

Kosovo: Independence or Empty Sovereignty?

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Abstract

The international administration of Kosovo has encountered many problematic issues ranging from practical military management, to administrative control, to legal affirmation of the right to self-determination and sovereignty. This paper analyses the persistent international presence in this ostensibly independent state with particular focus on the implications of these policies for contemporary understandings of sovereignty, autonomy and self-determination.

Introduction

The international administration of Kosovo has encountered many problematic issues ranging from practical military management, to administrative control, to legal affirmation of the right to self-determination and sovereignty. This paper analyses the persistent international presence in this ostensibly independent state with particular focus on the implications of these policies for contemporary understandings of sovereignty, autonomy and self-determination.

Despite Kosovo's declaration of independence in 2008 the new post-independence international administration remains largely unaccountable to the people of Kosovo. This continues to frustrate the local population and inhibit the development of solid and locally grounded statehood. The ICO and EULEX have designed and implemented policies such as guided decentralization under the Athisaari Plan that are unaligned with the will of the local population, thereby significantly undermining their legitimacy. The international administration's attempts to appease the local population with guided independence have fallen well short of success, as the local population – in particular the majority Albanian community – remain frustrated and untrusting of the international presence.

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Without clear lines of accountability between rulers and ruled, the political process of representation becomes mediated to the extremes particularly where intervention for the purpose of rebuilding institutions takes place. Sovereignty then loses its place in the scale of importance to a number of organizational precautions which the internationals deem essential to the correct functioning of state apparatuses. An example of this is the creation of the ‘constitutional framework for Provisional Self-Government ‘ in Kosovo. By prioritizing political arrangements other than the primacy of sovereignty, its essence – namely the will of the people – is relegated to a secondary place, lacking the customary primacy advocated by international law. External mediation of the political process and a dilution of the political content and importance of the people as sovereign empties statebuilding of its political meaning, resulting in a process that is not organic and which creates a cycle of dependency in the name of empty sovereignty. As the international presence applies policies which call for unprecedented levels of external involvement in the judiciary, executive and legislative bodies of the ostensibly independent state of Kosovo, it is evident that the means of the international organizations and the proposed ends of ‘guided sovereignty’ exhibit a sharp contradiction.

Statehood

Statehood is undoubtedly one of the most pressing dilemmas international administrations face. As the State is, to date, the unit of currency in international relations, the repercussions of such urgency become apparent. Statehood is, after all, not a recently imported problem in international relations, rather, it is one that has faced international organizations, in particular the UN and previously the League of Nations, since the commencement of decolonization.

The evident hesitancy to grant statehood to each nation that may request it is particularly clear when considering the fact that once the status is obtained, the internal characteristics of a State are no longer significant to statehood itself (Simpson, 2004:54). As the discourses of intervention and theories of statebuilding of much of the past decade have been concentrated on establishing a set of standards

to be achieved for the purpose of creating solid internal circumstances which lead to sovereignty, the contradiction is striking. Nonetheless, recognition by the international organizations, in the form of granting statehood, creates a situation of *existential equality* (Simpson 2004), at least in principle, whereby all members of statehood (as a system) enjoy the same equal rights; nevertheless, as Oppenheim argues, membership of the system does not guarantee that the State in question will be active part of the *Family of Nations* (society) (Oppenheim cited in Simpson, 2004:235). This indicates that there is, in actuality, a schism between the essence of statehood, hence existential equality, and the practice of international social relations, namely the life of the *Family of Nations*. What this entails for Kosovo is crucial. As Kosovo struggles to participate actively in the social life of the Family of Nations, it becomes clear that the problem of statehood in Kosovo is primarily a political one, as opposed to a legal one. Recognition of statehood becomes a political game as the states involved in the process of granting status are also the ones whose interests may be impacted upon by the outcome of the process itself.

