



THE INDEPENDENT KOSOVO AND THE NEW CONSTELLATION IN THE BALKANS

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Since the independence no predicted catastrophic scenario has come true. Now following the ruling of the International Court of Justice (ICJ)¹ in the Hague which stipulated that the declaration of independence was not in contradiction of international law, a new context is emerging. The process leading up to independence was quite carefully managed; it did not come out of a sense of urgency and many efforts were made to put away emotions in favour of rationality.

There are four problems that have arisen since independence:

1. Kosovo was born with limited sovereignty and with a frozen conflict in the North².

¹ On the 22 July 2010 the International Court of Justice gave its Advisory Opinion on the question of the Accordance with international law of the unilateral declaration of independence in respect of Kosovo (request by the General Assembly of the United Nations by its resolution 63/3 of October 2008). This Advisory Opinion pronounces that the Court "is of the opinion that the declaration of independence of Kosovo adopted on 17 February 2008 did not violate international law."

<http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=21&case=141&code=kos&p3=6&PHPSESSID=3329ae13daa9befacbbfd1362b4a6076>

² The northern part of Kosovo has an ethnic Serb majority and the last two years Kosovo conducted a policy of keeping the North as a frozen conflict through permanent organised presence and control from Serbia.

2. Problems of international legitimacy (which is not something new) although independence was a product of an international process.
3. Weak institutions.
4. Unclear international presence. It is unclear who is supervising the independence: both UNMIK (Interim Administration Mission in Kosovo) and EULEX (European Union Rule of Law Mission) are involved.

The contested legitimacy of the new state has psychological but also some concrete negative effects. Kosovo cannot export to Serbia and Bosnia-Herzegovina because they do not recognise its export stamps. Kosovo is a member of CEFTA (Central European Free Trade Association) but cannot actually use it for trade because of the Serbian opposition.

The limited sovereignty implicates problems of border crossing to and from Serbia. The establishment of one zone for borders and one custom zone in terms of respect of the law of customs is urgently needed. A border police and custom officers have to be placed at Gates 1 and 31 (burned by Serbian mob after the declaration of independence). This is one of the tasks within the mandate of EULEX which *de facto* seems to tolerate Serbian institutions. The Kosovo government does not control part of its territory ("the North") Belgrade has kept a foot in the door of Kosovar independence through "parallel institutions".

Another example is the problem with Kosovo's phone system which goes mainly through the Serbian system. Our phone numbers appear with area codes from either Serbia, Monaco or Slovenia. This has practical effects on business relations and security issues. The country does not have an internet identity. There is a lack of financial support if you are not a member of the UN for example. The loans have the quality of 'high risk'. When you want to buy a house you have to take a credit of 30-50%. This is what you usually call a credit shark. There is no security for these loans because of lack of recognition. The bank bears a higher risk than in the rest of the region and the interest rates reflect that.

Kosovo cannot participate in any international competition; it is impossible to get into the FIFA because Serbia is blocking it. However: there were three Kosovars in the Swiss football team – the only team that beat Spain during the World Cup!

WEAK INSTITUTIONS HAVE AN EFFECT ON DEMOCRACY.

There is a lack of clarity for the role of international organisations. UNMIK remained in charge the last two years in the North. EULEX deployment since independence had no clear mandate and therefore had to reinvent its mission mainly devoted to fostering the rule of law. The EU role is hampered by the fact that five EU states have not recognized Kosovo and its mission is thus supposed to remain “status neutral”. This lack of clarity for almost three years has allowed Serbia to try to obstruct it. Tax collectors and teachers were not paid but policemen got two salaries (one from Kosovo and one from Serbia). All this is financed from Belgrade and meant to create a “frozen conflict“ type of situation similar to that in the Caucasus. This situation has consequences for the rule of law and democratic governance.

I am maybe not completely fair with EULEX. EULEX had a difficult time establishing itself without unanimity in its ranks. The problem is that the objective is very broad: Peace & stability is a very broad agenda. We have to define the objectives more precisely and define the term. EULEX is a unique opportunity and has full support of the population for European assistance to implement the rule of law reforms in Kosovo. We need to work on a timetable and we need an exit-date for EULEX: within a given time frame we need to make the process measurable. We have to obtain the benchmarks in order to put the process forward.

For some of the third world countries Kosovo is seen as a product of US-imperialism. Serbia relied on Russia to back its position on the international scene and Russia used the opportunity for investment in the energy sector. Russia also found a good opportunity to point a finger at the West: “We can give you as well a frozen conflict.” Throughout the nineties

Milošević continuously tried to play the EU's Member States off against each other. The fact that there is no unity in the EU on the Kosovo issue leaves that door still open.

With Serbia's demand to the ICJ to give an opinion, they wanted to bring the question from the political sphere to the legal one. After the Court gave its opinion on 22 July 2010, they wanted to bring it again back to the political sphere.

The ICJ ruling represents a turning point for the way we are going to treat the four insufficiencies of the painful birth of Kosovo. Serbia initially went to the UN-Assembly with a kamikaze draft but eventually adopted the EU draft resolution³. Serbia seemed to gain ground because it showed that Kosovo's independence was still disputable, but also showed flexibility.

