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**EU Conflict Resolution in Kosovo
Seeking Legitimacy on the Ground**

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Work in progress

Comments welcome

Introduction

The crisis in Kosovo has been standing on the EU's eastern border for more than twenty years now. The history of conflict resolution in Kosovo has so far witnessed a set of diplomatic and military tools and brought up 'unusual' practices that are beyond the traditionally endorsed principle of sovereignty. Namely, conflict resolution was initiated by stretching the existing international law beyond its limits by an unauthorised NATO military action followed by direct administration of the territory by the UN. The long term efforts of the international community finally resulted in 'a traditionally unacceptable' outcome in the form of 'recognised secession'.

The EU's role in Kosovo has been expanding since direct status negotiations started in 2006; however the EU is very much involved in conflict resolution efforts of the international community since 1999. The paper argues that while the EU's policies have evolved from a provider of humanitarian aid to the most prominent actor of conflict resolution, constructing a legitimate authority in the eyes of local stakeholders has never become a major concern for the Union. Instead, the EU has so far relied on a self-declared identity derived from the assumption of the EU is a 'force for good'. The paper claims that while the EU relies on human rights and democracy promotion to legitimate its ongoing presence in Kosovo, as its policies and institutions are deeply involved to 'supervise' Kosovo's contested statehood, the EU is in an urgent need to address both foundational and performance based challenges to its legitimacy raised by local stakeholders.

In fact, legitimacy of the EU in the field of conflict resolution is relevant for its broader goal of being an international actor for three reasons: first it is likely to have a huge determining impact for the future of international response towards ethnic conflicts and secessionist claims. Since the EU assumes a global responsibility to support the principles of human rights and democracy in world, discretionary and selective application of these principles would tarnish the EU's foundational claims to

legitimacy based on the reinterpretation of the existing international law and principles¹.

Second, the EU now has taken over the main responsibilities of the UN to establish and sustain democratic structures of 'a contested state' which was promised a clear future in Europe. In 2005, the Commission acknowledged in the Communication 'A European Future for Kosovo' that the same path to Western Balkans, i.e. further integration and final membership, is also open to Kosovo². Given this clear political commitment, the EU needs to win local parties' consent to facilitate conflict resolution before proceeding with membership.

Third, the creation of a new state under EU supervision has not resolved the conflict but recreated the problem between Serbia and Kosovo at another level. While Kosovo's right to independent statehood is still challenged at the international level (even the EU members are far from a unified approach towards independence), it has created a minority problem that challenges the EU's authority on the ground. Serb minority of Kosovo resists the creation of a Kosovo state and rejects participation into new institutions under the EU supervision. Instead, the Serbs remain loyal to Belgrade challenging the EU's one of the main goals to create a multi-ethnic state.

The following first discusses the centrality of legitimacy for a third party in the field of conflict resolution and engages a brief theoretical and conceptual clarification of the term legitimacy. The second section of the paper turns to analyse the local perceptions of legitimacy by focusing on four phases of EU's conflict resolution in Kosovo since 1999. The final section summarises the argument.

Third Party Conflict Resolution and Legitimacy

Much of the literature on EU conflict resolution has exclusively devoted to prove or disprove the EU's normative ergo distinctive characteristics due to its norm-oriented concerns in its external relations (especially Manners, 2002:253 but also, Sjurzen,

¹ The ongoing secessionist claims in Caucasus, whether the EU likes it or not, have already drawn parallels between their reasoning and international community's legitimisation of Kosovo's long journey to supervised independence first under UNMIK and now under the EU.

² Communication from the European Commission, A European Future for Kosovo, COM 156, 2005.

2006; Eriksen, 2006; Bjorkdahl, 2005; Checkel, 1999; see Hyde-Price, 2006 and Merlingen; 2007 for critiques of the normative power argument). Especially in the field of conflict resolution where the EU claims *domaine d'expertise*, always eager to emphasise the unique blend of civil and military measures, commitment to effective multilateralism and international law, self-declared normativeness is considered to provide the Union with an unquestioned right and sufficient reasons to get involved in conflict resolution.

Normative power literature in this sense created much of the conceptual confusion between self-attributed or desired normativity and legitimacy of the EU. Ian Manners states that 'conceptualising normative power involves a tripartite understanding of legitimizing principles, persuasive actions and socialising impact of actors in world politics' (2010: 76, emphasis added). In this reading, legitimacy is treated as a value automatically created through normative behaviour. Manners is not alone conferring self-declared legitimacy to the EU. Similarly, Eriksen equates EU's legitimate foreign policy with self-deployed value and justice in universal higher ranking law

'I suggest as a criterion of a legitimate foreign policy that the EU does not aspire to become a world organisation- a world state- but subscribes to the principles of human rights, democracy, rule of law also for dealing with international affairs, hence underscoring the cosmopolitan law of the people' (Eriksen, 2006:10).

Put differently, legitimacy of the EU has been subjugated to self-congratulatory values and universal morals. Norm is considered to be "a close conceptual affiliate of the term 'legitimacy'" (Merlingen, 2007:439) while the relationship between legitimacy and self-declared normative orientation in foreign policy conduct is not explained further. The problems of self-identified normativeness of the EU can also be found in other inside out analyses of the birth of the EU as a peace project which is based on member states' rejection of inter-continental rivalries of the past (Waeber 1996) and the EU's ability and willingness to export this 'peace-ensuring cooperation' through Europeanisation (Lavenex and Schmelfenning, 2009). In the existing literature, the EU is implicitly labelled as legitimate, justified or fair as a third party conflict resolver.

The major problem associated with such one sided arguments is the confusion between the desired role and identity of the EU and legitimacy as conceived and consented by the external recipients of EU policies. ‘In other words, discursive construction of the role and identity of the EU as predetermining factor of practice cannot be evaluated without the perceptions of the relevant audience, i.e. confirmation or rejection of the discursive and practical role-making by those who are subjects of EU policies. Self-narratives of the EU do not occur against a blank slate. The perceptions, constructions and strategies of outsiders may be just as important for framing the EU’s future development’ (Christou and Browning, 2010:110).

Especially, in conflict resolution relying on multiple institutional representations on the ground, the EU chooses to establish a direct influence on local authorities’ decision making, offers market access and membership conditional on implementation of norms and institutional structures. This form of direct control is beyond democratic principles of representation and accountability. As discussed previously, the literature rarely addressed the question of ‘with respect to whom are the Europeans and the EU institutions underlining their distinctiveness ergo legitimacy?’ (Lucarelli, 2008:33).

If the EU wants to construct a stable and credible legitimacy in its foreign policy through effective conflict resolution role projecting influence and authority beyond its borders, it needs to centralise the dialogical relationship between the EU and ‘the Other’ (i.e. main external recipients of its policies). Otherwise, failure to construct salient legitimacy runs the risk of representing Eurocentric and neo-imperial connotations (Diez and Pace, 2007; Tocci, 2008) or at best an ‘EU-topia’ (Nicolaidis and Howse, 2002).

In fact, much of the peacebuilding literature today focuses on the consent and perceptions of the local recipients for a truly effective and sustainable conflict resolution. The technical, top-down, one way civilising missions are increasingly rejected forms of engagement with the conflict zones (Richmond, 2010). In other words, the addressees of the conflict resolution policies of the EU are not passive recipients but active participants to the peacebuilding process through endowing

consent legitimate authority to third parties which would allow sustainable resolution of conflict through local capacity development.

In this sense, legitimacy of the EU in Kosovo enables one to ask questions regarding the sustainability of the public authority exercised by international actors which are not an elected part of emerging local institutions through representation. The discrepancy between the EU's own claims to legitimacy and of Kosovars' perceptions of the EU is expected to shape the actual legitimacy and public authority of the EU in Kosovo.

Local Perceptions and Challenges

The EU's legitimacy in Kosovo has been shaped and reshaped through the scope and variety of its policies as a third party conflict resolver. The relations with the local authorities, civil society and the public are shaped through these policies on the ground. Although the local stakeholders are by no means unified, local perceptions highlights the EU's failure to address the question of local consent (legitimacy) in both substantial and performance grounds.

As will be discussed in this part, the gap between the EU's claim to legitimacy and the perceptions of actual recipients of EU policies highlight the existing challenges towards its authority and power in Kosovo. Main findings of analysis of policy documents and interviews conducted in Kosovo during May 2011 suggest that as the involvement of the EU in conflict resolution expands, the EU's own claims to generate legitimacy on the ground are becoming more detached from the local stakeholders' view.

Four periods can be identified in terms of the factors and ground realities that shaped the EU involvement, local responses and the EU's legitimacy in Kosovo. The first period is between the immediate aftermath of the NATO air campaign and initiation of interim local administration (PISG). The first period between 1999 and 2002 was marked by de facto separation of Kosovo from Serbia, beginning of UNMIK administration and first elections. During this stage, the role of the international community in Kosovo was very ambiguous and security in Kosovo was still fragile.

