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PEACE, POWER, MULTILATERALISM AND THE
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THE CASE OF KOSOVO: A PRACTITIONERS VIEW!

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PEACE, POWER, MULTILATERALISM AND THE INTERNATIONAL SYSTEM IN THE 21ST CENTURY – THE CASE OF KOSOVO: A PRACTITIONERS VIEW!

Moisés Venâncio*

Resumo: O artigo aborda a questão da independência unilateral do Kosovo e os problemas jurídicos e políticos que daí advieram.

Palavras-chave: Kosovo, Independência, Nações Unidas.

Abstract: Eighteen months after the unilateral declaration of independence (UDI) by Kosovo on 17th February 2008, while in the words of the United States (US) Vice President Bidden, independence has proven “irreversible”¹, Europe’s youngest state remains in a sort of “recognition limbo”. Only some sixty countries, albeit some of the most powerful and wealthy on the planet, out of the 192 United Nations (UN) Member States have recognised the former UN Administered Territory. While Kosovo has also been granted membership of the most important global multilateral financial institutions namely, the Bretton Woods – which is an important step to UN membership, the existence of a possible Russian veto on the UN Security Council (SC) precludes membership of the world’s governing body for the foreseeable future.

These mixed results following Kosovo’s February UDI reveal the complex and multi-faceted nature behind the declaration of independence, which militates against simple interpretations of the act as a universally applicable precedent, illegal or legal. If there is a precedent, it is a very conditional one.

Moreover, a closer analysis of the February UDI reveals that those are not the main issues that stem from Kosovo’s declaration of independence. The essence of the 2008 UDI lies in the “politics” of the act – “for there lies the rub” to quote Shakespeare.

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As opiniões expressas neste artigo reflectem apenas o ponto de vista do autor e não da instituição a que ele pertence.

¹ Speech by Vice President Jo Bidden to the Kosovo Parliament, June 2009.

The politics and the diplomacy that underpinned Kosovo's 17th February "putsch" on the world stage was not an act of spontaneous combustion. It was part of long and complicated negotiations, which, importantly, reveal that little has changed since the Berlin Conference on Africa as far as the international system is concerned: whilst multilateralism and international organisations play a more prominent role in today's international order, powerful friends, force and the interests of the great powers remain the key dynamic in the international system and the critical ingredient in the life and death of nation-states.

Kosovo's UDI is therefore not so much about a precedent but fundamentally about the complexity of managing international peace and security, as well as the current state of the international system in the 21st century.

In contrast to a series of events such as the second Iraq war, Georgia, and North Korea among others, which have generally marred the image of the UN and its SC to safeguard international peace and security, the Kosovo UDI and its aftermath shed a positive light on the role of the UN, and particularly the pro-active leadership of the UN Secretary-General (SG) in what may be the most lasting precedent of Kosovo – the shift from the UN SC to a lead role by the UN SG in managing difficult international crisis. Kosovo's act of independence shows the clear possibility of a "peaceful co-existence" between great power politics and a collective system of global security that is the UN.

Key-words: Kosovo, Independence, United Nations.

Kosovo: Key Milestones in the Consolidation of Peace and Independence

– International tutelage

Following the NATO bombing that brought to a halt the violence unleashed in Kosovo by the Milosevic regime, the UN SC adopted resolution 1244 (UNSCR 1244) in 1999, and authorized the Secretary-General to establish an interim administration in the form of an international civilian presence. UNSCR 1244 was to be a special resolution from the beginning for several reasons. Unlike other UN peacekeeping operations, UNSCR 1244 established a complex effort known as the UN Interim Administration in Kosovo (UNMIK), and involved for the first time in peacekeeping history two other regional organisations in the management of the operation, namely the European Union (EU) and the Organisation for Security and Co-operation in Europe (OSCE). Democratisation and institution-building were placed under the responsibility of the OSCE, and economic reconstruction, recovery and development were mandated to the European Union (EU).

UNSCR 1244 also established a separate NATO military operation in the territory that became known as KFOR – (NATO Kosovo Force). This is important as it finally legitimized the NATO intervention in Kosovo which had not

been sanctioned by the UN Security Council and which some therefore classified as illegal. It also allowed Russia to once again have an influence over a military operation in Kosovo that was essentially undertaken by an enemy military alliance. UNSCR 1244 was, therefore, an inclusive international settlement based on great power partnerships.

Of key significance is the fact that UNSCR 1244 is only one of two SC resolutions which established a peacekeeping mission without specifying the date by which the UN SC was to reassess its validity or continuation². In practice this froze the need for any discussion on the long-term political “Status” of the territory as UNSCR 1244 enshrined Serbian sovereignty. The adoption of UNSCR 1244 then set the stage for the international community’s approach to a long term settlement over Kosovo with the “Status” clearly a taboo discussion³. UNMIK was to act as the “de jure” Government authority for the next 9 years.

– Strengthening multi-ethnic post conflict State-building

Four years after the adoption of UNSCR 1244 and the discussion on the “Status” still a taboo, international concerns focused increasingly on developmental activities with a view to consolidating a process of multiethnic democratic state-building and reconciliation. The aim of this was to assist the development and, ultimately, the stability of the internationally administered territory.

A small but critical breakthrough on the road to the “Status” talks came in December 2003 at the initiative of the then UN Special Representative of the Secretary General (SRSG), Hari Holkeri. In an attempt to discreetly approach the “taboo” issue of the “status” and move Kosovo out of a stagnant political quagmire, the SRSG led the adoption of the Kosovo Standards. This excellent and clever initiative identified eight standards that became the fundamental principles for UNMIK rule in Kosovo⁴. This approach was to underpin the international community’s efforts at establishing a multi-ethnic, post-conflict state and the actions of the Provisional Institutions of Self-Government (PISG). The Standards became an important vehicle to track the political progress of Kosovo as well as the management of the international community in the

² The other resolution being the United Nations Mediator and the Truce Commission in supervising the observance of the truce in Palestine (UNTSO) established in 1948.

³ Portuguese diplomatic source (private conversation).