Clearly, statehood is central to state-builders, as the process of re-building institutions post-conflict entails a degree of extensive involvement in re-shaping social and political traditions of statehood with the purpose of re-writing the course of statehood itself in the area concerned. Candidacy to statehood therefore depends on a list of standards to achieve. Such has been the case of Kosovo, whereby extensive reconstruction has entailed invasive supervisory practices, whilst still promulgating the promise of statehood and sovereignty. Hence whilst invoking sovereignty and self-determination for the righteous fulfilment of statehood, international organizations statebuilding in Kosovo have promoted a system of statehood which involves interconnectedness and shared sovereignty through structures of supervision and control of sovereignty, hence starting a process of statebuilding through 'internationalisation of states' (Bickerton 2007:106). Such a concept is not new to theories of statebuilding, particularly those that seek to justify extensive international presence in Kosovo. Ignatieff and Krasner, for instance, envision a system of statehood characterised by trade relations and international pacts within States for the purpose of integrating weaker States (see Ignatieff 2003, and Krasner 1999).

The Montevideo criteria, classical criteria for statehood, did not envision the possibility of creation of States outside the realm of effectiveness *de facto*. Therefore, the equation statehood- effectiveness has been widely accepted; nonetheless, as Crawford notes, this equation is not to be taken for granted, particularly when evidence demonstrates that effectiveness can and has existed outside statehood (Crawford, 2006:97). Examples of this are Taiwan and the Turkish Republic of Northern Cyprus. Similarly, non-effective entities have continued to be considered States, and Crawford mentions, in relation to this, the cases of units annexed illegally between 1936-1940 (Austria, Poland, the Baltic States) (Crawford, 2006:97).

Yet, in the case of Kosovo, as effectiveness was considered to be crucial to state-building, the irony is that immediately after the beginning of the UNMIK mandate, statehood was not the pressing concern of the state-builders. Hence, the attempt was arguably to build an entity possessing sufficient effectiveness to equal if not surpass existing states elsewhere in the world which were facing crisis of statehood (much of Africa and the so called “failed states”). The plan was to create an oasis of statehood in the Balkans, an example of good governance, and an oasis for multilateral politics and respect of human rights. Yet, participation to the system of statehood, as described above, was not envisioned to be the primary goal until much later in time. Hence there arguably was no relation between the setting of Standards and the achievement of Status.

If it is accepted that the purpose of statebuilding in Kosovo was to create a democratic entity in the Balkans, then another problem arises, which concerns the supposition that statehood, in particular the sovereign state, is necessary to the establishment of democracy (Linz and Stepan cited in Tansey 2007:131). Whitehead, on the other hand, argued that not all the States are recognized before they transition to democracy and that therefore statehood is not essential to democracy-building (Whitehead in Tansey 2007:131). Kosovo has existed and still exists without substantial recognition of statehood. Certain developments demonstrate clear democratic characteristics such as the presence of municipal assemblies, the Central Election Commission, and the exhibited level of multilateral politics in the Kosovo Transitional Council. Moreover, even prior to the Declaration of Independence,

Kosovo exhibited evidence of exercising democratic electoral politics (Tansey 2007:139). Despite evidence that suggest Kosovo's path in the construction of democratic institutions, it is possible to argue that as democratization is prevalently a process which needs to have its roots firmly in the social and political context of the area it relates to, Kosovo has not completed an organic process of democratic institutions-building. The attribution of authority within the international administration significantly frustrates one of the central features of democracy which is that of allowing the elected local government to have sufficient power to policy-make (Tansey, 2007:140).

Greater levels of involvement in statebuilding by locals have run parallel to the unprecedented competences of UNMIK over the legislative, judiciary and executive powers. If such are the essential elements of statehood, and if the international presence is hindering political development in Kosovo by largely occupying most power seats in the arena, as will be shown in the analysis to follow, then uncertainty and vagueness over the future of statehood in Kosovo presents a grim scenario for self-government.

Therefore, true obstacle to the establishment of effective *de facto* democracy in Kosovo is the ambiguity of the status of Kosovo, reflected in the policies of the international administrators. Vagueness in relation to ultimate status not only undermines legitimacy of the international administration at the global and local level, by hindering the very work they seek to carry out, but it also highlights the unaccountability of their mandate, and ultimately frustrates the very process of statebuilding, thwarting its purportedly democratic goal.