Two implications of the ruling are very important:

1. The ruling treats the independence as an evolution within 1244. This implies the obligation to treat Kosovo as one territory which means that it is not disputable or available for partition which is important for future negotiations.
2. The question is moving from the UN to the EU because of the joint resolution.

For Serbia the resolution means supposedly that Kosovo remains disputable but, on the other hand, the issue is shifting to the EU and not to the UN as favoured by Russia. The EU showed strength because it made Serbia endorse the resolution even if it is a weak one. But the "frozen conflict" situation has to be solved by the EU without Russia in the way.

The situation within the EU is not a very clear one as there are 22 Member States who recognised Kosovo against 5. How is it possible in this case to obtain a unified opinion? This

³ Between the EU and Serbia an agreement was reached to co-sponsor a United Nations General Assembly (UNGA) draft resolution on the ICJ Advisory Opinion on Kosovo which should pave the way for dialogue between Belgrade and Pristina with the EU as a facilitator. Statement by Catherine Ashton, High Representative of the Union for Foreign Affairs and Security Policy: http://www.eu-un.europa.eu/articles/fr/article_10068_fr.htm

is a serious political problem for the EU. It has called for dialogue inviting the parties to talk. The EU is trying to establish a soft pattern of negotiations from easier issues to the core ones but this process may be long and the outcome uncertain. You cannot draw the bow from issues as waterworks or energy to the question of “why shouldn’t we find a way to live together?” You cannot discuss questions like who is the authority for this and that and then all of a sudden start talking about the status. Why shouldn’t we tackle this and “grab the bull by the horn”?

What are the objectives of the negotiations? To find a *modus vivendi*? If so, in which context and for which period of time? Or is it to find a historical accord? If this is the case why are we talking about pipelines for water?

The process of the negotiations should lead both Serbia and Kosovo into the EU. Or could anybody consider as plausible that we have to establish working groups and task forces (the EU gave its blessing) for different issues; Serbia becomes candidate; Kosovo has been told that it has a European perspective; Serbia gets into the EU and Kosovo stays outside...

The negotiations have three layers:

1. The nature of relationship between Serbia and Kosovo
2. The nature of relationship between Serbia and the EU
3. The nature of relationship between Kosovo and the EU

A successful outcome implies to achieve mutual support for Serbia and Kosovo to get into the EU. We need to have an intermediate process. The next five years Serbia has to work on the chapters and Kosovo on the Stabilization and Association Process (SAP). Kosovo and Serbia should prepare their accession talks with the EU. The EU has been and remains the transformative energy for their societies.

Kosovo is not the only unfinished state. We are in good company. Bosnia has a constitutional legitimacy problem. Serbia is also unfinished because it doesn't know where its borders end: it does not recognise Kosovo and keeps a 'special relationship' with Republika Srpska. Macedonia is unfinished in terms of its disputed identity (name and people) which poses an external problem with Greece (veto over entry in NATO) and an internal problem (relations with ethnic Macedonian minority). There are other places in the world, such as Israel for example. Israel has problems of borders and regarding democracy. The EU has the power to make this last push of state-building. Kosovo cannot resolve its state-building process on its own. The same goes for Bosnia and as well for Serbia who needs strong leadership. Cyprus is an unfinished state and entered the EU; a scenario not to be repeated. The EU should have the capacity to finalise these states in their accession process.

The interest of the EU is to prove the capacity of its post-Lisbon Common Foreign and Security Policy, its capacity to transform and move from peace-building policies to integration-policies. But you cannot do state-building without a safe and secure environment. I think that there are less and less people that feel unsafe in Kosovo. The Roma are in a difficult situation especially those that returned from Germany. They have no economic opportunity because in general there are not a lot of job opportunities. We developed a legal framework which is one of the most advanced in the EU. For a society that moves from war to a constitution where the Roma-language is officially recognised can be considered a success for Kosovo.

To conclude: the EU appeared as the honest broker between Serbs and Kosovars and is a key player on both sides. There are two new elements or rather problems.

1. Kosovo will be among the first tests of post-Lisbon EU Foreign Policy though we are still in the process of interpretation of the actual changes and the possibilities offered by the Lisbon Treaty.
2. It is the first time that the EU is dealing with an unfinished states – something where it needs the consensus of everyone without having it for now.

Serbia will have to prove that it is capable of building good relations with Kosovo. And its Kosovo the options are shrinking. How will they build up good neighbourhood relations without recognition? The question is not how we hinder each other but how can we help each other in the European integration process. It is in Kosovo's interest that Serbia gets into the EU and vice versa. We have to find a way of negotiating which creates the right climate to achieve this aim. There has been an evolution in Serbia that we have not seen before. From Milosevic to the Kostunica–Tadic coalition there was not a very good partner for us in Vienna. There are more favourable conditions now. If it won't be done with this generation of politicians it surely will be done with the next ones both in Serbia and Kosovo. Our natural habitat is Europe and negotiations should lead us there.

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