Kosovo: Political Evolution and the Negotiations with Serbia

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The Loose Ends of the Kosovo Crisis

The independence of Kosovo, declared in February 2008, left some loose ends. These are, again, questions of territory and ethnicity; and it is to them that diplomats and commentators alike have since then dedicated most of their attention. This was a mistake, in my opinion, because the main problems of the new State lie in its political and economic institutions, which are failing to sustain its development: this is the argument I seek to articulate in a recent book (Capussela, 2015), and the grave political crisis that envelops Kosovo at the time of writing would seem to support it. But I shall offer a few considerations on how Brussels, Belgrade and Pristina have dealt with those loose ends, and how these efforts have unwittingly contributed to that crisis.

The most conspicuous loose end is the fact that, upon its independence, Kosovo failed to extend its control over all the territory it claimed, which coincides with the boundaries it had as a province of Serbia. What remained beyond its reach was the northern corner, which is contiguous to Serbia and is inhabited almost exclusively by ethnic Serbs, who intransigently rejected Kosovo's secession from Serbia. A possible solution to the question of the North was found in April 2013, thanks to the EU's mediation, which also aimed, through that agreement, at starting a process of reconciliation between Kosovo and Serbia.

The Question of North Kosovo

The question of North Kosovo is the mirror image, in quarto, of the political conflict that opposed Serbs and Albanians over the territory of Kosovo. Solving it sustainably might prove as hard as solving the Kosovo question. But this avatar of the Kosovo question is a less urgent one, for the status quo is stable – if very undesirable – and neither side has strong incentives to compromise.

The North is not an existential question for Kosovo. Its strategic value is debatable, and the costs of absorbing it – and re-establishing the rule of law on what for a dozen years has been an almost lawless, unregulated land, where smuggling represents a large segment of economic activity – probably exceed the material benefits. Indeed, before the recent agreement the political elite in Pristina had never formulated a realistic strategy to extend its jurisdiction there, and part of it was believed to welcome the formal separation of the North, in order to 'get rid of the Serbs' (Phillips 2014, 142–3). Moreover, Kosovo's criminal circles – whose leaders are a component of that elite – are known to trade profitably with the North, and presumably preferred the continuation of a status quo that permits vast smuggling and money laundering operations

The North is of limited value to Serbia too. And Belgrade had little incentive to compromise because Kosovo had very little to offer Serbia in exchange for the North, except perhaps increasing the – already considerable – constitutional protection for the Serb minority in Kosovo and its ancient churches and monasteries.

Reversing the status quo was complex, moreover, because the residents of the North seemed unlikely to become loyal citizens of Kosovo soon. Indeed, in February 2012, ahead of the talks that led to the

2013 agreement, the North organized an informal referendum on whether Kosovo's jurisdiction could be accepted: reportedly, the turnout was 75% and 99% of the respondents answered no.

The Agreements about North Kosovo and the Current Crisis

Lacking real incentives to compromise, or even negotiate, Belgrade and Pristina only agreed to discuss the question of the North under pressure from the EU, which could leverage on their desire to accede to the Union, and which desired both to eliminate a possible source of regional instability and affirm the credibility of its own recently reformed common foreign policy.

After about two years of negotiations, on 19 April 2013 Brussels succeeded in persuading the two governments to sign an agreement, which also covers the question of North Kosovo. The reciprocal concessions are not negligible. Although the agreement formally safeguards Serbia's refusal to recognize Kosovo, Belgrade has accepted that the North be subject to Pristina's authority. In turn, Pristina has accepted to further increase the protection granted to its Serb minority. But this part of the 2013 agreement was left distinctly vague, probably deliberately so. In August 2015 Belgrade and Pristina made a second agreement, therefore, which translates the broad principles agreed two years earlier into more precise and implementable arrangements.

Both agreements have rightly been described as an important success for the EU. But they proved rather unpopular among the electorates of Serbia and especially of Kosovo, as well as among the residents of the North, who had not taken part in the negotiations.