Sovereignty: Empty Politics

Sovereignty represents the main characteristic of a State, as well as the essential quality through which to measure internal effectiveness and external capacities. The creation of institutions and the creation of organic political dialogue within a territory such as Kosovo all contribute to the creation of internal capacity, which is, in and of itself, one of the crucial elements of sovereignty. For the purpose of assigning a value to sovereignty, this essay accepts Crawford's definition of

sovereignty as the “plenary competence that States prima facie possess” (Crawford 2006:89). As sovereignty represents the key to access the system of statehood, then it is not surprising to find that less developed States and former colonies are amongst the most vocal supporters and defenders of Westphalian Sovereignty (Pemberton 2009:120).

Many scholars such as Charney, have argued that the concept of sovereignty should be erased and re-assessed as it evokes old-fashioned ideas of independence and total autonomy of the State, arguing that such concepts hold no meaning in today’s international relations (Charney cited in Crawford 2006:32). Despite this, sovereignty remains the enabling concept for much of international relations, in addition, the sovereign state, whilst it may continue to face mounting difficulties in many parts of the globe, will retain its formal structure and role in international relations, particularly thanks to larger actors (Clapham cited in Pemberton 2009:121).

Understanding the implications of sovereignty for Kosovo entails understanding the problematic application of the legal aspects of sovereignty as upheld by the international organizations in the face of obvious contradictions, which in the case of Kosovo appear particularly striking.

Traditionally, Westphalian sovereignty understood power to be located somewhere within State, vested in the monarch or, after 1789, in the people, yet, as Richmond notes, to date, and particularly in the case of Kosovo, individuals exist in extensively multi-ethnic and multi-cultural societies (Richmond, 2002:386). This tension threatens the order advocated by the notion of sovereignty in international law, and is exacerbated by the ambiguous interpretation of self-determination, which is particularly controversial in cases that do not relate to territories subject to colonial rule.

Nonetheless, sovereignty is not a precondition for statehood, rather it is a feature of it (Crawford 2006:32). If we take sovereignty in the sense provided within juridical discourse, exercising sovereignty, in Van Roermund’s words, equals ‘seizing’ sovereignty (Van Roermund, 2002:396). In the case of Kosovo, with particular reference to UNMIK and the SRSG’s extensive powers in all aspects of governance, it

becomes clear that seizing sovereignty is the extent to which the acting sovereign claims to take action within the realm of international law whilst at the same time overruling and overriding the very laws that support its mandate (Van Roermund 2002: 395-396).

Clear application of this is the performance of executive, legislative and judiciary functions by UNMIK and SRSG, now handed over for the most to ICO and EULEX under UNMIK mandate and Resolution 1244. The regulation that goes beyond the law and that best exemplifies the case for seizing sovereignty in Kosovo is Res 1244 itself: “ [The security Council] ... Authorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo...” (UNSC Res 1244, paragraph 10, June 1999)

Much of the dilemmas surrounding sovereignty relate to the territorial integrity and sovereignty of the Federal Republic of Yugoslavia (later Serbia) over the territory of Kosovo. If to respect sovereignty is to abide by existing territorial borders, then the problem arises of which historical borders to take to be the legitimate ones. Also if such borders are the result of illegitimate annexation during war in the past, or as a result of extensive colonial and imperialist policies, the rigid territorial prerequisite for sovereignty becomes secondary at best, and mostly biased. In relation to territorial integrity, Serbia and Russia have vehemently quoted Resolution 1244 and the Helsinki Final Act in support of the sovereignty of Serbia over Kosovo. Furthermore, Resolution 1244 states numerous times that Kosovo is to “enjoy substantial autonomy within the sovereign territory of Yugoslavia” (UNSC Res 1244, Annex 2.5, June 1999).

The resolution, in other words, stopped short of indicating the status of UN trusteeship, however, the echoes of the language and discourses of trusteeship very much resonate around resolution 1244. Sovereignty, suspended under international transitional administration, would in time be reconstituted and persist in the location of the agent ‘the people’, an actor newly established by the UN in recent discourses (Knoll, 2005:638).

