Kosovo: Some Thoughts on its Future Status

Rüdiger Wolfrum*

Introduction

After consultations with concerned and interested governments or groups, Martti Ahtisaari, Special Envoy of the UN Secretary-General for the Future Status Process for Kosovo, submitted on 2 February 2007 his report concerning the future of Kosovo (Comprehensive Proposal for the Kosovo Status Settlement – hereafter: Proposal). The Secretary-General of the United Nations has transmitted the Proposal to the Security Council1 for action. At the time of writing this contribution, it was still unclear what action the UN Security Council would take and to what extent it would be based upon this Proposal. However, this is not the focus of this contribution; it is concerned with the approach taken by the Proposal in respect of the future status of Kosovo.

The solution envisaged in the Proposal for the future status of Kosovo is a complex one. Any solution for the future status of Kosovo has to balance the interests of Serbia in safeguarding its sovereignty and territorial integrity with the human rights of the people of Kosovo. Theoretically, several options exist: extended autonomy within Serbia, statehood within a Serbian federal republic or a Serbian confederation, unification with Albania, independence of Kosovo,

---

* Director, Max Planck Institute for Comparative Public and International Law; President and Judge, International Tribunal for the Law of the Sea. This paper was completed in April 2007. Subsequent events are not taken account of in this paper. However, it should be noted that Kosovo’s Constitution adopted subsequent to its declaration of independence is based on and repeatedly refers to the Proposal.

etc.\textsuperscript{2} Although the Proposal itself avoids referring to the future Kosovo explicitly as an independent State, Kosovo will have to be qualified as such if the Proposal or something alike is to be accepted and implemented.\textsuperscript{3/4} The consequences of the implementation of the Proposal for Serbia are evident; Serbia would lose its sovereignty over the area in question. However, Kosovo would be facing several international restrictions or obligations concerning the conduct of its foreign relations, the treatment of minorities, its internal structure, etc. The Proposal does not yet contain a constitution for the future Kosovo, but it contains detailed guidelines amongst others concerning the protection of minorities, decentralization (local self-administration), the justice system, and the future involvement of the international community. Some of these core areas are dealt with in such detail in the Proposal that there is little room left for the future constitution-making process, given that the Proposal is drafted in mandatory terms.\textsuperscript{5} Finally Kosovo would remain under international supervision for a transitory period. In sum, this new entity would qualify as a State albeit one with limited sovereignty.

This solution envisaged for Kosovo – and as a matter of fact for Serbia – should be seen against the background of the historical development of independent statehood in this area following the First World War. The development of statehood here was based on the principle of self-determination as formulated by former US President Wilson.\textsuperscript{6} In Point 10 of his Fourteen Points he had proclaimed: “The peoples of Austria-Hungary, whose place


\textsuperscript{3} In that respect, the Proposal UN Doc.S/2007/168 Add.1 and the Report of the Special Envoy of the Secretary-General (UN Doc.S/2007/168) (Report) seem to differ. The latter refers to independence in paragraphs 5, 10 et seq., although it avoids referring to a State.

\textsuperscript{4} It should be noted that S/Res. 1244 (1999) 10 June 1999 called for a solution based on “the sovereignty and territorial integrity of the Federal Republic of Yugoslavia”.

\textsuperscript{5} See also Annex I, article 1 which states that the “Constitution of Kosovo shall be consistent in all its provisions with this Settlement”.