

Serbia's Constitutional Referendum: Democratic Reform and Euro-Atlantic Integration on Hold?

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Last month, on 28 and 29 October, just over half of Serbian citizens went to the polls and voted in favour of a new constitution. In almost any country, an event of this kind would be quite an occasion; however, this is not the case in today's Serbia. The process leading up to the referendum, as well as the issues that the country will need to address, all seem to be overshadowed by and connected to the moment when an international decision on Kosovo is taken. Serbia's democratically-orientated politicians are concerned primarily with the sequencing of events; that is, they are constantly contemplating the 'Kosovo dilemma' instead of moving the country forward through structural reform.

Where is Serbia now?

Six years after Milošević's one-way ticket to The Hague and more than three years since the brutal murder of Serbia's leading reformer, Zoran Đindjić, Serbia has not made significant progress in structural reform, democratic consolidation or Euro-Atlantic integration. While neighbouring countries in the Balkans are making headway towards NATO membership – Albania, Croatia and Macedonia – and towards EU membership – Bulgaria and Romania, which are likely to be followed by Croatia – Serbia is falling notably behind. Another direct neighbour, Bosnia and Herzegovina (BiH), is also making progress in some fields; for instance, defence reform is on track and talks with the EU on a Stabilisation and Association Agreement (SAA) are in place and slowly moving forward. The question is where does Serbia fit into this regional picture?

Unfortunately, the news coming from Belgrade on the integration front is not positive. Talks with the EU on an SAA have been suspended due to Serbia's lack of cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). Likewise, NATO is waiting for Serbia's main war crime suspect, Ratko Mladić, to be delivered to The Hague before it grants Belgrade Partnership for Peace (PfP) membership. Nonetheless, Serbia's war-wearied and disillusioned population seems indifferent towards Euro-Atlantic enlargement as well as on sending Mladić to The Hague. Tired of Belgrade politics, many Serbs abstained from voting in earlier elections and are concerned primarily with their daily economic survival. In this regard, it was noteworthy to see that Milošević's death, which received widespread international media attention, did not provoke any significant upheaval in Serbia.

Belgrade's political circles have been unable to initiate a national debate on the country's most pressing domestic issues. Preoccupied with internal political fighting, no serious debate has taken place on existential issues such as Serbia's war legacy, cooperation with the ICTY, Euro-Atlantic integration, a new Serbian constitution or the status of Kosovo. In this sense, the recent independence of Montenegro came as a shock to many Serbs. For its part, the government was not only slow in recognising its neighbour's independence but also in realising that the dissolution of the union changed Serbia's own political status.

Subsequent weak, democratically-orientated governments – which carefully had to manoeuvre between opening the country to the West and compromising with radical nationalists and former Milošević aides – have been unable to take a stand on, and tackle reform and democratic consolidation. Serbia does not know where it is heading and its politicians are obsessed with thinking in terms of a 'preferred sequencing of events'. 'As soon as there is a new constitution, we can hold elections. When there is a new government, there might be sufficient support to catch and deliver Mladić; and when Serbia has entered PfP and is negotiating with the EU, there might be some room for concessions on Kosovo. Finally, as soon as Kosovo is settled, work can begin on integration'. In the eyes of Serbian politicians, all of the big issues are interconnected; all lead to what every politician knows but has chosen to ignore publicly: the loss of Kosovo or, in the best case scenario, the need to work constructively with Albanian Kosovars within a new framework.

The international community, to some extent, is thinking in terms of a sequencing of events too. From its perspective, further NATO and EU integration is only possible upon Serbia's full cooperation with the ICTY. Indeed, it seems that any final decisions taken on Kosovo's status are only well-timed when a new and strong democratic government is in place or when there is a weak, nationalist-radical government in Belgrade. In the former case, the government would hopefully have enough strength to overcome the likely loss of Kosovo whereas in the latter case, the radicals – whose primary policy objective is maintaining it as part of Serbia – would take the blame for losing the province. The international community, led by the EU, NATO and the US, should avoid being paralysed by the 'sequencing' arguments used by Serb politicians. Assistance in the further embedding of democratic procedures and institutes are needed now more than ever before.

Serbia is a crucial country for Western interests in the Balkans. It is by far the most populous country in the western Balkans and is strategically important as it borders all except one (EU member state, Slovenia) of the former Yugoslav republics. Serbia is strategically situated on several crossroads; it has substantial minorities within its borders (Albanians in the Prešovo Valley, Bosniaks in the Sandžak region and Hungarians in Vojvodina); and numerous Serbs live in neighbouring Croatia, Republica Srpska of BiH and in disputed Kosovo. Serbia has to be the axis of lasting stability in southeast Europe. If the international community wishes to close the book on extreme nationalism, ethnic violence and weak states in the Balkans, it should not only look to resolve the status of Kosovo but focus as well on Serbia, which will remain at the core of southeast European politics and development.