Due to the late deployment of KFOR and UNMIK, in the immediate aftermath of Serbian forces' withdrawal, another massive exodus, this time of Serbian population occurred due to the revenge attacks (Weller, 2009:165) and Kosovo Liberation Army's (KLA) struggle to set up its own administration in municipalities. This has altered the demographic and political situation in Kosovo in favour of Albanians up until today.

The second phase was much shaped by the increasing discontent with the international presence and delay of final status talks. Following the introduction of Standards before Status process, the local governance was granted more powers domestically, but the process itself was interpreted as a means to evade final status talks by local authorities. After 2004 local elections, UNMIK's increased intervention into local politics has created a public perception that international administration forges a neo-imperial force in Kosovo. During this period, the EU devised long term development projects based on liberal peacebuilding principles in line with privatisation of former public enterprises, creation of jobs and building infrastructure as a part of UNMIK. Nevertheless, the minimal economic development and the EU's inefficient handling of privatisation have become another symbol of illegitimate international presence for the Kosovo society. Renewed interethnic violence in 2004 has created awareness within international community that Kosovo is not stable and the Serb minority was increasingly marginalised. In 2005 Kai Eide (as the special envoy of UNSG to undertake a comprehensive review of the situation) argued that unsustainability of the ambiguous status of Kosovo urged UNMIK to change its reticent approach towards final status and engage with local demands. Eide in his in his first report in 2004 stated UNMIK and other international actors are 'being in disarray' and 'without direction and internal cohesion'³. Eide stated that standards before status policy lacked credibility and needs to be replaced by a 'priority based and realistic standards policy'⁴. In its final report in 2005, Eide recommended immediate start for the negotiations for future status⁵.

³ 'Report on the Situation in Kosovo, 6 August 2004 included in Secretary General Report to UNSC, UN Doc. S/2004/932, 30 November 2004.

⁴ Op.cit.

⁵ A Comprehensive Review of the Situation in Kosovo, 7 October 2005
<http://www.ico-kos.org/pdf/KaiEidereport.pdf>

The third period started by the change of strategy and new activism of the EU in Kosovo starting from 2005 until the declaration of independence in 2008. During Vienna status negotiations, the conflict sides negotiated under close engagement of the international community. The EU employed an active diplomacy and closely involved in advising and proposing during direct negotiations and following constitution making. With the 2007 general elections in Kosovo for the first time, domestic political picture were altered considerably at the polls. Former leader of KLA Hashim Thaci an intransigent pro-independence political figure came to power as the head of the strongest party in the Assembly. Thaci was confident that Kosovo's independence would be recognised by the West at the end of negotiations⁶. The initial political relations with the EU were established during this period through Stabilisation and Association Tracking Mechanism. The EU has devised its ground mission EULEX and also committed to assume the main responsibilities of international administration through International Civilian Office and EU Special Representative (ICO/EUSR).

After the failure of negotiations and the rejection of Ahtisaari Plan at UNSC, Kosovo declared independence on 17 February 2008, a new period shaping the EU's legitimacy has started with an unprecedented EU involvement. The new role of the EU is on the one hand based on taking responsibilities of the international protectorate in Kosovo and on the other establishing an independent (member) state and multi-ethnic society under the shadow of an internationally contested statehood. Today, the EU faces a more consolidated local government dominated by Albanians. However, Serbian parallel governance and public services have been more consolidated after May 2008 Serbian local elections held by Belgrade in Serbian majority areas of Kosovo. The internal divisions of the EU regarding Kosovo's final status currently prevent the EU to devise clear policies on the ground. The renewed violence in late July 2011 which left one police from Kosovo police service dead in North Mitrovica customs gates once again reminds the frozen conflict would still turn to violence and instability where EULEX's ability and will to handle the control and security is subject to public cry.

⁶ Thaci: West will recognize Kosovo independence, http://www.b92.net/eng/news/politics-article.php?yyyy=2007&mm=11&dd=12&nav_id=45331, 12 November 2007.

1999-2002: Legitimizing Humanitarian Causes and Reconstruction Efforts

Despite previous periodic reports of human rights abuses, the attention of the international community was not properly drawn to Kosovo until late 1997 when the Serb dominated Yugoslav forces ethnically cleansed 300,000 Albanians before NATO launched a military campaign in 1999. During the initial period, after UN set its interim administration in Kosovo, the Union took the responsibility of humanitarian aid and immediate reconstruction of infrastructure to meet basic human needs under UNMIK- known as UNMIK IV Pillar or EU Pillar. While the initial EU policies were more related to immediate aftermath of humanitarian emergency where thousands of people sought shelter and return to Kosovo, the EU justified its presence in Kosovo through the same discourse adopted by the international community when setting up the interim mission separating Kosovo from the Serbian rule.

Legitimation discourse of the West in general was structured on moral arguments. Kosovo crisis has brought a remarkable period of change in terms of the rights of sovereign state inside its territory. The new understanding towards intervention and secession is based on the responsibility to protect over sovereign rights in the event of the brutal use of force against one state's own constituency⁷. As the first head of the interim UN Mission Bernard Kouchner stated

‘Can we dream of 21st century where the horrors of the 20th will not be repeated? Where Auschwitz or the mass exterminations that took place in Cambodia under the Khmer Rouge and later in Rwanda and Kosovo cannot happen again? The answer is a hopeful yes-if, as part of the emergent world order, a new 'morality can be codified in the "right to intervention" against abuses of national sovereignty [...] We need to establish a forward-looking right of the world community to actively interfere in the affairs of sovereign nations to prevent an explosion of human-rights violations.’ (Kouchner et.al, 1999:4)

The argument was based on the necessity to reinterpret the Charter and international law in light of the new developments. The Western community escaped from the necessity of universal legitimacy through UNSC Resolution (both for NATO campaign leading to separation of Kosovo from Serbia de facto and for governance of Kosovo after the declaration of independence).

⁷ UN General Assembly World Summit outcome Document, <http://www.who.int/hiv/universalaccess2010/worldsummit.pdf>

Since the beginning, ‘moral’ and ‘legitimate’ logic behind the intervention into the humanitarian disaster ‘in the middle of Europe’⁸ has also been the main underlying logic of policy formulation for the EU. Responsibility to protect and remedial self-determination for people which suffered from oppressive state in this sense provided a fresh cause for the EU to legitimise the breach of sovereignty principle in traditional sense and to support ‘Idealpolitik’ in the form of responsibility to protect. Given the developmental stages of CFSP/ESDP at the dawn of Kosovo crisis, the EU wanted to ‘write new normative rules’ of conflict resolution covering ‘especially the international legal, institutional, regulatory, interventionist and ethical principles’ (Howorth, 2007: 54-5). As stated by the Presidency Conclusions;

‘The international community has done its utmost to find a peaceful solution to the Kosovo conflict. On the threshold of the twenty-first century, Europe cannot tolerate a humanitarian catastrophe in its midst. It cannot be permitted that, in the middle of Europe, the predominant population of Kosovo is collectively deprived of its rights and subjected to grave human rights abuses, we, the countries of the European Union, are under moral obligation to ensure that indiscriminate behaviour and violence, which became tangible in the massacre at Racak in January 1999, are not repeated. We have a duty to ensure the return to their homes of the hundreds of thousands of refugees and displaced persons’⁹

In fact, in Kosovo, the EU has been engaged in legitimating its identity search and its visible role ‘after the Cold War’ in order to replace ‘the vacuum of Europe’s nameless 1990s’ (Medvedev and van Ham, 2002:1). As always confirmed by the EU at the highest levels of policy formulation, the Kosovo crisis ‘played a fundamental role in the creation of the European Security and Defence Policy’ and upgraded the Union from impotent actor during the previous violence in the former Yugoslav region to an active conflict resolver¹⁰.

EU Pillar of UNMIK

In line with the humanitarian discourse, the EU assumed the main responsibility to deliver humanitarian aid during the initial stage. In the aftermath of the Kosovo

⁸ European Council, ‘Presidency conclusions’, Berlin, 24 March 1999.

⁹ Berlin European Council Presidency Conclusions 23 March 1999

¹⁰ Javier Solana, remarks by EU High Representative Javier Solana at the conference on ‘National interests and European Foreign policy’, Berlin, 7 Oct. 2008, cited in Shepherd, 2009.

campaign, international community faced with an enormous effort to recover and rehabilitate Kosovo due to the destruction of war and the ‘enforced measures’ of Serbian dominated FRY which mostly destroyed the infrastructure, agriculture, telecommunications and houses leaving Kosovo completely dysfunctional¹¹. Reconstruction, institution building and early steps towards market economy were introduced by UNMIK IV Pillar (EU Pillar of UNMIK)¹².

