



PUBLIC INTERNATIONAL LAW & POLICY GROUP

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NEGOTIATING FINAL STATUS FOR KOSOVO

Briefing Packet for the Kosovo Albanian Team

Negotiation Simulation

Public International Law & Policy Group

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OVERVIEW

Resolving the issue of Kosovo's final status will be complicated by two enduring facts: the absence of overlap between the stated objectives of the Serbs and the Albanians, the two major peoples directly involved in the disputed area; and the inability of the international community to make up its mind about its preferred outcome. If these two conditions continue to prevail, resolution of Kosovo's final status is likely to be prolonged, difficult, characterized by posturing on all sides, and marked by procedural points advanced to mask the fundamental political issues which the international community has consistently avoided facing.

Negotiations over Kosovo's future status could be almost as contentious within the international community as between the two parties themselves. It is possible that the international community will be unable to come up with a unified position, at least on some key issues. The U.S. role will be critical. Experience at Dayton, Rambouillet, Skopje and elsewhere has shown that where the United States takes the lead, it can usually bring along the internationals and the locals. When the United States hangs back, achieving agreement at anything other than the least common denominator level is difficult.

Unfortunately, Washington continues to lack a consistent policy on Kosovo. Three factors shape Washington's current approach toward Kosovo and the Balkans generally:

- Preoccupation of senior policy officials with other parts of the world;
- A shift in working-level personnel dealing with the region away from those with experience during the conflicts of the 1990s;
- Willingness in some parts of the bureaucracy to consider all options, even patently unrealistic ones such as returning Kosovo to some form of loose association with Belgrade, either out of ignorance of the region or because of new notions of U.S. security interests.

The absence of leadership in Washington has left the lead in Kosovo in recent years to the EU but Brussels, unfortunately, is just as divided and directionless about Kosovo as Washington. The new UNMIK chief, former Finnish president Harri Holkeri is said to be determined to take the lead in the upcoming talks between Belgrade and Pristina but history has shown that UN leadership is no panacea for resolving international problems. This has nothing to do with the capabilities of the individuals involved, which are sometimes quite high, but rather the lack of an institutional structure allowing decisive action within the UN itself and the inability of the UN to adopt actions without a consensus among the members of the Security Council. UNMIK under Holkeri may take the lead as long as the upcoming talks remain focused on technical issues but not once they begin to touch on vital political or security issues of the major players.

In theory, there are two ways the “gateway” issue of independence could be treated. One would be to try to resolve this difficult issue first, recognizing that once it was out of the way other issues would fall into place more easily. The other approach would be to put it

off for later resolution and to begin the talks with other issues, in an effort to build a sense of confidence and momentum before tackling the hard issue of independence.

The international community has opted for the second approach—at least for now—by deciding to begin talks between Belgrade and Pristina on technical issues which, it is said, will then in some vague fashion evolve into talks on Kosovo's future political status. The last UNMIK chief, Michael Steiner, apparently adopted the notion of beginning with talks on technical issues as a way to get the issue off square one in the absence of any effective policy leadership in either Washington or Brussels. It was also predicated on the notion that Serbian Prime Minister Zoran Djindjic was a pragmatic politician with whom it would be possible to work to achieve a realistic outcome in Kosovo. Now, with Djindjic dead and with a divided and weak leadership structure in Belgrade that seems driven by hard-line political posturing, prospects for this approach appear questionable at best. The situation in Pristina is not much better. The Kosovo Albanian leadership is united on independence as the only acceptable outcome but is internally divided on almost everything else and seems to have no concept of tactics or strategy for how to get to its goal. The surge in recent weeks of terrorist violence in Kosovo—although its origins are unclear—could also be a constraining factor on the willingness of the Kosovo Albanian leadership to compromise.

Many countries outside the region—including some leading members of the international community—fear Kosovo independence because of the potential impact on break-away regions in their own countries. These sentiments are seldom expressed openly but can have a powerful effect on the way representatives of these countries approach the issue of Kosovo's final status. “Kosovo can never be independent,” is the refrain with the unstated subtext being, “and neither can Corsica, the Basque region, Chechnya, nor Quebec.”