⁴ The 8 principles are; Functioning Democratic Institutions, rule of Law, Freedom of Movement, Sustainable Returns, Economy, Property Rights, Dialogue with Belgrade and The role of Kosovo Protection Corps.

absence of any other political process or road map to address the future of the UN administered territory. The slogan, “Standards before Status” became the new leitmotiv of the international community in Kosovo.

In 2003, international concerns on the long term political and socio-economic social development of Kosovo were given another boost by the West with the European Union’s decision to include the UN-administered territory under the EU’s Thessaloniki agreement. This gave Kosovo, in like manner to its neighbours, a perspective for European accession within the framework of the EU Stabilisation and Association process based, inter alia, on the Copenhagen Process.

– Stagnation and renewed violence

The deplorable violence that broke out against the Kosovo Serb community in March of 2004 and the poor response by the international forces on the ground galvanized all concerned that a solution had to be found to the Kosovo issue before it boiled out of control. Five years after establishing its tutelage, the international community faced a deteriorating situation under its responsibility and still had no clear goal or exit strategy beyond the SRSG’s ingenious “Standards before Status” approach.

Aware of the perils of this situation, the UN SG tried to inject new momentum into the search for a long term solution to the future of the territory with a political review by the UN Special Envoy, a Norwegian Kai Eide. The review was presented to the UN SC in August 2006 and outlined the frustrations felt by the Kosovar leaders and the majority population over their undefined “status”. Critically, the review highlighted that the current status quo was not sustainable.

– Independence and Developing an Exit Strategy

In an attempt to keep the momentum going, in late 2006 the UN SG appointed a new Special Envoy to mediate talks between the parties, Mr. Marti Ahtisaari. A significant watershed over the future of Kosovo then came on 3 April 2007, when the UN SG submitted the comprehensive proposal for the Kosovo Status Settlement to the SC based on several rounds of negotiations with the two parties and key international players. The Ahtisaari proposal was designed to outline a series of conditions for the so called resolution of the Kosovo Status based on the principle of conditional or supervised independence. The Proposal was backed by the Contact Group, made up of France, Germany, Italy, the United States, the United Kingdom, and Russia. It was however not accepted by the Security Council, as Russia remained fully supportive of Serbia’s rejection of the document that saw as the unacceptable annexation of Kosovo by the interna-

tional community. Russia coherently stuck to its position and insisted on a negotiated settlement that avoided the creation of a precedent for other post-conflict situations. The SC discussion revealed that Kosovo had echoes far afield and even South Africa, a non-permanent member of the Security Council at the time, also failed to support the proposed Athissari package.

Athisaari echoed the thoughts of many after the failed efforts when he declared that “it is my firm conclusion that the potential of negotiations is exhausted”⁵. Serbia offered “more than autonomy, less than sovereignty”. The Kosovar leaders could not revert to the Government of a country and a majority ethnic group it saw as having attempted genocide against them. The lines were drawn.

Both Parliamentary and local elections took place against this background in the UN-administered territory in November 2007. A new Government was formed, headed by Prime Minister Thaci, a historic founder of the Kosovo Liberation Army’s political wing.

– Rapid Disengagement and Independence

Against this background there was a fear in the Western capitals, above all, that the frustration on the ground could lead “to an uncoordinated, unsupervised, possibly violent independence process that could stimulate instability in Kosovo’s neighbour countries. It would also seriously damage both the UN’s prestige and the EU’s development as a major political actor on the global stage”⁶. There was an overriding concern that “Kosovo and the wider Western Balkans have become less stable, and further delay would worsen matters”⁷. The new Prime Minister echoed the same concerns publically.

As such, in spite of the Russian and Serbian opposition, the United States and many EU capitals begun to discuss “a plan to orchestrate a peaceful transition culminating in Kosovo’s conditional independence in May 2008”⁸. The gamble by the West was that the EU would now take the lead and that Russia would ultimately acquiesce, leaving Serbia helpless to oppose the move.

It is also important to note that beyond the strictly political arena, the Kosovar economy was also in tatters, further contributing to social frustrations and a popular perception that only independence could solve this by clarifying property rights and ridding the territory of poor international management.

⁵ MARTI ATHISAARI, Press Conference, 10 March, 2007.

⁶ International Crisis Group – Europe Report No 188, Kosovo Countdown: a blueprint for transition – 6 December, 2007.

⁷ Ibid.

⁸ Ibid.

After several years of hesitant and reluctant progress on addressing a long term settlement for Kosovo, notwithstanding the efforts of the UN SG, the international community was faced with rising tensions and frustrations that could undermine the peace it had established in the territory, and which could leave all parties concerned particularly the United States, the key EU member states, the European Commission, the UN, and the OSCE facing a severe loss of credibility. This unwelcome situation was also significant for another reason. Saddled with growing commitments in Iraq and Afghanistan, the United States and the United Kingdom in particular, did not wish to have a failure on their hands as they attempted to mobilize support for critical interventions in other parts of the world. A swift response was now desired to extricate themselves from a potentially dangerous and unnecessary embarrassment with a modicum of success.

As a result, Prime Minister Thaci began to coordinate, particularly with the US and the EU, the timing of a declaration of conditional independence as envisaged by the Athisaari proposal soon after his election. The US, confident of its power as the only true global superpower at the time, felt empowered to ultimately push and drive a final internationally agreed settlement on Kosovo. The declaration when it came on 17th February, 2008, pitted the East, Russia – in support of Serbia – against the West, the US and the UK – the strongest advocates of Kosovar independence.

For the US this was a rapid disengagement in the face of growing international commitments whereas for EU member states, it was a changed emphasis from the UN to the EU as the key partner in supporting a newly independent state on the European continent.

– The post-declaration challenges

Following the UDI and the coming into force of the Kosovar Constitution on 15 June 2008, the UN was faced with growing tensions in the territory and an uncertain role for its civilian administration on the ground. The February declaration was also leading to the fragmentation of Kosovo with Serbs in the enclave of Northern Mitrovica staunchly opposed to independence. Serbia continued to support the institutions of the enclave (health, education, et cetera) and Kosovo Serbs, as an expression of their “dissatisfaction...expanded their boycott of Kosovo Institutions to include the police, judiciary, transportations, and municipal administrations”⁹. Sporadic and at times violent confrontation took place over the Mitrovica court house and the burning of Customs posts.

