. While accession talks are under way with Croatia and Macedonia has been awarded candidate status, the countries of Albania, Bosnia and Herzegovina, Montenegro, and Serbia have at least been identified by the EU as possible candidates. In the case of Kosovo, however, the country's relatively low standard of development and the lack of consensus within the EU over its statehood are reasons to assume that such a prospect can only be a realistic option in the longer term.

The situation is different in the case of Serbia. Brussels has confirmed several times to Belgrade that it favors a step-by-step approach of Serbia to the EU. There is no consensus in Serbia, however, as to whether the country should even embark on the European path. So far, the EU's insistence on the extradition of war crimes suspect Ratko Mladic as a precondition for a Stabilization and Association Agreement (SAA) has been a main reason for the tensions in the relationship between Brussels and Belgrade. This stumbling block has been overshadowed in recent weeks by the dispute over Kosovo's independence.

Serbian society today is in the grip of a deep identity crisis. While the Milosevic regime entertained fantasies of a Greater Serbia in the 1990s, the country has now lost an important province of its own. This development has strengthened nationalist and anti-Western groups. The Democratic Party (DS) of President Boris Tadic continues to regard Kosovo as part of Serbia, but is in favor of rapprochement between Serbia and the EU. Its coalition partner, the Democratic Party of Serbia (DSS) of Prime Minister Vojislav Kostunica, is now obstructing steps towards an SAA over the question of Kosovo. Should early elections be called, there is a danger that the nationalist Serbian Radical Party (SRS) could win a victory. Its Vice Chairman Tomislav Nikolic only lost the presidential elections in early February by a small margin. The SRS favors a close partnership of Serbia with Russia.

The Serbian government does not wish to deploy military means in the Kosovo conflict, and does not have such means at its disposal. Belgrade's options are also limited as far as economic sanctions are concerned. There is, however, a danger of a spiral of violence being set off by individual acts of violence. The risk of this happening is high, not only in Kosovo, but also in the region surrounding the Albanian-dominated communities of Presevo and Bujanovac in Southern Serbia. If Northern Kosovo should split off, there would be greater demands by ethnic Albanians in Southern Serbia for accession to Kosovo. The process of bilateral recognition of Kosovo independence is also problematic: Each new recognition stokes Serbian resentment towards the rest of the world. The loss of Kosovo is a trauma that Serbia will not be able to come to terms with. In order to prevent new instability from emerging from this trauma, the EU should encourage Serbia to embrace the perspective of European integration.

Author:
Cornelius Friesendorf
c.friesendorf@access.unizh.ch

Responsible editor:
Daniel Möckli
analysen@sipo.gess.ethz.ch

Translated from German:
Christopher Findlay

Other CSS Analyses / Mailinglist:
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