The short and medium term reconstruction and recovery was estimated to cover a period of 4-5 years. The EU identified three specific goals: developing an open and transparent market economy, restarting public administration and establishing transparent, effective and sustainable institutions, mitigating the impact of the conflict and the legacy of 1990s¹³. To achieve these goals ‘a proper balance [needed to be] struck between speed (for which a hands-on approach will often be needed) and sustainability (which requires the involvement of local authorities and specialists)’¹⁴.

The EU’s initial engagement in Kosovo was through reconstruction aid. During the immediate aftermath of the war, most of the humanitarian aid and long term reconstruction aid to Kosovo was pledged from European Community and member states. The EC pledged 378 million Euros to be used by ECHO for humanitarian aid between March and July 1999¹⁵. Aid needed to be distributed quickly and most efficiently. In order to prevent humanitarian disaster during the approaching Balkan winter, providing shelter, electricity and heating were organised quickly. During this initial period, the EU committed to the financing of material supplies for local housing repair, assisting basic power and water infrastructure rehabilitation, helping re-establish the customs service, supporting village job creation and providing micro-credit, creating a land mine clearance coordination centre, and financing the rehabilitation of the Mitrovica hospital, setting local administration, repairing roads,

¹¹ European Commission and World Bank ‘Towards Stability and Prosperity A program for Reconstruction and Recovery in Kosovo’, 3 November 1999.

¹² Under UNSCR 1244, UNMIK was divided into four different pillars according to responsibilities: Pillar I Police and justice (UN), Pillar II Civil Administration (UN), Pillar III: Democratization and institution building (led by the OSCE), Pillar IV: Reconstruction and economic development (led by the EU)

¹³ European Commission and World Bank ‘Towards Stability and Prosperity A program for Reconstruction and Recovery in Kosovo’, 3 November 1999.

¹⁴ Ibid.

¹⁵ By July 1999, total aid was approximately 640 million Euros including aid from the US.

bridges, communications, airport, and providing additional support equipment and training for the Kosovo Protection Corps¹⁶. The EU Pillar during this period was the leading partner within the international community in bringing KFOR, the major donors and former Albanian and Serbian managers to adopt a strategy for energy and heating for the coming winter through restoring production coal mines, repairing transmission lines, distribution and district heating plan and setting up arrangements to charge customers¹⁷. Similar projects were developed for water supply, repairing of roads and rail facilities.

The EU was effectively working alongside other donors; especially the World Bank and USAID. In order to ensure coordination, two donor conferences were organised in July and December 1999. The first conference took place in Brussels and focused on short term humanitarian aid for immediate emergency needs and refugee return. During the second conference, European agency for Reconstruction (EAR) was officially set up to administer its reconstruction program. EAR was working with the U.N. administration in Kosovo; with headquarters in and its “operations center” in Pristina¹⁸. EAR was the main EU institution responsible for aid distribution whilst EBRD was tasked for telecommunications¹⁹.

Obviously, the EU from the start took a liberal approach . After the initial delivery of humanitarian aid the next issue to address was creating jobs, dealing with rural economy and public enterprises, and developing private sector. In a joint report with World Bank, the EU Pillar stated ‘the foundations of the economy are likely to shift from large, publicly-owned enterprises to small and medium private companies, from heavy industry to services, and from essentially traditional agriculture, marked by small farm size and low productivity, to more modern, less labor-intensive agriculture.[...] Efforts should therefore not be aimed at reestablishing what existed, but at supporting the development of those activities that will most contribute to

¹⁶ http://ec.europa.eu/enlargement/archives/seerecon/kosovo/ec/obnova_1999.htm

¹⁷ UNMIK EU Pillar, Report on Pillar IV’s Activities, Joly Dixon , Head of Economic Reconstruction, 28 September 1999, Washington.

¹⁸ CRS Report for US Congress, Kosovo : Reconstruction and Development Assistance 7 June 2001

¹⁹ Agriculture, private sector development, water and waste management, landmine clearance, education, health, transport and energy were under World Bank’s responsibility.

sustainable growth, both in rural and urban areas²⁰. In order to deal with these challenges central economic institutions and new budget and laws were enacted. Key institutional structure such as central fiscal authority, a banking agency, a temporary cash payment operation, customs administration and more operational social and sectoral institutions were also set up to generate the small amount of domestic revenue.²¹ At the initial stages, the EU required strict budget controls were put in place in order to ensure accountability and transparency²².

During this period, thanks to the arrival of international staff, the services sector boomed to meet demand for restaurants, cafes, retail outlets (Korovilas, 2002). Adoption of DM and later euro as the currency has helped to keep inflation levels in line with the EU average since the main goods were imported from EU through unrestricted trade.

Mason and King (2006:77) notes EU took a different approach from the other components of international administration. Besides relying on totally locally recruited staff, '[s]o afraid was the EU of creating a colonial presence in Kosovo that the Pillar's operational budget for the first year was just 6 million Euros- little more than 1 per cent of the budget allocated to the UN'. Moreover, as early as 1999, the Commission and World Bank suggested that foreign involvement should be kept minimal and elected bodies should be made responsible at municipal level in order to adjust the broad strategy to local needs and strengthen self government²³. In order to initiate local dialogue from the first years onward, the EU pillar has set up Economic Policy Board co chaired by Pillar IV ad Governor of the Bank of Kosovo as well as other finance bodies. The Board acted as an advisory body to the Kosovo Transition Council under PISG structure.

Local Perceptions

²⁰ Towards Stability and Prosperity A program for Reconstruction and Recovery in Kosovo, 3 November 1999, European Commission and World Bank, pp.6-7.

²¹ Op.cit. Towards Stability and Prosperity, pp. 15-6

²² Ibid.

²³ Op.cit. Towards Stability and Prosperity, p.16

The head of the EU Pillar Joly Dixon noted as early as September 1999 that with the help of World Bank and IMF, three short term priorities were succeeded by the EU in Kosovo keeping the economy going, building basic macro-economic structure and establishing policy dialogue with the local population. Similarly, SGSR Kouchner stated ‘the power plants, roads and schools are all functioning. The shops are full. Building is booming. Kosovo begins 2001 with a solid economic framework and a balanced budget’ (cited in King and Mason, 2006:91). However, despite the efforts of the EU to offer financial support, the quick arrival of specialists and pledged aid was not available for months during the initial phase of the international administration due to bureaucratic procedures. There were problems with the EU to deliver the aid in a timely fashion. The US criticised the EU on many occasions claiming that the Union has ‘a reported history of bureaucratic delay in dispensing aid’. The head of UNMIK urged the EU to distribute the committed amount in 1999 and in early 2000 stating that “Today I have no deutschmarks in the Kosovo budget for the year 2000, so I cannot pay for the few, vital public servants, the hospitals, education, the judicial system and electricity.”²⁴

EU Pillar was mostly criticised for lack of sufficient staff during its first years. Mostly this was compensated by USAID staff seconding EU staff without involving themselves in management of EU Pillar. Still, thanks to the international efforts and quick humanitarian aid, the emergency was prevented to turn to a humanitarian disaster in the wake of winter. The role of the EU in organising and working closely with UNHCR and World Bank to deliver humanitarian aid was acknowledged by the local Department of Reconstruction in a report drafted in February 2001²⁵.

Although most of the pressing needs were provided, the main concern for Kosovo was more related to the mid-term identification of priorities to promote sustainable economic growth. Kosovar reconstruction department was cautious to declare success for the donor community in the field of general reconstruction program in the services, trade and construction sectors. The revitalized high annual GDP growth rates (10-16%) and quick recovery in infrastructure and housing as well as public utilities

²⁴ CRS Report for US Congress, Kosovo : Reconstruction and Development Assistance 7 June 2001

²⁵ Partnership in Kosovo: Reconstruction 1999-2000, An Overview by the Department of Reconstruction, February 2001.

were achieved mostly due to donor aid that allowed Kosovo to import material instead of domestic production²⁶. Specific industrial sectors, depending on the donor, achieved more development whilst sustainability of these sectors was mostly questioned by the department of construction and more advanced regulatory framework, infrastructure development and foreign direct investment were mentioned as the priorities for the local authorities²⁷.

Overall, despite problems and criticisms, the international administration and the EU as an integral part of it dealing with humanitarian aid and reconstruction enjoyed the biggest moral authority among the Kosovo Albanians during the initial period. The humanitarian causes that initiated NATO campaign and UNMIK acknowledged by the local elites and become the main driver to legitimise the international presence.

2002-2005: From Humanitarian Aid to Economic Development

The first three years of international administration was about immediate reconstruction. UNMIK was able to avoid deep political confrontations with local authorities on the ground. However, soon UNMIK had to deal with deeper issues which go beyond quick fixes of houses and roads. Politically sensitive issues became controversial and although local leaders support the steps required to move forwards, there was friction when implementation was required in rule of law, security and minority issues.