⁹ Report of the Secretary General on the United Nations Interim Administration in Kosovo, 12 June, 2008.

– *The European dimension*

At the time of the Athisaari proposal there was a notion that the EU was to replace the UN as the overall authority in Kosovo as part of the territory's conditional independence. However, this never really materialized as even the EU member states questioned the legality of such an approach unless blessed by the UN SC. A growing EU political role in Kosovo also implied reducing even more the influence of Russia on the territory's international tutelage. Moscow had no intention of sanctioning a new EU administration of Kosovo and along-side Serbia and the Kosovar Serbs still recognizes only the validity of UNSCR 1244 to this day.

In the end the EU presence materialized, albeit in a more reduced fashion, in the form of the new EU mission for the rule of law (EULEX). Interestingly, EULEX itself was to come under the authority of UNSCR 1244 as the only possible legal basis for its activities. EULEX reached initial operational capability only in December 2008 – one year after the approval by the European Commission given all the political and legal discussions that took place on its creation.

International Hybrid management of Kosovo

The differences amongst the international community over the Kosovo declaration and in particular the “EU divisions over Kosovo's independence have resulted in an unusual external intervention”¹⁰. The two traditional cornerstones of the international presence in the territory, namely UNMIK and KFOR remained and were joined by EULEX. All three operate under the authority of UNSCR 1244.

However, another structure has been created to supervise the independence of Kosovo under the aegis of the Athisaari proposal – the International Civilian Office (ICO). The ICO has no clear legal basis and lies outside the authority of UNSC 1244. The head of this structure is also double hatted as the EU Special Representative. The latter body is very much designed on the basis of Bosnia's Office of the High Representative and is not recognised by Russia and Serbia who recognise only the legitimate authority of UNSCR 1244.

In spite of almost unclear and top heavy international stewardship and despite the alarmist warnings that Kosovar independence could lead to new violence, particularly against the Serbs, the situation has remained generally

¹⁰ Making Kosovo work, Sofia Sebastian, Policy Brief No 7 – March , 2009, FRIDE, Madrid.

stable with occasional violence confided mainly to the Serbian enclave of northern Mitrovica. There has also been no exodus of Serbs from the territory.

The election of the Tadic Government in March 2008 in Serbia proper, has also revealed a more constructive posture by Serbia over Kosovo with Belgrade even stopping significant funding for Kosovo Serb institutions in the territory.

A. Kosovo – a precedent or Not?

As stated in the introduction, 16 months after Kosovo's UDI, the international community remains split and the only clear thing is that there is no clarity on the legality or illegality of the Kosovo declaration or its role as a precedent or not for other independence movements. Since the declaration, only 60 countries have progressively recognized the new state out of 192 UN Member States. The lack of consensus on the nature of the Kosovo declaration and its repercussions has even led the UN General Assembly, upon the request of Serbia, to ask the International Court of Justice (ICJ) for an opinion on the legality of the Kosovo declaration.

There are powerful arguments on both sides which make consensus difficult and which will undoubtedly form the core of the case before the ICJ.

a. Precedent for other Independence movements?

Serbia and Russia have adamantly and consistently upheld the view that the February 2008 declaration constitutes a precedent for populations around the world that seek secession and independence. This widely held position views Kosovo as undermining two fundamental pillars of international life, namely: sovereignty and the principle of the inviolability of borders which are enshrined in the UN Charter and the Helsinki Accords. Based on these, secession and independence can only be achieved legally through peaceful means and negotiations between the concerned parties such as the break-up of the former Czechoslovakia or even Montenegro's separation from Belgrade in 2006.

Two thirds of the UN's Member States seem to agree with this argument or at least have severe reservations on the implications of Kosovo's UDI, as they have not recognized the 17th February declaration. Five EU members namely: Slovakia, Greece, Cyprus, Spain and Romania, contrary to the majority of other EU countries are felt to continue to refuse recognition based on the belief that Kosovo supports irredentist claims by minorities within their own borders.

Many other countries such as Egypt, without any particular internal ethnic or territorial disputes, also fear that Kosovo presents an unwanted threat to current international law on state sovereignty and the peaceful alteration of borders.

Another pivotal aspect of this debate is the existence of UNSCR 1244. As the Security Council continues to be the highest international body with responsibility for global peace and security as per the UN charter, no other body except the Security Council has the authority to abrogate one of its resolutions. In light of this cornerstone of international legality, the 17th February declaration by Kosovo is viewed as illegal as it cannot overturn a UN SC resolution that clearly states that Kosovo is under the sovereignty of Serbia.

b. – Or Not a precedent?

On the other hand, a Communiqué dated 19 February 2008, two days after the declaration of independence, from the then EU Presidency, Slovenia, on behalf of the EU Foreign Ministers, succinctly summed up the core argument by those countries that have moved to recognize Kosovo. The Communiqué states that although the EU adheres “to the principles of the UN Charter and to the Helsinki Final Act ‘inter alia’ the principles of sovereignty and territorial integrity and all UN Security Council resolutions, it underlines its conviction that in view of the conflict of the 1990s and the extended period of international administration under UNSCR 1244, Kosovo constitutes a ‘sui generis’ case which does not call into question these principles and resolutions”¹¹. In other words, as per the Athisaari proposal, the unique characteristic of the Kosovo case do not allow for a precedent.

This argument is the cornerstone for all the countries that have recognized the Republic of Kosovo to date. For this group of countries, there are a number of critical factors which further support this position, namely:

– The history of Kosovo

Generally forgotten and overlooked, it is simply assumed that Kosovo, the often talked about cradle of Serbian civilization in the Middle Ages, was a small and long time historic province of Serbia with no real justification for independence. Reality is however far more complex for four main reasons.

a. Ottoman Kosovo

Kosovo has not been a continuous part of Serbia for the last 500 years. In fact, for the overwhelming part of the period that stretches from the 15th to the

¹¹ Slovenian Presidency of the Council of the European Union, Special Permanent Council number 702, 19 February 2008, EU Statement in response to the Serbian Foreign Minister Juk Veremic.

20th centuries, Kosovo belonged to the Ottoman Empire. Serbia briefly re-conquered Kosovo in 1912 only to have it taken away by the Bulgarians, Italians and Germans during World War II¹².

