

Making Kosovo Work

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»» Just over a year on from the declaration of independence on 18 February 2008, Kosovo's politics remain as uncertain as before. The divisions between the Albanian and Serb communities have if anything worsened. Tensions have been compounded by an uncoordinated international intervention that has become embroiled in Kosovo's divided politics. International efforts are squeezed between Pristina – poised to proceed with the Ahtisaari plan for independence – and a parallel institutional structure that has been consolidated in the Serb-majority areas.

Firmly rooted political and economic forces are putting Kosovo's long-term sustainability in danger. The current economic downturn is likely to intensify inter-ethnic tensions. Recent press comment has focused on the decision of some EU member states, such as Spain and the UK, to withdraw troops. But the real issues are more deep-seated. Making Kosovo work requires the EU to reassess its current policies.

A TALE OF TWO TOWNS

The declaration of Kosovo's independence has led to the deepening of political and institutional divisions between the Albanian and Serb communities. Kosovars are determined to repel Serbian sovereignty. Serbia is trying to consolidate its authority on the ground at any cost, especially in Mitrovica, and turn a de facto partition into a de jure one. It has effectively backed parallel Serb institutions in Kosovo. In early 2008, following orders from Serbia's nationalist government, Kosovo Serbs undermined Kosovo's nascent

HIGHLIGHTS

- The Serb rejection of Kosovo's independence has resulted in the consolidation of two parallel structures on the ground.
- The conflicting mandates of international and European organisations in Kosovo have compounded these divisions.
- The long-awaited transition from UNMIK to EULEX has started, but deployment has encountered as yet unresolved challenges in the north of Kosovo.
- The EU needs to consider changes to its policies on the ground in Kosovo and towards Serbia.

»»»»» autonomous institutions by walking out of the new decision-making forums. Municipal elections in mid-May put in place a parallel system that has been functioning ever since. Serbia has also scored significant successes on the diplomatic front by resorting to international legal process.

The EU's divisions over Kosovo's independence have resulted in an unusual external intervention. Two separate international structures have emerged that pursue somewhat conflicting tasks. The first one includes the UN Mission in Kosovo (UNMIK), the EU's rule of law mission (EULEX) and NATO's Kosovo Force (KFOR). All these abide by UN Security Council resolution 1244 and are formally status neutral. Although this layer of international presence counts, in principle, with the acquiescence of both communities, its work has been hampered by the lack of a clear division of competences between the different organisations on the ground.

The second international structure is that of the International Civilian Office (ICO), an Ahtisaari-based ad-hoc body in which most EU members participate. This is set to assist Kosovo's government in its journey towards full independence. It is run by Pieter Feith, who is double-hatted as the EU Special Representative (EUSR).

EU credibility has been caught between these two mandates, walking a thin line between the status neutral EULEX and the pro-independence ICO. There has long been a problem with overlapping and uncoordinated international activities in the region; but the current structures represent the pinnacle of such disorder.

TREADING WATER

The EU's involvement in Kosovo is increasingly floundering. The Ahtisaari plan for independence – rejected at the UN Security Council in April 2007 – envisioned a post-independence

transition period in which UNMIK would progressively release its rule of law competences to EULEX and Kosovo's institutions would assume the remaining ones with ICO assistance. Russia's rejection of the plan and the Serb boycott to the newly independent institutions truncated these plans, and EULEX deployment was paralysed for months. This produced a legal void on the ground and led to the consolidation of two parallel realities.

A reconfiguration of the UN mission and a solution to EULEX deployment appeared possible when UN Secretary General Ban Ki-Moon launched an initiative to keep Serb-controlled territory under a UN umbrella. This was proposed as a temporary arrangement in six key areas, namely police, justice, customs, transportation and infrastructure, boundaries and Serbian patrimony. On June 12, The UNSG presented an initial sketch of what has come to be known as the 'six-point plan', including a preliminary outline of the downsizing of UNMIK. The plan was finally approved at the UNSC on November 26, following intense negotiations between the newly appointed UN envoy Lamberto Zannier, the EU and Serbia.

