

Volume 1

Issue 1

January 2013

ISSN 2305-4336

---

# JOURNAL OF EUROPEAN AND INTERNATIONAL AFFAIRS

Editors

**Dr. Labinot Greiçevci**

**Dr. Qerim Qerimi**

Assistant Editor

**Gëzim Krasniqi**

Editorial Board

**Professor Richard Caplan**

*University of Oxford*

**Professor Peter A. Hall**

*Harvard University*

**Professor Stephen Krasner**

*Stanford University*

**Professor Stefan Talmon**

*University of Bonn*

**Professor Jan Orbie**

*University of Ghent*

**Professor Dimitris Papadimitriou**

*University of Manchester*

**Professor Thomas Diez**

*University of Tübingen*

**Professor Stefano Bartolini**

*European University Institute*

**Professor Sumantra Bose**

*London School of Economics (LSE)*

**Dr. Eric Gordy**

*University College London*

**Professor Simon Chesterman**

*National University of Singapore*

**Professor Jan Zielonka**

*University of Oxford*

**Dr. Eline De Ridder**

*University of Ghent*

**Dr. Geoffrey Edwards**

*University of Cambridge*

**Professor Richard G. Whitman**

*University of Kent*

**Dr. Oisín Tansey**

*King's College London*

## Contents

<b>Introduction</b>	5
<i>Labinot Greiçevci &amp; Qerim Qerimi</i>	
<b>Consolidating the statehood of Kosovo: Leaving the international law narrative behind</b>	8
<i>Jean d'Aspremont and Thomas Liefländer</i>	
<b>Kosovar multi-layer identity: what is the same, different and in common with Albanian identity</b>	27
<i>Dorian Jano</i>	
<b>Kosovo's Northern Dilemma in Historical and Comparative Perspective</b>	41
<i>Sumantra Bose</i>	
<b>Book review: Contested Nationalism: Serb Elite Rivalry in Croatia and Bosnia in the 1990s (Nina Caspersen, 2010)</b>	46
<i>Gëzim Krasniqi</i>	
<b>Nixon to China, Dacic to Brussels?</b>	48
<i>Elizabeth Pond</i>	

**Published by:**

Research Institute of Development and European Affairs (RIDEA)

ISSN 2305-4336

©2013 Research Institute of Development and European Affairs (RIDEA)

All rights reserved. No part of this publication may be reproduced or transmitted in any form without prior written permission of the publisher.

This journal is available online at: [www.ridea-ks.org](http://www.ridea-ks.org)

The publication of the first issue was supported financially by the British Council.

## INTRODUCTION

*Labinot Greiçevci & Qerimi Qerimi*

It is our great privilege to introduce and welcome you to the first, inaugural issue of the *Journal of European and International Affairs* (JEIA). The very fact of being the first issue demands some introductory background. We are thus happy to underline the key features that surround this enterprise.

One could begin with the rationale for a publication of this kind. And that relates to the overall state of the sphere of academic or scholarly publications in Kosovo, Albania, Montenegro and other countries of the Balkan Peninsula, a sphere that belongs to a largely neglected and unconsolidated category. The absence of similar publications is even more present in more specialized areas. To the knowledge of the Research Institute of Development and European Affairs (RIDEA), there are few, if any, academic journals published in the region with particular interest and specialization in the field of development and European and international affairs. Significantly, given the region's European aspirations and the demands that flow from the integration processes, it is imperative to publish a journal that provides a forum and platform for concentrated, competent and systematic discussion and analysis of the European integration processes and other related, larger European and international affairs.

The Institute believes that this sort of publication could be of benefit to the larger student and academic communities, as well as decision-makers in the region of the Western Balkans and wider. We hope this would attract the interest of a variety of target groups. In our conception, they are students, scholars and decision-makers, not only from Western Balkans, that share an interest on European Studies, Law and Political Science.

As to its format, the *Journal of European and International Affairs* is a peer-reviewed international journal published by RIDEA. It aims to publish cutting-edge articles on European, as well as broader international affairs, in particular as they relate to the theme of development. Typically, the Journal intends to publish articles and essays presented in an international symposium on a topic determined by the Institute. However, JEIA remains open to also consider for publication unsolicited articles, essays, and book reviews. The Journal's goal is to explore new directions and perspectives that best contribute to the aims of sustainable human development, conceived in terms of policies that promote the largest

---

net aggregate of human needs and aspirations in a given context.

The Journal will be published twice a year. This first, inaugural issue is published in January 2013. The second is planned for July 2013.

The current issue draws largely on the papers presented at a conference organized in Pristina by RIDEA, together with Centre for International Studies (Oxford University) on the following topic: "Consolidating Kosovo's Statehood: Processes, Problems and Perspectives".

The current issue consists of two parts: the first part comprises three longer academic articles which discuss the consolidation of Kosovo's statehood and its national identity. The second part consists of two shorter pieces. The first is an analysis of the events that relate to the ongoing dialogue for the normalization of relations between Kosovo and Serbia, whereas the second piece is a brief book review related to the consolidation of national identities in some of the countries of the former Yugoslavia.

Our inquiry begins with a comprehensive analysis of the consolidation of Kosovo's statehood, which is co-authored by *Jean d'Aspremont* and *Thomas Liefländer*. The article embarks on a forward-looking examination perspective of the statehood consolidation of Kosovo. The first part of this article describes briefly the relevant recent legal and factual developments as they relate to Kosovo's consolidation of its statehood. Then, the second part considers the continuing relevance, if any, of international law when it comes to the consolidation of statehood. Thirdly, this article scrutinizes some strategies that can either reinforce or undermine the consolidation process of Kosovo's statehood. *Jean d'Aspremont* and *Thomas Liefländer's* argue that the consolidation of Kosovo's statehood is not directly regulated (nor buttressed) by international law, but rather depends on an exclusively factual and political process of coalescing *effectivité*.

However, they similarly claim that this does not mean that international law is condemned to be merely cosmetic in this process. Therefore, they point out the fact that international law may generate obstacles to recognition, although this understanding is contestable in their view.

The attention of our inquiry then turns to the debate on *whether* and *what* a Kosovar identity may be, which is a delicate subject overloaded with political nuances. *Dorian Jano* in this article elaborates on the concept of 'nested identities' and proposes a model of how one can conceptualize Kosovo's identity. This model considers identity as a multi-layered concept with national (cultural) identity as a first-order concept, state (political) identity as a second-order concept and supra-state (European) identity as a third-order concept where the latter encompasses the former. *Dorian Jano* argues that as an implication of this model, perceptions of identities need not to be abandoned but rather expanded and nested into one another. Thus, according to him, the Albanian national identity remains the first-

order identity for Kosovar-Albanians and there is no need for another national identity to be invented. However, he argues that building on and consolidating a democratic political identity as well as embracing ‘European’ values and norms within self-defining narratives is vitally important to sustaining this multi-layered Kosovar identity.

We then turn our attention to the formation of sovereign national states across Central and Eastern Europe and the Balkans a century ago and the problem of national minorities, who found themselves “trapped” or “stranded” in states they regarded as fundamentally belonging to another nation, has been a familiar issue in the region. In this context, *Sumantra Bose* claims that the issue of the Serbs of Kosovo is simply the latest example of an old and perennial problem. *Sumantra Bose* mainly argues that the formation of sovereign states on the basis of the principle of national self-determination in Central and Eastern Europe and the Balkans created, both in the early and the late twentieth century, “new” minorities who feared subjugation and second-class status in states “owned” by and belonging to another nation.

As stated in the previous sections of this *introduction*, the remaining pieces are an analysis of current events in view of the political dialogue between Kosovo and Serbia for the normalization of their relations, and a book review dealing with the consolidation of national identities in former Yugoslavia.

*Gëzim Krasniqi* offers the book review of *Contested Nationalism: Serb Elite Rivalry in Croatia and Bosnia in the 1990s* of Nina Caspersen, published in *New York and Oxford: Berghahn Books, 2010*. He stresses out that *Contested Nationalism* represents a well worked piece of research that reaffirms the need to view ethnic conflicts in a more nuanced manner, highlighting the internal rivalry of elites and organizations that claim to represent different ethnic groups. *Gëzim Krasniqi* suggests that sociology as well as politics’ students, and above all, researchers working on ethnic conflicts and the Balkans will undoubtedly find it useful and interesting.

Finally, Elizabeth Pond analyses the ongoing process of political dialogue between Kosovo and Serbia. Elizabeth Pond argues that the West is now putting maximum pressure on the new Serbian government—led by one-time cronies of ultranationalist autocrat Slobodan Milosevic—to make a U-turn and finally acknowledge (if only tacitly) the reality of Kosovo’s independence.

## CONSOLIDATING THE STATEHOOD OF KOSOVO: LEAVING THE INTERNATIONAL LAW NARRATIVE BEHIND

*Jean d'Aspremont and Thomas Liefländer*

### Introduction

Four and a half years have passed since, on 17 February 2008, the self-declared representatives of the Kosovar people issued their unilateral declaration of independence, and more than two years have passed since the International Court of Justice (ICJ), in its advisory opinion (AO), decided that this declaration was 'in accordance with' international law.<sup>1</sup> In academic circles, these developments were the cause of abundant discussions about whether international law had anything to say about declarations of independence and, if so, what the consequences would be in the specific case of Kosovo.<sup>2</sup> The proceedings before the ICJ marked the apex of such a heated debate and, unsurprisingly, the Court's AO was followed by the production of a huge amount of literature.<sup>3</sup> The AO most certainly belongs to the category of ICJ decisions about which the dust will not settle quickly, for the professional community of international lawyers remains deeply divided on the matter.

Notwithstanding abiding bickering by scholars, the world has inevitably moved on, as has Kosovo. From the vantage point of Kosovo, as a result of the AO, international law could be said to have been a helpful instrument, as well as powerful narrative underpinning their political project.<sup>4</sup> Indeed, the AO can retroactively be construed as having allowed inter-

---

1 See ICJ, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 22 July 2010, available at <http://www.icj-cij.org/docket/files/141/15987.pdf> (hereinafter 'Kosovo AO'), para 123. For a concise historical account, see *ibid*, paras 57-77.

2 For a comprehensive overview of the legal issues raised see Jure Vidmar, 'International Legal Responses to Kosovo's Declaration of Independence' 42 *Vanderbilt Journal of Transnational Law* 779 (2009).

3 See only the large symposia in 24 *Leiden Journal of International Law* 71 (2011), 24 *Leiden Journal of International Law* 331 (2011) and 105 *American Journal of International Law* 50 (2011) as well as the contributions to Maurizio Arcari & Louis Balmond (eds), *International Law Issues Arising from the International Court of Justice Advisory Opinion on Kosovo* (Giuffrè, 2011) and Peter Hilpold (ed), *Kosovo and International Law* (Martinus Nijhoff, 2012).

4 Cf. Richard Falk, 'The Kosovo Advisory Opinion: Conflict Resolution and Precedent' 105



national law to be elevated to a worthwhile banner under which the Kosovar struggle for independence could be *fought*. However, despite the opinion of the Court on the declaration of independence, it is far from certain whether international law is the banner under which the fight for independent Kosovar statehood can be *completed*.

It is argued here that international law is of much less help, and arguably relevance, when looking beyond the AO. It is submitted that international law has very little to say about the consolidation of states. This stems, at least in part, from the fact that, from the vantage point of international law, statehood is construed as a binary concept that is not susceptible of variations or degrees: an entity is either a state or it is not.<sup>5</sup> When it comes to questions regarding the consolidation of the statehood of Kosovo, international lawyers' cognitive tools and formal categories prove highly unsatisfactory.

It is certainly not our intention to once more rehash the oft-played legal debates about the declaration of independence. Moreover, bearing in mind that one of the present authors was involved in the ICJ proceedings as counsel, it would be neither wise nor appropriate to reopen discussions on the AO.<sup>6</sup> Rather, the ambition here is to embark on a forward-looking examination of the consolidation of the statehood of Kosovo. With a view to doing so, we shall proceed in three steps: first we shall briefly describe relevant recent legal and factual developments (I); secondly, we shall consider the continuing relevance, if any, of international law when it comes to the consolidation of statehood (II); thirdly, we shall scrutinize some strategies that can either reinforce or undermine the consolidation process (III). The overarching thesis that will emerge from these considerations is that the consolidation of Kosovo's statehood is not directly regulated (nor buttressed) by international law, but rather depends on an exclusively factual and political process of coalescing *effectivité*. That will not mean, however, that international law is condemned to be merely cosmetic in this process. It could, for instance, be argued that international law may generate obstacles to recognition, although this understanding is contestable in our view.<sup>7</sup> Yet, legal considerations are only one reason for granting or denying recognition and we accordingly argue that, while tackling remaining legal questions can be one avenue to consolidating statehood by reducing perceived obstacles, other strategies can be just as instrumental in reinforcing Kosovo's *effectivité*. The article will end with a few concluding observations (IV).

---

American Journal of International Law 50 (2011), at 57; Jure Vidmar, 'The Kosovo Opinion Scrutinized' 24 *Leiden Journal of International Law* 355 (2011), at 358.

5 This perspective is epitomized in the mainstream doctrine that treats statehood as a question of fact, of compliance by an entity with objective criteria. A fact either exists or it does not.

6 It is an unwritten rule of the international legal profession not to comment on cases one is personally involved in.

7 See for instance the discussion in Jean d'Aspremont, 'Regulating Statehood: The Kosovo Status Settlement' 20 *Leiden Journal of International Law* 649 (2007), at 661ff.