The implementation of the agreements has made greater progress than could perhaps have been expected in the context I have just described. Most notably, in both 2013 and 2014 Kosovo's elections were meaningfully also held in the North, for the first time since independence. But although the turnout – little above 20%, or 20 points less than in (south) Kosovo – might have marked the beginning of a shift in popular opinion, especially compared to the 2012 referendum, it did not seem to signal sufficient acceptance of the deal.

The agreements, however, were the spark that ignited a serious political crisis. Soon after the August 2015 agreement was made, the opposition threatened a sustained battle, in Parliament and on the street, against its implementation. In response, the government sought to bypass the parliamentary ratification of the agreement, upon spurious constitutional arguments. The opposition, in turn, began a boycott of Parliament, which lasted several months and proved largely effective. To prevent Parliament from meeting, the opposition even opened tear gas cans inside the chamber (remarkably, this happened in six or seven consecutive sessions). The authorities responded by arresting – illegally, most probably – more than one third of the opposition MPs, prompting large, and occasionally violent, demonstrations. Parliament has thus transacted little business since the summer of 2015: the political conflict percolated outside of its walls, and became acute and unruly, increasing the risk that social unrest – fuelled by widespread poverty, joblessness, economic pessimism, and distrust for the political system – may break out.

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In this context, the implementation of the agreements has ground to a standstill. Their most important and controversial part is the establishment of a coordination body among Serb-majority municipalities, which would be delegated extensive powers by the latter and could thus serve as an interlocutor of the central government. Already the name of this body suggests the absence of real agreement on it: it is known as the 'association/community,' a double name due to the fact that the Albanian and Serbian versions use different words to describe it, reflecting different interpretations: Belgrade and the Kosovo Serbs view it as a constitutional organ, whereas

Pristina and its electorate view it as a simple association (an 'NGO,' they often say). This body could not yet be established because the boycott of Parliament blocked both the ratification of the 2015 agreement and the adoption of legislation giving shape to that body; because large demonstrations in Pristina signalled intense, and rather widespread, opposition against it, which the current government lacks the credibility to overcome; and because Kosovo's Constitutional Court – whose assistance that government sought – has voiced some (prudent) concerns about the constitutionality of the agreement.

None of these obstacles seems likely to be relaxed soon, at the time of writing, because the political crisis in Pristina remains acute and even threatens to degenerate, with potential repercussions in other unstable parts of the Balkans (including Macedonia, for instance, where differences between the Albanian minority and the central authorities remain). The paradox, of course, is that this crisis was triggered precisely by EU-mediated agreements, whose aim was to stabilize both Kosovo and the region.

Diverging Interpretations of the Agreements on North Kosovo

The agreements on North Kosovo are generally viewed from markedly different perspectives, by foreign commentators and analysts from the Balkans. The latter mainly discuss the merits of the agreement and the prospects of its implementation (e.g., Surroi 2015). Among the former, conversely, the emphasis is as much on the importance of the agreements for the solution of the underlying conflict, as on its significance as a success of the mediator (e.g., Cooper 2015). The EU, in fact, and its newly established External Action Service, have chosen to invest considerable energy and political capital in this issue – which seemed to be their highest priority until the 2013 agreement was reached and, almost in parallel, the negotiations on Iran's nuclear energy programme began – also in order to achieve a result that would strengthen their credibility in the global arena.

This ulterior motive is a target of the criticism of a Kosovar analyst (Surroi 2015), who argues that its aim to score a foreign policy success led Brussels to support, and perhaps suggest, misguided arrangements about North Kosovo. This ulterior motive can hardly be criticized *per se*, except from a markedly idealistic perspective, but it does offer a plausible explanation for both some defects of the agreement and its possible untimeliness. Parts of the agreements about North Kosovo do, indeed, seem highly problematic, as they introduce elements of ethnic-based governance (Surroi, 2015). More importantly, on account of their contents and circumstances, these agreements do not seem sufficient to solve the political conflict surrounding North Kosovo, partly because the population of North Kosovo was never meaningfully included in the discussion about who shall govern their own territory.

