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Developments as regards the future status of Kosovo

Report

Committee on Political Affairs and Democracy

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Summary

The solution of the Kosovo status process is a fundamental element for ensuring peace and long-term stability in Europe.

In its previous texts, the Assembly affirmed the importance of reaching a mutually-accepted solution. At the same time, it has also constantly stressed that the undecided status of Kosovo casts uncertainty over the further political stabilisation of the entire region, including its perspective of European integration; it affects its economic recovery; it prevents displaced persons and refugees from Kosovo from reaching a decision whether to return to their homes; it has a negative impact on the consolidation of a fully-responsible and accountable political leadership; and hampers the full attainment of the standards for Kosovo.

In the light of more than two years of unfruitful efforts, the report concludes that the potential for finding a compromise has been exhausted. The United Nations Security Council (UNSC) should, therefore, overcome existing differences and impose a solution. Should the UNSC be incapable of achieving a unanimous position, the possibility that the Kosovo Assembly resorts to a unilateral declaration of independence is not to be excluded. In this case, European Union member states should achieve a single position.

The parties concerned are urged to continue to act in a responsible manner, keep their pledge to preserve peace and dialogue in all circumstances and refrain from any incitement to violence.



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A. Draft resolution

1. The Parliamentary Assembly considers the solution of the Kosovo status process as a fundamental element for ensuring peace and long-term stability in Europe. Determining the future status of Kosovo is a highly sensitive political issue with serious regional and wider international implications and is a challenge for the international community.
2. More than two years have passed since the United Nations Security Council (UNSC) decided that conditions were in place for initiating the status process. In 2005, the UNSC supported the appointment of Martti Ahtisaari, former President of Finland, as Special Envoy of the UN Secretary General for the future status process for Kosovo. After 15 rounds of talks, Mr Ahtisaari finalised a draft comprehensive proposal for a Kosovo status settlement, which was accepted by Pristina and rejected by Belgrade. In its subsequent submission to the UNSC, he added to the final comprehensive proposal a report, in which supervised independence was recommended as the future status of Kosovo.
3. In August 2007, the standstill on a new UNSC resolution, due to the diverging views held by the states with veto rights over the Ahtisaari package, led the UN Secretary-General to invest a Troika emanating from the Contact Group with the task of facilitating a further period of negotiations of one hundred and twenty days. After six rounds of direct talks, the Troika has concluded that the parties have been unable to reach a compromise.
4. The Assembly deeply regrets that, at this stage, no mutually-accepted solution has been found. The dialogue engaged over this period has been precious in clarifying to what extent there is room for an agreement, amongst others, on issues such as the protection of national minorities, the protection of cultural and religious heritage and decentralisation. However, the position of the two sides as regards status remains unchanged.
5. In its [Resolutions 1453 \(2005\)](#) and [1533 \(2007\)](#) on the current situation in Kosovo, the Assembly affirmed the importance of reaching a mutually-accepted solution to the status issue. However, it has also been a constant preoccupation of the Assembly to stress that the undecided status of Kosovo casts uncertainty over the further political stabilisation of the entire region, including its perspective of European integration; it affects its economic recovery; it prevents displaced persons and refugees from Kosovo from reaching a decision whether to return to their homes; it has a negative impact on the consolidation of a fully-responsible and accountable political leadership and hampers the full attainment of the standards for Kosovo.
6. As a consequence, the Assembly concludes that, as the potential for finding a compromise has now been exhausted, alternative ways should be envisaged to secure a solution, with a view to preventing Kosovo from becoming a powder-keg and ultimately a frozen conflict in the Balkans. In this context, recalling that, in its [Resolution 1533 \(2007\)](#), it took a favourable position to an “internationally-imposed solution”, should “a deadlock protract negotiations beyond a reasonable time frame”, the Assembly calls on UNSC members to overcome existing differences and impose a solution.
7. The failure to reach a compromise during the period of engagement of the Troika opens a period of great uncertainty: amongst the possible scenarios, it is not to be excluded that the Kosovo Assembly decides to resort to a unilateral declaration of independence, should the UNSC be incapable of achieving a unanimous position and imposing a solution.
8. The Assembly urges the parties concerned to continue to act in a responsible manner, keep their pledge to preserve peace and dialogue in all circumstances and refrain from any incitement to violence.
9. Considering that Kosovo is, and should continue to be, a political priority for Europe and in the light of the challenges that it poses for the European Union Common Foreign and Security Policy, the Assembly calls on its member states which are also members of the EU to endeavour to achieve a single position on the issue of the future status of Kosovo, as well as on the attitude towards a possible unilateral declaration of independence by the Kosovo Assembly.
10. The Assembly reiterates its firm commitment to work together with Serbia in consolidating its democracy, reconciling the country with its own past, helping it to become a source of long-term stability in the region and assisting it in the path leading to EU membership.