## I. Prolegomena: the Facts and the Law

### a) The Facts: Recent Developments

As is well-known, until the declaration of independence, Kosovo was effectively governed by an international interim administration (mainly UNMIK), with the UN Secretary General's Special Representative having far-reaching executive and control powers. In addition to the international administration, a large number of NATO troops remained in Kosovo. Both KFOR and the international civil administration, in particular UNMIK, operated under the authority of Security Council Resolution 1244 (1999).<sup>8</sup> The Provisional Institutions of Self-Governance, in turn, acted under the Constitutional Framework elaborated by the Special Representative.<sup>9</sup> During this time of international administration, the final status was left open. It was supposed to be resolved via a high-level status settlement process, commenced in 2005 under the leadership of the former Finish president Ahtisaari.<sup>10</sup> The process resulted in the 2007 *Kosovo Status Settlement*, suggesting that independence was the only viable option.<sup>11</sup> Despite being welcomed by the UN Secretary-General,<sup>12</sup> the proposal was rejected by Serbia and not adopted by the Security Council. Confronted with an impasse, Kosovo opted for a unilateral declaration of independence on 17 February 2008.

Unsurprisingly, much has changed since the declaration of independence. Faced with the reality of a more assertive Kosovar leadership and invoking the UN's neutrality with respect to the final status, the Secretary General's Special Representative did not actively oppose the adoption of a constitution and the effective transformation of the provisional institutions of self-governance into organs of the self-proclaimed Republic of Kosovo.<sup>13</sup> The new constitution endorsed the Ahtisaari plan,<sup>14</sup> and with it the creation of an Inter-

---

8 See in particular paragraphs 5-11 of Resolution 1244 (1999)

9 UNMIK Regulation No. 2001/09, 15 May 2001 (UNMIK/REG/2001/9).

10 Cf. Kosovo AO, paras 65ff.

11 *Letter from the Secretary-General and Report of the Special Envoy of the Secretary-General on Kosovo's Future Status*, 26 March 2007 (S/2007/168); *Comprehensive Proposal for the Kosovo Status Settlement*, 26 March 2007 (S/2007/168/Add.1). See comprehensively d'Aspremont, note 7.

12 *Letter from the Secretary-General ...*, note 11.

13 For more details see *infra*, at 16ff.

14 See in particular Article 143 of the Constitution of Kosovo (available at <http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>).

national Steering Group (ISG),<sup>15</sup> composed of mainly EU member states and the US. Following the Athisaari plan the ISG exercised international supervision over the process transferring the governance over Kosovo from the international administration to Kosovar institutions. The ISG formally announced the end of supervision on 10 September 2012, marking the finalisation of the transfer period.<sup>16</sup> At the same, a much reduced UNMIK (many of whose police and judiciary-related functions were taken over by the EU mission EULEX<sup>17</sup>) and KFOR stayed in place, continuing to draw their authority from Resolution 1244.<sup>18</sup>

In the light of the foregoing, the status quo has not constituted a barrier to the consolidation of self-governance of Kosovo by the organs of the self-proclaimed Republic of Kosovo. Some remnants of international supervision still exist and particularly Serb-dominated communities in the north continue to resist Pristina's rule, but, on the whole, Kosovo has been functioning like most other states.<sup>19</sup> The high degree of self-governance and *effectivité* has however not precluded doubts being voiced in some quarters about Kosovo's statehood. In the next section, we thus scrutinize some of the legal issues that continue to be invoked against Kosovo's statehood.

### **b) The Law and the Facts: The Multifaceted Concept of *Effectivité***

Among international lawyers, it is traditionally accepted that a number of criteria must be fulfilled for an entity to qualify as a state - without such criteria necessarily being legal criteria. It is common knowledge that according to the mainstream conception of statehood,

---

15 Article 12, *Comprehensive Proposal ...*, note 11.

16 See the news release on the website of the International Civilian Office (<http://www.ico-kos.org/?id=61>).

17 EULEX performs both executive and advisory functions; its executive function concentrates on sensitive cases and its overall emphasis is on establishing the rule of law in the northern areas of Kosovo (see <http://www.eulex-kosovo.eu/en/info/whatisEulex.php>). The precise mandate is enshrined in *Joint Council Action 2008/124/CFSP*, 4 February 2008, as extended and amended by *Joint Council Action 2009/445/CFSP*, 9 June 2009; *Council Decision 2010/322/CFSP*, 8 June 2010; *Council Decision 2012/291/CFSP*, 5 June 2012.

18 For a more detailed discussion of the legal basis of these missions, see *infra*, at 18f.

19 For a comprehensive, recent appraisal of the political situation in Kosovo see *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, 3 August 2012 (S/2012/603); and International Crisis Group, *Setting Kosovo Free: Remaining Challenges*, Europe Report No. 218, 10 September 2012.

the effectiveness (or *effectivité*) of the entity is the linchpin.<sup>20</sup> In our view, such *effectivité* has two dimensions, namely an *internal* and an *external* one.<sup>21</sup> The internal dimension of *effectivité* pertains to the ability of the authority that claims a monopoly on the exercise of public authority on a piece of territory to actually impose its will – and enforce its decisions – on the people living on that territory. The external dimension of *effectivité* relates to the ability of that entity to enter into inter-state relations and claim state-like existence in the international arena of states.<sup>22</sup>

We do not need to discuss the internal *effectivité* in great depth in this article. Suffice to say that with the end of international supervision by the ISG and only rudimentary elements of UNMIK remaining in place, Kosovo's government has obtained a rather high level of internal *effectivité*. More noteworthy is the question of external *effectivité*. In this respect, it must be observed that although only recognized by a part of the international community, Kosovo's statehood is, from an external perspective, growing firm. According to Kosovo's Ministry of Foreign Affairs, Kosovo has received 91 international recognitions.<sup>23</sup> In our view, from the standpoint of its external *effectivité*, Kosovo is certainly a viable entity. Its existence as a state is a reality in its relations with a significant part of the international community, including most European states. For those states that have not yet recognized Kosovo as a state it remains a 'something else' entity. It must also be recalled that although universal recognition is the strongest sign that an entity has been accepted as a state by the international community, statehood does not as such depend on universal recognition.<sup>24</sup> Nevertheless, the question remains of how much the absence of recognition by around 100 states affects Kosovo's external *effectivité*.

It is useful to recall that the reasons for denying recognition can be manifold and do not necessarily reflect an actual rejection of statehood. Indeed, it can be reasonably surmised that the withholding of recognition by many states did not originate in an active and principled abstention. It can be speculated that many states, although not principally opposed to the birth of that entity as a new state, simply had not particular reason for or interest in taking a stance either for or against Kosovo's emergence as a new state. Considering the

---

20 In the following paragraphs, we will use the term *effectivité*, which is the terminology used by the ICJ.

21 On this distinction, see d'Aspremont, note 7, at 654f.

22 Note in particular that the external *effectivité* of an entity hinges primarily on its recognition by other states (see d'Aspremont, note 7, at 655).

23 Cf. <http://www.mfa-ks.net/?page=2,33>. It should be added that some more work is needed to decipher the intricacies of diplomatic language in order to ascertain that all those recognitions amount to recognition of statehood. Nonetheless the amount of recognition secured by Kosovo is significant.

24 Neither does it depend on UN membership nor recognition by the Security Council as an institution (see d'Aspremont, note 7, at 657).

controversies surrounding the declaration of independence and the continuing tensions over Kosovo's status, it may have been wiser for states with no stake in the matter to refrain from expressing any opinion. Why enter into a controversy when there are no political or economic advantages to be gained from doing so? There may even be states that did not recognize Kosovo because they never make the effort to recognizing other entities. In this sense, the absence of recognition must not necessarily constitute an act of conscious denial of the new entity's existence.

This being said, it is true that the active and principled opposition by some states to recognizing Kosovo certainly frustrates aspirations for normality, constituting a constant source of tension and controversy. Whether they are sufficient to undermine Kosovo's statehood is, however, a different matter. First, as already mentioned, non-recognition by some states does not affect the relations between the emerging entity and those states that have already recognized it. Secondly, there are precedents of states not being recognized by a sizable part of the international community. Indeed, some states existed throughout the Cold War despite their existence as a state being denied by one of the two blocks. In this respect, one needs only to recall the cases of divided states and protracted non-recognition during the Cold War.<sup>25</sup>

While non-recognition, be it principled or incidental, can then not, in our view, offset the effect of recognition by a significant part of the international community in terms of the emerging entity's external *effectivité*, it nonetheless frustrates that entity's march towards 'normal' membership in the international community. Consolidation of statehood (at least from an external perspective) then, to some degree, depends on overcoming non-recognition. It is here that law – and the authoritative interpretations thereof – may play a role, as legal controversies often provide pretexts for non-recognition or obfuscate, in the legal discourse, the actual *effectivité* achieved by the entity concerned. As we will discuss in the next section, the continuing legal controversies do not in themselves prevent or hinder a further consolidation of Kosovo's statehood; but unravelling them can be very conducive to wider recognition and consolidated statehood.

---

25 See generally Gilbert Caty, *Le Statut Juridique des États Divisés* (Pedone, 1969).

## II. International Law's Continuing Relevance?

### a) The Continuing Impact of the ICJ's Advisory Opinion

Despite the enormous amount of attention that international lawyers and the general public have dedicated to the ICJ's AO on the declaration of independence, the Court's actual contribution to the clarification of the debate is rather limited. The opinion boils down to two essential findings: first, general international law does not prohibit a declaration of independence;<sup>26</sup> and secondly, Resolution 1244 and the Constitutional Framework did not bind the authors of the declaration of independence.<sup>27</sup> With a view to Kosovo's statehood both findings are of only marginal importance, if any, and the Court was very careful to point out that it did not express any view on the statehood of Kosovo.<sup>28</sup> Why then, one may wonder, has the AO continued to feature so prominently in debates about Kosovo's statehood?

It seems to us that too much meaning was – and still is – placed on the AO. Proponents of Kosovo's statehood cling to the finding that the declaration of independence was not illegal under international law, as if it somehow expressed the Court's endorsement of the Kosovo as an independent state. The fact that Kosovo's negotiators apparently insisted on referring to the AO in the infamous 'footnote agreement' – to be discussed in more detail below – illustrates this overemphasis.<sup>29</sup> Conversely, the reaction from the opponents of Kosovo's statehood, rejecting the AO outright or pointing to its perceived flaws, similarly overextends its significance. A sober analysis of what the opinion says and does not say would quickly reveal that the opinion has very little impact on this continuing debate – it neither supports nor undermines Kosovo's statehood.

### b) Self-Determination

An issue that was prominently argued in the proceedings before the ICJ was whether Kosovo could rely on the right to self-determination to gain its independence from Serbia.<sup>30</sup>

---

26 Kosovo AO, para 84.

27 See in detail *infra*, at 14ff.

28 Kosovo AO, para 51.

29 Cf. Pasqualina Lepore, 'Beyond the Asterisk Agreement' *Istituto Affari Internazionali Working Papers* 12/21, June 2012 (available at <http://www.iai.it/pdf/DocIAI/iaiw1221.pdf>), at 3.

30 See Kosovo AO, para 82. For an example of a pleading relying on the right of self-determination

As is well known, the ICJ eschewed grappling with the various aspects of the law of self-determination and concluded that it only had to decide whether general international law prohibited independence.<sup>31</sup> In this light, it may be asked whether the self-determination argument still has traction.

We are of the opinion that the relevance that the self-determination argument might potentially bear is limited to the (period preceding the) secession itself. Even where an entity undoubtedly possesses a right to self-determination, this right exhausts itself when it is exercised. In other words, once an entity has achieved substantial independence, the right to self-determination loses all of its potential relevance with respect to the consolidation process.<sup>32</sup> Whether or not Kosovo was ever a self-determination unit or possessed an alleged right to 'remedial secession' – we doubt it was entitled to either of them<sup>33</sup> –, reliance on any such right would not serve to further consolidate its claim to statehood. Indeed, continuing to rely on this right would imply that Kosovo, if it ever had such an entitlement, has not yet exercised it. For these reasons, the narrative of self-determination would run against the claim that Kosovo has achieved statehood. The path towards further consolidation thus requires doing away with legal arguments supporting an alleged 'right' to exist as an independent state.

### c) The name 'Republic of Kosovo' and the 'Footnote Agreement'

It goes without saying, especially in the international arena, that names and appellations can have a hugely sensitive symbolic dimension. Indeed, there is hardly anything more sensitive than one's name, given how closely name and identity are connected. The question of state denomination has famously been a flashpoint in connection to Macedonia.<sup>34</sup> Similar resentment arises as a result of the recent 'footnote agreement' with Serbia. As a matter of fact, the recently concluded 'Arrangements Regarding Regional Representation and Cooperation',

---

see *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Written Statement of the Kingdom of the Netherlands, 17 April 2009, at 6ff.

31 Kosovo AO, paras 56, 83.

32 This is notably different from a situation where an entity has not achieved sufficient *effectivité*, but is nonetheless recognized because of its self-determination entitlement.

