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The hour of Europe could come... Perspectives on the EU presence in Kosovo

Confirming rumors that circulated for weeks, on 17 February 2008 the Kosovo Assembly eventually declared independence from the Republic of Serbia. Pristina made the step on a Sunday after the Serbian presidential elections, thus respecting the agenda that had been suggested by its most supportive European partners and, crucial for the Kosovars, by Washington. No surprises for the d-day, no surprises for the day after: while the US did not waste time and recognized Kosovo as an independent state, on the other side of the Atlantic no common EU position could be reached on the matter. The EU General Affairs and External Relations Council (GAERC) indeed closed with the announcement that "Member States will decide, *in accordance with national practice and international law*, on their relations with Kosovo"¹. Inevitable, foreseeable, as the upheavals around Mitrovica, the decision of KFOR to close off temporarily all communication roads with Serbia, and the tough political reactions from Belgrade. Fully supported by Russia, Serbia urged the United Nations Security Council (UNSC) to reject the *fait accompli* as an inadmissible

attempt of illegal secession. In the meantime, the Prime Minister Vojislav Koštunica recalled one by one the ambassadors serving in the countries that welcomed Kosovo among the community of sovereign nations.

Independently from the number (and the relevance) of official diplomatic relations that Kosovo is able to establish in these weeks, it seems clear that internationally, regionally, and even internally the newborn state is not going to enjoy a smooth existence for years to come. Persisting to refer to Kosovo as to a kind of mystic motherland, Belgrade has demonstrated a certain ability to mobilize the Serbs living in the lost province north of the Ibar River², thus igniting the fear of a dangerous *de facto* division of Kosovo along ethnic lines. Even if NATO will continue to guarantee the territorial unity of Kosovo, in the long run such a fragmentation could make economic sustainability uncertain. However, also the international political perspective of the independent *Republika e Kosovës* looks gloomy. Moving indeed from the internal fractures to the ground of international politics, the challenges for the

² Other than the three Serb-dominated municipalities in the north, the rest of Kosovo is disseminated of numerous small Serb enclaves. Štrpce in the south is the widest, a whole municipality in which Serbs represent over 65% of the population.

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Abstract

Following the declaration of independence adopted by the Kosovo Assembly, the EU has presented itself as leading statebuilding agency in Pristina.

The institutional reorganization of post-UNMIK Kosovo is going to be pursued with the combination of technical/economic instruments, the deployment of a rule-of-law missions, and the overall supervision of a mixed EU/international civilian presence. Moreover, differently from other internationally-led operations of the same kind, the EU-driven statebuilding hinges on the promise of future membership.

Success will depend on a complex combination of factors. The EU faces many challenges on the ground; however, it must also work on the consolidation of its "internal front". While the field presence in Kosovo has been backed by generalized support, Brussels must still win over those Member States that have been reluctant to establish formal relations with Kosovo on a bilateral basis. There is the clear risk that lacking unanimous support from each member of the EU-27 family, the integration of the ex-Serb province in the EU might be frozen for years, even if on administrative grounds the statebuilding process is completed in a relatively short time frame.

¹ *Council Conclusions on Kosovo*, 2851st External Relations Council meeting, Brussels, February 18, 2008; emphasis added. Online at http://www.consilium.europa.eu/ue/Docs/cms_Data/docs/pressData/en/gena/98818.pdf.

authorities based in Pristina appear equally demanding. Concerned respectively for Taiwan and Chechnya, the governments of China³ and Russia – both enjoying permanent seat and veto right in the UNSC – made clear that they will not accept the former Serbian province as the 193rd member of the United Nations. Moreover, it is likely that Moscow will back up Belgrade also for more concrete boycott actions against Pristina.

Against this backdrop, will the EU-27 react united? It is probable, especially if we consider that the few moments of real cohesion in the Common Foreign Security Policy (CFSP) have been literally the product of times of serious crisis. But the game that the EU is about to play in Kosovo goes far beyond the possible frictions with Moscow and Belgrade. In light of the difficulties experienced by the EU in Bosnia and Herzegovina (BiH) – and considering a certain mismanagement of the EU prospect of membership for the rest of the Western Balkans as well – Kosovo represents a delicate (if not crucial) proving ground. Success will depend on the quality of the cooperation that Brussels will be able to establish on the ground with Washington, as well as with the offices of other International Organizations. Nevertheless, strategic planning, inter-institutional coordination, and basic political cohesion in the capital of Europe will be the decisive factors.