The Kosovars were not included in the negotiations and presented a four-point counter-statement rejecting the new plan. Notwithstanding Kosovo's rejection, the government pledged cooperation with EULEX, and the EU mission was given the green light to deploy under the overall authority of the UN on December 9, almost a year later than expected. While UNMIK is still formally in charge on the ground, it is gradually being wound down. The Kosovars have rejected UNMIK's ongoing presence and have asked for its withdrawal.

The six-point plan has helped the EU save face for the time being, given that non-deployment would have significantly affected EU credibility. Many problems lie ahead however. The danger exists of divisions on the ground gaining legal status, which could endanger Kosovo's long-term viability. As a case in point, revenues

collected in the north stay in the north and are monitored by international officials. Similarly, police forces and the judiciary remain under UN command in Serb areas, instead of EULEX jurisdiction.

The end goal is to have all police and judicial competences under direct EULEX control. This will be difficult to achieve. Days before EULEX deployment in Kosovo, Kosovo Serbs said they would ignore the mission and accept

UNMIK as the only legitimate operative. The EU has encountered mixed reactions in the north. The resumption of court activities in Northern Mitrovica under EULEX judges in early March 2009 met with strong Serb resistance. The trial in

question had to be suspended and was only able to proceed with its duties under UNMIK Laws.

On the other side of UN legality stands ICO, the international body that Ahtisaari envisioned as the linchpin of Kosovo's independence. International Civilian Representative (ICR) Pieter Feith was appointed on 28 February 2008, but his office has also been undermined by the complex dynamics on the ground. Having failed to gain the UN stamp of approval, ICO's legitimacy has been curtailed, especially in the eyes of the Serbs who refuse to recognise the body. The ICO has struggled to gain traction even in the Albanian-controlled areas.

The decentralisation roadmap is a key instance of ICO impotence. Ahtisaari's decentralisation scheme involved granting significant economic, social and political competences to Serb-majority areas, including the redrawing of new municipalities for the Serb community. The complex dynamics on the ground have scuppered the plan, undermining one of the flag-

ships of the independence proposal for inter-ethnic coexistence.

DOMESTIC CHALLENGES PERSIST

While internationals have been busy dealing with a highly disorganised intervention, precious energy has been diverted from investing in economic development and social cohesion. This is urgent in an economy that the World Bank has labeled as the poorest in Europe. Unemployment in Kosovo continues to be above 40 percent, the highest in the region, and economic growth is highly dependent on external assistance. The black market is above 30 percent of Kosovo's GDP, a figure that could increase as a result of the year-long legal void in the north.

Though Kosovo has been less directly affected by the financial crisis than other economies – given the limited exposure of its economy to international markets – indirect effects are starting to show as commodity prices plummet. Serious effects may be felt in the coming months, depending on how hard both donors and expatriates are hit by the crisis. It remains to be seen whether Western donors remain committed to the more than a billion euros pledged in assistance as the crisis bites harder in both the US and the EU. The worsening conditions of Western companies employing Kosovars abroad will have a devastating impact on the 400 million euros that Kosovo receives annually in remittances.

In addition to the economic challenges, Kosovo faces major political deficits. Democratic structures are weak and corruption widespread. External intervention has made limited inroads to these shortcomings. There is also deep concern about the government's ability to manage majority-minority relations. The EU's latest progress report noted that Kosovo's authorities had failed to meet targets in this area. Progress on refugee return south of the Ibar River has also remained below expectations. These deficits raise doubts about the Kosovan government's commitment to building a multi-ethnic society.

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»»»» Mounting inter-ethnic tensions may also pose additional threats to Kosovo's long-term sustainability. Clashes between the Kosovars and Serbs have increased since early this year. Though there are no signs that these incidents may turn into large-scale violence, caution is required, especially in light of the political and social volatility that economic downturns often bring about in hostility-prone contexts. Certainly, economic difficulties could aggravate Serb's frustrations, stirring ethnic tensions. It is in this context that the announcement of the withdrawal of NATO troops by countries such as the UK and Spain has been received with concern.