33 For a rejection of the argument see d'Aspremont, note 7, at 658; ICJ, 4 December 2009, CR 2009/28.

34 ICJ, *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment, 5 December 2011; Ilias Bantekas, 'The Authority of States to Use Names in International Law and the Macedonian Affair: Unilateral Entitlements, Historic Title, and Trademark Analogies' 22 *Leiden Journal of International Law* 563 (2009); Francesco Messineo, 'Maps of Ephemeral Empires: The ICJ and the Macedonian Name Dispute' 1 *Cambridge Journal of International and Comparative Law* 169 (2012).

commonly referred to as the 'footnote' or 'asterisk agreement', raises two issues: first, the name (i); and secondly, the implications of signing the treaty and the name-giving footnote (ii). We will deal with each of them in turn.

*(i) The Name*

The name that Kosovo has chosen for itself in its declaration of independence and constitution is 'Republic of Kosovo'.<sup>35</sup> Nevertheless, the 'footnote agreement' provides that the only denomination to be used within the framework of regional cooperation is 'Kosovo\*'.<sup>36</sup> Much debate ensued in Kosovo, as certain parts of public felt that Kosovo had sacrificed its name.<sup>37</sup> While this matter remains politically sensitive, it must however be recalled that in legal terms an entity's name is not usually of greater relevance when compared to the issue of recognition. First, it seems far-fetched to contend that there is such a thing as a right to a name, or that statehood necessarily implies an opposable right to discretionarily choose one's name. Of course, such discretion exists as a matter of fact, for each state chooses its name, i.e. how it wants to be designated at the internal and external level. This does not, however, create a proper international right to have that name recognized and respected. Other states in the international community, in line with their freedom to recognize or not recognize an entity as a state, can decide how to designate that entity in their mutual relations.<sup>38</sup> Using one name or another is purely symbolic and has no implications for the entity's qualification as a state. It is in that sense that it should thus be realized that not using the name 'Republic of Kosovo' does not undermine Kosovo's claim to statehood.

Although of no relevance from the vantage point of international law, name-related considerations can nonetheless impact on an entity's external *effectivité* by providing a pretext for withholding recognition. It is true that where a state has already recognized an entity as a state, refusal to accept that state's self-chosen name has no effect. Likewise, where a state has chosen not to recognize an entity in the first place, the issue of naming does not even arise. However, it is possible that a state may decide not to recognize *because* it opposes the self-chosen denomination, in which case the name has a real impact. In such a context resolving a name-related dispute can contribute to consolidating the entity's external *effectivité*. In the particular case of Kosovo, the concession with respect to the name in the 'footnote agreement' could certainly be perceived as a step in the direction of

---

35 See Article 1 of Kosovo's Constitution.

36 See *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, 27 April 2012 (S/2012/275), para 13. The full text of the agreement can be found at [http://www.b92.net/eng/insight/pressroom.php?yyyy=2012&mm=02&nav\\_id=78973](http://www.b92.net/eng/insight/pressroom.php?yyyy=2012&mm=02&nav_id=78973)

37 Cf. Lepore, note 29, at 5.

38 In practice, however, recognition of existence and recognition of the name go hand-in-hand. Once they recognize an entity, states embrace the name that this entity as given itself.



reduced tensions with Serbia and a signal that Kosovo is eager to normalise relations with Belgrade, which in turn could alleviate the concerns of states having thus far withheld their recognition.

*(ii) Concluding the 'Footnote Agreement'*

Apart from using a different name, the 'footnote agreement' is of significance for constituting a properly concluded agreement – albeit of an unclear nature – between Belgrade and Pristina. While Belgrade insists that the agreement does not signal its recognition of Kosovo's independent statehood,<sup>39</sup> it normalises relations between the two entities and marks, at least, a willingness to work with each other. In some sense, the apparent openness of Belgrade to conclude agreements with Pristina enhances the latter's external *effectivité*, as it enables it to directly bring some of the most pressing issues to multilateral fora while developing bilateral contacts with its most important neighbour.

The real difficulty in appraising the legal significance of the 'footnote agreement', however, stems from the name-giving footnote itself. As mentioned, the agreement provides that only the denomination 'Kosovo\*' shall be used in the framework of regional cooperation. The asterisk footnote states that '[t]his designation is without prejudice to positions on status, and is in line with Security Council resolution 1244 (1999) and the International Court of Justice Opinion on the Kosovo declaration of independence.'<sup>40</sup> While we have already discussed the relevance of the ICJ AO as regards Kosovo's statehood, the reference to Security Council Resolution 1244 deserves attention. It is well-known that the ICJ considered that Security Council Resolution 1244 continued to apply to Kosovo and had not been displaced by the declaration of independence.<sup>41</sup> Whether Resolution 1244, and Kosovo's acceptance of its continuing applicability in the 'footnote agreement', has any real significance with respect to Kosovo's statehood is the single most important remaining legal issue to which we must turn our attention.

---

39 While Kosovar officials have stated that the agreement expresses Belgrade's recognition of Kosovo's independence, Serbian officials have stressed that no change in their stance towards Kosovo's status is implied (see Lepore, note 29, at 4-5). On Belgrade's stance, see also statements stressing that Kosovo must be "represented asymmetrically" (PM Dačić: Footnote, asterisk "lost battle", B92, 3 September 2012) but that Belgrade would "respect [] its signatures" ("Footnote in documents, not on nameplates", B92, 3 September 2012).

40 *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, 27 April 2012 (S/2012/275), para 13.

41 Kosovo AO, paras 91-92.

#### d) Statehood and Resolution 1244

As mentioned, the ICJ in its AO considers that Resolution 1244 continues to apply to the situation in Kosovo, a view shared by many scholars.<sup>42</sup> The 'footnote agreement' on the representation of Kosovo enshrines Kosovo's acknowledgment of this fact. In addition, the relevant mandate holders under this Resolution continue to carry out some of their tasks: the Secretary-General still reports on the situation in Kosovo to the Security Council, UNMIK and KFOR are still in place and, at least according to the Secretary-General's assessment, continue to operate under the authority of Resolution 1244.<sup>43</sup> Finally, states granting recognition have also expressed their continued commitment to this resolution.<sup>44</sup> Nevertheless, the contention that the resolution is still in force could be said to contradict the developments on the ground and thus calls for some remarks.

The potential (theoretical) impact of Resolution 1244 on the consolidation of the statehood of Kosovo accordingly raises the question of its termination (i) and the effects of its continuing application (ii).

##### (i) Termination

What exactly is the continuing relevance of Resolution 1244, if any, as regards Kosovo's statehood? The most radical hypothetical position would be to hold that it has actually come to an end and no longer applies at all. According to such a hypothetical view, it could be argued that the resolution's objective, namely to regulate a period of interim administration with a view to facilitating a status settlement, has been achieved. From this perspective, reaching a *stable* settlement - rather than an *agreed* settlement - was the final aim. The argument could accordingly be made that the objective has been fulfilled and the resolution's *raison d'être* has disappeared; in that sense, it could be contended that Resolution 1244 has exhausted its objective and has therefore been terminated.

Arguments in favour of termination could gain further support from the international law regime of unilateral acts. It is true that this body of rules is still in disarray after the inconclusive work of the ILC on that matter.<sup>45</sup> Yet, it can be argued that there exists a rule whereby a

<sup>42</sup> See Marcelo Kohen & Katherine Del Mar, 'The Kosovo Advisory Opinion and UNSCR 1244 (1999): A Declaration of "Independence from International Law"?' 24 *Leiden Journal of International Law* 109 (2011), at 126; see also Kosovo AO, Dissenting Opinion of Judge Skotnikov, para 14.

<sup>43</sup> See only the latest *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, 3 August 2012 (S/2012/603), paras 1-2.

<sup>44</sup> Cf. Vidmar, note 2, at 837.

<sup>45</sup> Jean d'Aspremont, 'Les travaux de la Commission du droit international relatifs aux actes unilatéraux des Etats' 109 *Revue Générale de Droit International Public* 163 (2005).

unilateral act ceases to exist by virtue of the disappearance of its object.<sup>46</sup> Indeed, contemporary practice shows that termination of a special regime created by the Security Council is very rarely expressly provided for. Resolutions of Security Council without an expressly stated period of validity are never explicitly terminated. Once their object has ceased to exist, states rarely claim that such regimes continue to apply.<sup>47</sup>

As attractive as this construction may appear, and despite the room for interpretation left by the intricacies of Resolution 1244, it is clear that most relevant actors do not share this view. As was already discussed, the ICJ, the Secretary-General and, more recently, Kosovo itself continue to act on the basis that Resolution 1244 still applies. It seems that the idea that Resolution 1244 has been terminated, even impliedly, cannot be seriously defended.

### *(ii) Effects of a Continued Application*

The starting point for thinking about the consequence of Resolution 1244's continued application is the ICJ's AO.<sup>48</sup> As is well-known, on that occasion the Court spoke exclusively about the declaration of independence and not about any subsequent acts or developments.<sup>49</sup> Nevertheless, the framework of analysis that the Court employed can shed some light on the question of consolidation of statehood. In a first step, it is necessary to briefly recall the main elements of the Court's finding that the declaration of independence did not violate the regime of Resolution 1244. In a second step we explore how this argument can be meaningfully applied to consolidation of statehood of Kosovo.

Faced with the question of whether the declaration of independence violated international law in the form of Resolution 1244 and the Constitutional Framework adopted pursuant thereto, the Court - in a controversial move - chose to focus on the identity of the authors of the declaration and the intended effect thereof.<sup>50</sup> It held, essentially, that the authors of the declaration were not among the direct addressees of Resolution 1244 and were not, as they did not act as one of the Provisional Institutions of Self-Government, subject to the Constitutional Framework.<sup>51</sup> As the Court held, the declaration of independence ... was not intended by those who adopted it to take ef-

---

46 Such a rule would reflect the corresponding rule in the law of treaties (Article 61 VCLT).

47 The same argument could be made for Resolution 787 (1991) on the situation in Iraq.

48 For broader discussions of the content, impact and addressees of Resolution 1244, see, e.g., Kohen & Del Mar, note 42; Marc Weller, 'Modesty Can Be a Virtue: Judicial Economy in the ICJ Kosovo Opinion?' 24 *Leiden Journal of International Law* 127 (2011).

49 See Kosovo AO, para 51.

50 See Kosovo AO, paras 101 et seq.

51 Kosovo AO, paras 109, 118, 121.

fect within the legal order created for the interim phase [pursuant to Resolution 1244], nor was it capable of doing so. On the contrary, the Court considers that the authors of that declaration did not act, or intend to act, in the capacity of an institution created by and empowered to act within that legal order but, rather, set out to adopt a measure the significance and effects of which would lie outside that order.<sup>52</sup>

As has been widely observed, the Court in effect viewed the declaration as an act performed by a group of individuals, which was not prohibited by the interim regime, but which also did not have effect under the interim regime itself.<sup>53</sup> Said differently, in the Court's view, the declaration of independence or any subsequent act implementing independence could neither draw any authority or legal support from the existing legal regime of Resolution 1244 nor could it be prohibited by it.<sup>54</sup> Pursuant to the Court's logic, they were all adopted by actors not bound by that Resolution or the Constitutional Framework, and therefore could not directly violate them. In the final analysis, the declaration of independence and its implementing acts were not 'legal' acts under the interim regime at all. As subsequent practice showed, the 'new' institutions of the 'Republic of Kosovo' were not based on the Constitutional Framework, but on the newly proclaimed 'Constitution', and new legislation and executive acts no longer referred to Resolution 1244 as the source of their authority.<sup>55</sup>

What then is the legal significance of the declaration of independence and the implementing acts? On the one hand, they created an alternative legal order on the territory of Kosovo. On the other hand, once and if this new legal order has become effective to the degree that the entity sustaining it can be considered a state, it becomes a mere fact of which one can only take cognizance. That Kosovo's self-created new legal order, as was explained above, has obtained a certain *effectivité* and largely displaced the interim regime is undoubtedly the case. This result is, in all reality, a factual consequence of its securing

---

52 Kosovo AO, para 105.

53 See, for example, Dov Jacobs, 'International Court of Justice, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion of 22 July 2010' 60 *International and Comparative Law Quarterly* 799 (2011), at 804. But see also Vidmar, note 4, at 361, arguing that the Group did not see the authors as merely 'a random group of people'.

54 See Kosovo AO, paras 105, 108-109, 118. The Court did go into some detail in the analysis of the content of Resolution 1244, but as was correctly observed by Jacobs (note 53, at 809) this analysis was somewhat redundant given that the Court had already found the authors of the declaration not to be addressees of that Resolution.

55 See, for example, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 15 July 2008, S/2008/458, paras 2, 4; Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 24 November 2008, S/2008/692, para 2; Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 17 March 2009, S/2009/149, para 2.

acceptance of its monopoly of public authority by the Kosovar population and other stakeholders, as well as the failure of the Secretary-General or the Security Council to resist this development by asserting the exclusive authority of the interim legal order.<sup>56</sup>

Yet despite the new legal order becoming effective and boiling down to a mere fact whose existence cannot be disputed, Resolution 1244 remains in place. The result thereof is that two legal orders now coexist on the same piece of territory, with different claims to authority. Such coexistence can hypothetically lead to conflict if both orders assert their claimed authority. It is interesting to note in this respect that, faced with the new reality on the ground, the Secretary-General restructured the international presence in Kosovo, basically relinquishing all administrative functions to the new institutions and thus avoiding a true clash.<sup>57</sup> As the Secretary-General stated in his report of November 2008,

As is evident from the developments on the ground, my Special Representative is facing increasing difficulties in exercising his mandate owing to the conflict between resolution 1244 (1999) and the Kosovo Constitution, which does not take UNMIK into account. The Kosovo authorities frequently question the authority of UNMIK in a Kosovo now being governed under the new Constitution. While my Special Representative is still formally vested with executive authority under resolution 1244 (1999), he is unable to enforce this authority. In reality, such authority can be exercised only if and when it is accepted as the basis for decisions by my Special Representative. ... Against this background, and on the basis of my instructions to my Special Representative to move forward with the reconfiguration of the international civil presence in Kosovo within the framework of resolution 1244 (1999), UNMIK formally announced on 26 June the start of a reconfiguration process.<sup>58</sup>

Even though an open rivalry between the two authorities seems unlikely, at least in the near future, the co-existence of the two legal orders is by no means unproblematic from a theoretical point of view.<sup>59</sup> Of course, national, regional and international law always coex-

---

56 Kohen & Del Mar, note 42, at 122, consider that the failure to resist by the Secretary-General and his Special Representative may constitute a violation of their mandate.