³ On the opposition of Beijing to the independence of Kosovo and the position of other Asian countries, see K. BRADSHAW, *Secession by Kosovo shows split across Asia*, in «International Herald Tribune», February 18, 2008.

From *Unilateral* to *Coordinated declaration of independence*

Prior to outline concrete challenges and potentials of the EU *multilateral*⁴ commitment to Kosovo, it might be useful to elaborate some hints on the diplomatic plots that accompanied the apparent reemergence of Kosovo from the legal limbo determined by UNSC Resolution 1244 and the UNMIK administration. With the blessing of the UN Secretary General Ban Ki-moon, the EU tried for months to bridge the divisions between the US and Russia, its partners in the Troika on Kosovo status that was promoted by the Contact Group at the end of last summer. In a way or another, Brussels sought to become the hinge of the US/Russia confrontation and ease the

⁴ Talking about an EU *multilateral* commitment to Kosovo is necessary. Such a formula helps to distinguish between the EU-27 operational commitment on the ground and the reluctance of single Member States to establish formal relations with Kosovo on a bilateral basis. While the establishment of the EU presence in Kosovo is backed by almost unanimous support (only few countries in the Council opposed the opening of EULEX and the offices of the Special Representative, EUSR, without a new UNSC Resolution) many Member States openly argue against the recognition of Kosovo. Their aim has been primarily to send a message to minorities within their boundaries who claim to have right to secession. Among others, this is the case for Spain, Slovakia, and Romania. Cyprus – supported by the orthodox axis Athens/Sofia – is also vividly contesting the legality of the path taken by Kosovo. Nicosia fears that the example of Kosovo could undermine the efforts for the reunification of the island and the consequent abolition of the Turkish Republic of Northern Cyprus.

dialogue between these two poles. However, in spite of the repeated efforts of Ambassador Wolfgang Ischinger – Solana's representative in the Troika – the mediation did not succeed, thus the only path that could have potentially put the UNSC at work was cut off. In parallel to this diplomatic activism, the EU slowly honed a particular "marketing strategy", which was eventually fully embraced by Kosovar-Albanians political elites. To be more precise – with Solana playing at the forefront of this delicate operation – Brussels has continuously striven to pursue two, so to say, "aesthetic" goals. On the one hand, it kept presenting Kosovo as an exceptional situation, a case of its own kind that should not have generated expectations in other restive provinces worldwide. On the other hand, the EU worked so that the Kosovar independence would be as much in line as possible with the spirit and the core indications of the Ahtisaari Plan, particularly with its emphasis on an internationally supervised transition.

To the very last minute, Brussels emphasized with care "its conviction that resolving the pending status of Kosovo constitutes a *sui generis* case that does not set any precedent"⁵. The specialty of the divorce between Pristina and Belgrade was reiterated in every circumstance and from every tribune, before and after the declaration of the Kosovo Assembly⁶. On its part, the US

⁵ *Presidency Conclusions on Western Balkans*, 2846th External Relations Council meeting, Brussels, January 28, 2008; par. 69. Online at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/98460.pdf.

⁶ Among others, see *Council Conclusions on Kosovo*, 2851st External Relations Council

tried to support these efforts. For instance, right after the recognition of Kosovo as a new independent member of the International Community, Condoleezza Rice pointed out that “[t]he unusual combination of factors found in the Kosovo situation – including the context of Yugoslavia’s breakup, the history of ethnic cleansing and crimes against civilians in Kosovo, and the extended period of UN administration – are not found elsewhere and therefore make Kosovo a special case”. “Kosovo,” the US Secretary of State further continued, “cannot be seen as a precedent for any other situation in the world today”⁷.

However, the emphasis on Kosovo being a *sui generis* situation was not confined to

meeting, cit. The document emphasizes that “[t]he Council reiterates the EU’s adherence to the principles of the UN Charter and the Helsinki Final Act, *inter alia* the principles of sovereignty and territorial integrity and all UN Security Council resolutions. It underlines its conviction that in view of the conflict of the 1990s and the extended period of international administration under SCR 1244, Kosovo constitutes a *sui generis* case which does not call into question these principles and resolutions”.