Regional issues are another complication. The neighbors of Kosovo have a strong interest in the outcome of the negotiations but are unlikely—at least initially—to be invited. The potential impact that changes in the political status or borders of Kosovo could have on Macedonia, Bosnia, and Albania is well understood both by regional and international players. It has always been one of the strongest arguments against major changes in Kosovo's status. If, on the other hand, the situation on the ground or the dynamics of the negotiation lead toward changes in Kosovo's status or borders, pressure could build to broaden the agenda and the participation of the talks beyond Kosovo alone.

During the 1990s the notion of “ancient ethnic animosities” often served as an excuse for diplomatic inaction but in the case of Kosovo it is a real factor. Serbs and Albanians genuinely dislike one another—and events over the past few decades have given both groups grounds for antagonism. Good personal relations between some Serb and Albanian negotiators are possible—some of the DOS leaders and the non-KLA Albanian leaders have known each other for years, going back to the days of the old Yugoslavia, when both constituted part of the so-called “alternative” to the Communists and then to Milosevic. But the distrust between the two peoples is deep and not easily bridged. It will affect the atmosphere and the substance of the talks in a range of tangible and

intangible ways. Albanians will cite Serb abuses going back to Milosevic's forcible suppression of the province's autonomy in 1989 as a justification for independence, while Serbs will cite the post-1999 war revenge attacks on Kosovo Serbs as one reason why the Albanians cannot be trusted with independence. In a broader vein, the record of violence will lend urgency to the perceived need of both sides for firm security arrangements, make minority rights issues more salient, and add strength to various partition options since—after the events of the past 15 years—few Serbs or Albanians can conceive of living together.

Another potential danger is that the talks could drag on indefinitely, leading to impatience and fueling extremism on both sides. The absence of high-level political engagement by the United States would make such a result almost a certainty. Even under the most optimistic scenarios—international unity and the two parties negotiating seriously—serious roadblocks can be anticipated at various points in the talks, which will require engagement at the Foreign Minister or the Chief of State level to overcome. It is also possible that one of the local parties might decide to spin out negotiations. If the Albanians, for example, became convinced that independence was genuinely off the table they might see continuation of the talks as the best way to retain KFOR in Kosovo and to buy time to prepare for resumed conflict if Belgrade were allowed to return to Kosovo.

Both Serbs and Albanians bring a lot of baggage to the talks. The emotional importance that both attach to the issue, the existence within both communities of sharp political and personality differences, and the strain of violence within both communities will make it hard for leaders on each side to compromise.

Nevertheless, the fact that all Albanians insist that Kosovo must become independent within its current borders and (virtually) all Serbs insist that Kosovo must remain part of Serbia does not mean that either side believes its professed preference is the only acceptable outcome. With enough pressure and patience some compromise is possible. Each side, however, also has red lines beyond which it will not go.

On the Albanian side, the most important red line is the return of Belgrade's rule in any real capacity. Albanians will insist on the trappings and reality of complete self-rule. They will not allow Belgrade's representatives any role in Pristina—even a symbolic one. Nor will they send their own people to any kind of common institutions in Belgrade—except perhaps in a transition arrangement. Albanians will also insist on some kind of international security guarantees against Belgrade's future return. Their demand will be a permanent NATO presence that includes U.S. troops. They might conceivably settle for some kind of European military presence, provided it was accompanied by security guarantees to which the U.S. was also a party. Albanians will initially be willing to grant Kosovo Serbs just what Belgrade says it will give them—full minority rights. But Albanians might be willing to allow Kosovo Serbs special status, including some limited territorial jurisdictions—Serb schools, health care, and police—provided these Serb “cantons” are legally part of Kosovo and report to Pristina and not to Belgrade.

Serbs also have some red lines in Kosovo. The first is the northern part of Kosovo, which only became part of the province in 1957, has always been predominantly Serb-inhabited, and which international inaction allowed to become a Serb fiefdom after the 1999 war. No Belgrade government will allow the north of Kosovo to return to unrestricted rule by an Albanian government in Pristina. At a minimum, Belgrade will insist on some kind of autonomous status for the north, including the northern part of the divided city of Mitrovica. In the context of an otherwise acceptable settlement, Serbs might be willing to allow Mitrovica to be united under some kind of special status under continued international control. As a practical matter, however, the existing dividing line will probably continue for some time, even under the most optimistic scenarios.