In addition, Noel Malcolm goes on to stress that although Serbia reoccupied Kosovo after World War I, it did not legally reincorporate the territory into Serbia as it failed to ratify the 1913 Treaty of London and the 1914 Treaty of Istanbul sanctioning the conquest and incorporation of the territory¹³. Rather Kosovo was incorporated into the kingdom of Yugoslavia in 1918. Within this logic, the argument is made that Kosovo transited legally to the former Yugoslavia of 1928, and not Serbia, despite the occupation of the latter and of the Yugoslavia of 1945¹⁴.

This argument would undermine Serbia's legal and long time historic claims to Kosovo – a fundamental trapping of claims to statehood.

b. The Dissolution of the Former Yugoslavia and a Forgotten Kosovo

As the Former Yugoslavia fell apart, the European Economic Community's Council of Ministers established an Arbitration Commission known as the Badinter Arbitration Committee in August 1991 to provide advice to the European Commission and its member states on the legality of the seceding Republics.

The Commission concluded by simply stating that Yugoslavia was "in dissolution" and that the Republics could be recognized when they declared themselves independent. Their borders were considered to have the same inviolability as those of independent states"¹⁵. Some western and Balkan observers felt that this was simply to justify the EU's want for recognition and to rival the 1991 recognition of newly independent former Soviet Republics¹⁶.

However, in addition to this overall criticism, the issue for Kosovo is two-fold. Firstly, the Badinter Commission did not exactly stipulate what the constituent elements of the former Yugoslavia were. These were simply interpreted by the EU member States as the six Republics.

Yet, despite it not being a Republic, Kosovo enjoyed its special status as an autonomous region within the 1974 Yugoslav Constitution, almost equal to that of a Republic which included even having a representative on the Yugoslav rotating presidency. This lasted until 1989 when the Milosevic's regime moved to curb the territory's autonomy and secure control over Kosovo. These changes

¹² MALCOLM, Noel. *Kosovo a Short history*, New York University press, NY, 1998.

¹³ Ibid.

¹⁴ See NOEL MALCOLM "Kosovo and Bosnia – a false Comparison", Bosnia Daily, June15, 2009.

¹⁵ Balkan Outlooks, May 27, 2007.

¹⁶ Ibid.

were approved by the Kosovo Parliament after it had been purged of opponents. The actions of the Milosevic regime deprived Kosovo not only of its special status but repressed and suppressed any democratic right of the majority Kosovar population to address secession.

Importantly, the Commission omitted any significant discussion or to take into account Kosovo's own declaration of independence in the face of aggression by the Milosevic regime in 1990 and the election by the Kosovo Parliament of Ibrahim Rugova as the first President, and how these related to the violent dissolution of the former Yugoslavia.¹⁷

As such, the Badinter Commission is seen as having rubber stamped Milosevic's repression of Kosovo by not addressing the issue and the status of the territory in light of the 1974 Yugoslav Constitution, which at best is a mistake if not out rightly unacceptable.

c. Suffering and the right to independence

"If you look at the candidates for secession in Europe, they all have recourse to democratic means to address their concerns...Kosovo earned it through its suffering....."¹⁸ The EU itself recognised this when, in the 19th February Communiqué, it stressed, when referring to the war of the 1990s, that the central tenant in the Kosovo's "unique" argument is the fact that the territory and its people suffered the atrocities and violence committed by the Milosevic regime against the majority Kosovar population, which left some ten thousand dead. In doing this, so the argument goes, Serbia has forfeited the right to Kosovo.

Richard Kaplan adds further weight to this argument when he highlights that in a 1998 opinion of the Canadian Supreme Court on the possible secession of Quebec from Canada, "the conduct of the state from which secession is sought is one of the major factors likely to determine its success"¹⁹. As Professor Hewitt adds: "If a country by its actions loses the moral right to control this or that region, which may or may not be populated by an ethnic minority, then that ethnic minority has the right to press its case for self determination"²⁰. In other words, the Kosovars are fully in their right to pursue self-determination

¹⁷ Only Albania recognized the 1990 declaration of independence by Kosovo. The Government of Kosovo then became the Provisional Institutions of Self Government under UNMIK in 1999.

¹⁸ Professor Richard Caplan, Oxford University, in the Rebirth of Secession by Toby Vogel in European Voice, Tuesday, June 9th, 2009.

¹⁹ The rebirth of Separatism, European voice, Toby Vogel, Tuesday, 9 June, 2009.

²⁰ Balkan earthquake is Felt far Away, Darko Duridanski, Balkan Insight in Bosnia daily, December 10, 2008.

in the face of a state that has simply not protected them, but actively engaged in aggression against them.

This could be one of the most powerful legal and emotional arguments in favour of recognition for the 17th February declaration of independence.

d. UNSCR 1244 – International Administration

Another critical factor to the “unique” case argument on Kosovo independence is the existence of an international tutelage and administration of the territory in the form of UNMIK. UNSCR 1244 establishes a UN administration ‘pending a final settlement’ of the Kosovo question. It could therefore be argued that this alone would legitimize the Kosovo declaration as a final legitimate outcome to a temporary international arrangement mandated by the SC.

The existence of a long term international tutelage of the territory under the aegis of the UN is also a unique feature of the Kosovo UDI, which hampers any attempts to easily apply the so called Kosovo precedent to support people associated with secession movements in other countries, such as Transdnistrians, Basques, Catalans, Ossetians, Abkhazis or even those of Darfur. None of these have been subject to international management as has been the case with Kosovo.

– Russia and the precedent

The limits of the so-called Kosovo precedent argument are also visible in the actions of Russia itself. While Moscow invoked the Kosovo precedent to justify the recognition of South Ossetia and Abkhazia in August 2008, it has not alleged the same principle to recognize other territories close to its heart, such as Transdnistria and Nagorno-Karabagh. As Salome Zubashvili highlights “the subsequent decision to recognize Abkhazia and South Ossetia might present Russia with uneasy contradictions in foreign policy. For instance, what should be done with regard to Nagorno-Karabakh? ... But this would alienate Azerbaijan, at a moment when Russia is explicitly courting President Ilham Aliyev to reorient gas transit towards the north in order to thwart the European Nabucco gas-pipeline project...”²¹. The so-called precedent has also not led to recognising Chechenya or other independence movements within mother Russia itself.