A step was made in the sequencing problem when the dysfunctional Serbia and Montenegro (SCG) state union was resolved in early June. The two countries are independent and can now pursue their own national interests more swiftly. Undoubtedly, it is important to establish close and healthy relations between them. Such a relationship will take time, but it is something that seems inevitable due to the 'brotherly history' and economic interests that continue to link both countries. Still, the lion share of Serbia's political and social problems need to be addressed. The many problems can be clustered under the following three headings:

1. Serbian politics and democratisation;
2. Serbian Euro-Atlantic integration and cooperation with the ICTY; and
3. Kosovo.

Assessing each of these areas in turn, a few conclusions can be drawn on priorities for Serbia, generally, and its main democratic forces, specifically. Not all of the conclusions are bad; in fact, notable progress has been made in some fields. Four brutal wars and immense human losses cannot be overcome overnight; the nation needs time to come to terms with its recent past.

Serbian Politics and Democratisation

A New Constitution

Barely half of the Serbian electorate went to the polls in late October to vote on a new constitution; overwhelmingly, those who did so said 'yes' to the new fundamental law that was backed by all the political parties and endorsed by the Serbian Orthodox Church. Although the big international institutions, such as the EU, OSCE and Council of Europe, were satisfied with both the conduct and the outcome of the referendum, locally-based non-governmental organisations (NGOs) and observers reported several serious irregularities. There were suspicions that the government – fearing that less than half of the disappointed electorate would cast their vote – gave people the opportunity to vote for friends and relatives and without identification. Moreover, in some areas voter turnout was much less than was claimed officially and there were even reports of ballot box stuffing. It was crucial for the governing parties to get the referendum approved in order to be able to move on to elections and other political hurdles. The referendum was not broadly monitored by international organisations and both the Serbian political establishment and the international community had a clear interest in getting the constitution issue out of the way by convincing the disillusioned Serbian population to vote without having received proper information about the repercussions of a new constitution.

More than five years ago, Prime Minister Vojislav Koštunica – then as president – promised to start work on replacing the 'Milošević-era' constitution. After much delay, the draft was pushed suddenly through parliament a few weeks before the referendum. There are several reasons for the speed with which the constitution needed to be adopted. First, it opened the way for elections to be held this year or in early 2007; second, the EU has been demanding a new constitution for years; and third, Montenegrin independence brought the issue to the forefront.

The most noteworthy part of the text is the preamble that states that 'Kosovo is an integral part of Serbia'. This was the only way to get the Serbian Radical Party (SRS) – in opposition, but whose acquiescence was needed for a two-thirds majority – to agree to the text and for the minority government headed by Koštunica's Democratic Party of Serbia (DSS) to receive the usual support of Milošević's former Socialist Party of Serbia (SPS). Additionally, both the governing coalition and the Democratic Party (DS) led by President Tadić seem to think that this preamble will strengthen Serbia's legal position in the negotiations on Kosovo's final status. In essence, the haste in obtaining the public's approval is connected indirectly to the Kosovo dilemma and can be used by Serbia's leaders to argue that their people regard Kosovo as part of Serbia.

Is this constitution an improvement in terms of Serbia taking future challenges into account? Probably not. This text will block the establishment of good relations with an independent Kosovo. It could even lead to tensions with other neighbouring states that might do business with the Kosovars. Moreover, the EU will not negotiate membership with a country that has a territorial claim on another independent state; the current impasse with Turkey shows the complexities that can result from unresolved territorial disputes. There has also been some criticism in Serbia that the constitution has centralising tendencies; that is, it strengthens the government's grip on municipal councils and mayors, while the trend in most European countries is towards decentralisation (as in the case of Macedonia). Some minority rights also seem less protected than before; for instance, Serbian is stipulated in the constitution as the only official language until other laws are drafted and approved. It is unclear, however, when and what laws will be passed to safeguard the right to use minority languages, which is a potential concern for Serbia's minorities and human rights groups.