Another Serb red line is the retention of some kind of special rights for the major Serb shrines in the southern part of Kosovo. The Pec Patriarchate and the Decani and Gracanica monasteries are the most important but the Serbs will come in with a much longer list. Serbs will insist on extraterritorial status for the shrines if Kosovo separates from Serbia and on some kind of Serb security presence at the shrines under any option. Albanians will resist extraterritoriality but might eventually agree to a symbolic Serb security presence, provided they got an acceptable deal on status and Western security guarantees. Belgrade will also insist on special rights for the population of the Serb enclaves in the south but might eventually fall off since Belgrade cares little for the Serbs of Kosovo and most Serbs in the south would, in any case, leave if they believed they were going to be ruled by Albanians.

Leaving aside “symbolic” issues such as flag, seat at the UN, and national anthem about which both sides are capable of expending endless time in arguments—two underlying issues are likely to drive the talks: security and partition. There is a dynamic at work on both issues. The more secure Kosovo Albanians feel against a return of Belgrade’s rule the more willing they will be to make concessions in other areas.

Given the separation in which the Albanian and Serb communities in Kosovo exist and the continued hostility and violence between them, some kind of separation is inevitable, although the word and the concept of “partition” will likely be anathema to Albanians and some in the international community, at least initially. The issue is whether the north separates entirely from Kosovo and rejoins Serbia or whether the north becomes some kind of autonomous “Krajina” within a separate Kosovo. Sub-sets of the partition issue are Mitrovica city and the Serb enclaves in the south, with acceptable outcomes in both areas depending on how a range of other issues are settled.

Full legal independence for Kosovo virtually guarantees a Serb effort to split the north away. Options less than full independence will increase Belgrade’s willingness to allow the north to remain part of Kosovo but, conversely, will increase Pristina's insistence on “its” issues in the north—Trepca, return of expelled Albanians, control over Mitrovica.

Modalities

Modalities are likely to be very important and delicate in the initial stages of Kosovo status talks. Both the Serb and the Albanian sides will try to push their long-range

political objectives through ostensibly procedural issues. The auspices under which the talks will be held is likely to be the venue for the first procedural skirmish, which in reality will mask a more fundamental struggle over whether or not independence is on the table. The Serbs and their backers in the international community will insist that any agreement reached in the talks must be ratified in a UNSC Resolution and that no solution can go beyond the parameters of UNSC 1244. Albanians will insist that UNSC 1244 is not determining with respect to Kosovo's final status and, in general, will try to keep the UN's involvement to a minimum, recognizing that there is little chance of gaining UNSC agreement to a deal that grants independence to Kosovo.

A critical issue, which the international community and the Kosovo Albanians will have to face even before the technical talks begin, will be status and the composition of the Kosovar delegation. The current Kosovo constitutional framework allows Kosovars only limited role in foreign affairs. Efforts by the Kosovo Albanians to go beyond this have been slapped down hard by UNMIK. Up to now Kosovo delegations to international meetings, such as the recent EU summit at Thesaloniki have actually been led by UNMIK, which exercises legal sovereignty in Kosovo.

Kosovo Albanians have gone along with these arrangements in part because they had little option and in part because they recognize that little of vital importance is accomplished at these international confabs. Their attitude will be quite different toward the upcoming talks with Belgrade. Kosovo Albanians will not and should not participate in discussions which affect their vital issues without being in control of their own delegation. A structure for the current talks in which the UN heads a delegation which negotiates with Belgrade on behalf of the Kosovo Albanians would have no legitimacy in the eyes of either the Kosovo Albanian leaders or the population at large.

The notion of opening talks on technical issues, such as transportation or travel documents represents both opportunities and pitfalls. Dealing seriously and substantively with such technical issues would allow the Kosovo Albanians to demonstrate their "reasonableness" and lend weight to their pleas to be given greater control over their own destiny. On the other hand, Belgrade will seek to limit talks only to such issues, arguing that Kosovo's political status is determined by Serbia's new constitution and is not something for negotiation. The international community will also seek to limit initial talks to technical issues, in part because there is no consensus on what to do about the broader issues of Kosovo's future and in part because some—probably most—members of the international community support Belgrade's position. Kosovo Albanians, by contrast, cannot afford to participate in talks expressly limited to technical issues without some guarantee that all options regarding political status will be on the table in the future.