B. Draft recommendation

1. Referring to its Resolution ... (2008) on developments as regards the future status of Kosovo, the Parliamentary Assembly strongly affirms that in no way should the status process shift the attention of the Provisional Institutions of Self-Government (PISG) and the international community from the implementation of the standards for Kosovo. In fact, keeping a focus on standards is even more necessary to foster trust and facilitate reconciliation in the current climate of political tension, determined by the failure to reach a compromise solution.
2. The Assembly reiterates its aspiration for Kosovo to be, irrespective of its status, a multi-ethnic area which is safe for all those who live in it, where Council of Europe standards of democracy, the rule of law, protection of human rights and rights of national minorities, and good governance are fully enforced, where the recourse offered by the European Convention on Human Rights is available to everyone and where the values of democracy, tolerance and multiculturalism are shared by its people and institutions.
3. Being convinced that the Council of Europe should continue to play a major role to ensure that this aspiration becomes a reality, the Assembly asks the Committee of Ministers to provide its support and expertise to the relevant authorities in Kosovo in the following areas:
 - 3.1. protection of human rights and national minorities;
 - 3.2. decentralisation;
 - 3.3. protection of cultural and religious heritage;
 - 3.4. use of minority languages;
 - 3.5. intercultural dialogue;
 - 3.6. fight against corruption, organised crime, money laundering and trafficking in human beings;
 - 3.7. democratisation and financing of political parties; and
 - 3.8. independence and efficiency of the judiciary.

C. Explanatory memorandum, by Lord Russell-Johnston

1. Introduction

1. When is the status of Kosovo going to be decided? “When?” is the question that people in Kosovo ask. Finding a solution to the status issue has been felt as an urgent matter for a long time. In June 2005 the Assembly itself acknowledged that “the undecided status of Kosovo casts uncertainty over the further political stabilisation of the entire region, including its perspective of European integration, affects its economic recovery and prevents a number of displaced persons and refugees from Kosovo from reaching a decision whether to return to their homes”.¹

2. “When?” is an urgent question that still does not have an answer. Since 1999 Kosovo has been in limbo: during this period, although subject to the formal sovereignty of Serbia, it has been administered by the United Nations under UN Security Council Resolution 1244, pending a political settlement of the status issue. Over these eight years, important steps forward have been taken in restoring normal living conditions for all the people of Kosovo, after a war which left deep scars on all the communities of Kosovo: 15 000 deaths amongst Kosovo Albanians; 3 000 deaths amongst Kosovo Serbs. Despite these efforts of normalisation, there are still 2 047 people missing; 240 000 displaced persons, 200 000 of whom Kosovo Serbs, and a number of unresolved issues.

3. In 2005, the Contact Group and the UN Security Council reached the conclusion that standards implementation and the status process should proceed hand in hand.² Since October 2005, there have been two successive attempts to facilitate a negotiated and commonly agreed solution which, unfortunately, have yielded no results.

4. It is not the first time that I am Rapporteur on Kosovo for the Political Affairs Committee: in October 2007 my report on the current situation in Kosovo was due for debate in the Assembly. It was removed from the order of business by 65 votes to 63. Its examination was moved forward to the January part-session 2006, when the reference to the supervised independence of Kosovo as “the solution which is liable to ensure the greatest chances of durable, long-term peace and stability for Kosovo and the entire region, in addition to being the one which corresponds to the will of the majority of Kosovans”³ was deleted by amendment by 90 to 64 votes (with 11 abstentions). I am convinced that this vote did not necessarily reflect the Assembly’s opposition to the independence of Kosovo: as it was clear from the debate, most members did not think it appropriate for the Assembly to take a position while the status process within the UN was still ongoing.

5. My present mandate is to follow developments as regards the future status of Kosovo. In my capacity as a rapporteur, I have tried to provide a balanced description of the developments as regards status and the position of both sides. My work, however, would be meaningless if I did not give my views on the status process and its outcome. As a rapporteur, I am not bound by any duty of neutrality or equidistance; on the contrary, I am bound by a duty to honestly say what I think, knowing that I might be opposed by some and supported by others.

2. The first chapter of the status process: Mr Ahtisaari

6. In 2005, the UN Security Council supported the appointment of Martti Ahtisaari, former President of Finland, as Special Envoy of the UN Secretary-General for the future status process for Kosovo.

7. A set of principles for the settlement of the status of Kosovo⁴ was produced soon after by the Contact Group, comprising France, Germany, Italy, Russian Federation, United Kingdom and the United States, with a view to supporting the Special Envoy in his work. These principles established that the future status should:

- be compatible with international standards of human rights, democracy and international law;

1. [Resolution 1453 \(2005\)](#) on the current situation in Kosovo (rapporteur: Mrs Tritz, Germany, SOC).

2. “Progress with regard to standards implementation is very mixed. Further progress is urgently required. However, it is unlikely that postponing the future status process will lead to further and tangible results in the implementation of standards. Progress can only be achieved if the sense of a political perspective is maintained and if the international community is ready and able to mobilise greater energy and pressure than it is today. Provided the future status process is properly handled, this framework can be used to make further progress”, Ambassador Eide’s comprehensive review of the situation in Kosovo, paragraph 64

3. Draft resolution on the current situation in Kosovo (rapporteur: Lord Russell-Johnston, United Kingdom, ALDE), paragraph 4, as adopted by the Political Affairs Committee on 18 September 2006.

4. Ten guideline principles of the Contact Group, 7 October 2005.

- contribute to realising the European perspective of Kosovo;
- ensure multi-ethnicity and the respect of the rights of communities;
- provide mechanisms to ensure the participation of all communities in government, decentralisation being considered as a means to facilitate the coexistence of different communities;
- include specific safeguards for the religious and cultural heritage;
- strengthen regional security and stability (no partition of Kosovo, no union with any other country or part of a country; no return to the pre-March 1999 situation; no unilateral solution or use of force);
- include specific provisions on security arrangements;
- promote mechanisms to strengthen the enforcement of the rule of law;
- ensure the sustainable economic development of Kosovo, including its co-operation with international organisations and international financial institutions;
- rely on a civilian international presence for some time.