As Moscow’s selective recognition underlines, it is the politics of the Kosovo declaration and not the notion of any kind of clear precedent that

²¹ SALOME ZUBASHVILI, *Moscow’s possible motives in recognising Abkhazia and South Ossetia*, radio Free Europe, September 24, 2008.

counts. Kosovo has given Moscow a realpolitik reason to act in the Caucuses, not because of a clear precedent but as an act of power and superpower rivalry in the defense or re-conquest of its sphere of influence. As Tim Judah states, "Even if Kosovo hadn't existed, the conflict in South Ossetia would not have been avoided in the long run".²²

As a result, the Kosovo declaration, notwithstanding the efforts undertaken to show it as a precedent, did not lead to a series of declarations around the planet from other groups who want independence. Moreover, besides Nicaragua and a vehemently anti-US Venezuela, no other countries have followed suit to recognize Abkhazia or South Ossetia including close Kremlin allies, such as Belarus. The precedent is at best a very conditional precedent.

c. International law and International Politics

Kosovo underlines once again that in contrast to national law where court can impose its judgment, in the international arena, politics and states reign supreme with impunity, not legality. Even the ICJ, the highest body to adjudicate disputes between states is simply designed to provide advisory opinions that are non-binding. This means that even if the ICJ rules in its forthcoming opinion that the Kosovo UDI is illegal this may have little practical bearing on increasing recognitions for Europe's youngest state.

As Tim Judah points out, in 1975, the ICJ ruled that "the people of the former Spanish colony of the Western Sahara had the right to self-determination. This was disputed by Morocco which had occupied the country. Now 34 years later, Morocco, a good friend of the West, is still occupying Western Sahara...".²³

Although, the situations are mirror images of each other, Kosovo has moved to independence and the Western Sahara has remained firmly under Morocco even after a favourable ICJ ruling. The two however, have one thing in common. The fate of both cases has not relied on international legality but rather on the international power relations of the countries contesting the right of the respective people to self-determination. Powerful Western friends have tilted the balance of power in favour of Morocco, a friend of the West. The reverse has been the case for Serbia, which has been the subject of several international interventions by the West and is still awaited to comply fully with the International Criminal Tribunal for the former Yugoslavia (itself a product of a Western intervention) in the capture of the most wanted General Mladic. In this latter case, the international balance of power tilts in favour of Kosovo.

²² TIM JUDAH, *ibid.*

²³ TIM JUDAH, *The Guardian*, Wednesday 13, 2008.

David Krasner, a former Director of Planning at the US Department of State, highlights the situation clearly: "The international environment is too complex for any set of rules , including those regarding sovereignty , to be applied rigidly across all cases...The impediments to resolving what appear to be conflicts over sovereignty – such as those involving Kosovo, Ossetia, and Palestine are not physical, intellectual, or legal, but political, relating to the interest of those actors whose consent must be obtained to make an agreement stick"²⁴.

Portugal

Another case in point on the international legality versus international politics is Portugal. This EU member state did not recognise Kosovo as its President Cavaco Silva, in particular, as well as the Prime Minister, wanted an internal debate on the matter to ensure full clarity on all aspects and repercussions stemming from the declaration of independence. However, after discussion in New York with several NATO allies and the US in particular, during the opening of the UN General Assembly, Portugal moved to recognize Kosovo on the eve of the vote by the General Assembly on whether or not to request an ICJ opinion on the legality of Kosovo's UDI. Clearly national interests, negotiations and international diplomacy won the day in this case over any doubts on international law and norms.

All of this clearly points to the fact that International power relations, not international legality, remain the key to successful international settlements. The so-called Kosovo precedent – in the absence of any clear legal or political definition – is ultimately interpreted and framed in today's international system by good, old-fashioned realpolitik interests and arguments.

B. Power, Superpowers and Kosovo

In other words, the Kosovo UDI clearly underlines that powerful friends, interests and the interaction of these dictate the rise and fall of states in today's international order. Kosovo's February declaration and its current 'recognition limbo', notwithstanding the internal and regional dynamics outlined earlier, is also clearly the product of a clash of interests in great power relations.

The end of the Cold War and the demise of Russia in the 1990s had allowed the US to stretch its influence from the Balkans well into Russia's back yard in the Caucasus and even Central Asia. However by 2007, Russia's steadfast positioning

²⁴ DAVID KRASNER, *Who Gets a State, and Why?* Foreign affairs, march 30, 2009.

on the Kosovo issue, beginning with the Athisaari proposal, showed that it had returned as a major force on the international stage. The 17th February UDI and its aftermath were therefore as much about Kosovo as about a new great power equilibrium, given Russia's resurgence, and the sanctioning of spheres of interest.

Superpower relations

In 2001, relations between the US and Russia seemed to be at a post-Cold War high. The US President George Bush received his counterpart Vladimir Putin on his Texas ranch and "found him to be very straight forward and trustworthy"²⁵. In early 2002, Moscow took critical steps in the security arena to forge better relations with the US and the West by closing a key listening base in Lourdes, Cuba, and one of its largest military bases abroad, Cam Ranh in Vietnam²⁶.

However, five years later, by 2006 and in the wake of Iraq and a resurgent Russia, there had been a qualitative evolution in relations for the worse. In 2006, a major theme of President Bush's visit to Russia was Mr. Putin's autocratic tendencies and Russia's human rights records. In 2007, NATO agreed to consider membership for two countries on Russia's borders, Georgia and the Ukraine, at its 2008 Bucharest Summit- NATO was to backtrack on this quickly. President Bush was looking at installing a new missile defense shield in Eastern Europe which Moscow felt to be aimed against Russia. In June 2007, President Bush visited Albania and clearly affirmed that Kosovo should be independent "sooner rather than later".

All of these fuelled traditional Russian distrust and fears on the intentions of the West on its borders, security and interests. The stage was set by the time of the 17th February 2008 declaration for a clash by more evenly balanced great powers.

