

Five essential elements for a long-term solution in Kosovo

By Clive Baldwin

As the final deadline for international moderators to report to the United Nations on Kosovo approaches, the future of the region remains unclear. Serbia and Russia argue that Kosovo is part of Serbia and they will not tolerate the territory breaking away, while Kosovo's Prime Minister-elect Hashim Thaci has stated that, if the deadline passes and no decision has been announced, Kosovo will proclaim its independence.

Uncertainty has clouded the future of Kosovo since 1999. After the war it was given a special status: part of Yugoslavia, but governed by the UN. But this set-up, unique in the world, is not a sustainable, long-term solution and it was never meant to be.

Discussions about the future of Kosovo began even before the NATO bombing of 1999, and have continued throughout the subsequent eight years of international rule

without achieving any conclusion. The 'final deadline' for final status was actually previously set as December 2006 – a year ago. A group of UN experts, under former Finnish President Martti Ahtisaari, spent the year drafting the details of a final settlement – independence for Kosovo. As Kosovo is currently run by the UN under a Security Council Resolution, it appears the final settlement needs another Resolution, and therefore Russian acquiescence.

It remains to be seen what Thaci will do, and what will come next for the people of Kosovo. Whatever occurs, the negotiators must remember that, at its heart, the problems of Kosovo lie in the violation of minority rights. If it is going to last, any final settlement must resolve these problems.

Kosovo is a small territory, but it is home to a plethora of different communities. It is too often forgotten that



A Roma musician in Prizren, Kosovo, playing a drum at sunset during the month of Ramadan, signaling the end of the fast. Rhodri Jones/Panos Pictures

Kosovo's inhabitants include not just Albanians and Serbs, but also Ashkalia, Bosniacs, Croats, Egyptians, Gorani, Roma and Turks. All groups have suffered, and continue to suffer in Kosovo, wherever they are a minority (i.e. Serbs south of the River Ibar, Albanians to the north, and all other groups across the region). The situation, in particular the segregation between Albanians and Serbs, is getting worse.

This is in a large part down to the failures of international rule, which were most clearly shown by the failure of the peacekeeping forces to prevent the ethnic cleansing (largely of Serbs and Roma) that took place in spring 2004, and which has not been reversed. The only sustainable solution for Kosovo is one that applies minority rights – i.e. creates a society that fully protects the rights of all communities and all people in Kosovo, allowing everyone to live peacefully in an integrated society.

And yet it seems that many actors, including the international peacemakers, do not grasp what minority rights mean in practice and how they should be applied to the final settlement of Kosovo. Drawing on its extensive experience of similar situations worldwide and ongoing work in the region, this briefing paper outlines MRG's five essential elements for a long-term solution for Kosovo.

1. Integration

As the 2006 MRG report *Minority Rights in Kosovo Under International Rule* makes clear, the implementation of the final status of Kosovo represents perhaps the last chance to stop the cycle of ever increasing segregation. The great failure of international rule has been that, rather than break down segregation in Kosovo, it has made it much worse. Separating Albanians and Serbs was essentially the default position adopted by the international community in 1999, and one that has been entrenched, not overcome, since then. Kosovo has become ever more divided into Albanian and Serb areas, with all other groups left to adapt to Albanian or Serbian domination, depending on where they live. In fact the international community has adopted language that speaks of the supposed inevitability of segregation in Kosovo. The depth of segregation that exists in Kosovo today has developed under international rule, to a degree not seen anywhere else in Europe.

For Kosovo, as for any divided society in the world, the only long-term stable solution is one of integration. As in so many areas of minority rights in Kosovo there appears to be a failure to understand the term. An integrated society is one where each group can freely practice its own language, culture and religion, feel secure in doing so and not suffer discrimination. But it also means that individuals and groups have to work together in their day-to-day life, including economic and public life.

Kosovo is far from this. Proposals that have been circulated in recent years (most recently the UN Ahtisaari proposals), continue the pattern of entrenching segregation,

notably through some of the ideas around “decentralisation”.

Decentralisation of power in itself is not anti-integration. Often, decentralisation of large states can bring power much closer to disaffected communities. But in Kosovo, decentralisation has been taken to mean the creation of ethnically based municipalities, with ethnically based public services, including health and education. The Ahtisaari proposals would have created an ethnically based policing and justice system, recruited to reflect the local majority population. This would have been a step back for Kosovo, where policing there has been one of the few relative successes in terms of integration.