8. It is significant that subsequently, in its statement of 31 January 2006, the Contact Group stated that the settlement should be acceptable to the people of Kosovo.

9. Special Envoy Ahtisaari and his team worked with alacrity and commitment, paying numerous visits to Belgrade and Pristina and conducting extensive consultations. In the course of 2006, 15 rounds of talks with the Belgrade and Pristina negotiating teams were organised. Some 14 of them focused on decentralisation, the protection of cultural and religious heritage in Kosovo, the economy, and the protection of the rights of communities. In addition, in July 2006 the Special Envoy presided over direct talks on the status issue with the Serbian and Kosovo leadership.

10. By January 2007, Mr Ahtisaari had prepared a draft comprehensive proposal for a Kosovo status settlement, which was presented to the parties concerned the following month. Regrettably, at a high-level meeting in Vienna in March, the Special Envoy could only observe that:

- there was no will from the parties to move away from their previously stated positions; and that
- the potential of negotiations was exhausted.

11. As a result, Mr Ahtisaari finalised his proposal for submission to the UN Security Council. This package included the final comprehensive proposal for a Kosovo status settlement and the report of the Special Envoy of the Secretary-General on Kosovo's future status, with the latter recommending supervised independence as the future status of Kosovo. While the Kosovo Assembly endorsed the Ahtisaari package, Belgrade considered it unacceptable unless overwhelmingly amended. A rift became visible also in the Contact Group: whereas the United States and the EU members of the Contact Group considered Ahtisaari's proposals as "fair and balanced" and "the best solution that will advance stability not only in Kosovo but in the region as a whole",⁵ the Russian Federation rejected them.

3. The status process under the Troika

12. By the end of March 2007, there were conclusive signs that it would not be possible to secure a UN Security Council resolution on the follow-up to give to the Ahtisaari package, given Russia's opposition and the prospect of its veto. This deadlock was not overcome but only circumvented by transferring the process in the hands of the Contact Group. Under its aegis, a Troika comprising representatives of the United States (Mr Frank Wisner), the European Union (Mr Wolfgang Ischinger) and Russia (Mr Alexander Botsan-Kharchenko) was set up, with the task of conducting an additional one hundred and twenty day period of negotiations, and to report back to the UN Secretary-General by 10 December 2007.

13. The mandate of the Troika is to stimulate compromise between the two sides; it is not to propose solutions for the status issue, let alone impose one. Moreover, whereas for the United States and the EU members of the Contact Group 10 December is the final date for finding a compromise, after which Ahtisaari's package should be implemented, for Russia there is no deadline for finding a compromise and 10 December is only a deadline for reporting.

5. Statement of 20 July 2007 by Belgium, France, Germany, Italy, United Kingdom and the United States of America, co-sponsors of the draft resolution on Kosovo presented to the UNSC on 17 July.

14. Since its establishment, the Troika has been very active and has managed to organise six rounds of direct negotiations between the two sides. A key stage in its work has been the elaboration of 14 points aimed to pave the way for a solution. These are:

- (1) Belgrade and Pristina will focus on developing the special nature of their relations, with an emphasis on the historical, economic, cultural and human dimensions;
- (2) they will solve future problems peacefully and will refrain from provocative acts;
- (3) Kosovo will be integrated into regional structures;
- (4) there will be no return to the pre-1999 status;
- (5) Belgrade will not govern Kosovo;
- (6) Belgrade will not re-establish a physical presence in Kosovo;
- (7) Belgrade and Pristina are determined to make progress towards association and eventually membership of the European Union and to move progressively towards Euro-Atlantic structures;
- (8) Pristina will implement measures to enhance the welfare of Kosovo Serbs and other non-Albanian communities, particularly through decentralisation, constitutional guarantees and protection of cultural and religious heritage;
- (9) Belgrade and Pristina will co-operate on issues of mutual concern, including amongst others: fate of missing persons and return of displaced persons; protection of minorities; protection of cultural heritage; economic, energy and trade issues; fight against organised crime; co-operation between municipalities and the government of one of the two sides;
- (10) Belgrade and Pristina will establish common bodies to implement co-operation;
- (11) Belgrade will not interfere in Pristina's relationship with international financial institutions;
- (12) Pristina will have full authority over its finances;
- (13) Kosovo's EU Stabilisation and Association Process (tracking mechanism) will continue unhindered by Belgrade;
- (14) the international community will retain civilian and military presence in Kosovo after status is determined.

15. In reply, during the direct talks of 22 October, the Serbian side presented its position of keeping formal sovereignty on Kosovo while granting it the widest possible autonomy as a rewording of each of the Troika's 14 points. According to Serbia:

- (1) the subject of the negotiations is to determine the future status of Kosovo based on the principles defined by UNSC Resolution 1244. As a result, any departure from this subject would previously require a change of Resolution 1244;
- (2) all sides – including members of the Troika – should refrain from unilateral steps;
- (4) there will be no return to the situation prior to 1999 and the future order in Kosovo should be solved on the basis of Resolution 1244;
- (5) Serbia will not govern Kosovo within the competencies which fall to the province under a future agreement;
- (6) Serbian institutions will not be present in Kosovo in affairs which are not within Belgrade's competencies under the future agreement;
- (7) in their legislation and policies, Serbia and Kosovo will progressively implement norms and standards in accordance with the process of Stabilisation and Association with the EU. With full participation in that process they will advance towards accession, and finally membership;
- (8) starting from an agreed solution between Belgrade and Pristina confirmed by the UNSC, Kosovo will implement comprehensive measures to promote the well-being of the Serbs in Kosovo and that of other non-Albanian communities, especially through decentralisation of the local authorities and constitutional guarantees;