⁷ C. RICE, *U.S. Recognizes Kosovo as Independent State*, Washington, DC: U.S. Department of State, February 18, 2008; emphasis added. Online at <http://www.state.gov/secretary/rm/2008/02/100973.htm>. Interestingly, also the Kosovars define themselves as special. Their declaration of independence emphasizes that “Kosovo is a special case arising from Yugoslavia’s non-consensual breakup and is not a precedent for any other situation”. Assembly of Kosovo, *Kosova Declaration of Independence*, Pristina, February 17, 2008. Online at <http://www.assembly-kosova.org/?krye=news&newsid=1635&lang=en>.

political declarations. Brussels also wanted the scene of independence to be unique, formally and concretely different. For this purpose, the EU pushed forward a subtle but significant linguistic adaptation, which was blessed also by the US. The Kosovars were attentively warned that their constant reference to a *Unilateral Declaration of Independence* (UDI) might not be a smart choice. Wisely, the government and all autochthon elites changed their rhetoric (especially in their declarations to the international press) and tuned themselves to the jargon that was circulating among EU and US officials: the UDI had to become CDI, thus giving emphasis to the idea of a *Coordinated*, fully supervised process. When separation from Serbia became a matter of few days, the Prime Minister Hashim Thaçi indeed reassured: independence is about to be declared “[i]n close coordination with our US and EU allies”⁸.

Where did this *modus operandi* lead to? Politically, these maneuvers proved inadequate effects. The case of Kosovo has inevitably been exploited by nationalist elites in other agitated provinces. Among the reactions from other lands experiencing sovereignty struggles, it might be interesting to focus particularly on the ones from neighboring BiH. After the step taken by Pristina, the prime minister of Republika Srpska (RS) Milorad Dodik announced that the Serb entity of BiH has fallen “in state of democratic rebellion”⁹. The

⁸ H. THACI, *Kosovo is ready*, in «International Herald Tribune», February 5, 2008.

⁹ Media Intelligence Agency, *Morning Media Brief*, February 22, 2008. Online at <http://www.miabalkan.info>.

statement was followed by a resolution of the RS National Assembly that claimed the admissibility of a referendum for separation. If the cautiousness of the EU has not prevented these reactions, did it affect positively the liaison Brussels-Pristina? To certain extent, it seems that the document issued by the Kosovo Assembly represents the formalizing act of a silent shared-sovereignty agreement¹⁰ – mainly between Kosovo and the EU – rather than a classic declaration of independence. In one move Pristina dismissed UNMIK, erected a wall with Serbia, and tried to jump on the lap of the EU. Apart from the adoption of an EU-friendly flag, this assessment is supported by some passages of the “Kosova” declaration. Having expressed their gratitude to the UN for both its post-conflict peace-keeping efforts and prolonged administrative activities (§ 7), the members of the Kosovo Assembly said to “invite and welcome” the international civilian presence and the EU rule-of-law mission (§ 5). Furthermore, the Kosovars solemnly announced: “for reasons of culture, geography and history, we believe our future lies with the European family. We therefore declare our intention to take all steps necessary to facilitate full membership in the European Union as soon as feasible and implement the reforms required for European and Euro-Atlantic integration” (§ 6)¹¹.

¹⁰ For further details on this issue, see S.D. KRASNER, *Sharing Sovereignty: New Institutions for Collapsed and Failing States*, in «International Security», 29, 2004, 2, pp. 85-120.

¹¹ Assembly of Kosovo, *Kosova Declaration of Independence*, cit.

Beyond the sovereignty paradox: enlargement and EU-driven statebuilding

The perspectives stemming from the EU presence in Kosovo and the experience in BiH indicate that Brussels presents itself as a very peculiar state-builder. Some scholars committed to reconstruct “the ethics” of current externally-driven statebuilding practices argue that such initiatives determine an inevitable sovereignty paradox. International missions compromise domestic sovereign prerogatives to foster the institutional reorganization of a collapsing/collapsed state, democratize it, and establish stable authorities and well-functioning institutions that at the end of the process will independently exercise full sovereignty again. In particular, the understanding of sovereignty as an internationally shared responsibility has been identified as the normative basis on which statebuilding initiatives can be properly justified¹². However, a closer look at the involvement of the EU in the reconstructions of the Western Balkans shows that Brussels follows, to a certain extent, its own statebuilding rationale and ethics. The institutional reconstruction of its neighboring post-conflict countries is pursued with the combination of technical/economic instruments – like those inscribed in the Stabilization and Association Process (SAA) – as well as with the deployment of field missions that have limited interference with self-

governance. Moreover, Brussels relies on its prospect of membership in the attempt to bridle national elites and contain their potential nationalist/extremist drifts. The ultimate goal of this combination of bargaining processes, promise of membership, and field presences is to prepare, or better, to educate the target states to give up some crucial sovereign prerogatives and become full members of the Union. The trajectory of sovereignty in what we could call “the EU-driven statebuilding” is thus sensibly different from the one determined by UN-led operations of such kind.