During the consolidation years of UNMIK, local government was tasked with so-called Standards before Status Process endorsed by UNSC. In his report in April 2002 to UNSC, SRSG Steiner stated that significant developments were achieved in Kosovo which implies the necessity of an exit strategy he states: ‘the road is not endless, we have a vision of how to finish our job’²⁸. Noting that UNMIK has been transferring some authorities to Kosovo local governance, independence was not mentioned in the report. Rather SRSG was determined to set some benchmarks which

²⁶ Ibid., p.10.

²⁷ Ibid. p. 14

²⁸ UN Doc. S/PV/4518, 24 April 2002

‘should be achieved before launching a discussion on status’²⁹. These standards are usually referred as very broad and ambiguous targets setting high standards for local Kosovo authorities beyond their capacities.

While progress in realising the standards was very slow, in March 2004 renewed ethnic violence in Kosovo leaving nineteen Serbians and non-Serb minorities dead, injuring 954 and destroying property, Orthodox religious sites and forcing people to flee³⁰ provided the wake up call for the international community in Kosovo that the strategy of ‘constructive ambiguity’ leaving status talks outside the mandate of UNMIK degrades legitimacy of the administration.

During this period, the EU tried to increase its visibility and profile for public and local media. According to the spokesperson of the EU Pillar of that time, brochures and leaflets were distributed together with most selling newspaper *Koha Ditore* in Kosovo, radio programmes and media appearances were organised including in Serbian, advertisement of euro as the new currency was supported through various media campaigns, active direct communication and visits to Brussels with local journalists (Todd, 2002). However, with numerous international presence and competing mandates, there were difficulties ‘in generating any real enthusiasm for ‘another strategy’ in an environment overloaded with paper, deadlines and demands on time, [still] the strategy at least put words to paper that gave some weight of purpose to the task, and gave longer term aims to daily work, with a key message that ‘the EU is committed to peace, stability and prosperity in Kosovo’ (ibid).

Besides the efforts to differentiate EU’s presence from UNMIK, the EU incrementally increased its political commitment in Kosovo. In 2005, the Commission finally acknowledged the situation in Kosovo. ‘A European Future for Kosovo’ stated that the same path offered to the Western Balkans is also open to Kosovo³¹. during the second period of EU’s involvement, the main policy however remain within the EU Pillar of UNMIK focusing more on long term economic development.

²⁹ UN Doc. S/PV/4518, 24 April 2002. Standards covered the areas of effective, representative and functioning institutions, rule of law, freedom of movement for all people, right to return, market economy, resolution of property disputes, normalised relations with Belgrade, transformation of KPS (Weller, 2009:186).

³⁰ Kosovo Outlook 2004, 13 May 2004, UNMIK European Union Pillar

³¹ Communication from the European Commission, A European Future for Kosovo, COM 156, 2005.

EU Pillar: Creating Economic Development

Humanitarian aid was relatively straightforward once the EU was determined to deliver aid. The aim of the EU Pillar of UNMIK was to create ‘a neoliberal, robust, modern economy by modernising the economic framework of Kosovo, with a view to developing the structures and instruments that form the basis of a competitive, efficient market economy’ (Richmond and Franks, 2007:4). It was a demanding task requiring political decisions and commitment since Kosovo’s economy required structural reforms and legislation from scratch in line with European standards.

It was clear by 2003 that the bubble initiated by international donations and remittances from diaspora would be soon decreased and the EU needed to devise structural policies for Kosovar economy. However, the task of restructuring Kosovo’s economy whose problems dates back to socialist and Ottoman era was not an easy task. Lack of investment and forced measured during Milosevic regime has decreased Kosovo’s GDP by 50% between 1989 and 1995 (Korovilas, 2002:109). Inefficient industrialisation, low growth, dependence on foreign remittances and unemployment had been problems well before the conflict broke out in Kosovo (ESI, 2002).

The EU from the start committed to reform Kosovo economy to set up market system, and remove restrictions on free flow of goods. For a sustainable growth, the EU Pillar identified major areas that need reforms: establishing banking and trade codes investment, macroeconomic policies, rural development, infrastructure building, financial sector, education, and agricultural sector, privatisation, and donor support policies³².

During this period, funds and technical assistance was made available to the SMEs, commercial and financial banks in order to vitalise the economy through borrowings and new businesses. Micro credit schemes helped agricultural sector. For instance, EAR financed the Agro Business Unit which was the main creditor for farmers totalling its credits 14 million Euros and providing technical assistance to farmers’

³² EU UNMIK Pillar, Next Steps for Kosovo’s Medium-Term Economic Development
Andreas Wittkowsky, 31 January 2003

associations, SOEs and some agricultural businesses³³. EAR also funded health sector through funding reconstruction of hospitals and improving medical skills through training during the first and second periods³⁴.

The most challenging task for the EU was introducing customs in the north. Establishing tax points between Serbia proper and Kosovo caused opposition from Serbia and Serbian community. While this would on the one hand tacitly mean recognition of Kosovo's separate governance; on the other would also mean double taxation for Serbs who were still paying taxes to Serbia. The issue became a public debate and Serbs violently opposed and prevented further international action. When finally UNMIK assured Belgrade double taxation would not be placed, the EU was finally able to introduce Central Fiscal Authority to consolidated a budget less dependent on foreign donations (Mason and King, 2006:136).

During this period the EU Pillar transferred substantial capacities to the provisional government in the economic policy area under Standards before Status process. By the end of 2003, all the responsibilities under Chapter 5 of the Constitutional Framework had been transferred to PISG which was mostly related to budget and central fiscal authority ceased to exist³⁵.

During this period, the EU's major responsibility was running and transforming publicly owned enterprises which were approximately around 350 (Korovilas, 2006). Privatisation is considered as a vital component of the transformation of planned

³³ Instituti për Hulumtime Zhvillimore Riinvest, Financial and Technical Assistance in the Reconstruction and Development of the Post-conflict Kosovo, p.18.

³⁴ *ibid*

³⁵ According the EU Pillar Report of 2004, the government took major responsibilities in the economic sector. including developing and executing the budget, overseeing tax collection, tax policy (with substantial USAID help), coordination of donors' contributions, public expenditure by the Ministry of Economy and Finance; developing policies and legislation for industrial and commercial enterprises, SMEs and establishing an economic strategy, facilitating trade and investment by the Ministry of Trade and Industry, developing road transport and telecommunications and other infrastructure by the Ministry of Transport and Communications; developing policies for agricultural sector by the Ministry of Agriculture and providing data for donor support by the Statistical Office of Kosovo. EU Pillar has actively supported all these initiatives providing help to set up relevant ministerial units. It facilitated the dialogue through working groups. One of the working groups was set up in trade policy area co-chaired by EU Pillar and the Ministry of Trade and Industry worked on trade liberalisation and facilitation and preparations on free trade agreements under the Stability Pact. Another working group brought IMF, World Bank, EU Pillar and relevant ministries together to develop a comprehensive economic strategy. Kosovo's SMEs were integrated into European Charter of Small Enterprises under DG Enterprise (Kosovo Outlook 2004, EU Pillar of UNMIK)

economies to market systems. Decreasing the inefficient socially owned enterprises (SOEs) and facilitating private enterprises become the two main goals to create a liberal market economy in Kosovo from early years on³⁶. In this sense, Kosovo Trust Agency (KTA) was set up in order to manage and oversee the privatisation of SOEs. In fact, due to the undefined status of Kosovo, UNMIK was not in a position to change the ownership of SOEs. What is called privatisation in Kosovo was leasing these enterprises to private investors for a defined period of time to open them into private ownership and transform their idle production capacities. However, operational policies of KTA as defined by UNMIK have met strong reservations from PISG and KTA³⁷. Moreover, the initial leasing plan for ten years did not attract enough private investors and second plan to extend the leasing to much longer period faced resistance from the management of SOEs, i.e. ethnic Albanians who took control of the enterprises after years of discrimination and forced replacement during Milosevic term (Korovilas, 2006). On many occasions, SRSG needed to issue an obtrusive decision permitting removal of the incumbent management and replace it with a new team that KTA preferred in order to facilitate privatisation (Korovilas, 2006:338).

Local Perceptions

For local stakeholders, UNMIK has started losing its credibility to devise and maintain a long term consistent policy in this period. The growing discontent with UNMIK and its ultimate delegitimisation in the eyes of locals is also related to the fact that domestic politics in Kosovo was occupied by the issue of final status (Hehir, 2010). The slow pace of progress under standards before status process to transfer authority to locally elected leaders has created questions whether this process is 'conditional sovereignty' or 'delaying tactic' (Visoka and Bolton, 2011:193).