Speeding up the process to vote on the constitution was clearly a result of the 'sequencing problem'. Without a new constitution, there would be no elections. And with delayed elections, an international decision on Kosovo might have already been taken, which would have likely resulted in the democratic parties' loss of the elections to the gain of nationalist and radical sentiment. Looking at the international communities' interests, one might wonder if democratic consolidation in Serbia has been helped by the poor monitoring of the elections, which – to say the least – were not completely orderly, and by welcoming a constitution that is severely flawed on several points. This illustrated how the international community, like Serbian politicians, is still thinking in terms of a 'sequencing of events'. Perhaps the international community was too hasty in giving its support to the current Serbian government by agreeing that the constitution should be accepted quickly in order for the Serbs to move on to more serious hurdles, that is, parliamentary and presidential elections and Kosovo.

Parliamentary and Presidential Elections

Currently, plans are in place to hold elections in late December. The minority government and President Tadić's opposition DS have two reasons for speeding up the elections. First, the current executive is unable to make tough decisions because it depends on support from the SPS and therefore has its hands tied on sensitive issues. In order to press ahead with reform, a new and robust mandate is needed, which leads to the second reason behind the haste to hold elections: democratic forces believe they can win such a mandate since the polls are showing Tadić's DS to be one of the likely winners of the elections. This is also the reason why the popular President wishes to hold presidential elections concurrently – even though he is only half way through his five-year term – as a win would give him an even stronger mandate over a longer period.

The only way of securing democratic progress after the elections is through broad cooperation among democratic forces, including the parties in these elections that might not make the five per cent threshold, as in the case of the reform-orientated G17 and Foreign Affairs Minister Vuk Drašković's Serbian Renewal Movement (SPO). Only if the democratic parties unite in a single coalition will the radicals – whose former leader Vojislav Šeselj is imprisoned in The Hague – be kept out of office. Also, a new democratic government with a majority in parliament might withstand the likely loss of Kosovo and deliver Mladić to The Hague. Again, timing and sequencing are of the essence in Serbian politics.

Democratisation and Security Sector Reform

Although Milošević was ousted from power in 2001, most of his former aides and bureaucrats still hold their posts. Many officials in various ministries are 'old guard', resistant to change and outside influence from the EU and NATO. In a sense, the country has not fully opened up to democratic procedures, which makes transparency and accountability a scarce commodity in Serbia's executive and legislature.

One sector in transition countries that often shows quick results in reforms is defence. The defence sector differs, in this regard, from the overall security sector, which also includes services such as the police and intelligence services. While the civilian intelligence agency, BIA, and its military counterpart, VOS, have been unable to arrest top war criminals and are even suspected of hiding Mladić, Serbia's Armed Forces are undergoing a steady reform process. The last three defence ministers – of whom the current President was the first to engage in structural defence reform – have shown remarkable results in restructuring the military. For instance, the General Staff has been placed under civilian supervision within the ministry; several hawkish generals from the former Yugoslav Army were removed from their posts; and national defence documents and reform plans were drafted and presented to parliament and the public. Serbia has demonstrated to NATO that the withholding of Partnership for Peace (PfP) membership cannot be argued on

technical grounds. However, there are still serious hurdles to overcome, including Serbia's lack of resources to implement reforms and the necessary further removal of hard-line remnants of the former regime, which in turn would dissipate all suspicion that Serbia's war crime suspects are harboured by elements of the military.

Although this is just one example of a sector that is in a process of reform and democratic consolidation – and surely not the only one – more assistance is needed in this field. Currently, assistance programmes focusing on defence are supported primarily on a bilateral basis with Norway, the Netherlands, the United Kingdom and the United States playing a leading role. As the main promoters of democratisation programmes, it is important that NATO and the EU (including individual member states) make a clear distinction between conditionality on partnership and negotiations, on the one hand, and assistance programmes and cooperation, on the other.

Serbian Euro-Atlantic Integration and Cooperation with the ICTY

NATO's Partnership for Peace

NATO-Serbia cooperation is thriving in spite of the fact that official PfP recognition will only be granted when cooperation with the ICTY is assessed as satisfactory. In 2004, NATO began developing Tailored Cooperation Programmes (TCP) with Serbia. At first, this initiative consisted of small workshops; however, in its third year, the TCP has grown into a substantial programme. In essence, NATO is doing much more in cooperation and assistance than it does with many PfP member states (such as dictatorial Belarus and Turkmenistan). Formal recognition seems to be the only missing aspect, which is nevertheless still important for Serbia. For many Serbs, PfP and NATO are two different things. NATO evokes bad memories of the 1999 bombings and less than 40 per cent would approve of membership; whereas 70 to 80 per cent support PfP membership.