Kosovo is perhaps the only place in Europe with a health system rigidly divided by ethnicity. Serbs will normally not be treated in ‘Albanian’ hospitals and vice versa – an indirect apartheid exists. This began at the start of international rule – for example in Mitrovica in 1999, a Serb leader publicly stated that there should be no Albanians in the hospital. All Albanians eventually left that hospital and the NATO-lead peacekeeping force proved unable to do anything about this. Instead separate health systems were created and have remained – when Serbs felt unable to use the hospital in Pristina, the authorities allowed a separate facility to be established in a majority Serb area. The idea of ethnically based health or social services is deeply problematic and cannot be sustainable – it is impossible for a small, impoverished part of Europe to maintain two or more separate health systems.

Most importantly, education should not be segregated. A society can only flourish where its different communities know and understand each other from childhood. Parents do have the right to know that their children will be able to learn and practice their language, religion and culture – and it is important for stability that all communities feel reassured on this. But this should not be done by forcing children into schools that are rigidly segregated by ethnicity. It is vital that children of different groups be educated together, with the educational system allowing them to maintain their minority language and culture. When the opposite happens, separate schooling can entrench differences and increase conflict over generations. In very tense post-conflict situations, parents and children may have legitimate security concerns about education in integrated schools, but efforts should be made to provide security and move at least gradually towards increased integration, rather than accepting complete separation. Unfortunately it seems that Kosovo is following the latter route. Education is the most rigidly segregated of all Kosovo's services and little has been proposed to address this.

Such segregation is not, as it has been described by the former European Commissioner for External Relations, Chris Patten, ‘the strongest minority protection regime ever seen in Europe’. Though many Bosniacs and Serbs see segregation as the only way to stay secure, many have also



New houses in the Roma district of Mitrovica, Kosovo. Destroyed after the 1999 war, the neighbourhood is now being rebuilt and the Roma will be encouraged to move back into the area. Andrew Testa/Panos Pictures

recognised that living in ghettos or isolated villages is not a long-term solution and that such segregation is not sustainable. People in ‘Serb’ or ‘Albanian’ villages cannot live in isolation from cities, or from the jobs and services that can only be found in such areas.

Given that international rule is largely responsible for tolerating the increase in segregation, it should be a priority for international peacemakers to start reversing it. Whatever international involvement continues in Kosovo, it must prioritise the integration as the only future for Kosovo, especially in the most important areas such as education. It must define clear steps towards the creation of an integrated society, and ensure they are implemented. Any final status must do the same.

2. Non-discrimination

Closely related to this is the issue of non-discrimination. Most, if not all in Kosovo, subscribe to this in principle. In fact, Kosovo has an anti discrimination law that is hailed as one of the most advanced in Europe. This law, passed in September 2004, declares segregation to be discrimination. But three years later, the law remains almost entirely simply paper.

Three major problems of approach seem to prevent any effective tackling of discrimination. First, the mentality that continues to promote the segregation of Albanians and Serbs as the right way to peace. Proposals on minority protection, such as those coming out of the United Nations

Office for the Special Envoy of Kosovo (UNOSEK), continue to tolerate and even promote segregation, as described in the case of the police service (see above).

The second problem is that, apart from segregation, the main solution proposed to resolve ethnic tensions has been quotas. Ethnic quotas have been applied to allocate seats in the Assembly and in public sector jobs. But quotas, whilst sometimes needed on a temporary basis, are rarely the solution to the underlying problems of discrimination. Indeed experiences from India and elsewhere suggest that having quotas without an effective anti discrimination law leads to an increasing proliferation and entrenchment of strict quotas in fields such as parliamentary representation, employment and education. This does not remove the underlying problems; instead it causes resentment between communities who see all parts of public life as a fight for new quotas. Unfortunately the proposals that have been made on the future of Kosovo do seem to be extending quotas for example into more areas of employment, whilst doing nothing to address discrimination.

But the biggest cause of the failure to address discrimination in Kosovo is the lack of rule of law. Eight years of international rule have produced a plethora of laws but no justice system that applies the law, holds government to account and requires changes in policies.

This problem has its roots in a culture enshrined in Regulation 2000/47 (passed in 2000 by the United Nations Mission in Kosovo (UNMIK) and Kosovo Force (KFOR) – the two governing bodies). The regulation makes the two

institutions immune from all forms of legal proceedings in Kosovo. Effectively, they declared themselves above the law – even overturning the most basic of human rights law requirements, that of detention to be by order of a judge, when it is applied to their actions.

In this climate, no cases have been brought under the anti discrimination law – and the international community has showed little interest in supporting such litigation. As such, the law has not ended any discriminatory practice, despite the discrimination that permeates throughout Kosovo, in employment, public services and schools.