While the EU was a part of UNMIK administration and affected by the weary public opinion on the international administration, its economic policies also did not deliver the goal of economic development. The real economic benefit of privatisation was highly questioned in Kosovo. According to Dzhic and Kramer (2009) especially in

³⁶ see UNMIK EU Pillar: A strategy for private sector development in Kosovo. Pristina, January 2000.

³⁷ Kosovo Outlook 2004

2003 and 2004, the EU's most active economic policy, i.e. privatisation of publicly owned enterprises became 'a symbol of the misguided policies of UNMIK and the EU'. Due to the different nature of the planned economy in Yugoslavia where SOEs consisted relatively a small portion of total production compared to the Soviet system, it was argued that privatisation under the ambiguous ownership and legal mandate of international administration would generate more problems in the long term (Korovilas, 2006:331). Korovilas states that the legitimacy of privatisation handled by EU Pillar in Kosovo was subject to serious challenges on external legal grounds by stakeholders 'who believe that UNMIK is attempting to privatise enterprises that have already been privatised. 'External legal challenge' in this context refers to challenges from Serbian former owners of SOEs who benefited from privatisations, which were not recognised by UNMIK on the grounds that they were discriminatory' (2006:331). Privatisation projects were generally carried on against the will of locals in Serbian areas (granting ownership to Albanians in areas inhabited by Serbians) (Wittkowsky, 2009:27).

Moreover, due to the lack of domestic private savings, socially owned enterprises were instead sold to the highest bidding companies under market prices to mostly diaspora Kosovo Albanians without any prospect of modernisation, increase in productivity and creation of jobs for Kosovars (Dzihic and Kramer, 2009:14). Instead of being efficient companies and creating employment for Kosovars, these privatised firms need to fight competing claims of ownership, liabilities and compensation due to socialist economic system (Richmond and Franks, 2007:16). At the end the privatisation of the local companies did not create employment opportunities for the people from the area. Moreover the institutions created and run by the EU such as Kosovo Trust Agency (KTA) and Kosovo Energy Cooperation (KEK) have become the very emblem of corrupt and inefficient institutions³⁸ (Wittkowsky, 2009).

Overall, after the boom of the period 1999-2001, economy remained in underdeveloped with major structural problems and with lowest GDP per capita and highest unemployment in the region (Papadimitriou, 2007:233). The budget deficit became severe as a result of 'almost non-existent export sector and a heavy reliance

³⁸ UNDP Early Warning Report 24 April 2009.

upon imports' (Korovilas, 2002: 110). Without foreign aid and remittances, Kosovo's economy would not be sustainable to meet import demands despite the EU's goal was to ensure economic reconstruction and long term development. Kosovo remained highly dependent on foreign aid to balance its budget. Production levels were so low forcing Kosovo to import food and other goods. The EU failed to address the agricultural sector in Kosovo which is the main source of income for rural population consisting 30-40 percent of the workforce (Dzihic and Kramer, 2009). With the renewed violence in Kosovo in March 2004, limited economic development was undermined according the UNMIK EU pillar since the violence had its biggest effects on the budget, investors' confidence and youth employment education³⁹.

2005-2008: Status Talks Establishing an EU Leadership

After international community realised that Kosovo's ambiguous status cannot be sustained forever, Secretary General appointed 'Office of the Special Envoy of the Secretary General of the United Nations for the future status process (UNOSEK)' headed by Martti Ahtisaari. The team brought two sides together for high level direct negotiations in Vienna on 24 July 2006⁴⁰. Mistrust and incompatible claims over final status dominated the negotiations; namely while Kosovo Albanians did not give up independence demand, Serbia insisted on 'more than autonomy, less than independence' for Kosovo. In February 2007, Ahtisaari issued a statement that continuing negotiations were no longer viable given the irreconcilable stance of both sides. The final report of negotiations and a status proposal was presented on 2 February 2007 known as Comprehensive Proposal for a Kosovo Status Settlement (Ahtisaari Plan) and submitted to UNSC in March. The Ahtisaari Plan envisaged a 'limited independence' supervised by the EU based on the principles of multi-ethnic society and democratic statehood for Kosovo. The Proposal granted Kosovo international status to conclude international agreements and become a member of international organisations and creation of armed security forces (Dzihic and Kramer, 2009).

³⁹ Kosovo Outlook 2004, 13 May 2004, UNMIK European Union Pillar

⁴⁰ Statement of the Contact Group after first Pristina-Belgrade High-level meeting held in Vienna - 24th July 2006, available at http://www.unosek.org/docref/Statement_of_the_Contact_Group_after_first_Pristina-Belgrade_High-level_meeting_held_in_Vienna.pdf

According to the Plan, Kosovo's sovereignty was limited under International Civilian Office (ICO) headed by International Civilian Representative (ICR) and EU Special Representative (EUSR). Unpopular UNMIK would transform all its authority to ICR/EUSR who would also coordinate the rule of mission EULEX. All minorities were granted extensive territorial and cultural autonomies under the Ahtisaari Plan. Rejection of the plan in UNSC in July 2007 was followed by extended negotiations between Troika, i.e. US, Russia and the EU⁴¹. After the failure of Troika talks on 10 February 2008, Kosovo declared independence and unilaterally committed to the implementation of Ahtisaari Plan on 17 February 2008. Except the US, the rest of the international community had never explicitly supported independence of Kosovo. The EU member states approach could best be defined as either fierce opposition (five Cyprus, Greece, Spain, Romania and Slovenia do not recognise Kosovo's independence) or reluctant acceptance.

Between 2005 and 2007 during the Vienna negotiations, the EU's role in Kosovo has been incrementally evolved towards greater political commitment and the main conflict resolver in Kosovo. The EU has dispatched EU Planning Team in order to prepare the ground work for a mission⁴². Joint reports of Solana and Rehn highlighted the level commitment that the EU was getting prepared to play in Kosovo. These reports also confirmed that the EU's role will be substantially different from the UNMIK regime. Solana and Rehn referred to a post UNSCR 1244 period when the EU would handle continuation 'the framework of the Stabilisation and Association Process; further strengthening and streamlining of the EU presence on the ground - Office of the Personal Representative of the HR and the Office of the European Commission in Pristina; the future international civilian presence could take the form of an international office with an important EU component but cannot be EUMIK; the future military presence should continue to be entrusted to NATO; core areas will be the protection of minorities and the rule of law (police and justice)' ⁴³. In a second report the EU acknowledged that 'whatever the outcome of the status, Kosovo will

⁴¹ Secretary-General's Statement on the new period of engagement on Kosovo - 1st August 2007, available at http://www.unosek.org/docref/2007-08-01_-_Secretary-General%20Statement_on_the_new-period-of-engagement.pdf

⁴² Council Joint Action, 2006/304/CFSP, 10 April 2006

⁴³ Joint report by Javier Solana, EU High Representative for the CFSP, and Olli Rehn, EU Commissioner for Enlargement, on the future EU Role and Contribution in Kosovo, 14 June 2005.

require for some time a continued international presence. The EU is likely to play a leading role together with international partners. The future international civilian presence after UNMIK shall, however, not be EUMIK⁴⁴.

During the direct negotiations, it is not possible to differentiate the discourses of major stakeholders since Contact Group, Troika and the EU Planning Team as well as some experts from member states were involved in the process, devised proposals regarding final status and decentralisation. Prioritisation of 'European values' for Kosovo's future-whatever the status would be- were emphasised by the all mediators and Ahtisaari Team during negotiations. The content of negotiations were essentially shaped by the incompatible principles of territorial integrity and sovereign rights of a state human rights protection and earned self-determination. At the end, the EU during the status negotiations avoided to openly support one side given the several possibilities that would convince the parties to direct status talks. Rather the EU prioritised status-neutral negotiations and focused on the community rights in Kosovo and decentralisation as the major issues.

The major change in the discourse of the EU was actually the departure from the territorial integrity of Serbia as stated in UNSC Resolution 1244 to commitment to Kosovo's development as a democratic, multi-ethnic state with a future in the EU. In this sense, the EU claimed that Kosovo presents a unique case due to the level of previous oppression under FRY and de facto separation of Kosovo under international administration.

In order to convince Kosovo side to 'negotiate generously' in terms of community rights, EU increased its political commitment. The incremental build up of political commitment towards Kosovo in the form of assuming main ground presence and enlargement has intended a reconfiguration of a region (Western Balkans) which was previously considered outside or at bay of Europe as a potential insider which is not yet European fully, but through incorporation of European values, can in the future turn out to be. The Balkans had never been considered an integral part of Europe throughout history and even attached negative connotations related to chaos,

⁴⁴ The joint report by Javier Solana, EU High Representative for the CFSP, and Olli Rehn, EU Commissioner for Enlargement, on the future EU Role and Contribution in Kosovo, 9 December 2005

disintegration, and destabilising hostilities far from ‘the civilised Europe’ (i.e. Balkanism see Todorova, 2009). With break-up of the ethnic violence, Kosovo for the first time has been placed in ‘the middle of Europe’. Stability of the region has become a strategic priority for the EU. The EU’s active policies are also justified by reference to a potential drift of instability through migration, organised crime and military threat from the region to the stable EU (Solana, 2000).