Hence sovereignty is emptied of its political and legal content, as it becomes open to interpretation. This exercise is dangerous, considering that the powers in

charge of guiding the process around the achievement of status and sovereignty in Kosovo are also the ones who act above and beyond the law that they themselves have set for the purpose of providing order to the system. When sovereignty is seized, as in the case of Kosovo, it can be manipulated and exploited for the purpose of political bargaining. As Knoll notes, the acceptance of regulations by Kosovo's local institutions, prompted by the international administration, suggest that the territory of Kosovo acquires limited subjectivity, preferring to comply with the requirements of the international life (Knoll, 2005:650) arguably at the expense of the original bid for independence and Westphalian sovereignty.

As Bickerton notes, the fact that sovereignty exists as a notion, does not mean that it can be cut out of society or manipulated by an external agent; through the intervention of external forces in the process of institution-building politics and sovereignty are mediated and abstracted, replaced by an alternative framework of interests and arrangements which de-class sovereignty to a lower tier (Bickerton 2007:100). As sovereignty is mediated and diluted, therefore, it is voided of political meaning, hence, the very process of *state*-building, to which sovereignty is central, becomes purposeless and empty. Ultimately the problem of statehood arising mainly from external sovereignty as capacity to engage in external relations precludes access to the system of statehood and the family of nations as mentioned previously. If Kosovo is to participate in international life as a pre-requisite to its existence as a State, as agreed by the UN within the context of extensive EU and UN presence in Kosovo, then the paradox is evident, as lack of recognition and closure on the issue of sovereignty and status prevent this from happening.

Statebuilding: Liberal Norms and Empty Peace-building

Whether issues of severe human rights violations, genocide and political unrest warrant intervention in sovereign territories is not the subject of this paper. Having problematised the issue of territorial integrity as it relates to sovereignty, the focus of this section is mostly on impediments to the achievement of sovereignty through the extensive involvement of international administrations within a nominally independent state.

Ironically, state-building faces this very dilemma. Re-building institutions does not happen overnight, nor does it or should it span decades. International organizations are faced with a problem of accountability and legitimacy which stems primarily from the echoes of imperialism. Just as the language of the UN jettisoned terms such as trusteeships and protectorates marking them paternalistic, contemporary statebuilding is painted in shades of protection, responsibility, humanitarianism. The question remains whether this is a true change of colours or simply a leopard attempting to change its spots unsuccessfully. Ironically, in fact, territorial administrations carried out unilaterally by States were presented as unjust and colonial during the era of decolonisation, nevertheless, the very same idea of territorial administration is now considered legitimate and just, as it is carried out by international organizations, hence multilaterally (Wilde 2007:41). This is arguably only a change in discourses. The tensions between the means and the outcomes of transitional authorities expose the objectionable nature of this alleged new character of statebuilding; this exercise of legitimisation is proved easily falsifiable as international administrations often reach their supposed liberal ends through illiberal means, which seem to suggest the internationals be above and beyond the law because *'they know better'*. Secondly it seems erroneous to assume that the exercise of statebuilding as carried out by international administration ought to be 'good', in the normative sense, because its motivations are 'good' (Bain 2007:170).

In the case of Kosovo, the UN periodically reminds us that UNMIK is "*uniquely*² positioned to act as a facilitator in situations where the underlying disagreement over the status of Kosovo has inhibited practical progress in several areas" (UNSC Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo S/2009/497 30 September 2009:II.3).

If democratisation is at the forefront of statebuilding in Kosovo, then it is worthwhile to mention some crucial phases of democratisation itself. The *preparatory phase* is characterized by political struggle, the *decision phase* exhibits elements of democratic order, and lastly and perhaps most importantly the *consolidation phase*, whereby democracy itself is seen as the only possible system

2 Italics added by author. Not in the original source.

(Sørensen, 1992:402). It is the very last phase, the consolidation phase, which is particularly problematic and which is also the moment in the process where most democratisations fall short of success and/or revert back to undemocratic regimes. New democracies are far from being consolidated, they are frail and unstable (ibid). Consolidation, precisely because it entails a degree of ‘naturalisation’ and ‘assimilation’ of the concept of democracy as the only viable solution to political conflict, needs to be rooted in the local social and political circumstances. However, as it is seen in the case of Kosovo, statebuilding entails the importation of systems and political arrangements which are in most cases inorganic, controversial and unwanted at last.