NATO officials stand firmly on the conditionality policy, but some creativity could be expected during NATO's Riga Summit at the end of November. The revision of old partnership programmes and the creation of new ones will be on the agenda. Since Serbia has been working constructively with NATO and because the Alliance has a strategic interest in working closely with the Serbs, new forms of cooperation could be devised. Here, one might consider allowing Serbia to make use of the PfP's most valuable tools, such as the Individual Partnership Action Plan (IPAP). Also, the PfP's structure could change altogether while its subsequent tools are strengthened. Such modifications could make official membership irrelevant. It would be in NATO's interest to include Serbia (as well as BiH and Montenegro) fully into the PfP's cooperation process.

The EU and the Stabilisation and Association Agreement Negotiations

Serbian citizens would rather see their country join the EU than NATO. Unfortunately, mutual confidence between the EU and Serbia has dropped to its lowest point to date due to Belgrade's lack of cooperation with the ICTY. The negotiations on the SAA were frozen last May and since then the Serbian government has done everything within its power – so it says – to get back to the negotiation table. Regrettably, the sole condition of apprehending Mladić has not been met. The delay on reaching this agreement is a loss for Serbia as, for instance, it affects visa and trade regimes. However, there has been a noticeable trend that indicates that official support for democratisation programmes has not declined since May. In the recent past, a lack of cooperation from Belgrade often resulted in EU member states' freezing or stopping their support programmes. This tactic has been counterproductive. Serbia's reform-minded politicians and institutions should be supported substantially and continuously. Only in this way can the country prepare for the challenges ahead.

Serbian Cooperation with the ICTY

Belgrade's cooperation with the war crimes tribunal in The Netherlands has travelled a bumpy road. Many Serbs believe the tribunal is politically-slanted, is based on double standards and does not give enough attention to the suffering endured by the Serbs. Furthermore, they feel that the whole country has been made to suffer from not entering PfP and the freezing of SAA talks because of one indictee. Still, one could also argue that it is the Serbian authorities that are to blame. Surely, Serbian intelligence could track down Mladić if it so desired (assuming that he is in Serbia). The question is to what extent do politicians have full control over the security services and the political will fully to cooperate with the ICTY? Despite a recent Belgrade action plan, nothing concrete has occurred in regards to apprehending Mladić. Indeed, several war crime indictees – not all of whom were 'small fry' – have been delivered to the ICTY this past year, proving there has been some cooperation. However, not unjustifiably, it is the person that will be charged with the murder of 7,000 Muslim men and boys that the tribunal is most eager to see in court. On the other hand, cooperation between NATO and Serbia has been growing steadily. The EU is also eager to work with Serbia due to its importance in the region. The conditionality terms set by Euro-Atlantic institutions exist and – counterproductive or not – it will be difficult for the EU and NATO to rescind on their stance.

The indicted general has strong support in small reactionary circles and although a substantial part of Serbia's population, if asked, would not support his being dispatched to The Hague, it would be highly unlikely that large crowds would take to the streets to protest his arrest. Both Milošević's extradition in 2001 and death in 2006 have proven this point. Moreover, when rumours emerged in February 2006 that Mladić had been 'conveniently' arrested near the Bosnia and Herzegovina border town of Bijeljina, it attracted much Western media attention; while all remained relatively calm in Belgrade. It remains unclear how these rumours on Mladić's arrest came about. Was it Western intelligence services trying to pressure Serbia to apprehend him? Or, more likely, did Koštunica want to test the reaction within the security services that are suspected of helping Mladić avoid arrest? Perhaps Serbian political circles were simply interested in assessing the population's reaction? In the latter case, the reaction affirmed that the current minority government would most likely be unharmed politically if it apprehended Mladić and delivered him to The Hague. However, EU and ICTY trust in Koštunica's leadership was further damaged. The Serbian government still needs to understand that this issue cannot be used as a political bargaining chip in the upcoming elections or to create goodwill before a final decision on Kosovo is taken.

Kosovo

The loss of Kosovo is unthinkable for most Serbs. Kosovo and Metohija – as the Serbs call the province – is regarded as the cradle of Serbian civilisation and is home to many churches and other historic places. Kosovo's population is 90 per cent Albanian and it remains crucial for the Serbian government to hold on to the province and remain uncompromising over the inviolability of its borders. Up until now, concessions on Kosovo have equated to political suicide in Serbian politics.

All the issues addressed so far are to some extent linked to the Kosovo issue: for instance, a new constitution would strengthen Serbia's legal position in the negotiations; new elections could result in a government that might be able to withstand the impact of any decision taken on Kosovo; and some would argue that cooperation with the ICTY, including PfP membership and the reopening of SAA talks, could positively influence a final decision.