To sum up, while the EU avoided openly siding with independence of Kosovo during direct negotiations, it sought to expand its role in the post-negotiations period claiming legitimacy of this expanded role through expanding European values to Kosovo. By arguing Kosovo is an extraordinary case of conflict resolution, the EU actively sided with the Ahtisaari Team to convince Kosovo on the necessity of multi-ethnic Kosovo regardless of the final status.

Means of EU Mediation

As discussed previously, during the status negotiations from 2005 to the declaration of independence, the EU’s actions in Kosovo aimed at asserting itself as the major actor on the ground in the post-negotiations period. In order to achieve this, the EU involved in high level negotiations closely, offered advice and put down legal proposals for the final settlement. Although the Kosovo delegate was hesitant that extensive concession would eventually block political process in the future and facilitate ethnic segregation within institutions as happened in Bosnia (Weller, 2009:204-5), they worked with human rights institutions from Europe in order to get advice and devise advanced proposals in community rights and decentralisation issue.

The EU intensively lobbied at the Security Council to change the attitude of Russia after the Ahtisaari Plan was rejected (Weller, 2009:221). The EU was closely engaged with extended negotiations during Troika talks with both sides in order to facilitate a mutually acceptable solution. While Ahtisaari Plan was still the main document on the table, the EU representative of Troika did not rule out any potential

agreement⁴⁵ and even suggested partition of Kosovo along north Mitrovica border as a potential solution (Economides and Ker-Lindsay 2010:5010)⁴⁶.

In the meantime, there were great efforts within the EU to reach a united position especially during the late stages of negotiations when independence of Kosovo was clearly on the table (see fn. 46). Troika talks hosted active EU involvement although any alternative was not devised, the EU has gained time to develop Plan B to ease domestic opposition in member states as well as to look for an alternative to deploy the ground mission and assume UNMIK's responsibilities in the aftermath of the inevitable declaration of independence. When Troika submitted its report on 7 December 2008, most of the EU member states were convinced that the EU would go for a third way even without UNSC Resolution and without a formal agreement between Belgrade and Pristina. The third way was to proceed with the biggest ESDP mission in the field of justice, police and custom (EULEX), although the question of recognition was left to member states to decide separately 'in accordance with national practice and international law'⁴⁷. Separating status question from deployment of EULEX was the result of active EU diplomacy between international parties and member states and provided an ad hoc solution.

Local Perceptions

When Kai Ede assessed the ongoing situation in Kosovo, he stated that UNMIK administration lost its authority and credibility for Kosovo public and the EU would be given 'the most prominent role in Kosovo'⁴⁸. During this period local expectations were very high from the EU. Partially affected by the existing negative attitude towards UNMIK, the profile of the EU as an alternative to UNMIK was very high. Especially due to the increased political commitment of the EU, public opinion on EU membership and EULEX mission enjoyed high reputation.

⁴⁵ Letter from Secretary General to the President of the Security Council, S/2007/723, 10 December 2007

⁴⁶ Authors state that 'armed with US support for independence', Kosovo Albanians nevertheless remained firm to demand complete independence ruling out any proposals for extensive autonomy, p.502.

⁴⁷ Council Conclusions on Kosovo, 18 February 2008.

⁴⁸ Letter addressed from UNSG to the President of the Security Council, UNSC S/2005/635, 7 October 2006

For Albanians supervision of the EU is a temporal deal before achieving full sovereignty. In this sense, a future ground mission of the EU in Kosovo was perceived very different from UNMIK. At the same time, by digressing final status question, EULEX's legitimacy in the eyes of local stakeholders was mostly left to its future performance to deliver rule of law and justice in Kosovo. Performance legitimacy is rather related to political will to deeply engage in local problems of corruption and organised crime, being more assertive in terms of policy making and implementation as well as capabilities in terms of available staff and institutional ability. However, as will be extensively discussed in the next section, the third way soon proved to be an excuse to avoid addressing recognition issue but nevertheless placed the EU as the most prominent actor on the ground which complicated the EU's efforts in the near future. In practice, the decision to divorce the question of independence from EULEX's mandate brought a high price for the EU's legitimacy than the EU expected.

Since 2008: Post Independence and EU Supervision

With the declaration of independence, Kosovo government committed to the implementation of Ahtisaari Plan unilaterally. Given the complex situation on the ground, the EU has constructed multiple policies and different justifications in order to gain legitimate presence and exercise safe authority to transform Kosovo from an ethnic violence and crime zone to a member state in the unknown future time. The EU now has taken over the main responsibilities of the UN to establish and sustain democratic structures of 'a contested state'.

As the EU seems like becoming more and more the single responsible conflict resolver in a region where its historical engagement dates back only little more than a decade. After the ICJ ruling on Kosovo which declared unilateral declaration of independence itself does not violate international law, the US and other interested

third has started withdrawing from Kosovo leaving it to the EU sole responsibility⁴⁹ (Petrovic, 2010).

In the post independence period, the EU's discourse has become more refined in terms of commitment to establish democratic and multi-ethnic Kosovo. Peters states that "when the EU started planning a civilian mission in Kosovo in spring 2006[...] the plan was to push the communicative dimension of the operation strongly in order to strengthen the image of the EU's foreign policy. [...] In order to portray EULEX as a symbol for a coherent, effective EU foreign policy, EULEX had to be a legitimate, credible, internationally agreed mission " (Peters 2010:20). The EU has sought to differentiate itself UNMIK by relying on a discourse of human rights and stability rather than political-security considerations and consolidates its power as an advisor rather than an obtrusive foreign rule.

Sustaining the UN protectorate or establishing a future member state?

EULEX was officially launched in December 2008 (it was established in February 2008⁵⁰) in Kosovo as the biggest ESDP mission to date in terms of staff and budget. According to the Joint Action, EULEX is 'responsible for ensuring the maintenance and promotion of the rule of law, public order and security, which could include the reversion or annulment of operational decisions taken by Kosovo authorities' (Muharremi, 2010:367)⁵¹.

In the aftermath of independence, Russia's and Serbia's resistance to Ahtisaari Plan blocked deployment of EULEX in Kosovo entirely until November 2008 when a deal was stroke between UNSG and Serbia. Named as Six-point Plan, the agreement has reversed EULEX's status, instead of being a supporter of rule of law in an independent Kosovo, EULEX would 'fully respect Security Council Resolution 1244 (1999) and operate under the overall authority and within the status-neutral

⁴⁹ Overall European participation for KFOR is 74% after the US decreased its troops from 8000 to 1440 in a few years

⁵⁰ Council Joint Action 2008/124/CFSP of 4.2.2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, amended by Council Joint Action 2009/445/CFSP of 9.9.2009

⁵¹ EULEX Kosovo, Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo 2008 O.J. (L 42)(16 Feb. 2008).

framework of the United Nations'⁵². The deal ensured deployment of EULEX in the entire Kosovo in return Serbia is given direct control over Serb populated areas of Kosovo. EULEX's status neutral position was justified under a claim that this would allow effective collaboration and deployment in the north.

In practice, the face saving deal for EULEX's deployment with Serbia has inhibited development of rule of law in Kosovo. An example of confusion is related to implementation of the Ahtisaari Package of Laws (closely drafted by EU Planning Team). According to the Kosovo authorities the applicable law in Kosovo stems from different sources but Kosovo Assembly legislation passed after the Constitution came into force in June 2008 has a hierarchical priority with the provided they are consistent with the Constitution and Ahtisaari Plan.⁵³ Kosovo Assembly passed the law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo which is included in Ahtisaari Package foreseeing the integration of international judges (albeit their total independence) into Kosovo judicial system in order to avoid creation of two parallel judicial systems (international and local) by EULEX in March 2008 (Spernbauer, 2010). According to the law, EULEX judges and prosecutors are conferred functions of investigation, prosecution and adjudication alone or in joint panels with Kosovo local judiciary staff (Muharremi, 2010). On the other hand, in line with the Six Point Plan, EULEX is status neutral and cannot act under the independent Kosovo institutions. This has created a very complicated environment for the applicable law in Kosovo which depends much on the discretion of judges. In a case related to Kosovo Trust Agency (KTA) in October 2009, a EULEX judge asked opinion of SRSG related to the matters of KTA and law adopted by the Assembly to clarify legal status of KTA (ibid. 2010). The dilemma is that EULEX judges have become a part of Special Chamber as a result of the legislation on Law on Jurisdiction and given competence by the Kosovo Assembly to decide on a case about KTA. But their status as neutral rule of law

⁵² Statement by the President of the Security Council, UN Doc. S/PRST/2008/44 (26 Nov 2008)

⁵³ Then the judges can also rely on UNMIK Regulations (with supporting Assembly laws) passed between June 1999 and June 2008; laws dated prior to 22 March 1989 (meaning exclusion of discriminatory laws against Albanians under Milosevic presidency), and laws dated between 22 March 1989 and 10 June 1999 which are not discriminatory. Ministry of Trade and Industry, The Legal Guide to Kosovo, October 2010, http://www.eciks.org/english/publications/LegalGuide_2010_Web.pdf [accessed 28 July 2011]

mission requires a mandate under the authority of SRSG with whom Kosovo government had ceased all direct communication.