57 Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 12 June 2008, S/2008/354, paras 14-16; Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 15 July 2008, S/2008/458, para 30; Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 24 November 2008, S/2008/692, paras 21-25.

58 Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 24 November 2008, S/2008/692, paras 21-22.

59 See generally Robert Muharremi, 'The European Union Rule of Law Mission in Kosovo (EU-LEX) from the Perspective of Kosovo Constitutional Law' 70 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 357 (2010).

ist to a certain degree in every state. However, in the case of Kosovo the situation is more complicated. Assuming, for the sake of argument, that Kosovo has by now matured into a fully-formed state under international law, it has become bound by general international law. However, the applicability of Resolution 1244 to Kosovo as a state is not automatically obvious and would need to be demonstrated. Kosovo is presently not a UN member state automatically bound by Security Council Resolutions. Nor can it be said to have assumed these obligations in any other way.<sup>60</sup> As a result, even if the Kosovar leadership of the Kosovars, as a people or any non-state entity, had been, contrary to the opinion of the ICJ, directly bound by Resolution 1244, it would appear that this obligation could hardly be directly transferred onto the new state.<sup>61</sup>

The consequence is then that the continued application of Resolution 1244 theoretically bears the risk of conflict between the two legal orders existing in parallel. Such a conflict could, for instance, manifest itself in connection to the status of EULEX.<sup>62</sup> Indeed, before independence, the legal basis for EULEX was clearly Resolution 1244.<sup>63</sup> However, there are signs that the new Republic of Kosovo does not recognize this authority, claiming that under international law the international presence is predicated on invitation by the new state.<sup>64</sup> This disagreement about the legal basis for these missions continues to exist, with

---

60 Its acceptance of the international obligations assumed on its behalf by UNMIK can hardly be read as unilaterally accepting to be bound by Resolution 1244. Additionally, we are of the opinion that Article 12 of the Declaration of Independence does likewise not represent a unilateral acceptance of Resolution 1244 as binding the new entity. It is clear that the commitment to 'act consistent with principles of international law and resolutions of the Security Council of the United Nations, including resolution 1244 (1999)' relates only to the implementation of the Declaration and the Ahtisaari Plan. It is hard to construe this commitment as embracing Resolution 1244 if that would render the very entity the Declaration seeks to bring about unlawful.

61 From this perspective, Kosovo's recognition of the continuing application of Resolution 1244 in the recent 'footnote agreement' also poses no particular problem, as it can recognize that the Resolution continues in force without attributing any legal impact to it. At most, it may mean that legally speaking the entity presenting itself under the denomination 'Kosovo\*' corresponds to the one existing under the interim regime, and not the one existing under the title of 'Republic of Kosovo'.

62 Similar conceptual problems exist with respect to KFOR. However, as the DOI refers to Resolution 1244 with respect to KFOR, the overlap of invitation and independent Security Council authorization is so complete as to avoid problems in practice.

63 The legal basis of EULEX was somewhat unclear until the Security Council, in the form of a Presidential Statement, endorsed the Secretary-General's wish to transfer some of UNMIK's responsibilities to EULEX. See *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, 24 November 2008 (S/2008/692); *Statement by the President of the Security Council*, 26 November 2008 (S/PRST/2008/44). See generally Erika de Wet, 'The Governance of Kosovo: Security Council Resolution 1244 and the Establishment and Functioning of EULEX' 103 *American Journal of International Law* 83 (2009).

64 See Muharremi, note 59, at 365ff.

EULEX claiming to be based on Resolution 1244,<sup>65</sup> and Kosovo stating that its presence is based on invitation.<sup>66</sup> So far, actual conflict has remained hypothetical, but a withdrawal of Kosovo's consent to the international presence could lead to a serious legal controversy. From an international law perspective, the problem is that both sides could invoke the law in their favour: if one accepts Kosovo as a new state to which Resolution 1244 is not applicable, consent would be the only basis.<sup>67</sup> If one does not accept Kosovo to have become a state, Resolution 1244 is entirely sufficient.

The foregoing confirms that the continued application of Resolution 1244 could raise thorny legal questions in the future. However, such legal controversies are unlikely to jeopardize the current *effectivité* of the new entity. Indeed, as was explained above, Resolution 1244 does not and did not prohibit the relevant actors from creating institutions that obtained *effectivité*, and the absence of formal support for the actions leading to the creation of the 'Republic of Kosovo' is hardly decisive.

An entirely different question that ought to be briefly mentioned is that of the impact of Resolution 1244 on recognition by other states. This issue, which was widely discussed on the occasion of the debates preceding the AO, is whether third states were somehow barred from recognizing an entity as a state by virtue of the particular procedure prescribed by Resolution 1244 for the determination of the final status.<sup>68</sup> This question is at the heart of argument that Resolution 1244 created an obligation on third states to only recognize Kosovo as a state where independence was agreed upon in negotiations with Serbia.<sup>69</sup> In our view, this argument seems far-fetched. Indeed, it would seem to us that attributing such effects to Resolution 1244 would, from a textual perspective, be a stretch. Moreover, the substantial number of recognitions that Kosovo has already obtained clearly speaks out against such an interpretation. But even if it were the case, the fact that recognition was itself wrongful by virtue of Resolution 1244 would not, in the absence of withdrawals of recognition, erode Kosovo's external *effectivité*.

---

65 See the EULEX website: <http://www.eulex-kosovo.eu/en/info/whatisEulex.php>.

66 See Muharremi, note 59, especially at 371.

67 See also generally d'Aspremont, note 7, at 667.

68 The effect of Resolution 1244 on recognition is discussed in depth in Vidmar, note 2, at 832ff.

69 See Vidmar, note 2, at 839-40: 'Resolution 1244 makes references to territorial integrity, and states denying recognition argue that the state of Kosovo was created illegally; thus, they maintain that collective nonrecognition should apply. ... States granting recognition interpret Resolution 1244 as a legal instrument that does not automatically preclude secession, so that, consequently, the obligation of collective nonrecognition does not apply.'

This confirms, once again, that the continued application of Resolution 1244 hardly bears upon Kosovo's statehood. It is true that the remaining doubts about the role of Resolution 1244 may continue to be a cause for hesitation and controversy. Ideally, rescinding Resolution 1244 would remove the parallel existence of two legal orders in Kosovo, eliminate the impression of Kosovo being an entity in legal limbo, and allow the international community to reach a consensus. Abrogating this resolution can be realized either by virtue of a decision of the Security Council to this effect, or by a fully-fledged agreement between Kosovo and Serbia on the former's status that would put an end to the transitional period to which Resolution 1244 applies. As both scenarios seem remote possibilities at the present time, the more promising strategy to secure normalization would appear to be continuing to search for pragmatic arrangements in order to prevent the parallel existence of the two legal orders from becoming openly conflictual.

### III. Pursuing the Consolidation of Kosovo's Statehood

The foregoing section demonstrated that legal arguments neither present any true obstacles to nor support the further consolidation of Kosovo's statehood. Besides toning down the abovementioned outstanding controversies, additional strategies may be pursued to enhance the statehood credentials. In line with the criteria of statehood, the challenge consists of ensuring further recognition to boost the external *effectivité*. While these are certainly not exhaustive, two principal strategies come to mind: emphasizing democratic and economic credentials of the new entity.

Kosovo aspires to be a well-functioning democracy. Preserving and improving the entity's democratic virtues can constitute an important strategy to increase recognition and actual engagement with the new entity. Indeed, contemporary practice shows that new entities aspiring for statehood that can prove some democratic virtues can more easily secure external *effectivité* via recognition.<sup>70</sup> There is a close connection here between the internal consolidation of statehood (in the form of completing the creating of democratic institutions) and external consolidation (in the form of obtaining recognition). In other words, established states more easily accept newcomers if they comply with basic tenants of democratic governance. Practice of recognition pertaining to Bosnia-Herzegovina and East Timor, among others, provides some illustration. Despite these entities lacking full internal or external *effectivité*, the democratic form of the political regime facilitated their recognition by other states.<sup>71</sup> As a matter of fact, Kosovo's democratic credentials have

---

70 Cf. Jean d'Aspremont, 'Post-Conflict Administrations as Democracy-Building Instruments' 9 *Chicago Journal of International Law* 1 (2008-2009), at 15; Jean d'Aspremont, *L'Etat Non Démocratique en Droit International* (2012), at 57-61.

71 *Ibid.*



already had an effect on recognition. States like the Netherlands only granted recognition after convincing themselves that the new state had sufficient democratic features, such as respect for human rights.<sup>72</sup> Emphasizing its own democratic virtues is thus a promising consolidation strategy.

A second - rather obvious - strategy could be to give other states stronger incentives to recognize the new entity. As we hinted at above, whether or not to recognize a new entity as a state is normally entirely in the discretion of other states. The motives for or against recognition can vary widely. We speculated above that some states have so far refrained from recognizing Kosovo because committing themselves to one view or another on the issue of Kosovo's statehood held no advantage or disadvantage for them. Accordingly, giving these hesitant states an economic incentive, making recognition advantageous, could prove an - albeit conspicuous - promising strategy. In particular, facilitating contacts and international investment, decreasing bureaucratic barriers and providing stability could attract otherwise hesitant states. It seems reasonable to assume that states with an economic interest in the new entity would feel a greater urge to recognize Kosovo, thereby further consolidating its external, as well as internal, *effectivité*.

#### IV. Conclusion

Is there virtue in writing an article, based on international law, about the consolidation of statehood? As we said at the beginning and elaborated upon later, international law has very little to say about the statehood-consolidation process. Nevertheless, we believe that there still is merit in reflecting on international law and statehood-consolidation: shedding the artificial and obfuscating mist of legal argument too often found in the international legal discourse and exposing the real dynamics underlying the consolidation process certainly helps sharpen perspectives and focus attention on the real issues. At the same time, we have argued that the impact of some legal controversies on an entity's external *effectivité* should not be underestimated. Whether or not they are ill-founded in existing international law, legal controversies can provide states with reasons or pretexts not to recognize the new entity. Toning down these legal controversies in one way or another can therefore be conducive to the external *effectivité*. In the same light, giving states incentives to recognize, be it through boosting Kosovo's own democratic credentials or economic appeal, is the strategy that is the most instrumental in consolidating statehood.

The path forward is then one of pragmatic steps, of reducing obstacles to consolidation while simultaneously creating incentives. In such a process, the international law narrative

---

72 See <http://www.government.nl/news/2008/03/04/the-netherlands-recognises-kosovo.html>. It also relevant that in their joint declaration, the EU foreign ministers stressed the democratic credentials of the new entity (<http://euobserver.com/foreign/25684>).

is bound to ebb away. The most difficult remaining issue is the continued application of Resolution 1244 and, in particular, the superposition of another legal order to that of the new entity. But in this respect, taking pragmatic steps towards reducing the controversies that sustain the continuing emphasis on the interim regime created thereunder is the most promising avenue. To cite but one example, the recent conclusion of the 'footnote agreement' between Kosovo and Serbia which has been discussed above, marks a move towards normalization of their relationships. Consolidation of statehood in a context as intricate as that of Kosovo is then a task most likely to be accomplished through careful, considered and pragmatic politics, not high-strung, far-fetched, opportunistic and often artificial international legal narrative.

## KOSOVAR MULTI-LAYER IDENTITY: WHAT IS THE SAME, DIFFERENT AND IN COMMON WITH ALBANIAN IDENTITY

*Dorian Jano*

**Abstract:** The debate on *whether* and *what* a Kosovar identity may be, is a delicate subject overloaded with political nuances. In this article, I elaborate on the concept of ‘nested identities’ and propose a model of how one can conceptualize Kosovo’s identity. The model considers identity as a multi-layered concept with national (cultural) identity as a first-order concept, state (political) identity as a second-order concept and supra-state (European) identity as a third-order concept where the latter encompass the former. As an implication of this model, perceptions of identities need not to be abandoned but rather expanded and nested into one another. Thus, the Albanian national identity remains the first-order identity for Kosovar-Albanians and there is no need for another national identity to be invented. However, building on and consolidating a democratic political identity as well as embracing ‘European’ values and norms within self-defining narratives are vitally important to sustaining this multi-layered Kosovar identity.