What this means is that the Kosovo Albanians even before the technical talks begin will have to work out their own position on two difficult and complex issues, both of which threaten to bring them into a conflict with the international community. Kosovo Albanians will need to work out a position that allows them to control their own delegation and also allows technical issues to be addressed without prejudice to broader political and economic issues associated with future status. Kosovo Albanians will have

to stake out their own positions on these points in the face of likely strong international pressure without entering into an open confrontation with the international community or allowing themselves to be pushed into the position of seeming to be intractable in comparison with Belgrade.

Participants

Serbs will seek to avoid the impression of talks between two equal parties and will do as much as possible to foster the impression that the talks are between the center and one of its constituent parts. Serbs will likely seek to keep the international role limited to something like “good offices” or “facilitator,” although they would be happy to construct the talks between themselves and the international community, with the Kosovo Albanians in a subordinate status. One ploy in this direction would be to insist that Kosovo Serbs and Kosovo Albanians each participate as separate and equal sub-delegations. Belgrade might also resurrect Milosevic’s old tactic of insisting on equal representation for minority “communities” in Kosovo, including Turks and the various sub-categories of Roma. The Serbs may also float their own concept of “regional” talks, which would include states sympathetic to the Serb position on Kosovo, such as Macedonia, Bulgaria, and Greece.

Kosovo Albanians, by contrast, would prefer to keep Belgrade’s role in talks on future status to a minimum, arguing that the final settlement is between the people of Kosovo and the international community. Kosovo Albanians have accepted the concept of talks on technical issues but they will resist direct talks between them and Belgrade alone and insist that the international community be fully in charge of the negotiating process at all stages. Kosovo Albanians will be ambivalent on the form of Kosovo Serb participation. They will resist allowing the Kosovo Serbs to be part of the Belgrade delegation because of the implication that Belgrade has the right to represent the interests of any citizens of Kosovo. On the other hand, Kosovo Albanians would welcome anything which tends to confirm that the Kosovo Serbs are not independent actors but, in fact, are acting under the direction of Belgrade.

The history of diplomatic negotiations over the past decade in the Balkans shows that achieving an agreement requires the U.S. to take the lead role and devote major political capital to the process. Kosovo Albanians will insist that the U.S. be at least a co-chair of any negotiating process and may condition their own participation on such a U.S. role. Ironically, Belgrade may also support a strong US leadership role in the talks, if it sees U.S. policy shifting away from sympathy toward the Kosovo Albanian cause.

Venue

This is likely to be one of the earliest and most stubborn areas where procedural arguments mask deeper substantive differences. Belgrade, together with much of international community, will probably take the position that the talks should be held under UN auspices, that any agreement must be codified in a UNSC resolution, and that the task of the talks is to discuss complete implementation of UNSC 1244 but nothing more. This strategy will be facilitated by the concept of technical talks led by the UN.

Albanians will need to find a way to participate constructively in technical talks without allowing this to undermine or divert the process from broader political objectives. They will insist that UNSC 1244 only deals with interim status for Kosovo and that final status goes beyond the provisions of UNSC 1244. Once the talks go beyond strictly “technical” issues, Albanians will seek to hold them under some kind of ad hoc group which they believe that the U.S. can dominate, such as the Contact Group. The Albanians will also try to bring forward aspects of the deal they accepted—or claim they accepted—at Rambouillet and Paris, especially the concept that the “will of the people” should figure in the determination of Kosovo’s final status and the notion of a three-year period for reaching a decision. They will seek to ignore aspects of Rambouillet they did not like, such as its constitutional provisions regarding minority communities.

Timing

Kosovo Albanians seek a road map that points the way toward resolution of final status. If an agreement is reached, the international community will not be out of the woods—or out of Kosovo—yet. Implementation of any agreement will require a prolonged international civilian and military presence. Kosovo’s current status as an international protectorate will be gradually reduced even before final status negotiations conclude, as more authority is transferred to democratically elected Kosovo representatives. The international community will need to come up with a mechanism to cover a continued—although diminished—role, which will likely include enforcing implementation of the terms of an agreement, monitoring political and human rights developments, and security.

Serious money will continue to be needed after an agreement for economic restructuring and investment. It would make little sense to spend the time and effort to gain some kind of agreement on final status only to see it collapse under the strain of economic difficulties in Kosovo and in Serbia.