In the post independence period, enlargement process has served as the main driver and the value-added of the EU in terms of creating an atmosphere for conflict resolution more than ever before. Contrary to the EULEX mandate which has executive functions in the area of rule of law, police and customs, the Commission prepares Kosovo for future membership. In line with the Stabilisation and Association Process, Kosovo is expected to progress 'towards full integration, but rather in sectoral approximation in a creeping process towards EU membership' through visa liberalisation and financial aid (Renner and Trauner 2009:450-1).

The disagreement among the member states hindered future policies of state building in Kosovo. since an official recognition of Kosovo's statehood is denied by the EU due to five member states which for Kosovo Albanians hinders the development of Kosovo politically and economically, Kosovo has not yet signed SAA, has not allowed starting visa liberalisation process, and has not secured trade agreements due to five member states blocking the path of further integration of Kosovo with the EU.

Besides supervising Kosovo institutions and supporting member state building; the EU is also committed to build a new national identity based on multi-. In the post-independence period, decentralisation has become the main tool of the EU to realise this goal. Serbian minority was granted extensive autonomy and cultural rights in municipalities where they constitute the majority under the Ahtisaari Plan. Current decentralisation project to create extensively autonomous local governance is carried by close EU funding and management.

It seems that since the EU expanded its institutional presence and policies on the ground, its discourse to justify itself has become more diversified and not necessarily compatible with each other. On the one hand, the EU tries to consolidate statehood; on the other it challenges the sovereign statehood by not recognising Kosovo's independence and sustaining the UN protectorate through EULEX.

Local Perceptions

The EU's own discourse and local stakeholders perceptions regarding legitimacy has never been such dissonant since 1999. To start with EULEX, initially it was most the welcome institution by Kosovo Albanian majority since it was designed as a force to fight against corruption and organised crime in Kosovo. However, EULEX as deployed under contentious legal conditions the response from Kosovo Albanian towards reconfiguration of EULEX mandate was considered as a direct violation of Kosovo Constitution Kosovors in breach of the initial promise⁵⁴ by practically limiting Kosovo's sovereignty in Serbian enclaves and north Mitrovica. The government opposed the plan because it would undermine its authority over Kosovo territory. The then Foreign Minister Skender Hyseni stated 'Kosovo is not against the international community and we are interested in co-operating closely with them. But we don't recognise the plans which threaten our sovereignty'⁵⁵. Similarly, President Sejdiu clearly challenged the decision by asserting "Kosovo has its constitution and does not need new documents"⁵⁶.

Local civil society organisations were equally critical of the new deal between EULEX and Serbia blaming that it 'sounds very much like yet another 'status quo holding operation' proposed by the same institution [UNMIK] that has failed to improve the situation in Kosovo's north for the past nine years'(IKS, 2008). According to Instituti Ballkanik i Politikave (IPOL) (2009) direct talks with Serbia after independence has created an image among many Kosovors that Kosovo institutions are still seen inferior by EULEX. The EU has unilaterally altered the initial deal without Kosovo's consent as a sign of disregard for the independence of Kosovo and Kosovo's sovereignty⁵⁷ and 'emasculat[ing] the political leadership of Kosovo in the eyes if the citizens' (KDI, 2009:55).

While the ambiguity surrounding the role of EULEX have facilitated challenges towards its legitimacy against its *raison d'être*, the lack of effective performance in

⁵⁴ Author's interview with Adem Gashi, Analyst from KIREC, Pristina, 12 May 2011

⁵⁵ Cited in Foniqi-Kabashi, Blerta. SE Times. UN Security Council approves Ban's six-point plan. 27/11/2008. Available at:

http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2008/11/27/feature-02

⁵⁶ New Kosovo Report, Kosovo united against six-point plan. 15 November 2008

<http://www.newKosovoreport.com/200811151406/Politics/Kosovo-united-against-six-point-plan.html>

⁵⁷ Author's interview with Jeton Zulfaj, Head of Celnaja, Pristina, 10 May 2011

developing rule of law have also generated harsh criticisms towards EULEX's credibility. Kosovo public is occupied by an awareness of corruption in Kosovo mostly created by EULEX statements and emphasised continuously in Commission Progress Reports. For Kosovo public and civil society, EULEX is as responsible as the government for the lack of development in rule of law sector⁵⁸. There is a perceived unwillingness of the EU in fulfilling its executive functions since April 2010 when EULEX Police has raided Ministry of Transport, Post and Telecommunications and arrested Minister Limaj and head of the Procurement Office Krasniqi for charges of corruption. Following the statements by Acting Chief Prosecutor of EULEX Police, Kosovo public expected that EULEX would keep investigating further cases in other ministries⁵⁹. Since April 2010, there were no other investigations although six other ministries were named by the Chief Prosecutor for further investigations. The public attributes the silence of EULEX to inability and unwillingness to fulfil its mandate.

The EULEX's inaction to follow corruption allegations also points to the uneasy relationship between the Kosovo government's authority and EULEX. Prime Minister Thaci asserted that the arrests sent out a message that 'Kosovo's institutions were at war with the international institutions' and claimed that the International Civilian Representative Pieter Feith had interfered in the judicial system⁶⁰. Prime Minister's statement was supported by the speaker of the parliament Jakup Krasniqi calling the raids of EULEX to ministry as a 'spectacle' and questioned why EULEX had not 'simply asked for the necessary documents'⁶¹.

Lack of accountability and transparency of EULEX have also been questioned. Public information regarding ongoing trials of high level politicians has been limited due to confidentiality. According to a journalist from BIRN, although EULEX officials claim that there is a need for confidentiality and asks media to stop inventing assumptions about further investigations⁶². Youth organisations and political groups usually blame EULEX on the same grounds that UNMIK's legitimacy was called into question. The leader of Vetvendosje! Albin Kurti that EULEX has been installed as

⁵⁸ Kosovo Progress Report Made in Kosovo

⁵⁹ Author's interviews in Pristina, May 2011

⁶⁰ Balkan Insight News Report, "EULEX: Limaj Could Face a Long Jail Term," BalkanInsight. 7 May 2010

⁶¹ Ibid.

⁶² Autho's interview with Muhamet Hajrullahu, BIRN, Pristina

‘the supreme instance of authority and kept the last word on every matter’⁶³. The lack of accountability of EULEX has turned to ‘a hegemonic and irresponsible power’ which has driven the biggest ESDP mission of the EU into a marginal position today in Kosovo (Kurti, 2009). Public opinion, political parties, civil society and youth organisations all share that perception that EU’s most ambitious mission to day suffers from ‘loss of mission’s sense’.

Moreover, the deal reached between Serbia and EULEX has not facilitated any of the mission’s goals in North Mitrovica. Serbian authorities reject establishing any direct communication with EULEX. By no means, EULEX has gained a sign of acceptance from Serbs and ‘the perception of EULEX remains very negative among Kosovo Serbs. There is only a couple of EULEX staff based in Mitrovica and they know they are not welcome there’⁶⁴. At the end, both sides perceive EULEX as hostile to their aim given the lack of a clarification of EULEX’s status and mandate.

Regarding the issue of further integration with the EU, local stakeholders seemed convinced that the EU does not have an agenda to resolve the recognition of Kosovo. Since the EU’s promise of European future for Kosovo is not linked to tangible integration steps, public feels disillusioned and abandoned by the EU⁶⁵. Kosovars know that membership is not possible in the near future but they expect some tangible steps to confirm the political commitment of the EU. For so long, Kosovars think they are forced live in a ghetto in the region as a result of what they see as ‘Schengen wall of exclusion’⁶⁶. Failure to take tangible steps towards institutional relations would risk a perception that the EU is perceived as a closed empire and even a neo-colonial power in places like Kosovo which is under direct EU supervision (Krasnev, 2005). According ‘The Speak Up!’ Movement (a youth organisation in Kosovo) the situation has created ‘a blame game’ between local and international actors (FOL Movement 2010:5). Accession perspective has been ‘little more than an empty promise’ for Kosovars (KIPRED, 2010).