- The US, Kosovo and Russia

Despite an evolving collective sense of foreign policy and identity by the European Union and the fact that the conflict in question took place in the EU's back door, by the beginning of the 21st Century, the US had consolidated an unrivalled and uncontested position as the lead external power in the consolidation of peace and security in the Balkans. In the face of the European inability to act, it was the US under Bill Clinton that provided leadership in bringing the Bosnian war to a halt through the Dayton Agreement; it was also the US

²⁵ BBC News. Bush and Putin: the Best of Friends, Saturday 16, June , 2001.

²⁶ Russian Diplomatic source.

that led the intervention to stop the atrocities of the Milosevic regime in Kosovo; and, it was the US that provided crucial support to EU efforts in stabilizing Macedonia in 2001.

Today, some 17 years after Dayton, and although the EU plays a more significant political and financial role, the US is still seen as the decisive external player in terms of brokering major political developments, particularly in the internationally managed states of Bosnia and Kosovo. With the Balkans still very much work in progress, the important role played by the US is set to continue.

The US involvement in the region seems initially to have stemmed from a genuine sense of revulsion for the atrocities unleashed by the Milosevic's regime, coupled with Europe's lack of action on its own doorstep without any specific national interest being in question. As the former Secretary of State, James Baker stated, when referring to the violence that erupted around the breakup of the former Yugoslavia, the United States "did not have a dog in the fight".

Madeleine Albright further strengthens the view that the engagement of the US stemmed from the humanitarian concerns. The former Secretary of State, outlines that her rationale to act and to support the military bombing of Belgrade after one year of diplomacy, which ended in no agreement due to Milosevic, was ultimately "moral". According to her, NATO's presence in Europe gave us the means to stop ethnic cleansing on that continent, and I hoped by doing so we could help prevent similar atrocities elsewhere"²⁷.

While the US may not have had clear national interests in the region, a clash with Russia for whom the Balkans has been a historic region of involvement, given its close historic ties to its Slavic Orthodox ally Serbia, was unavoidable. In 1999, imbued in self-confidence as the only truly global superpower on the planet, Washington dismissed the concerns and protests of a weakened Russia against the bombing of its long time ally by NATO forces. The Russian opposition had already prevented a UN Security Council resolution on the use of force against the Milosevic regime²⁸. Russia, gripped as it was at the time by its own internal crisis and challenges, stood by impotent, as the US-led West imposed its will and influence in the region and bombed its Slavic, Orthodox brothers.

The Balkans was once again a major confrontational fault line between East and West and the respective Great powers. Yet, this time, a new strategic relationship was formed. While Serbia continued its traditional historic alliance with Russia, the US now established a close alliance with the Albanian populations of the region around the issue of Kosovo.

²⁷ *The Mighty and the Almighty*, page 62 Madeleine Albright, Harper Perrenial, Ny 2007.

²⁸ *Ibid.*

A weakened Russia was not to forget this with future consequences. Referring to the 1999 dismissal of Russian protests against NATO bombing, Alexander Alexeev, the former Russian envoy in Belgrade stated, that In the defense of Kosovo “we will stand as firm as in the battle for Stalingrad”²⁹. These words were to be prophetic.

In 2008, the Bush regime once again dismissed Russian influence in the Balkans, and spearheaded international support for the independence of Kosovo. The US was however to find its ambitions thwarted and that its multi-dimensional superpower status also had limits.

– Russia, Kosovo and the US

Spurned by Washington a second time in almost ten years on Kosovo, the Russian President Putin responded by declaring that Kosovo independence was “immoral and illegal”³⁰. The February UDI and a second dismissal of Russian concerns over Kosovo, confirmed to many in the Kremlin the worst about the objectives of the West and the US. As Pavel Felgenhauer, pointed out “the West is seen today by many in the Russian elite and public as a threatening force that is plotting to tear Russia apart and rob it of its natural resources. By supporting Serbia’s right to veto Kosovo’s secession, the Kremlin clearly believes that it is defending Russia’s undisputed right to sustain its territorial integrity by any means available”³¹.

Retaliation

Given this and increasingly confident of its own resurgence, Moscow retaliated. Russia made it very clear to the UN SG days before the 17th February declaration, that it would support further secession in the Balkans (i.e. the Serbs), the independence of Abkhazia and South Ossetia, and would refuse to support the process of Kosovo recognitions³². As Victor Marshall outlines “it was a warning that Washington and several of its European allies foolishly, recklessly, failed to heed”³³.

In August of 2008, Russia invaded Georgia in a 5-day war, allegedly to protect South Ossetia against Tbilisi’s bid to retake control of the territory.

²⁹ Serbia, Russia and the pax Americana I South East Europe, Bosnia daily, September 24, 2008.

³⁰ Bosnia daily, February 15, 2008.

³¹ Plaything of the Gods, Tim Judah, Guardian, Wednesday 13 August 2008.

³² Russia encourages Serbs to Secede, Bosnia Daily 29, 2008 plus confirmation by UN Diplomatic source 2.

³³ J. Victor Marshall, August 22, 2008, Urbana daily citizen.

A few weeks later, on August 26th Russia, as warned, had recognized the new States of Abkhazia and South Ossetia which had anyway until then been, for all practical and intensive purposes, independent from Georgia. As Fyodor Lukyanov states on Russia's incursion into Georgia, "otherwise it would have shown that Russia is completely impotent"³⁴ and a resurgent, self-confident Russia had no intention to be seen again as the weak power of 1999. If until then Russia had attempted the moral high ground over the Kosovo issue vis-a-vis the US, then it has also lost it with the recognitions of Abkhazia and South Ossetia.

As Moscow also warned, tensions between Russia and the West have also risen in the Balkans. Russia has since taken positions that are not strictly anti-Western in the Balkans, but are not supportive of the Western objectives either. It has called for shutting down the International Criminal Tribunal for the Former Yugoslavia, the closing of the office of the High representative in Bosnia and continues to support Serbia in refusing the validity of the Kosovar declaration of independence³⁵.

As Gordon Bardos points out to "dismiss" Russia was a fundamental mistake³⁶. Albeit even in its "weak" decade, Russia had been crucial to Balkan stability and agreements whether in terms of ending the Sarajevo siege, the secret discussions on Kosovo or the disposal of the Milosevic's regime. To take Russia out of the equation as it oil and gas gave it a newfound sense of confidence and concrete influence was foolhardy.