SIMULATION SCHEDULE

Location: Grand Hotel

- 9:30** Coffee and snack available for participants
- 10:00-10:10** Introduction and review of simulation schedule and procedures—Plenary Room
- 10:10-10:45** Individual team meetings to set strategy
- 1030-11:00** International Team 1 meets with Serbians
International Team 2 meets with Albanians
Small group meeting of some Serbian team members and Albanians if agreed to by both parties and mediated by International Team 3
- 11:00-11:45** First Plenary
- 11:45-12:30** Individual team meetings to re- focus strategy (lunch will be provided during this meeting)
- 12:30-1:15** Small Group Meetings as determined by International Team
- 1:15-2:00** Second Plenary
- 2:00-2:30** Review and Lessons Learned

TEAM SCENE SETTER

All members of the Kosovo Albanian team, regardless of their political orientation, will share the objective of full, *de jure* independence as the preferred outcome of the talks. Compromise within the delegation on this issue will be hard, given the likelihood that anyone who did would face accusations of betrayal of Albanian national interests. All members of the delegation will likely insist on following the Rambouillet agreement precedent of a three year period followed by a referendum on Kosovo's future. There may be a certain amount of flexibility on tactics and timing within the delegation.

The relationship of the Albanian negotiating team to UNMIK could be an issue. Under the constitutional framework, the Provisional Institutions of Self-Government have certain responsibilities in the field of external relations, including the negotiating and finalizing of agreements, but these activities are to be coordinated with the UNMIK chief. In any case, the Kosovo Albanians will not recognize the UN's legitimacy to speak for them on the issue of Kosovo's future status. Both UNSC 1244 and the constitutional framework appear to specify that the UN exercises its authority in Kosovo pending a final settlement, which would appear to limit UNMIK's role in negotiations over a final settlement.

The place of the Kosovo Serbs will be a major issue in the composition of the Kosovo delegation. Logically, the Kosovo Serbs should be part of one Kosovo delegation and it is possible that Belgrade and some in the international community will insist on it. As a practical matter, neither Kosovo Serbs nor Albanians will trust each other or be willing to work together in a realistic fashion as part of one delegation, even if international pressure forced them to sit together at the table.

The UN may insist that the Kosovo negotiating team include representative(s) of the minority communities in Kosovo, such as the Turks, Roma, and Gorani. Kosovo Albanians might not resist but would seek to ensure that any minority representatives would tilt in their direction. If Belgrade also sought to include "its" Kosovo minority representatives in the talks, the question of who speaks for these communities and their place on the delegation could be an early issue.

NEGOTIATING THE ISSUES

1) KOSOVO FINAL STATUS

Objective:

- Full, *de jure* independence for Kosovo, with its own seat in the UN and diplomatic recognition by other states.

Acceptable minimum:

- *De facto* independence from Belgrade, complete local self-rule with security provided by an international military presence under the umbrella of some kind of nominal international protectorate status.

Background

Independence will be the overriding objective of all members of the Kosovo Albanian delegation. Kosovo Albanians will probably demonstrate little flexibility on any solution short of independence until very late in the talks and even then only in the context of heavy U.S. pressure coupled with favorable resolution of other issues of concern to them, such as the territorial integrity of Kosovo, continued NATO security presence, and the absence of any substantive role for Belgrade in Kosovo. Independence is such a sensitive issue that compromise on it could provoke splits within the delegation and violence within Kosovo itself. Since any Kosovo Albanian delegates who agreed to an outcome of less than full independence could have legitimate grounds for worry about their political future and personal security, this will obviously reduce incentive for compromise on the final status issue. A settlement based on less than full independence, moreover, could provoke such instability in Kosovo that it would be difficult, if not impossible to implement.

2) MITROVICA AND BORDERS

Objectives:

- Retain Kosovo as a single, unified entity within its current borders.
- Regain control of Mitrovica city and the near-by Trepca metallurgical complex and eliminate the illegal Serb administration that currently controls northern Mitrovica and the northern part of Kosovo.

Acceptable Minimums:

- Retain Kosovo in its current boundaries except for the three northern municipalities, which have always been predominantly Serb populated and which did not join Kosovo until 1957.
- Mitrovica city remains part of Kosovo but under international administration.
- Shared access and management of Trepca with Belgrade.