**Keywords:** Albania, Kosovo, Nested Identities.

---

## Introduction

The importance and the popularity of ‘Kosovar identity’ have been a crucial issue not only before but mostly after Kosovo declared its independence. In the light of the latest developments, with the challenges for a full international recognition of Kosovo as an independent and sovereign state, the issue of identity has become an issue of great concern. The identity issue is so delicate that even Kosovar political leaders have publicly asserted “a Kosovo identity does not exist”<sup>1</sup>. Pronouncements such as these constitute a politically embedded rhetoric rooted in the idea that claiming a certain identity may be detrimental to Kosovo’s recognition of independence. Moreover, the fear of being associated with “nationalistic Balkan legacies”<sup>2</sup>, has made the question of Kosovar identity an *Achille’s heel*. Navigating these political perplexities has resulted in stepping back the debate on not only what a Kosovar identity is, but whether or not a Kosovar identity actually exists.

In order to tackle the delicate question of identity, overloaded with political nuances, I elaborate on the concept of ‘nested identities’ and propose a model of how one can perceive and understand Kosovo’s identity. The argument builds on today’s post-modernist world in which collective identities have the tendency to be multi-layered, moving from the first-order concept of national (cultural) identity towards including other-order concepts of post-national identity such as state or supra-state identity. Empirically, I illustrate the argument using the case of Kosovo and Albania in order to compare what is the same, different and in common with regards to identity between these cases.

### The Concept of Identity

Identities are anchored around a set of moral propositions that regulate behaviour (Schöpflin 2001). They are sets of values and norms that provide symbolic meaning to collectivities by enhancing their individuation (or self-definition) and their feeling of belonging. This system of values, norms and morality has common shared meanings by all members it represents. It is not given once and forever; on the contrary, it can be continuously valorised and enriched according to the particular collectivity and the communal and societal context in which this collectivity exists. As such, collective *identity* is always in the process of evolving. These identities are constructed and developed with the aim to overarch community and guarantee cohesion within a specified group.

---

1 Reference to Bilefsky, Dan (2007) “Kosovo Struggles to Forge an Identity”, New York Times, December 17.

2 The Balkans region in general have been portrayed as an “ethnically ordered world in which no other conceptions of identity have political importance and where group relations cannot be other than mutually exclusive and naturally, conflictual” Blumi, Isa (2000) “The Dynamics of Identity: Albanians in the Post Ottoman Balkans.” Lecture at Harvard University, Center for South Eastern European Studies, Cambridge, 11 February.

### The role of Narratives in constructing identity

One of the most potent ways to construct collective identities is through the use of 'narratives'<sup>3</sup>. Narratives can be both individual and social in scope but in this article the term is used exclusively at the social level. At this level, narratives about beliefs and ideas embedded with a moral content are told and used by the community in order to construct collective identities. Such narratives help the community construct and legitimized itself. It should also be noted that although narratives may transcend the truth of the events, they are not historiographies; they are more about perceptions rather than historically accurate truths. Narratives allow people to organize their collective and communal past, present and future in ways that make sense for them.<sup>4</sup>

Political scientists underline narratives' capacity and their value in ensuring community cohesion. They see narratives as central to the way we live and how we define ourselves, where human collectives establish and determine the foundations of their own being, their own system of morality and values.<sup>5</sup> Some critical cultural theorists are more sceptical and see narratives as a source of abuse and with negative impact for social relations. Yet, despite of being in favour or against, all scholars agree on the power that narratives have in constructing collective identities. As research demonstrates, democratic 'civil' societies rely on narratives just as much as authoritarian 'ethnic' societies do<sup>6</sup>.

### The dual function of identity: the 'we' and the 'others'

---

3 In the literature the most elaborated concept is that of 'myth' but I prefer to use the term 'narratives' through the paper as I evaluate to be more neutral and without the misleading connotations the term 'myth' (faboulation, invention) may imply. "Myths are first and foremost stories which can have two meanings. The most popular one that we can see in the press; commonly meaning a story, an invention, a faboulation, something in which we do not believe, while another point for looking at myths is that of a particularly set of believes and ideas with a moral content told as a narrative by a community about itself" Schöpflin, George (2002) "The nature of Myth: Some Theoretical Aspects", in S. Schwandner-Sievers and B. J. Fischer (eds.) *Albanian Identities: Myth and History*, London: Hurst & Co. p.26.

4 See Schöpflin, George (1997) "The functions of Myth and a Taxonomy of Myths", in G. Hosking & G. Schöpflin (eds.) *Myths & Nationhood*, London: Hurst & Co. pp.19-28. Note that emphasis is added and the author refers to the concept of myth.

5 For more on the functionalist views see Schöpflin, George (1997) "The functions of Myth and a Taxonomy of Myths", in G. Hosking & G. Schöpflin (eds.) *Myths & Nationhood*, London: Hurst & Co.; and Kolstø, Pal (2003) "Theorizing historical myths in Balkan societies and beyond: Part I Enlightenment vs. Functionalism." *RFE/RL East European Perspectives* 5(20).

Because identity is discursive, it denotes something in relation to other identities. A sense of collective identity is always accompanied by the need to differentiate 'we' from 'others'. As such, collective identities tend to draw strict boundaries between those who belong to the community and those who do not. Such a concept where "every identity includes and excludes" (Schöpflin 2001) has both the positive attitude (inclusion) and the negative attitude (exclusion). In this sense collective identity is defined through a dual process. On the one hand the narratives of self stress the similarities of the in-community and on the other hand they point out its differences with the out-community. That is why identity simultaneously includes and excludes, otherwise it would not be an identity that could sustain itself. Exclusion, become a necessary and unavoidable aspect of collectivity existence. Nevertheless, it is not the fact of exclusion as such that is problematical, but as Schöpflin (2005) points out, it is the particular forms of exclusion in particular situations. Identity does not function of and by itself, it is rather the politics of exclusion and of marginalization that becomes problematic and may have a harmful impact since it often degenerates into violent conflict among those included and those excluded. That is why the Balkan historical narratives compared to other nation's narrative have in some cases had strongly negative social consequences and have even contributed to the outbreak of violent conflicts. What's more, nationalist projects of the region had very big ambitions overlapping with each other and sometimes going to the extreme of even not recognising at all their neighbour nations. That is why some of the in-group narratives were and are used as threats by the 'others' so as to deny the authenticity of the in-group.

### **Embedded Identities: the Multi-layer dimension of Identity**

To challenge the dualistic including-excluding notion of identity, I borrow from Medrano and Guitiérrez (2001) the concept of 'nested identities'<sup>7</sup> and make an attempt to propose a model that exposes identity into an intertwined multi-layer variant where the 'excluded' in some layer are 'included' into another greater layer of identity. The argument here is that we do not need to have a one-way simple membership, but rather perceive identity into (multi)layers. In such a multi-layer identity model, identities do not exclude but they are rather constructed as complements of each other. Layers of identity do not contradict each other, on the contrary, they complement one another since every layer has its own distinguished variables. Thus, at the national level of identity people share same cultural variables be it ethnicity, language or tradition. At the polity level, identity, in addition to national identity, which may be also different, people share the same political and socio-economical rights. In other cases, in addition to the previous national and polity identities, people may want to identify themselves to a greater community which shares more universal values and norms. Which of these layers becomes salient

---

7 'Nested identities are lower- and higher-order identities such that the latter encompass the former.' (Medrano and Guitiérrez 2001: 757).

or important in a given instant depends on the context in which the community is placed. For example, in the 19<sup>th</sup> century during the nation-state building process, national identity played a major role. After the fall of communism in the '90s the need for creating a polity identity compatible with liberal democracies was the model to be followed by most of the countries from Eastern Europe. From mid 90's onwards (2000 for the Balkan region) with the perspective of joining the European Union, the countries of Eastern Europe in addition to constructing a liberal democracy felt/had the need of coming closer to European values and norms.

The motivations behind identity construction of any of the layers of identity may be different, and in theoretical terms they can derive from either logic of appropriateness or from a logic of consequentiality.<sup>8</sup> The first and most influential arguments on collective identity formation are based on the sociological/constructivist reasoning. From this perspective, collective identities are constructed on the basis of normative beliefs of belonging to a community that shares the same culture, language and history. They include emotional, affective, and evaluative components. Yet, belonging to a community may not be only through sociological reasoning but also through rational thinking. Identity as such is formed based primarily on materialistic interests. A voluntary constructed identity because of rational reasoning derives from conscious calculations of costs and benefits. From this point of view, rationalist assumptions can be a strong motivation for identifying with a certain community and wanting to be included in its membership.

### National, State and European Layers of Identity

Very often it is claimed that collective identities are very much related with national identities, therefore the prospects of building a new identity form is doomed and cannot be achieved without having to face conflicts of loyalties. The model of layers of identity considers identity never fixed but always in the process of changing and evolving. It deals with the question of identity developments and constructions of layers of identity as oppose to the very unique and stable idea of national identity.

The concept of multi-layered identity or nested identities sees *national identity* as a first-order concept where collectivities identify themselves belonging to a certain national identity based on narratives of shared language, tradition and history; *state identity* as a second-order concept where collectivities identify themselves belonging to a certain political identity based on a "common economy and territorial mobility, and common legal rights and duties for all

---

8 For the theoretical argumentation on both logics of action see the seminal work of March, James G. & Olsen, Johan P. (1998) "The Institutional Dynamics of International Political Orders." *International Organization* 52(4): 943-969.

members”<sup>9</sup>; and adds a third layer, the *supra-state (European) identity*, that can be seen as a third-order concept where collectivities identify themselves belonging to a wider political space than the state, as it is the case of the European Union based on *additional* economic, political and social interests or values for all communities and consequently all members. In today’s world of globalization, collective identities tend to be multi-layered moving from the *first-order* concept of national identity towards including *other-order* concepts of post-national or supra-state identity.

The national identity is more a sociological argument and might become particularly salient when cultural related issues (such as language, traditions, and ethnicity) are important or threatened. The state and supra-state identity are more rational arguments and might become particular salient when citizen related issues (citizenship and political rights) are of concern. The national identity has to do more with a nation-building process while the polity identity is a more recent concept that has to do with a state-building process. The construction of a European (political) identity is still in the making and focuses on the European integration process.

Nested identities or the model of multi-layered identity is important above all because it reconfigures the very narrow nationalist divisions between ‘us’ and ‘them’. For instance, Albanians as well as Kosovar-Albanians, Macedonian-Albanians or Montenegrin-Albanians, all share a common national identity despite the fact that they live in different states and have different polity (state) identities. Furthermore, they all, regardless of the state in which they live, are aiming to a common supra-national and supra-state European identity.<sup>10</sup>

Perceiving identity in such an embedded multiple way can help communities not only sustain themselves but also live in harmony with others since there is not a strict and dichotomous division of inclusion/exclusion but rather overlaps where some communities share a common national identity with other communities and at the same time share the same polity identity with those who may have different national identities. Above all, their aim is to completely belong to a common supra-national and supra-state identity: Europe or the European Union.

### **The case of Kosovo and Albania...**

#### **...*Same national (cultural) identity***

Albanians of Albania, of Kosovo, of Macedonia and of Montenegro share the same national identity. The Albanian national identity is constructed around shared his-

---

9 Smith, 1991: 14. Note that Smith defines nation, not state but as it has been rightly argued by Schnee (2001), Smith “conflates the nation with the state”.

10 Recall here that all the countries of the Western Balkans have and are willing to join European Union.



torical territory and memories and narratives of common ancestry, of common culture, and a common language. This common (cultural) national identity is shared by all Albanians living in those areas, regardless of their different state identities.<sup>11</sup>

### The construction of Albanian national identity

Narratives of national identity became politically powerful and dominant in the 19<sup>th</sup> century when the Balkan nationalist movement appeared as a need to defend identity denied by the process of disintegration of the late Ottoman Empire (Schwandner-Sievers, 2002). The process of Albanian nation-building in the 19<sup>th</sup> century cannot be separated from the Balkan context which was still based on dynamic empires. Differing from the French concept of nation, which was based on open and rational allegiance of the individual to a political collectivity, as well as from the German concept of objectively determined membership of an organic body, (Thiess, 1999) the Balkan priority was that of national sovereignty and nation-state formation. In shaping a national identity, common substantial values were needed: a history of continuity through the ages, a set of heroes embodying its national values and a common language. Let's look in more detail at which narratives played a role in creating the Albanian national identity.

First of all there were the narratives of origin or ethnogenesis<sup>12</sup> stating that Albanians were autochthonous in the western Balkans and they have been living there if not forever at least longer than their neighbours<sup>13</sup>. Such narratives of shared descendant, of the same culture and language may have been weakened as a result of the assimilation process that may have taken place during the long centuries of inter-ethnic coexistence in a multinational Ottoman Empire. This gave rise to new narratives of a continuous permanent national struggle build upon the important historical figure of Gjergj Kastriot Skanderbeg. Other more local narratives that in time took on a national character have also contributed to the construction of the Albanian national identity. For example *Besa* (oath), an unwritten contract based on the notion of honour became a successful ritual device to ensure internal

---

11 A point needs to be clarified here since "it would be a mistake to confuse the idea of Greater Albania with that of an 'Albanian area' - a legitimate expression of the common linguistic and cultural identity of the Albanians of Albania, Kosovo, Macedonia and Montenegro - thus calling that nationalist would be as silly as continuing to consider the Albanians a non-existent nationality" (Andersson 2002).

12 For more information on the taxonomy of Myths see: Schöpflin, George (1997) "The functions of Myth and a Taxonomy of Myths", in G. Hosking & G. Schöpflin (eds.) *Myths & Nationhood*. London: Hurst & Co., p.34.