The EU does not compromise self-governance with the aim to fully restore the empirical statehood of the fragile South-European states; rather, it approaches its mission with a preordained goal of educating the target states to membership. In synthesis, in the parallel implementation of its statebuilding and enlargement agenda, the EU would resemble the moves of a neo-medieval empire that educates to membership, since it considers inclusion and participation to its formal and informal networks as definitive indicators of rehabilitation. Among those who support this neo-medievalist understanding of the EU, Zielonka defines the Union as “a civilian power enlarging its territory by consent and diplomatic bargaining”, which however – not differently than past empires – would be “more preoccupied with maintaining its internal cohesion than in solving external problems on the ground”¹³. The need to

balance internal solidity and external projection takes us inevitable to the debate on the deepening/widening trade-off. However, if in the past years even some key Member States often sensed the risk of overstretching and tried to question the enlargement to South-East Europe¹⁴, today the consensus on the Thessaloniki Agenda seems more consolidated. Inevitably, some old divisions on the enlargement modalities still persist. Among other grounds of debate and confrontation, the Council remains inexorably divided on what would represent the right equilibrium between conditionality and incentives. Still, even if not at full regime, the benevolent “imperial” machine remains somehow at work, in its neighborhood as well as in more distant crisis areas.

Operational challenges in Kosovo and lessons-learned from BiH

The lack of conformity among EU Member States on the recognition of Kosovo determines a rather peculiar situation: while Brussels deploys its field presence and inaugurates its statebuilding efforts, the EU foreign ministers cannot reach consensus on the international legal status of the recipient state. In light of such incongruity, a chain of questions inevitably arises. Can Kosovo still become a EU success story? Is there a chance that this time “the hour

¹² On the sovereignty paradox and the ethics of statebuilding, see D. ZAUM, *The Sovereignty Paradox: The Norms and Politics of International Statebuilding*, Oxford 2007.

¹³ J. ZIELONKA, *Europe as Empire: The Nature of the Enlarged*

European Union, Oxford 2006, pp. 170, 143.

¹⁴ For an exhaustive analysis of the EU prospect of membership and the Western Balkans, see L. GORI, *L'Unione Europea e i Balcani Occidentali. La Prospettiva Europea della Regione (1996-2007)*, Soveria Mannelli 2007.

of Europe¹⁵ could truly come? In other words, will Brussels stand united for the integrity of Kosovo and use its means and resources to complete a smooth and full integration of South-East Europe in its structures?

At the moment, the responsibility of such an arduous undertaking are mostly on the shoulders of the recently assembled ESDP Mission EULEX Kosovo, the EUSR¹⁶, and the offices of the Council Secretariat that are expected to provide political directions and stimuli to the personnel deployed on the field, while channeling precious political consensus and material resources from the Member States. Predictions are never easy in the EU arena; however, there can be some ground for hope. Political and legalistic disagreements could always be encountered in the EU integration process, particularly in the CFSP history. But time has shown that compromises and convergence, sooner or later – unequivocal or ambiguous that they might be – are possible in the EU basket. Yet, even admitting that Member States will slowly all opt for recognition¹⁷, there are

still some critical operative challenges that the EU should not ignore on the ground, preferably since the very beginning of its field activities.

The first challenge is posed by democratization. The electoral turnout registered in November 2007 provides a clear message: like in the rest of the Western Balkans, also around Pristina democratic participation continues to decrease dramatically. Not even the imminence of independence could stimulate the electorate. According to the Council of Europe (CoE), participation in the last electoral round in Kosovo was as low as 43%. The Strasbourg-based organization admitted that there were several variables that should have provided incentives for participation. Among others, these included the fact that three elections were held at the same time (presidential, municipal, and mayoral) and the introduction of open lists¹⁸. The creation of a responsive civil society should be better highlighted in the EU agenda. Initiatives in the field of democratization are too often overlooked by the International Community and left to random and micro initiatives launched by NGOs, or relegated to the OSCE and its scarce resources. To invert this trend in Kosovo would represent a great improvement of the EU *modus operandi*.