Background

Albanians will insist that Kosovo remain united within its current borders and will initially insist on the return of the three northern municipalities, from which virtually all of the small number of Albanians who lived there before the 1999 conflict have been expelled and which has come under the informal control of local Serbs backed by Belgrade. Albanians are realistic enough to understand, however, that regaining effective control of the north will take time if it happens at all. Provided Kosovo remains united (either as an independent state or a protectorate) Albanians would be willing to allow some kind of local autonomy to the Serb-dominated north, provided Serbs there recognized Pristina's suzerainty. Albanians will be reluctant to agree to a *de jure* partition of Kosovo but at the end of the day might be willing to let the northern municipalities go if that was the price of independence and provided the Albanian portion of Kosovo received the necessary international security and economic guarantees. Albanians will resist to the end any efforts to extend the partition zone to the Serb-inhabited entities in central and southern Kosovo, as some Serbs have advocated. If partition becomes a real possibility, the Serb inhabitants of the entities may well find themselves exposed to violence intended to drive them out. Partition would also almost certainly encourage the activities of extremist elements within the Albanian community and might also lead to efforts to rekindle the uprising in the heavily Albanian Presevo region of Serbia.

Albanians will insist that Mitrovica city—currently divided into southern, Albanian and northern, Serb sectors—be reunited but provided they get an acceptable deal on Kosovo final status they might be willing to see Mitrovica remain under a truly effective international administration. This would probably involve a tacit willingness to allow the informal division to persist, under an overall international umbrella which covered separate Serb and Albanian sub-municipalities.

A major factor in the issue of territorial integrity and partition will be control of the Trepca mining and metallurgical complex, which both sides are convinced contains the key to Kosovo's economic future, although its real commercial prospects are uncertain at best. Albanians will insist that Trepca be administered exclusively from Pristina but in the end might be willing to allow some kind of shared management, although international supervision would probably be needed to make this work.

If Kosovo is partitioned, the Kosovo Albanians will almost certainly link their acceptance of the loss of northern Kosovo to demands that Belgrade and the international community agree to a territorial compromise in which parts of the Albanian-inhabited region of Presevo in southern Serbia were absorbed into Kosovo. These claims would likely be accompanied by renewed violence against the Serbs there intended to focus Belgrade and the international community on the cost of rejecting such a territorial swap. The Albanians would perhaps back off from these claims only if they believed that continued pursuit of their objectives in southern Serbia jeopardized Kosovo independence itself.

The Kosovo Albanian delegation would not seek to link partition with the fate of the Albanians in Macedonia but, depending on how developments in Kosovo and Macedonia

are going at the time, it is not inconceivable that some Albanians in Kosovo and Macedonia could seek to exploit partition to argue that the Albanians in Macedonia should be allowed to join Kosovo.

3) SECURITY AND THE FUTURE OF KFOR

Objectives:

- A permanent NATO presence in Kosovo and a NATO security relationship with an independent Kosovo.
- A Kosovo military armed and trained by NATO.

Acceptable Minimum:

- A “tripwire” security force in Kosovo that included some U.S. troops linked with international security guarantees to which the United States is a party.

Background

Kosovo Albanians understand that an independent Kosovo cannot fully provide for its own security. They will pay lip service to the notion that the best guarantee of their security is good relations with their neighbors, including Serbia. Nevertheless, they will never fully trust Belgrade and they also believe that it would take many years for Belgrade to become reconciled to the loss of control and sovereignty over Kosovo.

Given the level of insecurity and distrust in the region some kind of international security presence will be needed in Kosovo for years to come. Kosovo Albanians would like KFOR to stay indefinitely and would be prepared to grant NATO troops broad latitude in basing rights and relations with local authorities.

Kosovo Albanians will also insist on a small local military force under the command of the elected authorities of Kosovo. They believe that the Kosovo Protection Corps (KPC) should serve as the nucleus of a small military force under the command of the elected authorities of Kosovo. If the international community balks at the KPC, which has earned a bad reputation among some internationals for reportedly engaging in violence and unauthorized business activities, Albanians would not object to creating an entirely new military organization. Whatever its origins and name, however, any Kosovo military force would, in the beginning, be heavily staffed by ex-KLA fighters, which would reinforce the already strong Serb opposition to any kind of Kosovo military.