13 Misha, Piro (2002) "Invention of a Nationalism: Myth and Amnesia", in S. Schwandner-Sievers and B.J. Fischer (eds.) *Albanian Identities: Myth and History*. London: Hurst & Co., p.41. At first these fore fathers were the Pelasgians which followed the Illyrian descent theory Misha (2002: 42), See also Zhelyazkova, A., (No date). *Albanian Identities*.

conciliation and solidarity action for any Albanian bonds in the national movement (e.g. League of Prizren) and nation-state building processes (Schwandner-Sievers, 2002).

These narratives contribute to the creation of the Albanian identity aiming not only on binding together Albanians for creating a nation-state but also on rediscovering the culturally, linguistically homogenous Albanian identity. Nationalistic narratives had the intention of attracting the attention of the world and legitimizing the historical right of Albanians to be considered a nation and to create the Albanian independent state<sup>14</sup>.

### ... Different state (polity) identity

But as the case of Europe shows, nations do not always overlap with states. In 1912, when Albania gained its independence, many Albanians and their territories remained outside of the new Albanian state. Today, although Albanians from all the areas share the same national identity, they have developed different polity identities depending on the state in which they live. For example Albanians of Kosovo, although they share the same national identity with Albanians of Albania, belong to different states with different civic and political identities. They also belong to a different polity, the state of Kosovo. The state here should be seen as a political unit which offer a common economy and territorial mobility, and common legal rights and duties for all members included in its political unit.<sup>15</sup>

It is important that members of a polity (state) share the same citizens' identity but not necessarily the same national identity. As such citizens' core political identity depends upon an institutional framework (the state) which they need to share. Constructing a shared polity identity is a necessary condition of political institution building and yet such institution building is also necessary to help foster a common identity. For a polity to function or exist first of all it needs to represent each and every individual it includes and on the other hand every individual included need to identify him/herself with that polity. That is, every community within it needs to share the same civic identity regardless of their national identity. The identity of a polity needs to be constructed and understood as a political concept of rights and duties and not as a cultural substance or heritage that has to be discovered and reformulated from the historical traditions.

The polity identity does not require *a priori* a shared cultural (national) identity. A polity, more especially those composed of communities with very different national identities, which intend to be found on nationalistic backgrounds, is doomed to fail. This was the case

---

14 Ibid (pp.40)

15 For Smith "the state is a legal and institutional concept. It refers to autonomous public institutions which are differentiated from other social institutions by their exercise of a monopoly and extraction within a given territory. The idea of the nation, by contrast, is fundamentally cultural and social" (1991: 61).

of the disintegration of Yugoslavia. The idea of a very nationalistic polity is incompatible with the liberal democratic ideas promoted in the '90s and "unable to function according to demands of modern political institutions: as communities of free and equal citizens"<sup>16</sup>. Any polity that is not sufficiently flexible to incorporate and permit collectivities with different national identities risks social unrest or even dissolution.

Today's modern polities are aiming towards a liberal, participatory and social democracy. Such a polity needs to construct a shared feeling around liberal democratic values of universal human rights with an emphasis on citizen participation and the protection of historically rooted cultures, often expressed in linguistic terms.

### **The construction of liberal democratic state: The narratives of the West**

With the political changes in the early nineties, all of Eastern Europe became subject to new narratives of liberal democratic states. A liberal democratic polity identity often contains visions of political and social justice orders. The rights of participation in the polity lie at the heart of the narratives of modern western democracies. This means that all people have the right to choose the type of polity they want and by virtue of that right they can freely determine their status and freely pursue their economic, social, and cultural development of their shared polity. The transfer of the liberal democracy models or collective identities based on the idea of democracy and pluralism has to be seen as instrumental for the guarantee of the state. It is especially true with multicultural polities where contemporary Rawlsian liberalism needs to be embraced and applied. The narratives of liberalism are compatible with multiculturalism or pluralism since one of the aims of liberalism is to accommodate diversity rendering a totally unified community impossible and even undesirable.

The spreading of democratic values and the building a democratic polity identity do not neglect national identity; on the contrary they leave space for many cultural identities to be reproduced and exist in harmony with each other. A democratic polity should be above all a political space where different national identities can be accommodated, and each member of the polity has a political identity of rights is additional to a national identity. Building an identity in such a multi-layered way, where different cultural reproduction is possible and not conflictual, is significant for both social and political processes of a polity. As Schöpflin (2000) observes without citizenship, cultural reproduction is endangered... and without the state, the framework of citizenship cannot operate.

The urgent need for Kosovo is not that of building a new national identity but rather consolidating the democratic state identity which promotes the idea of an additional civic

collective interest to legitimise state authority throughout its polity. The national idea could neither be used for that purpose nor be neglected. It is rather a question of building a Kosovar polity, the second-order identity of the democratic polity that needs to be further developed. The idea of 'democratic' statehood which is becoming increasingly ascendant in modern societies is that each individual's opinions must contribute to defining its polity. It is the total of these opinions that determines the identity of a democratic state.

### ... (aiming at) Common supra-state (European) identity

Albanians long for affiliating themselves with the modern European values and fulfilling themselves in a peaceful and democratic social climate, like all other post-Communist societies in Eastern Europe. This is stimulating the expectation for democracy "above the level of the nation" and the European Union is the best example of a transnational structure that could foster democratization across borders<sup>17</sup>. External influence and especially the European Union had a direct impact on identity formation as the case of CEEs countries have shown. The possibility to be part of the European Union together with EU conditionality towards a liberal democracy has been a strong incentive to shape a perspective European identity for the aspiring candidate countries. A future European membership is the best narrative to uphold towards building a supra-national identity compatible with European values and norms. In this sense 'Europe' and EU membership has been important for the way national identities have been expanded to other more broad political forms of identity. In the formal format, member-states are relinquishing part of their state sovereignty to Brussels.

Albanians, regardless of their polity belonging, and citizens of other countries from the entire Balkan region, show a desire to be part of the 'civilized' and 'cultured' Western world. Being for many years stigmatised as "the dark other of 'western civilization'"<sup>18</sup> makes the identification with Europe a way 'to escape' from the derogatory meanings associated with Balkan identity. In addition to the national or state identity we can speak of a third-order concept of identity in the making. The process of constructing Albanian, Kosovar, and Macedonian identity also as part of 'Europe' has been the latter challenge of the entire Balkan region. As previous research have shown "ultimately, it is Europe which stands as the common denominator around which a new collective identity of the Balkans has begun to crystallise"<sup>19</sup>. Other more specific research in the case of Kosovo has observed "a process of constructing Kosovar identity as part of 'Europe'"<sup>20</sup>. A further integration and

---

17 Giddens, 2000: 97.

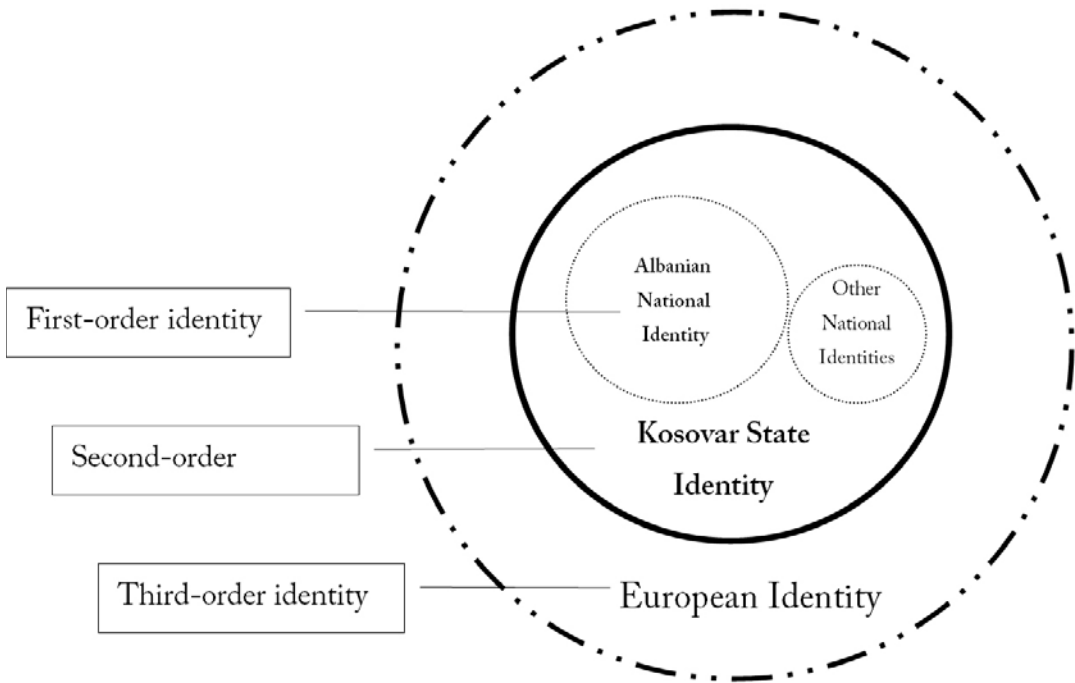
18 Todorova 1994: 482.

19 Bechev, 2006: 22.

20 Seifert, R. (forthcoming) Nationalism and Beyond: Memory and Identity in Post-War Kosovo/a.

an expedited membership in the European Union would mean, in terms of identity, adding another identity circle, that of Europeaness.

**Figure: Kosovar Multi-layer Identity**



Source: Author

### Conclusion

Often the Kosovar identity is put into a real question mark. The greatest dilemma of all is which road to take. From one hand there are those that speak of a purely Albanian identity glorifying the Albanian cult with all its narratives. From the other hand the narratives of the West evangelize the gospel of the free market economy, democracy and the universal value of human rights. The issue is not plain or simple and cannot be either one or the other way. The most comprehensive and realistic version is that of seeing identity in all its layers. Kosovar-Albanians need to return to their real self and restore their collective memories which have been forcefully uprooted or manipulated from previous regimes. At the same time, they need to build a more inclusive polity identity which gives the political space for all its other nationalities because it is only in participatory democracies where a sense of a truly ‘national’ identity layer can be developed and harmoniously sustained. Furthermore, in addition to a national (first-order) and state (second-order) identity, their aim has been to find themselves within the post-modern European values (third-order). Identity is not a one-order concept. The answer of *who* we are is not plain and simple. ‘We’

can belong simultaneously to a nation, a state or a supra-national organisation and identify ourselves with the three of them. The relationship between identities is one of embeddedness, of different layers in a complex identity structure.

The Albanian national identity remains the first-order identity for Kosovar-Albanians and there is no need for another national identity to be invented. What it is needed is to further build and consolidate a democratic political identity as well as further expand Kosovar identities by including also a 'European' vision within their self-defining narratives. Identity at the state level or furthermore at the European level represents only a legal means for access to civil, political and social rights and should not be conflated with national identity of belonging to a specific cultural group. Building collective identities in a multi-layered way gives space to co-existence of various forms of identities and as a consequence harmonious living of different communities.

## References:

- Andersson, Nils (2002) "Identity crisis in the Balkans", *Le Monde Diplomatique*, June, (Translated by Malcolm Greenwood).
- Bechev, Dimitar (2006) "Constructing South East Europe: The Politics of Regional Identity in the Balkans", RAMSES Working Paper 1/06, European Studies Centre, University of Oxford, Oxford.
- Bilefsky, Dan (2007) "Kosovo Struggles to Forge an Identity", *New York Times*, December 17.
- Blumi, Isa (2000) "The Dynamics of Identity: Albanians in the Post Ottoman Balkans." Lecture at Harvard University, Center for South Eastern European Studies, Cambridge, 11 February.
- Giddens, Anthony (2000) *Runaway World: How Globalization Is Reshaping our Lives*. New York: Routledge.
- Hosking, Geoffrey and Schöpflin, George (1997) *Myths & Nationhood*. London: Hurst & Co.
- Kolstø, Pal (2003) "Theorizing historical myths in Balkan societies and beyond: Part I Enlightenment vs. Functionalism", *RFE/RL East European Perspectives* 5(20).
- March, James G. and Olsen, Johan P. (1998) "The Institutional Dynamics of International Political Orders", *International Organization* 52(4): 943-969.
- Medrano, Juan Díez and Paula Gutiérrez (2001) "Nested Identities: National and European Identity in Spain", *Ethnic and Racial Studies*, 24(5): 753-778.
- Misha, Piro (2002) "Invention of a Nationalism: Myth and Amnesia", in S. Schwandner-Sievers and B. J. Fischer (eds.) *Albanian Identities: Myth and History*. London: Hurst & Co.
- Schnee, Walter (2001) "Nationalism: A review of the literature." *Journal of Political and Military Sociology* 29(1): 1-18
- Schöpflin, George (1997) "The functions of Myth and a Taxonomy of Myths", in G. Hosking & G. Schöpflin (eds.) *Myths & Nationhood*. London: Hurst & Co.
- Schöpflin, George (2000) *Nations, Identity, Power: The New Politics of Europe*. London: Hurst & Co.
- Schöpflin, George (2001) *The construction of identity, Österreichischer Wissenschaftstag*.
- Schöpflin, George (2002) "The nature of Myth: Some Theoretical Aspects", in S. Schwandner-Sievers and B. J. Fischer (eds.) *Albanian Identities: Myth and History*. London: Hurst & Co.
- Schöpflin, George (2005) *The Dilemmas of Identity*. London: Hurst & Co.
- Schwandner-Sievers, Stephanie (2002) "Narratives of Power: Capacities of Myth in Albania", in S. Schwandner-Sievers & B. J. Fischer (eds.) *Albanian Identities: Myth and History*. London: Hurst & Co.
- Seifert, Ruth (forthcoming) "Nationalism and Beyond: Memory and Identity in Post-War Kosovo/a", in Lynne Christine Alice (ed.) *Ethnocentrism, Minority Rights and Civil*

*Society in the Balkans*. Peter Lang.