3. Participation

A further key aspect of a sustainable future for Kosovo is ensuring the full and equal participation of all communities in the decisions that affect them. Apart from being a basic right under international law, it is essential for democracy and conflict prevention, both to ensure that decisions are made that are best for all parts of society, but also so that all persons, and groups, feel themselves to be an equal and included part of society.

When it comes to the most important decisions, it seems the right to participation has been forgotten. On the future status, none of the smaller minorities participated in the negotiations, which took place in Vienna, and which were confined to seven Albanians and seven Serbs. New York, Brussels and Moscow have had more of a say, thus far, in the future of Kosovo than some of its peoples.

The drafting of a constitution should not stick to some artificially short deadline, but be carefully planned to ensure transparency, consultation and participation. If future discrimination, segregation and conflict are to be avoided, it is vital that all communities participate. The case of the future status of Kosovo is no different: all minorities should be supported in their involvement, not just Albanians and Serbs.

4. The final settlement must be based on self-determination and minority rights

The final settlement regarding Kosovo's status must be fair and be seen to be fair, in order to be accepted and to last. Two key issues of international law are often referred to in Kosovo, but rarely understood.

First: the right to self-determination. This is not exactly the same as a right to independence. It is the right of a 'people' to determine their future and governance. The Kosovans as a whole are a people, and it can be argued that the specific groups amongst them – Kosovo Albanians, Ashkali and Egyptians, Roma, Serbs and Turks – have the right to internal self determination (for example, and as a basic minimum, the right to political participation as a minority group) too. Whatever the final status, it must respect this right.

But the right to self-determination, although it *may* mean independence, does not mean the right to create ethnically pure areas or states. It means the right of a people to determine the future, and also that the rights of all peoples within an area must be respected. As such, the second issue is minority rights. The international community made clear at the start of the Yugoslavia wars, (in the Badinter Commission set up by the Europeans in 1991), that newly independent states would only be recognised if they could show they could, and would, adequately protect all the minorities living within them. 16 years later, if Kosovo is the last newly independent state to emerge from what was once Yugoslavia, it is critical that this principle is held to. Kosovo must protect the rights of all its communities in reality, and not just on paper.

5. There must be a final settlement

The uncertainty over Kosovo's final status significantly contributes to the ongoing persecution minorities are suffering. The lack of clarity over what parts of Kosovo will be ruled from where, is an apparent incentive for majority communities (Albanians and Serbs) to ethnically cleanse their areas, to 'claim' these areas for their community before final lines are drawn on the map. Fear of being ruled by 'alien' Albanians or Serbs in the future is inciting violence between the two majority groups as they seek to create ethnically pure areas, with crimes going unaddressed by the authorities. An Amnesty International report on Serbia, published in April 2007, documents cases such as Albanian youths stoning buses carrying Serb passengers, throwing grenades or other explosive devices at buses or houses, and looting and vandalizing Orthodox churches. The report states: 'Three predominantly Serbian municipalities declared a "state of emergency" on 2 June following attacks they considered ethnically motivated, and announced a boycott of the UNMIK police and the Kosovo Police Service (KPS). Additional international police were deployed and ethnic Albanian KPS officers withdrawn.'

At times of heightened tensions, the risk to unprotected minorities grows. This was certainly the case during the last major ethnic cleansing in 2004 – where many of the remaining Serbs and Roma in Albanian majority areas were driven out. And in 2007, there have been a number of documented incidents. In its 2007 report on Serbia, Amnesty International stated that in June, two Romani families left the village of Zhiti/Žitinje after an incident in which an ethnic Albanian was later arrested.

A recent report produced by Serb authorities and supported by international agencies stated that more than half of the 200,000 Serb, Roma and other minorities who have left Kosovo in the last eight years said their main reason for not returning was fear of violence and distrust of Kosovo institutions. In its 2007 report on Serbia Amnesty International further stated that on 1 June, a Serbian youth was shot dead on the road between Zvečan/Zvečan and

Žitkovac/Zhitkoc. On 20 June, a 68-year-old Serbian man who had returned the previous year to Klinë/a was reportedly shot dead in his own house.

That uncertainty is contributing to attacks against minorities in Kosovo tallies with evidence from similar situations worldwide. Worldwide, there are many examples of conflicts that have been resolved with ‘temporary’ solutions, but which have actually lasted for decades – without addressing the tensions beneath. Temporary ceasefire lines have also lasted decades, such as those imposed between Israel and its neighbours in 1948, in Kashmir in 1947, or in Cyprus in 1974. In some cases, international peacemakers have produced temporary solutions to conflicts, in the expectation that these would stabilise the situation, leading soon after to negotiations and permanent settlements. This was the plan with the Dayton Peace Accord for Bosnia-Herzegovina, or the Oslo Accords that created the Palestinian Authority.