⁶³ Author’s interview with Albin Kurti, Leader of Vetvendosje and Member of Kosovo Assembly, Pristina, 20 May 2011

⁶⁴ Interview with Sasa Ilic.

⁶⁵ Author’s interviews in Pristina, May 2011

⁶⁶ Interview with Muhamet Hajrullahu

On the other hand, the general support in favour of the presence of the EU in Kosovo remains high especially among Albanian population. European integration is seen as a national goal in Kosovo that should supersede narrow policies of incumbent governments⁶⁷. Kosovo's place in Europe is unquestionable for Kosovars and final goal is to join the EU and at least Kosovo public and civil society acknowledges that Kosovo government needs to commit further to meet conditionality of membership⁶⁸.

Finally, the EU's way of using multi ethnicity as a conditionality principle as well as justificatory claim has also faced local challenges from both Albanian and Serbian communities. During the status negotiations, the Albanian side was aware that in case of independence Kosovo Serbs would be granted extensive autonomy in the north and within the enclaves. For Kosovo Albanians, the issue of decentralisation as required by the internationals is a bitter price for independence⁶⁹. Albin Kurti states that the idea of tolerance pushed by Western project of decentralisation is based on ethnicity 'as a most essential trait, and as an unbridgeable characteristic of people in Kosovo'. Decentralisation has been introduced to create a multi ethnic society but started with defining ethnicities and dividing governance (central and local through quotas and municipalities) according to ethnicity⁷⁰.

Reconciliation is the main goal of decentralisation project. But it has been happening very slowly. The Serbians living in southern enclaves are limited in terms of freedom of movement. At societal level, Kosovo Serbs and Albanians re-established daily relations however, besides political separation, Serbian and Albanian populations mostly remain in separate neighbourhoods. There are a limited number of Kosovo Serbs who work in the Kosovo Police Service in northern Kosovo and in southern enclaves. (KIPRED, 2008:7). And there is still a high perception among Kosovo Serbs that they are not welcome and accepted in society to be employed in state institutions or big companies⁷¹.

⁶⁷ Interview with Adem Gashi

⁶⁸ Interview with M. Hajrullahu

⁶⁹ Authors' interview with Fatmir Curri, Head of European Integration Unit. Kosovo Civil Society Foundation, 13 May 2011, Pristina

⁷⁰ Interview with Albin Kurti.

⁷¹ *ibid*

Decentralisation is practically seen as fundamental to improve the bad living conditions of the Serb community and would allow freedom of movement and public services to Serbians⁷². However, for Kosovo Serbs new municipalities are unacceptable since they are under the control of central Kosovo government. According to Sasa Ilic, ‘there are certain things that Kosovo Serbs cannot receive from decentralisation. Integration into independent Kosovo structures is imposed on Kosovo Serbs against their will’⁷³. Indeed, Serbian structures in the areas of security, health care, education, pension, and other public services which were set up parallel to UNMIK and PISG remain intact and further entrenched⁷⁴ after the independence.

To sum up, the contestation between the EU and Kosovo local stakeholders stems from the fact that the EU pursues nation building (democratisation, decentralisation) and (member) state building (Europeanisation) in Kosovo along with supervising (stabilisation) the country as a protectorate. The incompatibility of these three strategies has created a gap between the EU’s self justifications and expectations/perceptions of local stakeholders. For local stakeholders, state building in Kosovo does not sit comfortably with EULEX which became a symbol of protectorate status of Kosovo and unfulfilled promises of reconciliation through bitter decentralisation for locals.

Conclusion

It was argued in this chapter that the EU has engaged in legitimacy construction as international image construction mostly through distinguishing the EU from the rest of the international actors in Kosovo. First through acting within the legal mandate under UNMIK and later through distancing itself from UNMIK as a new international actor to support post-independence state and nation building in Kosovo. The EU has been involved in Kosovo conflict resolution from the start with a claim to establish its

⁷² Author’s interview with Vlara Trajkovic, Staff from ICO Decentralisation Unit, Pristina, 20 May 2011

⁷³ Author’s interview with Sasa Ilic, Head of Center for peace and Tolerance and KPAN Gracanica, 19 May 2011.

⁷⁴ On 28 June 2008, Serb municipalities in Kosovo formed an “Assembly of the Union of Municipalities of the Autonomous Province of Kosovo and Metohija,” which rejects Pristina’s declaration of independence. The unofficial Kosovo Serb assembly meets in Mitrovica since June 2008 with the task of coordinating forty five elected Serbian representatives after Serbian general elections in Kosovo

identity in international relations. Dividing into the EU's involvement in conflict resolution it was argued that the EU initially constructed legitimising frames on multilateralism and humanitarian causes. Human rights concerns and reinterpretation of international practices legitimised the initial involvement of the international community since 1999. While the EU actively reinstates its loyalty to multilateralism and international law, it also aims to contribute to the new shape of international constitutional principles. These claims are rather unproblematic for Kosovo Albanians whilst Serbia and Kosovo Serbs clearly rejected de facto separation of Kosovo.

Only during final status negotiations and post-independence period, the EU asserted its political commitment and independent EU stance in Kosovo. At the same time, humanitarian justifications have designed to recover the negative image of the EU created during previous military conflicts in former Yugoslav area and present a unified powerful EU identity in international affairs. Still, the EU sees Kosovo conflict as a security threat but at the same time the case has been perceived as a European problem that requires a sustainable resolution through strengthening democracy and minority rights. During the later stages of conflict resolution in Kosovo, the EU's clear but distant promise of membership has brought an arduous effort on both sides and increases the expectations of local stakeholders from the EU.

In fact, as the presence of the EU in Kosovo expands and prolongs, the EU needs to act more as 'a balancing actor' on the ground ensuring inclusiveness and equal access to institution building in Kosovo from various groups and reflecting will of people of Kosovo. This aims at establishing fiduciary relationship between the EU and local addressees of its policies. In other words, legitimacy of the EU relies on 'societal trust' where the EU is perceived exercising its rule 'on behalf of and for the benefit' of the population (Caplan cited by Knoll, 2007:6). It can only be achieved if the EU regularly consult and cooperate with various representatives of Kosovars. Otherwise, it would face challenges directed against legitimacy of its presence as criticisms mount against the EU as ignorant, negligent, insincere, and unnecessary from Kosovo.

Today, the EU is beyond being perceived a distinctive foreign policy actor from the previous international administration as claimed by the EU, rather interpreted as a continuation of much contested and inefficient international administration and

increasingly challenged by local actors. Knoll (2007:8) states that ‘[t]he fiercest challenges to the political legitimacy of an international agent’s governorship emerge as the agent is perceived to breach the trust established between itself and the people it governs’. Unchecked executive powers, lack of exit strategy and unified voice especially regarding the status question have become the core of the *raison d’être* of its biggest ground mission and contested legitimacy of the EU in Kosovo.

In terms of performance legitimacy, the EU needs to rely on ‘the properties of the efficiency’ where the Union is given the supervisory role through a mutual agreement between Kosovo and the EU. It seems that the EU is currently being perceived as obsessed with stability concern and its own success by the Kosovo public, civil society and political elites. The EU avoids taking risks and protects the status quo ‘without challenging the established domestic criminal links, devolving power to local authorities for the sake of staying operational. The stability concern and seeking success has undermined the logic of conditionality which requires stronger pressure and challenge to overcome the established criminal links and corruption in Kosovo’ (Keukeleire et al., 2010). Kosovo public and civil society argues that shying away from executive responsibilities reflect the lack of genuine political commitment and lack of capabilities on the side of the EU. As a result, in the long term, local institutions would be prevented from developing independent capacities in line with European standards,

Given the divergent local reactions and challenges towards legitimacy claims of the EU, Kosovo still remains an important test for the EU to construct a sustainable legitimate identity as a foreign policy actor. The EU with political and civilian decision making structures, civilian missions, economic aid; ideals and principles; and even battlegroups and strategic headquarters do not mean much to Kosovars unless they see ‘the same old’ internationals promising but unwilling to commit to realise it. The EU’s normative claims and power of attraction can only allow it to have initial access to Kosovo and help creating expectations not legitimacy. Legitimacy is long term and needs to be based on consent and acceptance of local populations. The challenge for the EU in terms of building a legitimate role in Kosovo lies in the fact that ‘[t]here is too much at stake: the credibility of the EU; the credibility of those 22 countries that have recognized Kosovo and invested in its future – politically and

financially; the credibility of the largest-ever EU rule of law ESDP mission, and the credibility of the EUSR; finally, the credibility of the government and the local political class in Kosovo' (KIPRED, 2010).

Bibliography