SOLUTIONS

In order to confront these major challenges, EU policies need to be reassessed.

With respect to Serbia, the EU needs to move beyond the dilemma of how to reconcile Serbia's EU path with Kosovo's independence. Divisions around this issue have in the past resulted in ineffective policies, which continue to this day. While some countries would still like to see Serbia recognise Kosovo as a precondition for EU membership, this may be highly counterproductive. A more pragmatic approach is needed in which the EU's internal fissures are not reinforced but submerged. This would help the EU regain its credibility and yield more effective results on the ground. In this context, a more constructive incentives framework is needed, in which accession is linked to cooperation with EULEX and direct dialogue with Pristina rather than acceptance of Kosovo's independence. Direct negotiations between Pristina and Belgrade are particularly critical for both EULEX and ICO. Though both Belgrade and Pristina have ignored calls for direct talks, the EU should work with both sides to support this process. The diplomatic rapprochement between the new US administration and Russia over Kosovo may bear some fruits in this area in the coming months.

The EU should also use economic leverage to help tip the balance within Serbia's democratic forces. Though Serbia's strategy in Kosovo has borne fruit thus far, the economic recession may turn things around. Serbia's own economic problems may make it more accommodating to EU's demands. US Institute of Peace analyst Danier Serwer has calculated that Kosovo costs Serbia more than 200 million dollars per year in both arrears payments to the World Bank and allocations to parallel institutions. Finding an arrangement that is not as costly in the midst of an economic recession may be tempting for Serbia. The EU should insist that accession will be determined by the pace at which Serbia is actually able to meet economic conditions. Giving a green light to the implementation of the SAA - which was signed in July 2008 but has been made contingent upon further cooperation with the International Criminal Tribunal on Yugoslavia - may also send the right signals. Both France and the UK have expressed readiness to move in this direction; the Dutch remain to be won over.

In Kosovo proper, a two-pronged strategy is urgently needed. Divisions within the Serb community between the north, where Kostunica's Democratic Party and the Radicals are still popular, and the rest of Kosovo, where moderate, pragmatic stances abound, call for a dual strategy on the ground. Luring the moderates into closer cooperation with EULEX would represent the first layer of this strategy. This strategy may become critical in the coming months as Serbia's grip on the Kosovo Serb community is weakening due to the economic recession. Further emphasis on refugee return and reconciliation programs may also bear fruits within this strategy.

With respect to Mitrovica, the EU should move beyond its "wait and see" policy that has yielded few successes in the region. Furthermore, given the lack of consensus over the Ahtisaari plan, the EU needs urgently to take matters into its own hands and find an alternative solution that is acceptable for all parties. Some observers have suggested the model of Bosnia's Brcko district,

signaling a solution whereby Mitrovica could remain under international supervision until domestic consensus is found eventually to integrate into the wider Kosovo. The EU should take care not to repeat the mistakes made in Bosnia, where the two-entity based structure has in fact led to deep-seated inter-ethnic intransigence and ongoing institutional stalemate.

The EU needs to step up the profile of EULEX. Past experiences elsewhere in the Balkans have shown that missions based on unclear mandates are doomed to fail. If the EU fails to fine-tune

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the six point plan with Serbia using its carrots and sticks leverage, EULEX's credibility will suffer. EULEX will also need a clear strategy to handle potential spoilers on the ground. Indeed, the key question looming over the EU and EULEX is how (and whether) they will respond operationally in case of a major crisis. While

such a scenario is not at present likely, the EU should prepare for such an eventuality.

The EU will also need to be creative in finding a way to keep the accession machine moving forward for both Kosovo and Serbia, irrespective of the Kosovo stalemate. The twin track accession process applied to the former Union of Serbia and Montenegro may represent a good template if a Brcko-type solution is found for Mitrovica. But good care should be taken not to reinforce partition by default.

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