The Geo-politics of Energy: Overlooked

Importantly, the US-supported putsch for Kosovo independence was also ill timed as it overlooked Russia's vigorous pursuit of an active energy foreign policy on the European continent, which, at the same time, accorded Serbia a key role. Increasingly seen as an "Energy Superpower"³⁷, Russia had already secured a route known as the "Nord Stream" for its energy supplies to Northern Europe. The pipeline under the Baltic sea links Russia to Germany avoiding Russian foes like Poland and the Baltics³⁸. In the early 2008, Russia moved to consolidate its energy hegemony in Europe by ensuring a second energy supply route, this time to Southern Europe, in a deal with Bulgaria that will become the gateway for Russian gas to Southern Europe. Importantly, barely one month before the declared independence of Kosovo, and after months of nego-

³⁴ Quote by Fyodor Lukyanov, in Russia's attack against Georgia was Revenge for Kosovo: analysts. Bosnia daily, August 14th, 2008.

³⁵ Gordon Bardos, *ibid*.

³⁶ Russia Returns, Gordon Bardos, Bosnia daily, August 14, 2008.

³⁷ The gains and failures of the Energy Superpower, Andrei Denisov, 15.06, 2008.

³⁸ Russian strategy leaves EU in the cold, Llana Bet-el, European voice, 31st, January, 2008.

tiations, Russia and Serbia signed an agreement that gives Russia's state-owned gas giant Gazprom 51 per cent of Belgrade's national oil monopoly, and establishes a gas pipeline through Serbia. In the words of President Putin himself, "Serbia is becoming a key hub in the prospective Russian energy supply to southern Europe"³⁹. The Serbian hub is to be seen as vital to the Bulgarian pipeline. The deal is also thought to provide for Serbia's energy needs for years to come.

As the West prepared to back irredentist Kosovo against Serbian sovereignty, so Russia and Serbia were drawing closer together. Even the EU acknowledged that the Russian acquisition of Serbia's national oil industry was a politically motivated agreement given that the Serbian energy monopoly was sold for far less than its \$2 billion worth⁴⁰. The deal was only ratified by the Serbian Parliament in September 2008. Russia could but strongly support Serbia on the Kosovo issue, given it aimed to secure Serbia's role in its vital energy supply routes to Europe.

A New Equilibrium

In essence, as a result of the US/Western-supported Kosovo declaration of independence, Russia showed and consolidated its new found influence on the world stage and in the Balkans, both politically and economically; and, in its traditional sphere of influence, the Caucasuses, with a pro-Western Georgia dismembered. Russia was also back in Central Asia. The Government of Kyrgyzstan requested the US to close its military base in February 2009 after securing a large loan from Russia.

Bolstered by its natural oil and gas wealth and after years of strong Putin leadership, Russia was back and the superpower equilibrium has been readjusted, the spheres of influence consolidated. Moreover, an analysis of the post-February 2008 Russian position based on the Balkan energy deals indicates a clear gain for Russian influence in Europe.

C. The UN-Multilateralism and the International Management of Peace

Much has already been written on the lessons learned from Kosovo for peace and state-building. However, there are two points worth underlining:

1. The United Nations

Firstly, it is important to note the role of the UN in the entire Kosovo process. The declaration of independence posed a significant threat to the UN

³⁹ BBC news, Serbia signs Gazprom Energy Deal, January 25th, 2008.

⁴⁰ BBC, *ibid*.

administration of the territory and to the UN itself, given the fiercely opposed positions of the two superpowers and Security Council permanent members. One newspaper article even referred to the Kosovo crisis as heralding the end of multilateralism⁴¹.

Yet, contrary to the expectations, throughout the entire process before and after the Kosovo USI and amidst all the superpower struggles, the UN in the form of the Secretary-General and its Security Council have remained at the forefront of events. Torn between the pressures of the US and the Western camp on the one hand, and Russia and Serbia on the other, the UN SG and the UN Department of Peacekeeping Operations (DPKO) have displayed admirable dexterity and initiative in managing the crisis and the UN presence on the ground- with much internal bloodletting including the resignations of both the SRSG and his Deputy.

2. A Changing Reality

As mentioned in the introduction, the February declaration ignited a volatile and politically dangerous environment on the ground in Kosovo. Following endless consultations and assessments, the UN SG rapidly showed initiative and communicated to the SC his intention to address events by “reconfiguring the international civilian presence” and to consult further with the EU in line with the latest development. The SG’s June 2008 report requested guidance from the SC on his suggested course of action. The Security Council responded by strategically acquiescing in silence to the SG’s proposal. In his 15th July 2008 Report to the SC, the SG states that “in light of the fact that the Security Council (meeting of 20th June) *is unable to provide guidance* [emphasis added], I have instructed my Special Representative to move forward with the reconfiguration of UNMIK”⁴². UNMIK was indeed to proceed and has proceeded with its downscaling to date. Moreover, it was clear that the SC happily and quietly deferred the lead crisis management to the Secretary-General.

Against this background, the Secretary-General swiftly embarked upon a three pronged strategy to stabilize the situation, consisting of the following: a) direct negotiations with Belgrade in six key areas of mutual interest such as police, customs, etc; b) reconfiguring and downsizing of UNMIK; and, c) increasing dialogue and cooperation with the EU.

The SG has also been at pains to labour in successive reports that the UN remains status-neutral operating under UNSCR 1244, leaving recognitions to individual member states.

⁴¹ IAN BANCROFT ‘the End of Multilateralism’, The Guardian, UK, Tuesday 19 February, 2008.

⁴² Report of the Secretary General to the Security Council, July 15th.