This is not a surprise. Already in 2002 the ombudsperson institution in Kosovo reported on the undemocratic means of UNMIK, claiming that the international administration did not operate in accordance with the rule of Law (Ombudsperson Report 2001-2002). And whilst the 1907 Hague Regulations stated that any occupying power must respect the laws of the country it occupies, already two years into the mission, UNMIK called for a derogation from certain laws and norms codified in the UN charter and the Declaration of Human Rights, under regulations which allow for such exclusion only in cases of exceptional circumstances (Convention IV Hague Regulations 1907)

Many have argued that such circumstances warrant for derogation from certain laws, particularly when the result is the cessation of fighting and human rights abuses (Matheson, 2001:78, 84, 85, Thompson 2006:268; Franck 1999:860). Statebuilding has principally been initiated by a military intervention, however, the building of democratic institutions does not normally fall within the agenda of the military, therefore, as Meernik notes, it is erroneous to expect that the military can deliver and create democratic norms and practices (Meernik, 1996:393), as it is arguably misleading to assume KFOR can do the same, as instead Paris suggests (Paris 2004:213).

The liberal peace-building framework has aimed at creating pluralist, multi-ethnic statebuilding, by drawing from Wilsonian and Kantian ideals of democracy,

liberalisation and their relation to peace (Paris 2004:40; Sørensen,1992:397; Ghani, Lockhart, Carnahan 2005). Upon the establishment of norms or standards to achieve prior to independence and autonomy, it is evident that such conditional self-rule would entail that, to different extents, an international trustee would continue to retain some powers within a territory (Franks and Richmond 2008:81).

In the case of Kosovo, UNMIK reached unprecedented levels of control of government, and despite this being subjected to supposed cooperation with the locals, UNMIK's command in all aspects of Kosovo's governance reflected the pillars of liberal peace; UNHCR (responsible for humanitarian relief), ICR (civil administration), OSCE (democratization and institutionalisation), EULEX (economic development and rule of law) (Franks and Richmond 2008:84). However, given such extensive control, it is questionable whether the peace achieved was a mere reflection of a blueprint or a truly consolidated political change.

State-building entails such a radical degree of intervention, transformation of political, economic and social circumstances in a territory, which naturally compromises the autonomy of each territory. In such difficult process, one of the main dilemmas has always been the setting of an exit strategy (Zaum, 2009:189). Exit strategies, at least nominally, are often contingent upon the local institutions' ability to develop democratic characteristics and to conform to the rules of the international game.

When autonomy and total sovereignty are seen as problematic, particularly within the normative frame of responsibility, then such norms become the standards which need to be fulfilled before the internationals can exit the scene. Sovereignty then becomes conditional (Zaum, 2009:193), as we have seen above, particularly upon a set of elements, established within the framework of the 'responsibility to protect' which include: democratic government, promotion of human rights, rule of Law, economic liberalisation and effective government (I.e. internal sovereignty) (ICISS 2001, Zaum 2009:194, Paris 2004)

It is the purpose of transitional administrations to generate the first wave of political transformation, particularly in the case of post-conflict territories. If this process is to be successful, the locals ought to contribute to the creation of these institutions (Chesterman 2004). The statebuilding framework mentioned above is

essentially western in nature, 'liberal' peace-building has become synonymous of statebuilding, however, such a form of statebuilding has fit scantily into local existing norms (Zaum 2009:195), particularly because such imported norms diverge from the local existing ones, hence they are not organic and harder to assimilate in the system.

Another problem of accountability stemming from such a creation of norms for the blueprint of state-building in Kosovo is that the actors who specify the content of the norms are the same ones who assess whether they have been met. Zaum points to the example of the UN operations where the mandates as well as the norms are set and reviewed by the SC and the SG (Zaum 2009:196). Moreover, erratic statebuilding, characterised by ambiguity and vagueness has not seen impressive outcomes for democratization and governance in Kosovo. UNDP supports that the decentralization project introduced by the Ahtisaari Plan helps to promote cooperation and to enlarge minority-municipalities capacity-building (UNDP Results 2009, Democratic Governance 2009). Arguably, frustration over unresolved issue of status steered the discussion of the international community and the locals towards talks of non-status related issues such as decentralization and economic matters (Kostovicova, 2008:635). This arguably concurred to further ambiguity concerning status issues, in particular exit strategies and the issuing of a substitutive resolution to Res. 1244.