Kosovo Albanians would resist—probably violently—the reentry of any Serb military forces into Kosovo. In the context of an otherwise acceptable agreement on Kosovo’s final status they might be willing to allow a small number of armed Serb security personnel to provide a symbolic presence at Serb churches and monuments.

4) MINORITIES AND REFUGEES

Objectives:

- All Serbs who lived in Kosovo prior to 1989 have the right to return but only if they are prepared to accept citizenship in an independent Kosovo.
- Serbs and other minorities (“communities”) are entitled to all generally accepted minority rights but no special status, privileges or broadly defined political vetoes.
- Serbs are entitled to compensation for injuries suffered during or after the 1998-1999 conflict only if Albanians receive full compensation.

Acceptable Minimums:

- Provided they accept status as Kosovo residents, Serbs living compactly in Kosovo would be allowed certain cultural rights and local autonomy, including use of their own language, schools, medical facilities and possibly police.
- Compensation dropped by both sides.

Background

The issue of Serbs in Kosovo includes the return of Serbs driven out by Albanian revenge attacks after the 1999 conflict and what rights Serbs should have in the future Kosovo. (A note on terminology: Serbs insist they are not a minority in Kosovo, citing the fact that they are a majority in the larger Serbian community they consider Kosovo to be part of. The agreed term of art has become “communities.”)

The numbers game will be the first question on refugees and minority rights. The last (1991) Kosovo census showed 194,190 Serbs in Kosovo, which amounted to 9.73 percent of the province's total population. (Since Albanians refused to participate in the census their numbers were based on estimates.) During the 1990s tens of thousands of Serbs came to Kosovo, either to take jobs from which Albanians had been fired or as refugees from other places in Yugoslavia. Over the same period several hundred thousand Albanians left Kosovo—for jobs in Western Europe say the Serbs, to escape Serb repression say the Albanians. How many of these Albanians subsequently returned to Kosovo is unclear. After 1999 somewhere between 100,000 and 150,000 Serbs fled Kosovo to escape Albanian revenge attacks or because—as refugees or recent economic in-migrants—they knew there would be no place for them in Kosovo. In 2002, according to OSCE data, about 136,000 Serbs remained in Kosovo, about five percent of the total population. Almost all lived separately from Albanians, either in enclaves in the southern and central parts of Kosovo or in the north. Perhaps half of these remaining Serbs had fled from homes elsewhere in Kosovo.

Security and legitimacy will be at the heart of the negotiation over return. Although the security environment for Serbs and minorities in Kosovo has been improving over the past year or so, the recent increase in violence—whatever its source—shows that Serbs still cannot live normally in contemporary Kosovo south of the Ibar river Kosovo without international protection. Historically, the Serb community in Kosovo has been declining for many years and this trend will continue whatever happens with regard to final status. Nevertheless, in the short run the greater is the international security presence in Kosovo the greater will be the likelihood of a significant Serb population remaining or returning to Kosovo. Albanians will be willing to agree to provisions allowing all legitimate Kosovo Serb residents to return, except for those who committed crimes during the

conflict—who would probably not want to return anyway. The Albanians would also accept obligations for their local police to provide security for returning Serbs. But Serbs—for good reason—would have little confidence in such pledges.

For their part, few Kosovo Serbs recognize the legitimacy of Albanian rule over them. The greater is Kosovo's separateness from Belgrade, the less will be the tendency for Serbs to remain or return. If Kosovo becomes independent, only a small number of Serbs will stay, regardless of the security and legal provisions made for them.

The question of legal and governmental rights for Serbs and minorities will probably be pursued separately from that of returns, probably in the context of negotiations over a constitution for Kosovo. Albanians will initially offer the Serbs all generally accepted European minority rights—which ironically may be exactly what Belgrade will offer them. This issue will focus on the extent of any special rights Serbs should have in addressing Kosovo-wide issues and the scope of any local autonomous rights Serbs should have in the parts of Kosovo where they live compactly. On the former, Serbs will assert that they should be treated as a “constituent nation”—although they may not say so explicitly since this could undermine their claim that Kosovo is just a part of Serbia—which in former Yugoslav practice would mean that no important decision could be taken without their consent. Kosovo Albanians—and probably most of the international community—will resist this, so the issue will revolve over the scope of Serb special representation in governmental bodies and the extent to which they could delay or block legislation or other governmental actions. One possible compromise could be a certain number of legislative and executive branch positions set aside for Serbs and the creation of special constitutional provisions under which Serbs could either delay or block (obviously the distinction is crucial) decisions or legislation in certain clearly delineated areas which impact on their cultural or economic life in Kosovo.