(9) taking into consideration their exclusive competencies, Belgrade and Pristina will co-operate on issues of common interest, including the fate of missing persons and return of displaced persons; physical protection of cultural heritage; economic, energy and trade issues; fight against organised crime; and harmonisation with EU standards (unlike in the Troika's 14 points, protection of minorities is not mentioned);

(10) in these and other possible fields of co-operation, Belgrade and Kosovo will form joint bodies to conduct affairs of common interest;

(11) except to the extent of its international obligations as a subject of international law, Belgrade will not interfere in Pristina's relations with international financial institutions;

(13) the process of Stabilisation and Association (tracking mechanism) for Kosovo will continue in co-operation with Belgrade;

(14) after the status of Kosovo is defined, the international community will continue its civilian and military presence in Kosovo, under a UN mandate.

16. Serbia agrees with the Troika's points 3 and 12.

17. For their part, during the period of engagement of the Troika, the position of Kosovo Albanians continues to be that they will not accept anything less than independence. In addition, however, Pristina has drawn up a proposal for a friendship and co-operation agreement to be made with Serbia once Kosovo achieves independence and has committed to fully implementing minority rights.

18. The three-day Baden conference (Austria), at the end of November, marked the end of the Troika-sponsored direct negotiations. As it can be read in the Troika's final statement, "the Troika explored together with both sides every reasonable status outcome for Kosovo to determine where there might be potential for a mutually acceptable outcome. Regrettably, the parties were unable to reach an agreement on Kosovo's future status".

4. Finding a solution within the UN framework?

19. Two years since the beginning of the status process no commonly-agreed solution has been found. What happens next, also considering that the Contact Group and the UN Security Council do not speak any longer with a single voice? Have these additional four months of negotiations been instrumental to induce a softening of the position of Russia, possibly towards its abstention on a new UN Security Council resolution? It would not seem so according to the statements of high-ranking Russian officials.

20. Russia explains its opposition to the independence of Kosovo on the basis of the respect for the international legal order and the principle of territorial integrity. I am not completely convinced by this principled explanation. It is my impression that Kosovo is caught up in an attempt by Russia to assert itself globally: by defending the Serbian position, Russia can undermine the unity and the credibility of the EU, block the eastward expansion of NATO, and obstruct the political and military influence of the United States in the Balkans. And, should independence come about, would Russia hesitate in using it as a precedent where it would be in its political interest to do so? Immediately after the Ahtisaari package became public, the statements of the highest representatives of the Russian leadership went exactly in this direction.⁶ Diplomatically, Kosovo indeed represents a win-win situation for Russia.

21. Serbia has repeatedly stressed that the status process should be kept within the UN framework, and that only a new UNSC resolution can supersede Resolution 1244. Of course it would be incommensurably preferable, legally and politically, if the status process could be kept within the UN but can it be concluded within such a framework, given the diverging positions of states with veto rights?

5. What could happen after 10 December?

22. The more 10 December approaches the more the number of realistic scenarios shrinks.

The current undetermined situation drags on, perhaps with new negotiations

6. For example, Zanoni, L., "Poutine: quand je dis Kosovo, je pense Caucase", Le Courrier du Caucase, 2 February 2006.

23. Officially, nobody asks for the current undetermined situation to drag on: formally everybody wants a satisfactory conclusion of the status process. However, Serbia and Russia complain about the imposition of “artificial deadlines” for the status negotiations and would like to protract them for as long is necessary to reach a negotiated solution. Kosovo Albanian leaders, instead, have consistently stated that they will not engage in negotiations after the deadline of 10 December.

24. In my opinion, a distinction should be made between “artificial deadlines” and the complete absence of any time perspective: more than two years of unfruitful efforts have made it crystal clear that the two positions cannot be reconciled. Supporting open-ended negotiations now, without any meaningful sign that they might come to an end, is not entirely fair: those who do so know very well that the absence of any time frame is likely to exasperate Kosovo Albanians and perhaps precipitate unilateral acts.

25. It has also been suggested to me that perhaps the Serbian public would currently not be prepared to accept Kosovo’s independence and that such an outcome could destabilise Serbia’s political environment. Instead, in some years’ time, possibly when Serbia is at the doorstep of membership in the European Union, the option of independence could be reconsidered and accepted without causing public and political turmoil. I am afraid that this idea is a very diplomatic way of asking for the current situation to drag on, for a lapse of time which would be unacceptable for the majority of Kosovans.

26. This undefined scenario, for me, would be the most detrimental: first of all it is unfair for the people of Kosovo who, irrespective of their ethnicity, need normality and a prospect for the future; but it would also be dangerous for Europe, because it would create a long-term frozen conflict in the Western Balkans.

The Kosovo Assembly makes a unilateral declaration of independence (UDI)

27. In the absence of a negotiated solution, and in the face of the inability of the United Nations to impose one, a unilateral declaration of independence by the Kosovo Assembly represents the most realistic scenario. Although aware of the gravity of such a choice, the Kosovo Albanian leadership, irrespective of political colour, feel the pressure of responding to the expectations and the frustration of the Kosovo Albanian people and of the need to achieve a clear status for the benefit of all the Kosovo communities within a reasonable time frame. Consistent statements made by the highest PISG figures, as well as by the victors in the elections for the Kosovo Assembly of 17 November, indicate that the UDI is an option.