The second challenge that Brussels is about to face concerns the degree of interference that its offices will have in the local politico-

administrative life. International offices with corrective powers can become a comfortable scapegoat for inefficient autochthon policy makers. Local politicians end up enjoying both the status of crisis – with the flow of direct financial aid that is usually attached to it – and the presence of foreigners. For instance, the latter can be easily blamed in case unpopular decisions have to be adopted, or equally, when a popular demand for reform cannot be satisfied. Keeping this in mind, the EU should invest energies to avoid the creation of a failed micro-state that is “babied” both financially and politically from Brussels. Voices from the ground reassure that the time of UNMIK will be rapidly overcome. A senior EU official explains: “the ESDP mission to Kosovo will have a brand new connotation if compared to the experience of UNMIK. In short, we want to put local authorities on the driving seat, while we keep holding the handbrake”¹⁹.

Assuming that the praxes developed under the UNMIK *ad interim* administration will be rapidly overcome, it would also be important that the model of the Office of the High Representative (OHR) in BiH is not going to be duplicated. The mandate of the EUSR and the corrective powers that the ESDP mission will enjoy in Kosovo are different from those attributed to the OHR/EUSR and the ESDP presence in BiH. The EU in Kosovo is expected to intervene mainly in few specific fields: fight against organized crime, fight against terrorism, financial crimes, property rights related to

¹⁵ In 1991, when confronted by the breaking-up of Yugoslavia, Jacques Poos, Foreign Minister of Luxembourg then holding the EU Presidency, made the unfortunate prediction that “the hour of Europe” had eventually come.

¹⁶ The EU Council has nominated Peter Faith as EUSR to Kosovo. Former Head of the Aceh Monitoring Mission (AMM), Faith also has a consolidated experience in the Balkans in the ranks of NATO. Yves de Kermabon, retired general of the French army, has been chosen to guide EULEX.

¹⁷ This will be crucial, since progress in membership negotiations (SAA process included) requires unanimous consent.

¹⁸ For further details, see CoE Election Observation Mission, *Mission Conclusions: Preliminary Statement*, Pristina, November 18, 2007. Online at http://www.coe.int/t/dc/files/events/2007%5FKosovo/prelim_statement_en.asp.

¹⁹ A. ZUCCARINI, Deputy Head of Mission at EUPT, interview with the author, Pristina, November 30, 2007.

interethnic cohabitation, and war crimes. Moreover, Brussels' envoys are not expected to pass laws by decree, but "only" to impede the adoption of measures that might undermine the post-status stabilization process. In short, the transition away from the UNMIK regime has been given two main directions. One line of responsibilities goes towards the autochthon elites in power, the other towards the EU. However, a subtle fiction remains. The transfer of power in favour of local politicians is not so direct and extensive. While the administrative functions are in the process of being *de facto* transferred, it is likely that executive powers will still be profoundly conditioned by the international/EU presence. Against such a backdrop, it is up to the EU to speed up ownership and democratic accountability of local authorities.

The third main operative problem that the EU is likely to face on the Kosovar ground concerns the establishment of a constant and solid connection between the statebuilding efforts and economic development. In other words, the EU should try more to be...itself! The process of European integration has indeed mostly developed along the same line: the efforts for the socio-economic harmonization of the European space have been accompanied by the attempts to generate political convergence, consolidate common values, and standardize good-governance practices. Hence, integration has taken place through supranational institutional developments, but also through a redefinition of the institutional and legal structures inherent to the Member States. The real additional value of the EU-driven statebuilding should

precisely be the link between political stabilization and promotion of welfare and opportunities. For this purpose, the EU should have probably resorted to the experience of the EUSR in Macedonia. The political envoy in Skopje is indeed also head of the Commission delegation. The double-hat ICO-EUSR and the double chain of command seem instead a replica of the model adopted in BiH. Still, hopefully the EU will learn to act collectively, affirm its *primauté*, and eventually overcome its "Jacques Poos complex" on the challenging Kosovar field.

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