The Overlooked Precedent and UN action

A number of observations come from the above in terms of international crisis management and the United Nations system of collective security in the 21st Century:

- First of all, it is clear that despite the colliding and diametrically opposed opinions of two Security Council permanent members, the UN has remained at the center of managing the fall out of a divisive and potentially dangerous international crisis. Importantly, even the EU, due to discussions among its members, could not agree upon a legal transfer of tutelage from the UN to the EU in Kosovo without the consent of the UN SC. Ultimately, its EULEX mission came under the legitimate authority of UNSCR 1244.
- In light of the severe disagreement in the Security Council, the SG has taken unopposed and pro-active leadership in managing the fallout of Kosovo's UDI- and here Kosovo does present an overlooked precedent. The Secretary-General has significantly reconfigured a UN peacekeeping operation/civilian administration, with a tacit approval of the Council but without the prior official alteration of UNSCR 1244. Some criticism has been leveled against the Secretary-General, which portrays him as too openly favouring the US-UK position on the conditional independence for Kosovo. The submission of the Athisaari proposal, in particular, was seen as an attempt to impose a US-led settlement on the UN and its Member States. However, the SG seems to have learned from this initial action⁴³ and shifted to manouvering between the key players. More significantly, the SG embarked on an unprecedented proactive course of action which has been a critical factor in stabilizing Kosovo, the Balkans and the UN, and ultimately international peace and security.
- Although the Kosovo declaration of independence pitted Permanent members against each other and involved heated debates, there has been no paralysis of the Security Council or any fetters on the attempts of the SG to manage the Kosovo issue or to curb his self-created autonomy and initiative. There clearly seems to have been a gentlemen's agreement among the powers on agreeing to disagree on this, and both not hampering the search for a peaceful solution, or discrediting the

⁴³ Portuguese Diplomatic Source.

organisation. Even Russia, which so vehemently opposes the Kosovo UDI has not undermined or questioned the role and work of the SG in managing this international crisis in the interest of peace and security. The Security Council did not even see a showdown in the form of a veto when it was split over the Athisaari proposal. Clearly, the key players agreed to disagree while continuing to work through the established UN system of collective security.

While the above clearly underlines the continuing central role played by the UN system of collective security in managing global peace and security; more importantly, it shows a marked shift towards leadership by the SG in managing international crisis' when faced with a situation reminiscent of the Cold War with the superpowers diametrically opposed and threatening a paralysis of the Security Council. The SC even acquiesced to what was essentially the reversal of UNSCR1244. This could be a healthy and lasting legacy for UN conflict resolution and crisis management in the future.

Peace Building, Disengagement and the Declaration of Independence – Hit and Run

One startling lesson comes out of Kosovo for major international peace building efforts. It is understandable that Kosovo could not go back to the Serbian rule for obvious reasons as the Athisaari proposal itself recognises. It is doubtful that Serbs themselves would have entertained even the idea of a Kosovar Albanian President one day. It is also reasonable to conclude that Kosovo and its population of 2 million could not go on with an undefined status as some sort of a UN no man's land almost in the heart of Europe and in the heart of the EU's new accession region.

However, the problem was that the disengagement by the international community, when it came, in the form of the UDI, flew in the face of known vehement Russian opposition and proved divisive for the international community. Kosovo's February UDI left superpower relations more strained, Serbia dismembered and even more prostrated as it goes through its one difficult and challenging internal political transition, and ultimately, placed Kosovo in some sort of "recognition limbo".

It is hard to know whether or not the Kosovo declaration was too premature and whether the international community could have held the peace in the face of rising frustrations after close to a decade of inaction. However, the aftermath of the 17th February declaration suggest that any successful international settlement over a new state needs to be inclusive in terms of recognizing and accommodating the interests of the great powers. Although it is doubtful there

would be any other final settlement option other than the independence of this small territory, it is also true that the timing and the manner of the UDI was not the best for a final, internationally recognised settlement that would strengthen international peace and security.

Final Conclusions and Lessons

As we have seen, the declaration of independence by Kosovo on 17th February is a complex affair that foregoes any simple labels on whether it is legal, illegal or any form of clear precedent for other secession and independence movements. Importantly, as we saw above, the Kosovo UDI was not a fast, impulsive act. It took long, patient and clever diplomacy by the Kosovar Albanian leadership, particularly in courting the key regional powers and the global superpower, the US. Kosovo has also been subject to international tutelage and administration for close to a decade.

As such, while the Kosovo declaration may be seen as an act of encouragement for other peoples, it does not carry with it, or herald, the imminent independence of all those populations that seek it. If anything, it teaches others secession movements that independence is a long diplomatic road. As a result, at best, the so-called Kosovo precedent is a highly conditional one.

Power and power relations in the international system proved crucial to the declaration by Kosovo in February 2008. The Kosovar leadership was strongly backed by the global superpower in an alliance it had nurtured since 1999, as well as the key European powers and the European Union. However, it is also true that the USA and its close allies have found their power limited and unable to conclude a universally acceptable settlement on Kosovo for the time being. Dismissing the other great power in the process, Russia, also a permanent UN Security Council member, as it reasserted its status on the world scene, was a severe miscalculation that backfired and has left the former territory in a “recognition limbo”. Borne out of great power rivalry, perhaps Kosovo will only be solved by a great power collaboration.

The fall out of the Kosovo declaration also highlights that international politics far outweighs international law and legality when it comes to the behaviour of States. The fact that some 130 States continued to refuse recognition for the former UN administered territory despite its support by some of the planet's leading powers, indicates serious international concerns on the implications of Kosovo and perhaps the need to revisit and strengthen international law- or not, as States may prefer the current course of impunity. Either way, Kosovo presents a choice before the international community on reassessing the value and role of international law in the current international order.

As with Bosnia and Herzegovina, the international community intervened in Kosovo on moral grounds, but soon discovered that winning the peace is a long term affair that requires a sustained long-term commitment. Rapid and swift disengagement, as was the case of Kosovo, does little to avert crisis or deep fractures in the international community. The aftermath of the February UDI suggests that defining an inclusive exit strategy that accounts for power relations in a timely fashion is the best basis for a successful international settlement.

Lastly, this international crisis showed that the UN and its system of collective security remains the key legitimate linchpin of international peace and security. No matter the difference between the two great powers of our time, neither undermined nor questioned the functioning of the UN as it attempted to manage the crisis. However, the back seat approach taken by the Security Council in favour of a pro-active, lead role by the Secretary-General in managing the international crisis between the powers may be the longest lasting precedent of the Kosovo declaration of independence.

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