Whereas six months ago, at the start of the negotiations under UN-appointed chief negotiator, Martti Ahtisaari, the international community seemed set on independence, Serbia stands a much better chance today of not fully losing the

province or at least of receiving substantial compensation (Kosovo owes Serbia one billion euros). The Contact Group – consisting of France, Germany, Italy, Russia, the UK and the US, and charged with looking into Kosovo's status – is struggling to forge a common front. Meanwhile, Ahtisaari and the Western countries in the Contact Group are aware that when the UN Security Council votes on a proposal for independence, China and Russia could either abstain from voting or – in a worst-case scenario – veto the resolution.

Serbia focuses on the formula 'less than independence, more than autonomy'. The Albanian Kosovars want nothing less than independence and have not backed down on this demand. Presenting their case as 'self-evident', the Albanian Kosovars have not supported their arguments with much progress towards fulfilling the standards set by the international community. Serbia started the talks in Vienna from a hopeless position but was able to form a united and politically well-balanced negotiating team that succeeded in: first, stalling; second, arguing strongly on legal points; and most importantly, rightfully stressing the deteriorating security of Serbs living in Kosovo. A large part of the Kosovo Serbs lives in Mitrovica and the areas between this city and Serbia proper; the rest are scattered throughout Kosovo. A solution needs to be found to accommodate the Serbs in an independent Kosovo. Decentralisation will surely be important but it is unclear whether the northern municipalities would receive some sort of autonomous status.

Many options are possible but whereas initially the best-guess outcome was independence with internationally curtailed sovereignty, now there is a variety of solutions possible – excluding only full independence with full sovereignty for Kosovo, and at the other extreme autonomy within Serbia. It will be extremely difficult to find a solution that is final, fair and functional. It might be final; however, both parties will certainly not consider any solution reached as fair. And, in the case that the middle road between independence and autonomy is taken, Kosovo might not be functional and could turn into a failing state. In November, Ahtisaari will report first to the Contact Group and then to the UN Secretary-General; a final decision by the Security Council might still be forthcoming by the end of this year but it is more likely to be expected in February-April 2007. The latter would leave enough time for Serbia to hold elections and establish a new government. Stalling the process remains an important aspect of the Serbian negotiating strategy. While the Albanian Kosovars argue that postponing a decision could lead to violence in Kosovo, the Serbs argue that setting a precedent by violating independent states' borders will start a chain reaction in southeast Europe, highlighting the substantial Albanian minorities in Macedonia, southern Serbia and the Republica Srpska in BiH, which wishes to become part of Serbia.

In any case, Belgrade would be well advised to prepare its population for a negative outcome and to begin to consider how it will accommodate the Serbs that leave an independent Kosovo. The government should plan ahead and not only react to misfortune, as it has done up until now.

While the wind is blowing slightly more favourably for Serbia in the negotiations, it should make an effort to separate the status of Kosovo from other pressing issues. Kosovo status talks continue to blur Serbia's other priorities. It is essential that the government does everything within its power to establish full control over the security services and arrest Mladic in order to win back the international community's trust and progress on the integration front. These and other issues should not be connected to Kosovo; they must be addressed regardless of the outcome decided for Kosovo's future. Serbia is losing precious time for reform and integration by thinking too narrowly in terms of a preferred sequencing of events, which revolves around an obstacle that it is only able to influence partially.

Steps Ahead

Serbia's government and democratic parties have many challenges to face in the coming years that include:

- Well-run democratic elections and the establishment of a strong democratic coalition;
- Full cooperation with the ICTY. Democratic parties and others need to foster the political will to apprehend Mladić and act on security services that are either unable or unwilling to get the job done;
- Initiating a national debate on Serbia's recent war-torn history, as well as on future integration with Euro-Atlantic structures;
- Obtaining PfP membership and reopening EU talks - not just for their own sake, but with a broadly supported long-term vision in mind;
- Cooperating on democratisation programmes offered not only by the EU and NATO, but also by other international organisations and (Serbian) NGOs;
- Informing citizens about the realities that Serbia faces in the settlement of Kosovo; and
- Planning ahead for a possible negative decision on Kosovo's status and preparing to accommodate Kosovar Serbs 'migrating' to either Mitrovica or Serbia proper.

If Serbia can avoid becoming paralysed by a fixation with the rightful sequencing of these different hurdles, making progress on any one issue conditional on progress in other areas, and instead deepen democratic consolidation, it will catch up sooner with its western Balkan neighbours on the road to EU and NATO membership. Serbia has huge potential due to assets that include a highly educated population. However, before full integration is within reach, Serbia needs to find itself, come to terms with the past while looking ahead, build its 'good neighbour' relations and engage in structural reform. The future could be bright, but a lot needs to be done.

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