On the issue of local autonomy, Kosovo Albanians will initially insist that Serb-inhabited regions should be treated like all other parts of Kosovo. They know that this is a non-starter, however, and in the context of an acceptable accord on final status and borders Albanians would be prepared to grant the Serb enclaves and the Serb municipalities in the north some autonomous rights within Kosovo (i.e., not as part of Serbia), with the issue obviously being fought over the scope of these rights. In the end these would probably include the right to Serb schools, language and media, health care, and police, with the latter being the most difficult for the Albanians to swallow but essential if the Serbs are to stay. These provisions could be built on the existing UN local offices in the enclaves and on the UN-established Kosovo Police Service (KPS), which has recruited Serbs to act as police in the enclaves.

5) ECONOMIC AND PROPERTY ISSUES AND REPARATIONS

Objectives:

- Establish the Kosovo economy completely separate from Belgrade and integrated as closely as possible with the EU.
- Full local control over all Kosovo economic assets, including Trepca.

- International agreement on the principle of reparations and on a specific figure for what Belgrade owes Kosovo Albanians for actions beginning with the forcible suppression of Kosovo's autonomy in 1989.
- Agreement that Kosovo should get a specific share of the assets of the SFRY.

Acceptable Minimums:

- Full local control over economic assets in areas controlled by Pristina.
- Technical economic cooperation with Belgrade where necessary, e.g. electricity.
- Any ties with EU do not go through Belgrade.
- Shared administration of Trepca with Belgrade, under international authority.

Background

The Kosovo economy hardly exists above the level of restaurants, food stores and other small businesses in the service sector. According to UN data Kosovo is desperately poor, with per capita GDP between \$850 and \$950. Even though official data certainly miss a considerable amount of the money which flows into Kosovo from workers abroad and other sources, the basic picture remains one of poverty, unemployment, high birth rate, and absence of local opportunity. With economic support from international and diaspora sources declining, many Kosovars are beginning to worry about signs of downturn in the small business economy which up to now has lent a surface air of vibrancy to Pristina and other cities in Kosovo.

Kosovo's grim economic realities have been compounded by UNMIK's economic mismanagement, including a policy on customs and taxation which favors imports and makes any investment in local productive capacity very difficult. Privatization was delayed for years and its initial implementation has been accompanied by charges of incompetence and corruption. Absence of clarity about final status and severe power shortages which continue to persist four years after the end of the war have all but precluded significant large-scale foreign investment and seem likely to continue to do so through the foreseeable future.

Kosovo Albanians will insist on their right to conduct all economic activities, whether governmental or private, independently of Serbia. They will seek a direct relationship with the EU but be prepared to forego any relationship if Brussels insists it must go through Belgrade. But Kosovo Albanian leaders seem to have given little serious thought to economic aspects of final status negotiations. Most Albanian political leaders still seem to expect that Kosovo's economic future will be linked to the former the Socialist enterprises that led the Kosovo economy before 1989—which even then survived thanks only to heavy subsidies from the rest of Yugoslavia. They also view the economy as a field of political patronage and influence which has led them to try to retain the remnants of the Socialist enterprises and inhibits individual entrepreneurs.

Kosovo Albanians will insist that the legally constituted authorities in Pristina should have full control over the Trepca complex, either to prepare for privatization or to run it.

They might be prepared to allow the Serbs a share of the operating rights, jobs, and proceeds, but only a minority share and only under international control.

The Kosovo Albanians will also assert that—as one of eight federal units in former Yugoslavia—they deserve a share of the financial and other assets of the SFRY. Since their share would presumably have to come out of Belgrade's portion and since the international community, beginning with the Badinter Commission in 1991, failed to recognize Kosovo's claims to be treated on an equal basis with the six Yugoslav republics, the Albanians will probably use this issue largely for bargaining purposes and be prepared to fall off at some point.