Smith, Anthony D (1991) *National Identity*. London: Penguin.

Thiess, Anne-Marie (1999) "Inventing national identity", *Le Monde Diplomatique*, (Translated by Barry Smerin)

Todorova, Maria (1994) "The Balkans: From Discovery to Invention", *Slavic Review* 53(2): 453-482.

Vlaisavljevic, Ugo (2003) "Yugoslav Communism and After: The Continuity of Ethnopolitics", *Identities: Journal for Politics, Gender and Culture* 2(2): 6-26.

Zhelyazkova, Antonina. (No date). *Albanian Identities*. Available from <[http://www.omda.bg/imir/studies\\_fr.htm](http://www.omda.bg/imir/studies_fr.htm)>.

**Author:** Dorian Jano, Ph.D. is lecturer at the University "Marin Barleti", Tirana. He has been visiting researcher fellow at the Institute for European Integration, Europa-Kolleg Hamburg and NewDem research fellow at the Institute for Advance Studies, Collegium Budapest. He receives his PhD in Political Studies from the University of Milan. He holds also a Master degree in Interdisciplinary Research and Studies on Eastern Europe (MIREES) from the University of Bologna and a Bachelor degree in Economics from the Aristotle University of Thessaloniki. His academic interest and research regards EU Enlargement, Europeanization and South-Eastern Europe. He has carried out research related to the above mention topics, some of them have been presented at international conferences or published in international peer reviewed academic journals or edited volumes.

**Correspondence to** Email: [dorian.jano@gmail.com](mailto:dorian.jano@gmail.com)

**Acknowledgments:** The author would like to thank Christina Standerfer for editing and improving the English of this article.



## KOSOVO'S NORTHERN DILEMMA IN HISTORICAL AND COMPARATIVE PERSPECTIVE

*Sumantra Bose*

Ever since the formation of sovereign national states across Central and Eastern Europe and the Balkans a century ago the problem of national minorities, who found themselves 'trapped' or 'stranded' in states they regarded as fundamentally belonging to another nation, has been a familiar issue in the region. The issue of the Serbs of Kosovo is simply the latest example of an old and perennial problem.

"At the beginning of the nineteenth century," the modern historian Joseph Rothschild wrote, Central and Eastern Europe and the Balkans "contained no sovereign national states" but "was organized into and divided among the Habsburg, Ottoman and Russian supranational empires and the Prussian kingdom."<sup>1</sup> The end of World War I saw the demise of the era of supranational empires and the emergence of the doctrine of self-determination of national peoples as the basis of political organization and government. In the multinational geography of Central and Eastern Europe and the Balkans, this principle "proved a powerful but ambiguous lever" that generated much instability and conflict. In the western half of Europe, the principle of national self-determination had "promoted the consolidation of numerous small political units into a lesser number of larger states, such as the unifications of Germany and Italy and the solidification of the Swiss federation." In the eastern half, the same principle "tended to have the opposite effect, to fragment a few large units into many smaller ones"<sup>2</sup>. This dynamic reappeared in the last decade of the twentieth century, with the break-up of the Soviet Union, Czechoslovakia, and Yugoslavia.

The formation of sovereign states on the basis of the principle of national self-determination in Central and Eastern Europe and the Balkans created, both in the early and the late twentieth century, 'new' minorities who feared subjugation and second-class status in states 'owned' by and belonging to another nation. In many cases the fear was far from imaginary. While the old supranational empires were generally and broadly accommodat-

---

1 Rothschild, Joseph. 1974. *East-Central Europe Between The Two World Wars*. pp.3; Seattle and London: University of Washington Press.

ing of the ethno-national diversity of their subject populations, the new national states, imbued with nation-building ideals and integrationist objectives, were frequently “menacing to subordinate ethnic groups.” In contrast to the era of supranational empires, in the interwar (1919-1939) period in Eastern and Central Europe and the Balkans, in many of the “successor nation-states...an ethnic minority seemed fated, short of war and a redrawing of frontiers, to remain a subordinate minority forever--not simply in the statistical sense but in terms of political, economic, cultural and often even civil-legal deprivations.”<sup>3</sup> And as the interwar period progressed “the lot of the many and usually large subordinate ethnic minorities became emotionally more demeaning and politically more desperate”<sup>4</sup>. The chronic and mounting instability that resulted provided fertile ground for the region’s penetration and eventually invasion and occupation by fascism, inter-ethnic bloodletting during World War II, and the rise of the communist movements that seized power across the region after the defeat of fascism and war’s end.

The multinational zone of the western Balkans known as Yugoslavia witnessed a dramatic--and between 1941 and 1945 especially bloody--version of this chain of events. The post-1945 Yugoslav regime sought to paper over this history by emphasizing the constitutional equality of the first-tier ‘constituent nations’ of the reconstituted country (Serbs, Croats, Slovenes, Macedonians, Montenegrins and, from the 1960s, Bosnian Muslims) and by institutionalizing a federal structure--substantively in the 1970s and 1980s--all within an authoritarian, one-party framework. The Albanians of Yugoslavia received second-tier recognition as a ‘national minority’ (along with ethnic Hungarians and several other communities) and in the 1970s and 1980s Kosovo, with its steadily growing Albanian ethno-national majority, enjoyed substantial if constitutionally second-tier autonomy--as an ‘autonomous province’ rather than a ‘republic’--within the federal structure. When the multinational edifice carefully constructed by the Yugoslav communist elite came apart at the seams in the space of a few years in the late 1980s and early 1990s, it became rapidly apparent that the old fear of becoming a minority--not just statistically but politically--in another community’s national state was very much alive and resonant. The armed rebellion of a large section of Croatia’s Serbs in 1991 and Kosovo’s ‘Serb question’--since 1999 but especially 2008--are instances of this phenomenon.

“Twice in this century,” the social scientist Rogers Brubaker wrote in 1996, Central and Eastern Europe and the Balkans “have undergone a massive...reconfiguration of political space along national lines. In the first phase...the crumbling of the great multinational land empires...left in its wake...a belt of new states...stretching from the Baltic littoral

---

3 Rothschild, Joseph. 1981. *Ethno-Politics: A Conceptual Framework*. pp. 229-231; New York: Columbia University Press.

to the Balkan peninsula.”<sup>5</sup>The (contested) emergence of Kosovo as a sovereign state is the final act of the second phase, which unfolded at the end of twentieth century. Kosovo’s contemporary ‘Serb question’--and especially the ‘northern dilemma’ represented by the area comprised of north Mitrovica, Zubin Potok, Zvecan and Leposavic, demographically dominated by Serbs and bordering Serbia--is an exemplar of what Brubaker characterizes as the tortuous triadic relationship between a newly formed national state, its ‘stranded’ and fearful national minority, and the external national homeland of that minority<sup>6</sup>.

The most innovative and useful aspect of Brubaker’s conceptual frame is that he does not regard any of the elements of the triad as either monolithic or static. To the contrary, he emphasizes that each element of the triad is a differentiated “field” of multiple and often competing stances. Thus the triadic relationship is not fixed and immutable but carries the potential to shift and change over time, and the relationship between the three fields--the national state, its national minority, and the minority’s external national homeland--is at least in part dependent on relationship dynamics internal to each field. Overall, the triadic relationship is not frozen in time but susceptible to “contingency and variability” over time.

In the case of Kosovo, I would add a fourth, essential element to Brubaker’s triad: The differentiated field of multiple and competing stances known as the ‘international community,’ which includes the United States, the European Union, the member-states of the EU, and countries such as Russia, China, India, and Indonesia. The European and global debate about Kosovo, and Kosovo’s northern dilemma, are situated in the context of not a triangular but a quadrangular relationship between four fields--the state of Kosovo, the Kosovo Serbs, Serbia, and the divided ‘international community.’

On paper, there are three ways of dealing with Kosovo’s ‘northern dilemma.’

The first is to reclaim the northern area by using force, on the template of the Croatian military action against the ‘Republika Srpska Krajina’ (RSK) in 1995 or the Sri Lankan offensive against the rebel Tamil zone in northern Sri Lanka in 2008-2009. This is not a viable strategy to resolve Kosovo’s northern dilemma.

The second approach would hive off the northern area to be joined with Serbia. This would be similar to Ireland in the early 1920s, when the ‘Irish Free State’ (which became the Republic of Ireland) emerged in 26 of the 32 counties of Ireland, while six northern counties were hived off to constitute a new entity called ‘Northern Ireland,’ which became part of Britain. This scenario is not totally infeasible but would require agreement between, as well as near-consensus within, the polities of Kosovo and Serbia. An additional but important

---

5 Brubaker, Rogers. 1996. *Nationalism Reframed: Nationhood and the National Question in the New Europe*. Cambridge: Cambridge University Press.

6 *Ibid*: pp. 55-76

question would be the Serbs of central and southern Kosovo. Therefore this scenario is improbable in the near future.

The third possibility is that the northern area would have radical autonomy while remaining part of Kosovo, on the template of the Republika Srpska (RS) in Bosnia & Herzegovina<sup>7</sup> or the self-governing Turkish Cypriot constituent state within the umbrella of a re-unified Cyprus proposed for the divided eastern Mediterranean island's north by the United Nations' 'Annan plan' in 2004. This scenario is at present unacceptable to the vast bulk of the political establishment and the public of the Albanian ethno-national majority of Kosovo. There is also no guarantee that it would secure the acceptance of Kosovo's sovereignty by Serbia.

Kosovo's northern dilemma is thus likely to persist, as a stalemate, for the foreseeable future. Whether or not the stalemate will be broken, and if so in what form, will depend on the evolution of the complex quadrangular relationship between Kosovo, the Kosovo Serbs, Serbia, and the international community.

There are two potential sources of fluidity and change in the quadrangular relationship. One is Serbia's priority of joining the EU. To be sure, the EU is hardly the beacon of hope to aspiring members that it was a decade ago. But for Serbia, the tangible benefits of membership are still considerable, and there is a psychological imperative that is no less important--the desire for full acceptance and renewed respectability in 'Europe.' The other is Kosovo's priority of widening its recognition and consolidating its status in the international system. This means gaining acknowledgment, if not recognition, from at least some of the hundred-plus states which are yet to recognize Kosovo as sovereign (especially geo-politically significant states), and overcoming obstacles to membership of multilateral institutions. The impasse over Kosovo's minority-dominated northern area can only be broken by movement in the other axes of the quadrilateral which link Kosovo and Serbia with each other and with the international community.

---

7 Bose, Sumantra. 2002. *Bosnia after Dayton: Nationalist Partition and International Intervention*. pp.60-89; New York: Oxford University Press; Bose, Sumantra. 2007. *Contested Lands: Israel-Palestine, Kashmir, Bosnia, Cyprus, and Sri Lanka*. pp. 132-142; Cambridge, Mass. and London: Harvard University Press.

## References

- Bose, Sumantra. 2002. *Bosnia after Dayton: Nationalist Partition and International Intervention*. New York: Oxford University Press.
- Bose, Sumantra. 2007. *Contested Lands: Israel-Palestine, Kashmir, Bosnia, Cyprus, and Sri Lanka*. Cambridge, Mass. and London: Harvard University Press.
- Brubaker, Rogers. 1996. *Nationalism Reframed: Nationhood and the National Question in the New Europe*. Cambridge: Cambridge University Press.
- Rothschild, Joseph. 1974. *East-Central Europe Between The Two World Wars*. Seattle and London: University of Washington Press.
- Rothschild, Joseph. 1981. *Ethno-Politics: A Conceptual Framework*. New York: Columbia University Press.

**Author:** Sumantra Bose is Professor of International and Comparative Politics at the London School of Economics and Political Science (LSE). He is the author of six books, the newest of which is *Transforming India: The World's Largest Democracy in the Early 21st Century*, forthcoming in 2013 from Harvard University Press. He received his PhD in political science from Columbia University in 1998.

**NINA CASPERSEN- CONTESTED NATIONALISM: SERB ELITE RIVALRY IN CROATIA AND BOSNIA IN THE 1990s** New York and Oxford: Berghahn Books, 2010, £44.00 hbk, (ISBN: 978-1-84545-726-6). xi+207 pp.

*Reviewed by Gëzim Krasniqi, University of Edinburgh*

*Contested Nationalism: Serb Elite Rivalry in Croatia and Bosnia in the 1990s* by Nina Caspersen is an invaluable contribution in the study of the complex correlation between intra-ethnic competition and inter-ethnic conflicts in general, and the ones in the Balkans in particular. Despite the fact that there is an ever-growing academic work on the Yugoslav conflicts of the 1990s, the absolute majority of these sources emphasise inter-ethnic nature of the conflict, thus undermining the internal dimension of elite competition and its impact on ethnic conflict. Highlighting the intra-Serb competition for control of economic and coercive resources in Bosnia and Croatia, Caspersen makes a compelling case for the need to better understand the nature of conflicts in former Yugoslavia and ethnic conflicts in general.