Grounding statebuilding in local ownership is not impossible. In East Timor, as Chesterman notes, UNTAET's mandate stemmed from the relationship of trust with the Timorese (Chesterman 2004:143). It is therefore vital that once the fighting has stopped, a clean, transparent, objective and unbiased political process of statebuilding is to be started, with particular focus on enhancing the locals' stake in the process itself, by ensuring that a goal of the international administration, including final status, exit strategies, and mechanism for the transfer of control is established clearly and without doubts to avoid vagueness and in particular to avoid frustration of the locals which may otherwise work against the international administration itself.

A Political Game: 'Our' Standards, 'Your' Status and International Bargaining

As seen above statebuilding as embodying the idea of responsibility to protect poses impending legitimacy questions which relate not only to the motivations adduced for the practice of statebuilding but also to the actual conduct of statebuilding policies on the ground. *Ad hoc* approaches have been advocated by supporters of the liberal peace-building paradigm as a bridge between local ownership and external control (Thakur 2002:324). Such approaches are advocated but not actually practised as the guidelines provided in the Charter often are taken as blueprints and therefore each case which is showcased as *ad hoc* becomes in its own right a case study from which to acquire ready-made lessons learned scenarios to add to the blueprint. Resolutions, furthermore, as they are unchangeable and unbendable become rigid frames within which *ad hoc* approaches have little room.

Crucially, moreover, transitional authorities risk turning into never ending missions; these have often been dubbed as 'burdens' (see Warbrick in Warbrick and McGoldrick, 2008:686). It follows that the inability and unreadiness of populations to self-government has been adduced to the list of reasons for delaying self-rule (see Bowen 2002, Fanon 1963, Smuts 1930; Said 1993, Perwita 2008). The parallels in discourses and motivations between contemporary transitional authorities and past exercises during decolonisation is striking. The discourse of sovereignty as responsibility is loaded with references to the locals' inability to self-rule as a justification for extensive presence and control (ICISS Responsibility to Protect, 2001:29). This type of paternalistic responsibility, is not born from the recognition of having, in certain cases, exacerbated existing conflicts with past colonial endeavours (Rwanda, Somalia, etc.), but rather from an arrogant position of authority which dismisses the locals' self-governing abilities as 'insufficient' and 'problematic'. The actual practice of intervention has been characterised by a legitimisation of the breach of the non-intervention rule through the establishment of norms such as human rights, minority rights and international order and prosperity (Krasner, 2001:242). The creation of such norms have the purpose of acting as mere justification for persistent international presence in ostensibly independent states, such is the case of Kosovo.

However, as Malmvig notes, rather than eroding the concept of sovereignty, such legitimisations actually enhance its role in international relations; sovereignty and intervention become mutually constitutive and constructed, as they represent the transcendental ontological blocs of reference for international relations; legitimations of intervention give meaning to state sovereignty precisely because intervention must be followed by a justification of it, implying that sovereignty is recognized and prioritised as intervention is problematised (Malmvig, 2001:251-268). The issue is not whether or not the internationals have a duty to respond to internationally acknowledged crisis, rather it concerns the internationals' inability to establish unbiased and transparent policies of statebuilding in the territory they have intervened in. Understanding the problematic nature of 'responsibility' as invoked by the internationals is to expose the degree of hypocrisy and dependency consequential to liberal statebuilding.

Legitimacy is crucial to the effectiveness and success of the international administrations, particularly as it is judged according to the level of peace, stability and prosperity it engenders in the territory (Kostovicova, 2008:631) However it seems that lack of legitimacy, particularly in Kosovo, is an essential fault of liberal statebuilding. Such practice, Franks and Richmond suggest, lean towards coercive domination through the setting up of conditionality and consequential dependency upon external support (Franks and Richmond, 2008:83). Yet, it is possible to agree with Kostovicova's point that legitimacy derives from "the juxtaposition of ruler and ruled" (Kostovicova, 2008:633). Nonetheless, this goal is increasingly unachievable as unaccountable and illegitimate international transitional authorities in Kosovo promote empty state-building and relative governance contingent upon the achievement of alien and non-attuned norms. Despite promoting independence, the international presence supports a degree of supervision that ranges far from the locals' understanding of independence.