28. Even so, Kosovo Albanian leaders assured me that this choice would be made only after having secured support from the United States and the European Union, or at least a critical mass of EU members.

29. I was also told that, in the case of a UDI, the Ahtisaari package would be fully implemented, including the provisions on decentralisation, which give large autonomy to Serbian municipalities.

6. What could be the consequences of a unilateral declaration of independence?

Partition?

30. Despite having been raised in the media and in the academic and think-tank community as a test-balloon, the partition of Kosovo is not an option and, as such, has not been discussed in the negotiations. It would not even be of great advantage, as the majority of Kosovo Serbs live south of the River Ibar.

31. Similarly, an awkward statement by Mr Ischinger that any solution mutually agreed upon by the parties would be acceptable – which seemed to contradict the principle set by the Contact Group that the status settlement should respect Kosovo’s current borders – has been subsequently clarified and the principle of the preservation of current Kosovo’s borders reiterated.

32. Nonetheless, during my visit my attention was drawn to the possibility of partition occurring de facto, as a “spontaneous” reaction by Kosovo Serbs in the northern part of Kosovo to a unilateral declaration of independence by the Kosovo Assembly. On the other hand, I was also told that even if Kosovo Serbs in northern Kosovo might “close” the border for some time, this situation would not be sustainable and security conditions would be easily restored by the Kosovo Force (Kfor).

33. In either case, the partition of Kosovo would be the worst possible scenario for the region, because it would imply an acceptance of ethnicity as a criterion for establishing borders and would risk creating destabilising effects. This aspect was mentioned to me in Skopje by the Minister for Foreign Affairs,

Mr Milososki, who, while confirming the support of his country for the Ahtisaari package, stressed the risk of manipulation of this precedent by extremist groups, in his country and in the region. I would like to express my gratitude to Mr Milososki

- whom I was only able to give a one-week notice request
- who came out of a cabinet meeting to see me and spoke openly and directly with me for over an hour.

Mass exodus?

34. Serbian officials often refer to mass exodus as one of the consequences of Kosovo's independence. I am not totally convinced that independence would cause largescale population movements: I have the impression that, during these years, many Kosovo Serbs have come to accept the idea to remain in Kosovo irrespective of its status; some of them are prepared to work within the system or would be prepared to do so if they did not fear Belgrade's retaliation, which could result in a refusal to pay salaries, pensions or a dismissal from employment. On the other hand, the media effect of those Kosovo Serbs who might be leaving their homes in Kosovo could generate a chain-reaction, could be exploited to increase tensions and, in the worst case scenario, to foment violence.

Violence?

35. At the moment the situation in Kosovo is calm and Kfor claims to be capable of maintaining security in all possible scenarios, including in the north where its presence has recently been reinforced. Similarly, Kfor does not consider the existence of small Serbian militia groups in the north of Kosovo as a meaningful threat.

36. The events of March 2004, however, should act as a warning. Unfortunately, it cannot be excluded that, in a climate of great tension such as that created by a UDI, violence could be sparked by even a trivial incident, for Serbian agents provocateurs, charged with fomenting violence in Kosovo

37. In my meetings with the highest Serbian officials, I was told very firmly that, in response to a unilateral – and therefore unlawful – declaration of independence by the Kosovo Albanians, there would be a legitimate political and diplomatic reaction from the part of Serbia. Never during my meetings was the possibility of resorting to violence raised as an option; in fact, it has openly been excluded by President Tadic after the Baden conference. Some analysts, however, predict the establishment of roadblocks or the obstruction of electricity supplies as possible retaliation.

38. I want to say that we all are indebted to Kfor for its efficiency and competence and to the new French general in command, Xavier de Marnhac, who was for me someone in whom one could have complete confidence.

7. Achieving a unanimous EU position

39. It is fundamental that the EU succeeds in achieving unity or at least wide internal support on the status issue, and on its attitude in case of a UDI.

40. A solid single position by the EU is important in many respects:

- politically, to give credence to the European Union's Common Foreign and Security Policy, especially in a region like the Balkans, which is a priority in the context of defence and enlargement;
- to ensure the smooth functioning of the future EU mission in Kosovo, which should replace the United Nations Interim Administration Mission in Kosovo (UNMIK);
- given that most EU member states are also NATO members, to ensure that Kfor can continue to be operational in all the different scenarios, including if necessary in the absence of a UNSC resolution and in the case of a unilateral declaration of independence by the Kosovo Assembly.

41. EU members such as Cyprus (with its northern part), Greece (with its unrecognised minorities, and a great concern over the situation in Cyprus), Romania (with its Hungarian minorities), Slovakia (with its Hungarian minorities) and Spain (with its Basque countries and Catalonia) have expressed concerns about the impact that Kosovo's future status, in particular Kosovan independence, could have for their own situation. Other EU members would prefer the process to remain within the UN framework and would be very cautious in the absence of a UNSC resolution.

42. It is to be hoped that reluctant EU states will have now drawn their conclusions: the parties were given an additional chance to reach a negotiated solution, failing which leaving Kosovo in a limbo represents an even greater risk than its independence. According to the press, it would seem that, at the moment, only two EU states are not prepared to move from their previous positions.⁷

8. The Kosovo issue in Serbian politics

43. The failure of the Troika to facilitate a negotiated solution opens an even more delicate period for the domestic situation in Serbia, which should be on the eve of a presidential election.