The book is divided in eight chapters, plus introduction and conclusion. The first chapter poses the theoretical framework for analysis of the intra-ethnic competition and its impact on inter-ethnic conflict. This framework focuses on different audiences – such as forces within party/movement, general population and kin state - to which leaders owe their power. By focusing on the interaction between elite interests and popular grievances, this framework ‘*examines the opportunity structure facing elites and argues that the exact mix of grief and grievance differs depending on context*’ (pp. 24). As far as the context is concerned, three variables – institutional framework, ethnification and violence – influence the role and significance of the different audiences and the resources they supply.

The empirical analysis, which begins in chapter two, provides a brief overview of the conflict in Bosnia and Croatia, as well as an analysis of the background events and factors that led to the disintegration of Yugoslavia. Chapters three and four analyse the emergence of ethnic parties in Bosnia and Croatia, with a focus on the Serb Democratic Party (SDS) that, due to its control of the coercive resources and support from Serbia, was soon to become the dominant Serb force in both countries. Empirical evidence suggests that,

despite different dynamics of competition, increasing radicalisation of the Serb position was the outcome in both countries. Chapters five and six, which focus on developments during the military conflict in Bosnia and Croatia, analyse intensification of intra-ethnic competition, which was dominated by coercive (economic and military) resources rather than popular attitudes.

Empirical findings of the previous chapters are summarised in chapter seven and used to suggest a new framework of analysis, discussed in more detail in the same chapter. The main findings in the case of the Serb rivalry in Bosnia and Croatia suggest that *'notwithstanding the imperative of unity in the face of severe conflict, as famously called for in the motto 'only unity saves the Serbs', disunity prevailed throughout the conflict and war'* (pp. 161) and that intra-ethnic competition did not necessarily result in radicalisation (the 'outbidding' theory). This proves that ethnic groups are not as homogenous as they might seem and that elites are not monoliths. Internal rivalry is an indistinguishable part of inter-ethnic conflict and is dependent on and affected by local, regional and transnational context, as well as various resources used by elites in their bid for power. This study certainly supports Brubaker's argument that organisations, not ethnic groups as such, are the chief protagonists of ethnic conflict and violence, and that the relationship between the two is often deeply ambiguous.

Notwithstanding, Caspersen's analysis of the Serb elite rivalry could be improved by devoting more space and an increased attention to some of the classical issues of the sociology of conflict such as in-group policing as well as deliberate staging, instigation and dramatisation of inter-group conflict in the case of the Serbs in Bosnia and Croatia. This work would certainly benefit from Paul Brass' extensive work on the concept of dual dimension of identity formation/alternation and of inter-group relations – interaction and/or competition with external groups and internal struggle for control and representation of the group.

*Contested Nationalism* represents a well worked piece of research that reaffirms the need to view ethnic conflicts in a more nuanced manner, highlighting the internal rivalry of elites and organisations that claim to represent different ethnic groups. Sociology as well as politics' students, and above all, researchers working on ethnic conflicts and the Balkans will undoubtedly find it useful and interesting.

## NIXON TO CHINA, DACIC TO BRUSSELS?

*Elizabeth Pond*

It will still be a hard sell. But it was important for Secretary of State Hillary Clinton to squeeze in a last visit to the tiny Balkans in late October just days before the U.S. presidential election.

Her trip advertised that the West is now putting maximum pressure on the new Serbian government—led by one-time cronies of ultranationalist autocrat Slobodan Milosevic—to make a U-turn and finally acknowledge (if only tacitly) the reality of Kosovo's independence.

European Union High Representative for Foreign Affairs Catherine Ashton travelled with Clinton to reinforce the message: It's time for a bold Nixon-to-China move by Premier Ivica Dacic, head of Milosevic's old Socialist Party, and First Deputy Premier Aleksandar Vucic, the Progressive Party president who started his career in the Radical Party that claimed even more neighbouring territory for Greater Serbia than Milosevic himself did.

Clinton's subliminal message was that Dacic and Vucic now have a golden opportunity to admit that it was Milosevic who forfeited Serbia's century-long rule over Kosovo by his brutal suppression of the province's 90 percent Albanian majority. His security forces killed 10,000, drove 1.4 million ethnic Albanian refugees from their homes, and prompted President Bill Clinton to respond by launching NATO's first war in its half-century existence. Kosovo's declaration of independence in 2008—under a constitution that guarantees extensive protection to minority Serbs—was the consequence of Milosevic's bloodletting.

Thirteen years after the Kosovo war and four years after Kosovo's secession, then, the West sees the new Serbian premier and his deputy as precisely the ones who could persuade their followers to drop 19<sup>th</sup>-century territorial grievances and move on to the 21<sup>st</sup> century.

To be sure, the task of reconciling Serbs to their loss of Kosovo remains formidable. As long as Milosevic was winning military gambles in the 1990s, there was widespread public support for Serb conquest of a third of Croatia and two-thirds of Bosnia. In the folk memory, the dominant narrative of the 1990s wars remains that Serbs were its greatest



victims and Kosovo their greatest loss.

Moreover, even after Milosevic was defeated by NATO intervention in Kosovo in 1999 and reformist Serbian Premier Zoran Djindjic extradited him to The Hague in 2000 to stand trial for war crimes, Serbia's unreformed security network remained strong. It was complicit in the murder of Djindjic in 2003 as he started to purge criminal gangs from the network. It was instrumental in hiding fugitive General Ratko Mladic for 16 years before the commander of the 1995 Srebrenica massacre of 8000 unarmed Muslim boys and men was finally sent to the Hague. Today, four years after the Kosovar Albanians seceded from Serbia, Belgrade's security forces still run illegal structures in the majority Serbian northern tip of Kosovo. These "parallel structures" have abetted sporadic violence by local Serbs against NATO peacekeepers and the EU rule-of-law mission—and also rampant smuggling by Serb and Albanian gangs that practice exemplary interethnic cooperation.

At this point the West is not asking Dacic and Vucic to recognize Kosovo's independence. But it is asking them to "normalize" everyday relations with the Kosovo government, to let Pristina participate fully in regional Balkan meetings, put a halt to smuggling, and enforce customs controls at the Serbia-Kosovo dividing line. It is also asking them to dismantle the parallel security structures in northern Kosovo and to nudge Serbs there to accept the Kosovar constitution and benefit from local self-government, as enclaves of Serbs south of the Ibar River have done.

One legal model for agreement on this agenda might be a Serbia-Kosovo treaty like the 1972 détente treaty between West Germany and communist East Germany that delicately called the two signatories "entities" rather than "states."

Belgrade's reward for establishing a working relationship with Kosovo would be an agreed date to open negotiations for eventual membership in the European Union and additional EU financial aid beyond the €1 billion paid to Belgrade in the past five years. Joining the EU would give Serbia the chance to catch up with the spectacular gains of post-communist countries like Poland that after the cold war ended in 1989 joined the EU and tripled their GDP, while Serbia languished.

By contrast, the alternative of continued stonewalling on the Kosovo issue, thereby forfeiting their advance to EU negotiations, would ensure continued economic stagnation for Serbia. The country dropped to a quarter of its pre-1990s per capita GDP during the Balkan wars and did not recover until 2007. It is still only a third as rich as neighbouring Croatia, which has paid the hard price of settling its own border disputes and prosecuting senior Croatian officials for corruption in order to qualify for EU membership next year.

"There is no alternative" for Belgrade, one key European diplomat flatly declares. He pins his hopes on ordinary Serbs' weariness with sacrificing improvements in their living stand-

ard to restore Belgrade's rule over Kosovo—and on Dacic and Vucic's newfound pragmatism. In last summer's election campaign, both said that EU membership and economic growth are their top priorities. Since taking office, they have warned their own chauvinist followers that Serbs will have to make (as yet unspecified) tough choices to do so.

Premier Dacic first showed pragmatism in 2008 by defeating his party's old guard—which, like other ultranationalist parties, held a Serbian application for EU membership hostage to regaining control over Kosovo. He then dragged the Socialists into the coalition government led by the moderate Democratic Party. In 2011 he further demonstrated his pragmatism by approving the arrest and extradition of Gen. Mladic. He is now leading the Serbian side of the new EU-sponsored talks with Kosovo Premier Hashim Thaci that will shortly convene for their second session.

Deputy Premier Vucic first tiptoed into pragmatism in 2008 when key parliamentarians from the Radical Party split to form a new Progressive Party and repudiated Radicals' founder Vojislav Seselj, who still led the party from a Hague cell while defending himself against charges of war crimes. The Progressives, who managed to crowd the old Radicals out of parliament in this year's election, have been slower to soften their fixation on restoring Serbian rule in Kosovo. They too, however, are adjusting to being part of the government rather than the opposition, and the party leaders, at least, are avoiding inflammatory rhetoric. Vucic, who doubles as defence minister, is now the operational point man for contacts with European and American diplomats.

European diplomats credit Dacic and Vucic's vows of giving EU accession priority. They detect some hints, though, that the pair lack the necessary sense of urgency and do not yet understand that they must take practical steps toward solving the Kosovo issue in the next six months. If they don't quickly outface their hardliner constituents' resistance to accommodation with Pristina, they may lose this window of opportunity. After nine years of Serbian adamancy, the EU wants proof of Belgrade's sincerity—both in reining in Serbian parallel security structures in northern Kosovo and in clamping down on periodic violence by local Serbs there.

Otherwise, the EU will not give Belgrade a green light to begin the membership negotiations they long for. "Enlargement fatigue" could engulf both EU member states and Serbia. Support for EU accession has already dipped to 48 percent in Serbia (with 33 percent against), and EU enlargement fatigue could become a factor in Germany's elections next year. This vacuum could be filled with polarizing violence by Serb extremists and by Albanian counterparts who protest in Pristina against the Kosovo government's "treason" in talking with Dacic.

Western doubts about the new Serbian government's commitment to resolve the Kosovo issue have been triggered in part by some official public statements. Last summer Presi-

dent Tomislav Nikolic—who ceded leadership of the Progressive Party to Vucic when he assumed his high but constitutionally non-partisan office—denied that Serbs committed genocide at Srebrenica, despite the Hague Tribunal ruling that they did. He refloated the discredited idea that Kosovo might be partitioned. He also called Vukovar a “Serb” city—a gratuitous insult to the Croatian city on the Serbian border that, before a savage siege by Serb forces in 1991, had a roughly even mix of Croats and Serbs.

In recent days, President Nikolic also raised the spectre of a drive for a “Greater Albania” in the Balkans. He told EU officials that it was impossible that any Serb born in the next hundred years would accept independence for Kosovo and Metohija. “We are refusing to accept our territory to be taken away,” he said further. “I will sooner step down than allow an entry into the Union without Kosovo.”

More positive signals are coming from Dacic and Vucic, however, and they hint at a new flexibility that Clinton and Ashton want to encourage. They have promised that Serbia will shortly negotiate specifics for “integrated border management” and tax collection in lawless northern Kosovo that the moderate outgoing Serbian government agreed to but never implemented. Unlike President Nikolic, they are now reducing their “red lines” to saying Serbia will never (formally) recognize Kosovo—which, as both Clinton and Ashton pointed out in Belgrade, the West is not demanding anyway.

In successive TV interviews and press conferences this past week, Dacic has stated that “it is time for a historic agreement” and that “now it is time to talk and look for solutions that are in [our] mutual interest.” In the past, Serbia was “slowly losing Kosovo by wasting time from year to year” and isolating itself from the international community. “There are historical crises that are solved [with] time, but if we wait, it will be solved to our detriment.” He wants a “quick solution” and does not want to deny reality “like Greece and say that Constantinople is a Greek capital, but it no longer is and they have been saying this for 100 years.” Now, he told Clinton at a joint press conference in Belgrade, his government “will do everything possible to normalize relations with Pristina for the sake of a joint integration into the European Union” and a fixed date for opening Serbia’s membership negotiations.

The public discourse, too, has taken a new turn recently with an investigative TV series on “Patriotic Pillage” that pricks the narrative of poor but noble Serb heroes in northern Kosovo. The series lifted the curtain on staunch nationalist Serb mayors of towns in the north to show them pocketing three salaries—one from Pristina, and one from Belgrade, doubled by a generous bonus. It also traced funds that are sent from Belgrade to help the needy Serb population in the north, but get diverted to private pockets. And it reminded viewers of the “scandalous abuse” of soup kitchen funds by Bishop Artemije that led to the Serbian Orthodox Church’s dismissal of this prominent defender of Serbdom from the eparchy in Kosovo.

Bill Clinton, it's safe to assume, will be watching the outcome of his wife's farewell trip to Serbia and Kosovo with keen interest.

\*\*\*\*\*

Elizabeth Pond is a Berlin-based journalist and author of *Endgame in the Balkans*.



# JOURNAL OF EUROPEAN AND INTERNATIONAL AFFAIRS

---

Volume 1

Issue 1

January 2013

## Contents

<b>Introduction</b>	5
<i>Labint Greiçevci &amp; Qerim Qerimi</i>	
<b>Consolidating the statehood of Kosovo: Leaving the international law narrative behind</b>	8
<i>Jean d'Aspremont and Thomas Liefländer</i>	
<b>Kosovar multi-layer identity: what is the same, different and in common with Albanian identity</b>	27
<i>Dorian Jano</i>	
<b>Kosovo's Northern Dilemma in Historical and Comparative Perspective</b>	41
<i>Sumantra Bose</i>	
<b>Book review: Contested Nationalism: Serb Elite Rivalry in Croatia and Bosnia in the 1990s (Nina Caspersen, 2010)</b>	46
<i>Gëzim Krasniqi</i>	
<b>Nixon to China, Dacic to Brussels?</b>	48
<i>Elizabeth Pond</i>	