But the people of Kashmir, Bosnia-Herzegovina, Palestine and Cyprus have found themselves living with ongoing uncertainty as to the future. In such a climate, sporadic violence can flare.

Temporary settlements do not resolve themselves; they just continue into decades of uncertainty. As events in the Middle East and Kashmir among other parts of the world have shown, this encourages hardliners on all sides, who exploit the fears of the people along ethnic or religious lines. The idea of a permanent settlement recedes, and seems to become more and more difficult the longer it is avoided.

Temporary solutions, therefore, seem highly undesirable. Yet, as the Dayton and Oslo Accords show, international peacemakers often adopt such strategies even when they claim to be creating a final settlement. To them, temporary solutions are the least difficult option.

As such, the temptations for those who want to see a deal on Kosovo will be to once more try to postpone Kosovo’s final status and opt for longer international rule. But if this option is taken, and a new deadline is set, it must be realistic and made with the commitment that whatever is determined must be prepared as being the final status, and implemented as such, so everyone is clear as to the future and can begin to adapt to it.

However, there is now a distinct possibility that, as widely reported, Thaci will fulfil his pledge of declaring independence after the 10 December deadline expires. On the other hand, Reuters have reported Serbian Prime Minister, Vojislav Kostunica, as saying that such a declaration would be a ‘crime’ against international law. While both parties have been urged to keep violence from erupting, the ambiguous ending of the talks leaves the situation in a state of continuing, unsettling, uncertainty, and a vacuum in which conflict will grow.

Conclusion

It seems that any of the possible future status scenarios that currently exist, risk failing dramatically on all counts of minority rights protection. Both a unilateral declaration of independence, or an externally imposed settlement maintaining some form of international control, underscore the failure to involve all Kosovo’s communities in their own future. In the short-term, both outcomes present risks to minorities, and the threat of violence is real. In the long-term, the only way that Kosovo can build a sustainable peaceful future is through the upholding of minority rights. This can be achieved by the promotion of reconciliation, the enforcement of anti discrimination legislation, the establishment of the rule of law and policies that lead to integration, not segregation. Without these measures, the international community’s eight-year history of failure in Kosovo will continue.

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working to secure the rights of minorities and indigenous peoples

Recommendations on applying the five principles

Ensuring integration and ending segregation

- Any decentralisation of power should not be on a specific ethnic basis. All units of government in Kosovo must be required to ensure the equality of all persons for whom they are responsible.
- Freedom of movement must be guaranteed, in practice.
- The anti discrimination law's prohibition on segregation should be fully applied. The final status/constitution of Kosovo should clearly state that segregation, on the basis of language, religion, ethnicity or culture is prohibited. Segregation in public services, such as police, judiciary, health or social welfare should be prohibited.
- The authorities should be required to create a fully integrated public school system whereby children follow the same curriculum and mix with each other. Different languages, histories, religions and cultures should be taught, also ensuring that parents can pass on their languages to their children.

Ending discrimination

- A key priority, stressed in the final status, should be the implementation of the anti discrimination law. Adequate funding should be given for information for all communities and litigation support for at least five years.
- The final status should prioritise the creation of any effective rule of law system in Kosovo, including stating clearly that any government in Kosovo, whether Kosovan or international, is subject to law. It should also ensure cases are brought.
- The constitution should state that any quota system will only be in place for a temporary period of time, and that

affirmative action measures will be taken to tackle the root causes of discrimination. A deadline should be fixed – for example, five years – at which time the system of quotas will be reviewed.

Ensuring participation of all minorities

- Any final status document should be drafted in consultation with all groups, and the participation of women from all groups should be actively promoted.
- Discussion on a constitution for Kosovo should take at least two years. It should include discussion meetings with all the different groups in Kosovo, with particular emphasis on women's participation.

Self-determination and minority rights

- The final settlement should state that it is founded on the principle of self-determination for all Kosovans and all communities within it, and put measures in place to implement this.
- The rights of all communities and members of these must be stated to be a key principle of the government of Kosovo. Persons should be able to practice their language, religion and culture freely anywhere in Kosovo.

Final settlement

- The settlement should be stated to be, and constructed as, a final settlement. International governance should end. There should be clear accountability for the government of Kosovo in international bodies, as with any other government.