Evidence of discontent within Kosovo with regards to ongoing international administration is highlighted in the 2007-8 Ombudsperson Report which states that as foreseen by the Ahtisaari Plan, the International Civil Representative, the final authority in Kosovo in relation to all civilian features of the constitutional settlement,

may take measures to ensure the achievement of the terms of the Settlement which may include annulment of decisions and/or laws adopted by Kosovo authorities (Ombudsperson Report 2007-2008:13 – Ahtisaari, 2007: Annex D). Clearly, allowing the ICR to be the ultimate judge and reviewer of the Proposal, which is to remain above the Constitution itself, may ultimately obliterate domestic law (International Crisis Group 2007:19).

It is also noted that even after the Declaration of Independence and subsequent constitution of Kosovo as sovereign State, there still remains uncertainty with regards to how the Constitution could coexist with Resolution 1244 (Ombudsperson Report 2007-2008:12). Despite this, the Ahtisaari Plan foresaw an end to the international transitional authority, and to UNMIK's mandate after which all legislative and executive authority shall be transferred to local authorities of Kosovo (Ahtisaari, 2007:4). Nonetheless, three years after the drafting of the Ahtisaari Plan, Resolution 1244 remains in place with no foreseeable practical alternative offered to replace it and to finally settle the issue of sovereignty.

Discontent is also evidenced in the local media's view of the internationals' mandate. On 21st of May 2010, in one leading front-page story in relation to the recent decision by Zannier to prevent the Central European Free Trade Agreement meeting from taking place in Pristina, the paper *Bota Sot* quoted Morina, member of the Parliamentary Committee for Trade, Industry, Economy and Energy as branding Zannier's decision as interfering in the authority of the Kosovo institutions (UNMIK Media Monitoring Headlines 21st May 2010:3).

It has also been noted in the 2009 UN SC Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo that UNMIK faces increasing challenges to the fulfilment of its mandate in Kosovo under Res 1244 as there is widespread "perception among many Kosovo Albanians that the Mission's tasks have been accomplished and its continued presence is an unwelcome obstacle to the desire for Kosovo to function as a sovereign State." (UNSC Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo S/2009/149 17 March 2009:II.4).

The UNDP Early Warning Report of March 2010 highlights statistical evidence of discontent with the political settlement in Kosovo through poll analysis,

evidencing overall dissatisfaction with the governing institutions of Kosovo, with satisfaction levels dropping 20% since September 2009; satisfaction with EULEX has dropped to 30% of respondents in Jan 2010, as opposed to 40% in September 2009; satisfaction with the work of UNMIK stands at the all-time lowest level of only 12% in Jan 2010 (UNDP Early Warning Report 27 Fast Facts March 2010).

Furthermore, evidence on the ground demonstrates the significant challenges faced by EULEX and UNMIK both in terms of legitimacy and accountability. EULEX is hindered by the refusal of the Serb-controlled territories to recognize its authority whilst recognizing only that of UNMIK; however at the same time UNMIK's mandate is removed from the civil component of the administration by the Kosovo Constitution (De Wet, 2009:85-86). Conditionality and dependency are blatant examples of by-products of liberal statebuilding in Kosovo. In particular, it is evident in the adoption of the Ahtisaari plan as embedded in the Declaration of Independence of Kosovo and adopted by the Constitutional Framework and the Kosovo Parliament. This represents the Kosovo Albanians' full acceptance of the obligations set out by the international administration (Kostovicova 2008:636). Arguably, Kosovo's compliance with the international obligations embedded in the liberal framework and exemplified in the Ahtisaari Plan have little to do with Kosovo's status. As Warbrick notes, there is no international legal obligation to bind Kosovo, as it is not a member of the UN and therefore is not bound by claims under Resolution 1244 (Warbrick in Warbrick and McGoldrick, 2008:690). It is possible to argue that 'encouragement' from the internationals to take 'responsibility' in the local hands is seen as an opportunity, at best the only chance to 'push times' for a faster achievement of the locals' side of the deal: substantial unsupervised independence. To do so, the locals must engage in a level of bargaining with the internationals which tilts the balance in favour of the transitional authority, resulting in inorganic, non-consolidated and empty state-building. As a result, the "Kosovo Standards" established as liberal guiding principles were used tactically by the locals to argue for a faster transition of powers (Zaum, 2009:200).