44. I believe that the Democratic Party of Serbia (DSS) of Prime Minister Kostunica is key to finding a solution to the status issue and to ensuring that, even in the event of a UDI, the situation in Serbia remains peaceful. It is understandable and legitimate for a government to be concerned about defending the territorial integrity of its country. However, it is my impression that until now the government, and the DSS in particular, has relied on a populist and nationalist discourse to distract the Serbian public from the real problems of the country, first of all its economic and social situation, unemployment and the need for democratic reforms. In fact, it seems to me that the Kosovo issue has somehow been used by the DSS to present itself as the balancing element in Serbian politics: by waving the threat of an alliance with the Serbian Radical Party (the largest political force in parliament), the DSS has retained for itself a position of power which is surprising given its relatively small representation.

45. On the other hand, the threat of precipitating Serbia into the hands of radical forces is a blackmail argument which is used both internally, in Serbia, and externally, with the international community, and in particular the European Union.

46. It is also a strange factor in the whole complicated equation that, while Serbia has throughout very clearly stressed its commitment to maintain sovereignty over Kosovo – even to the extent of a constitutional referendum stating this in which Kosovo Albanians did not vote – there has been no meaningful effort at reconciliation. In Kosovo I was told that Serbia was only interested in territory, not the people living in it. Otherwise, in order to maintain Kosovo with its 90% Albanian population and the memory of the war with Serbia, the Serbian Government would have engaged in a huge effort of reconciliation for this to work.

47. The weeks to come will show whether the current government coalition is prepared to face all the possible scenarios and whether it will be able to counterweight those political forces that want to divert Serbia from its European path.

9. My personal conclusions

48. When is the status of Kosovo going to be decided? In more than two years, the potential for negotiations has been exhausted. The positions of Pristina and Belgrade cannot be reconciled. Encouraging the continuation of negotiations knowing that there cannot be a common ground means creating a frozen conflict in the Balkans, with all the consequences that this would entail for regional and European stability, as well as for the full attainment of the standards for Kosovo. The status of Kosovo should be determined as a matter of urgency. The precondition for this status to be durable is that it is backed by the widest international support, in particular the EU and its member states.

49. Why should Kosovo serve as a precedent? It is, indeed, a unique situation which I cannot see anywhere else in Europe, where the UN decided that status should be determined, and for which a unanimously accepted UN Special Envoy proposed independence.

50. I shall repeat my personal view that, in the absence of a mutually accepted solution, independence is the only viable solution.

51. I have listened attentively to the core arguments of the Serbian leadership: the Badinter Commission took a firm position that in the process of the dissolution of Yugoslavia, administrative borders should be maintained. This position was reiterated in the Rambouillet Agreements. Why, then, should it be different in the case of Kosovo? Besides, depriving Serbia of its territorial integrity would mean undermining the international legal order and would risk opening the Pandora's box of proliferating demands for territorial secession, both in the region and outside. What Kosovo needs is not so much independence as good governance, solid institutions, economic recovery, good relations with its neighbours.

7. Reuters, "Russia to "insist" Kosovo talks extended", 26 November 2007.

52. In spite of acknowledging the basis of these arguments in general, I still think that the tension between the principle of self-determination and the respect of territorial integrity need not in each and every case be resolved in favour of the latter. In fact, the case of Timor Leste shows very well that, in very special circumstances, the United Nations can also decide in favour of the establishment of an independent state, regardless of the principle of territorial integrity.⁸

53. Without wanting to draw any parallels, I would like to recall the words of the Contact Group that in Kosovo “the disastrous policies of the past lie at the heart of the current problems”.⁹ Kosovo’s autonomy was stripped in 1989; the following year, Kosovo declared itself independent and in 1992 Ibrahim Rugova was elected president; the Albanians established a parallel underground system; a war ensued during which atrocities were committed against both sides but to a greater extent against the Albanian population – for which the current democratic Serbian leadership has never made a public apology. It is not a matter of punishing Serbia by dismembering it, but to ask ourselves:

- Is it unreasonable to question Serbia’s moral right to govern Kosovo?
- Is it realistic to think that Kosovo could go back to Serbia’s sovereignty, even a formal one? How long would this situation last?

54. I believe that Serbia would do much better without Kosovo: it could then turn to its real problems and pursue its democratic and European vocation.

10. Dissenting opinion by the delegation of the National Assembly of the Republic of Serbia

10.1. General remarks

The delegation of the National Assembly of the Republic of Serbia considers that Lord Russell-Johnston has carried out substantial work in preparing the report on developments as regards the future status of Kosovo, and understands this as an effort to keep the Council of Europe Parliamentary Assembly informed of the situation in the province.

However, keeping in mind all the goals, competences, principles as well as mechanisms of the Parliamentary Assembly of the Council of Europe, the Serbian delegation has raised doubts whether the Parliamentary Assembly of the Council of Europe should produce documents in which it states clear positions on the status questions of one of its member states. Furthermore, the reservations and doubts were raised with regard to the opinion on whether the Parliamentary Assembly of the Council of Europe should take the liberty and invite bodies such as the United Nations Security Council (UNSC) to impose solutions on a UN member country. It is clear that the primary goal of the Parliamentary Assembly of the Council of Europe is to address issues referring to the state of human rights, democracy, and the rule of law, and fight against challenges such as discrimination, xenophobia, intolerance, terrorism, trafficking of human beings, crime and violence, as well as to back political, legislative and constitutional reforms. Therefore, the Parliamentary Assembly of the Council of Europe should not take stands on the issues which lie within the sole competence of the United Nations. Also, the Parliamentary Assembly of the Council of Europe should not exert pressure upon UNSC member countries to impose the solution (Council of Europe Statute, Article 1.c, “Participation in the Council of Europe shall not affect the collaboration of its members in the work of the United Nations and of other international organisations or unions to which they are parties”). Therefore, the Parliamentary Assembly of the Council of Europe should strive to promote ways which could assist in solving the problems, in accordance with its own values, that is through dialogue and compromise.

Since the draft resolution has already been produced, the delegation of the National Assembly of the Republic of Serbia considers that certain points, which are already included in this report, should be completely presented, in full detail, in order to retain the comprehensive and fully accurate approach.

8. Following severe human rights violations in East Timor by the Indonesian Government, in 1989 the UN established a United Nations Transitional Administration in East Timor (UNTAET) and encouraged the independence process (see UNSC Resolutions 1272 (1999), 1338 (2002), 1392 (2002) and 1410 (2002)).

9. Contact Group statement, 31 January 2006, paragraph 7.

10.2. Comprehensive reference to the documents the rapporteur used

The rapporteur has stated in the last sentence of paragraph 3 of the draft resolution, “After six rounds of direct talks, the Troika has concluded that the parties have been unable to reach a compromise”. However, if the aim is to provide a more detailed and complete view into this matter, one would have to mention that the Troika has expressed its regrets, whilst stating that “a negotiated settlement is in the best interest of both parties”.

The rapporteur has recalled in paragraph 6, line 4, of his draft document, that the Parliamentary Assembly of the Council of Europe has in its previous [Resolution 1533](#) taken a favourable position with regard to an “internationally-imposed solution”, should a deadlock protract negotiations beyond a reasonable time frame”. However, the accurate reference to [Resolution 1533](#) would be a wider quote with regard to this position, which gives a completely different sense to it. With this in mind, it has to be stated that the Parliamentary Assembly of the Council of Europe has taken a favourable position to an “internationally-imposed solution as the last and extreme resort”, “should a deadlock protract negotiations beyond a reasonable time frame”.

In addition, it is important to underline that contrary to the rapporteur’s statement that “the potential for finding a compromise has now been exhausted” (paragraph 6, line 1, of the draft resolution), the Troika has never mentioned that the potential for finding a compromise has been exhausted, but only that the agreement was not reached during their one hundred and twenty-day mission.

10.3. Amendments moved by the Serbian delegation

The Serbian delegation moved the following oral amendments to the draft resolution at the Political Affairs Committee meeting on 11 December in Paris:

In paragraph 2, after “15 rounds of talks” insert the following “of which only one referred to the status itself and lasted not more than two hours”.

This needs to be included in order to provide the Assembly with a complete insight into the manner in which the negotiations were conducted under Mr Ahtisaari’s auspices, explaining that during the 15 rounds of talks only a segment of one round was dedicated to the question of status.

In paragraph 5, in the second sentence, line 5, delete the words: “it prevents displaced persons and refugees from Kosovo from reaching a decision whether to return to their homes”.

Our amendment basically expresses our firm doubt that any status settlement would enable displaced persons and refugees to return to their homes. In fact, the return of these people was part of the package of UN standards that was set before the process of determining Kosovo’s status began (“Standards before status”). Moreover, independence would most likely discourage most of the nonAlbanian population from returning to their homes.

Paragraph 6 should be replaced with the following paragraph:

“As a consequence, the Assembly concludes that, as the most recent stage in negotiations has not resulted in compromise, alternative ways should be envisaged to secure the continuation of the talks and the compromised solution in the near future, with a view to preventing Kosovo from becoming a powder keg and ultimately a frozen conflict in the Balkans. In this context, recalling that, in its [Resolution 1533 \(2007\)](#), it took a favourable position on an ‘internationally-imposed solution as the last and extreme resort’, should ‘a deadlock protract negotiations beyond a reasonable time frame’, the Assembly calls on members of the Council of Europe who are also members of the UNSC before resorting to any other solution to strive to overcome existing differences and do everything in their power to find the way to reach a timely compromise as the only guaranteed basis for the peace and stability in the region.”

The amended paragraph was proposed because the rapporteur has omitted to add that an imposed solution is the last and extreme resort, particularly bearing in mind that the Troika report has not said that the end of their mission means an end to the negotiations and further talks, that all possible means of reaching a compromise were exhausted or that it is time for the imposition of a solution. Furthermore, one could question whether the imposed solution contravenes the UN Charter, and international law.

In paragraph 7, after the word “independence”, delete the rest of the sentence. The explanation is the same as in the amendment above.

In paragraph 8, after the word “any”, insert the words “unilateral action and”. It is important to stress that unilateral acts do not contribute to peace and stability, and in fact have quite the opposite effect.

10.4. Reference to the rapporteur’s view on the role of the EU in this matter

The Serbian delegation strongly disagrees with paragraph 9 of this draft resolution, where the rapporteur invites EU member states “to endeavour to achieve a single position on the issue of the future status of Kosovo, as well as on the attitude towards a possible unilateral declaration of independence by the Kosovo Assembly”. Unilateral acts, by their very nature, undermine and hinder stability, particularly in this very set of circumstances; EU countries should not be asked to get involved in something that falls within the jurisdiction of the UNSC.