The result of such in-organic statebuilding are obvious in the face of persistent international presence in an ostensibly independent State. The issue of the

'standards' remains a pressing question considering that, at least from the point of view of the Kosovo Albanians, the issue of status has been settled (Zaum, 2009:202), Kosovo has now been recognized by over sixty States, hence it cannot be de-classified to non-State or cease to exist. To meet the demands of Res 1244 whilst attempting to empower the local institutions, UNMIK set up initially the Kosovo Transitional Council, which was supposed to represent the whole political spectrum of Kosovo in a consultative body. Yet the council had no real power or political influence (Tansey, 2007:135). Later on, a Joint Interim Administrative Structure was formed, to create an intermediate layer of involvement for the locals, with arguably stronger powers of recommendation than the KTC. Nonetheless these attempts were frustrated by the fact that UNMIK and SRSG maintained final authority (Tansey 2007:136). In the area of democratic elective politics, as the Central Election Commission was established in 2000, the LDK and PDK entered talks with relation to electoral systems, in consultation with OSCE which preferred proportional representation (Tansey 2007:139); The CEC was chaired by the head of OSCE, so it is perhaps unsurprising that the SRSG ultimately opted for proportional representation as opposed to any other alternative system supported by either LDK and PDK.

Moreover, the extensive power of the international administration also controls the economic development of Kosovo to the extent that it is rendered dependent upon support of the member States of the World Bank which are the very same member States which make up the UN and the EU. In reaching decisions to support the Transition Support Strategy, the World Bank considered elements of interests to the Bank's member States (Knoll, 2005:645)

It seems possible to agree with Knoll as he argues that the UN is unsuitable to conduct negotiations on the status of Kosovo contingently upon readiness to join the international arena, as it seeks to embody two functions which are in theory incompatible by firstly representing the interests of the territory of Kosovo whilst remaining an organ of the final authority (UNSC) who can authorize issues such as sovereignty and treaties (Knoll, 2005:658)

Conclusion

Kosovo remains caught in a political grey area characterised by ambiguity, political games and conflict of interests which come to aggravate the already fragile political circumstances of this newly independent State. Persistent international presence has continued to undermine the legitimacy of the statebuilding approach in Kosovo as well as the motives. Ambiguity in relation to the issue of status for Kosovo has undermined and hindered the work of the international presence by presenting a picture of the international community whereby statehood is important insofar as the States granting status are the ones setting the standards by which to set the bar. Legitimacy is then called in to question, as the mandate of the internationals is frustrated by conditional bargaining to achieve status.

Sovereignty remains crucial, therefore, both to the international community as a whole and to the local population of Kosovo, who deem it essential to the functioning of the State as a wholesome component of the international community. Sovereignty in Kosovo has, however, been dependent upon the achievement of standards set by the international community which have in no way been objective and universal to all statebuilding operations, rather they have been drafted to reflect the founding pillars of liberal peace-building, a predominantly western liberal concept. As a result, sovereignty loses its once paramount place in the scale of importance to other issues on the international agenda; this results in the removal of political meaning from the concept of sovereignty itself, which renders it open to manipulation and exploitation for the purpose of a calculated bargaining game.

The removal of politics from the exercise of state-building has generated inorganic outcomes and a statehood which lacks political meaning. The international presence remains strong within the judiciary, legislative and executive powers of Kosovo, despite the fact that the empty promise for clear resolution of the status issue is periodically renewed, even in the face of the ghost of Resolution 1244, which keeps hindering and frustrating the true organic nature of statehood in Kosovo.

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