This remark of the Serbian delegation fully corresponds to the principles on which the EU was founded (consolidated version of the Treaty on European Union, Provisions on a Common Foreign and Security Policy, Article 11: “The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be: to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter; to strengthen the security of the Union in all ways; to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders”). Therefore, the delegation of Serbia will submit an additional amendment in this regard at the next meeting.

10.5. Concluding remarks

The official position of Serbia, regarding the future status of Kosovo, is that it is necessary to have a compromise solution, reached in a peaceful manner through negotiations, thus preserving regional and wider stability. A solution should be based on the UN Charter, UNSC Resolution 1244 and the Helsinki Final Act which refers to the territorial integrity of states. In addition, conclusions of the European-founded Badinter Commission stated that the dissolution of the SFR Yugoslavia shall be based solely on the lines of administrative borders of the former republics (Kosovo is a province of Serbia, and it was never one of the six Yugoslav republics).

We believe that it is necessary to analyse and discuss the issue of Kosovo, in terms of the state of human rights, the rule of law and democracy. It is vital to continue to suggest how the situation in these fields can be improved. We believe that the Parliamentary Assembly of the Council of Europe should deal with real life problems, instead of the status issue itself, and it should use its capacity to produce concrete results in this respect. This draft resolution clearly addresses the issue of status, and the Serbian delegation believes that if the circumstances are such, stronger reference by the Parliamentary Assembly of the Council of Europe should be made to the principles stemming from the spirit of the core values embodied in this Organisation, through the promotion of dialogue and compromise as its basic tools.

Reporting committee: Political Affairs Committee.

Reference to committee: Reference No. 3324 of 16 March 2007.

Draft resolution adopted with 14 votes in favour, 7 against and 3 abstentions, and draft recommendation unanimously adopted by the committee on 11 December 2007.

Members of the committee: Mr Abdülkadir Ateş (Chairperson), Mr Konstantin **Kosachev** (Vice-Chairperson), Mr Zsolt Németh (Vice-Chairperson), Mr Giorgi Bokeria (Vice-Chairperson), Mr Miloš **Aligrudić**, Mr Claudio Azzolini, Mr Denis Badré, Mr Radu Mircea **Berceanu**, Mr Andris Bērziņš, Mr Alexandër **Biberaj**, Mrs Guðfinna Bjarnadóttir, Ms Raisa Bohatyryova, Mr Predrag Bošković, Mr Luc **Van den Brande**, Mr Lorenzo Cesa, Mr Mauro Chiaruzzi, Ms Elvira **Cortajarena**, Ms Anna **Čurdová**, Mr Rick Daems, Mr Dumitru Diacov, Mr Michel Dreyfus-Schmidt, Ms Josette **Durrieu**, Mr Frank Fahey, Mr Joan Albert Farré Santuré, Mr Pietro Fassino (alternate: Mr Pietro **Marcenaro**), Mr Per-Kristian Foss, Ms Doris Frommelt, Mr JeanCharles Gardetto, Mr Charles Goerens, Mr Andreas **Gross**, Mr Davit **Harutiunyan**, Mr Serhiy Holovaty, Mr Joachim **Hörster**, Mrs Sinikka Hurskainen, Mr Tadeusz **Iwiński**, Mr Bakir Izetbegović, Mrs Corien W.A. Jonker, Ms Darja Lavtižar-Bebler, Mr Göran **Lindblad**, Mr Younal **Loutfi**, Mr Mikhail Margelov (alternate: Mr Victor **Kolesnikov**), Mr Tomasz Markowski, Mr Dick Marty, Mr Frano Matušić, Mr Murat Mercan, Mr Mircea Mereuță, Mr Dragoljub Mićunović (alternate: Mr Željko **Ivanji**), Mr Jean-Claude **Mignon**, Ms Nadezhda Mikhailova, Mr Aydin Mirzazada, Mr João Bosco **Mota Amaral**, Ms Natalia Narochnitskaya, Mrs Miroslava **Němcová**, Mr Hryhoriy Nemyrya, Mr Fritz Neugebauer, Mrs Kristiina Ojuland, Mr Theodoros Pangalos, Mr Aristotelis Pavlidis, Mr Christos Pourgourides, Mr John Prescott (alternate: Mr John **Austin**), Mr Gabino **Puche**, Mr Lluís

Maria de Puig, Mr Jeffrey Pullicino Orlando, Mr Andrea Rigoni, Lord **Russell-Johnston**, Mr Oliver Sambevski, Mr Ingo Schmitt, Ms Hanne **Severinsen**, Mr Samad Seyidov, Mr Leonid **Slutsky**, Mr Rainer Steenblock, Mr Zoltán Szabó, Baroness Taylor of Bolton (alternate: Mr Denis **MacShane**), Mr Mehmet **Tekelioğlu**, Mr Mihai Tudose, Mr José Vera Jardim, Ms Biruté Vėsaitė, Mr Björn Von Sydow, Mr Harm Evert Waalkens, Mr David **Wilshire**, Mr Wolfgang Wodarg, Ms Gisela Wurm, Mr Boris Zala, Mr Krzysztof **Zaremba**.

Ex officio: Mr Mátyás Eörsi, Mr Tiny Kox.

NB: The names of those members present at the meeting are printed in bold.

See 4th Sitting, 22 January 2008 (adoption of the draft resolution, as amended, and the draft recommendation); and [Resolution 1595](#) and [Recommendation 1822](#).