The current political crisis suggests that such defects could undermine the success, unveiling the structural weakness of the agreements. In order to be a success they must be sustainable, in fact, and implementable, and no agreement that abstracts from the interests and incentives of all relevant players – including the residents of the north – is very likely to be sustainable. It may of course be argued that the EU's attempts to deconstruct that sensitive political question into piecemeal agreements might pave the way for more solid solutions. But the current crisis would seem to suggest that these attempts were premature, partly because the elite in Pristina evidently lack the political credibility to persuade its electorate to accept the further 'concessions' granted to the Serb minority.

So it might be useful to turn briefly to the underlying rationale of these agreements, namely the Western decision to support Kosovo's claim to the North.

The Unclear Foundations of Western Policy on North Kosovo

The question of Kosovo and that of the North are mirror images of each other, as I said. In both cases a homogeneous and geographically concentrated ethnic minority desired separation from its (titular or putative) mother State, had lived autonomously from it for a decade or more and was capable of resisting the imposition of its jurisdiction. And in both cases the minority-held territory refused to accept the sovereignty of the mother State in exchange for internal self-determination rights.

The West had judged this solution impossible in the case of Kosovo, which was allowed (controversially)

to secede from Serbia. But Western powers implicitly embraced it for the North, because they offered a high degree of minority protection to Kosovo's Serb community *taken as a whole*. This choice neglected the fact that the North, unlike the Serb enclaves dispersed in the rest of Kosovo, had the option of breaking away, as they de facto did in 2008. The preference for keeping the North within Kosovo could have been dictated by the intention of increasing the Serb minority's numerical and political force, in order to strengthen its protection, or by the desire to see the civic notion of citizenship prevail over the ethno-nationalist one, in a region where the latter had caused great suffering. But the same arguments could be invoked to maintain Kosovo under the sovereignty of Serbia (which retains a small Albanian minority), subject to adequate guarantees for its autonomy.

Retaining Kosovo's provincial borders might have responded to a desire – laudable, of course – to limit the dangerousness of Kosovo's independence as a precedent for the ethnic-based redrawing of established borders. But Kosovo's secession did change (unilaterally) an established border (Serbia's). And it did have an essentially ethnic character, which the subjection of the North under Kosovo's authority can hardly eclipse; this emerges very clearly from the central argument in the blueprint for Kosovo's independence (Ahtisaari 2007, 2; emphasis added), which is couched in words that could equally well describe the question of the North:

> [a] history of *enmity and mistrust* has long antagonized the relationship between Kosovo Albanians and Serbs… For the past eight years, Kosovo and Serbia have been governed in *complete separation*… This is a reality one cannot deny; it is *irreversible*. A return of Serbian rule over Kosovo would not be acceptable to the overwhelming majority of the people of Kosovo. Belgrade could not regain its authority without provoking violent opposition. Autonomy of Kosovo within the borders of Serbia – however notional such autonomy may be – is *simply not tenable*.

Some Concluding Remarks

So it was not just imprudent, or at least premature, to bring the two sides to an agreement that neither really desired, considered urgent or was capable of implementing, but it might also have been mistaken – or 'simply not tenable' – to support Kosovo's claim to the North in 2008, when the West decided to support its secession from Serbia. It was mistaken especially from a European perspective, for this territorial dispute was a serious distraction from Kosovo's governance problems, which involve far greater European interests than the country's territorial reach. Kosovo, in fact, remains an unstable polity and a safe basis for organized criminal groups, whose main export markets lie in Western Europe.

It is true that the current crisis could open promising perspectives for Kosovo, for it might force much-needed changes in its elite and governance system. But this is neither certain nor imminent: indeed, in the short term the crisis is likely only to exacerbate the country's problems. The paradox, of course, is that this crisis was triggered precisely by the arguably premature Western attempt to solve the question of the North. The clouds over Kosovo's near future remain dense, the fate of the agreements on the North therefore unclear and the prospects of reconciliation between Kosovo and Serbia uncertain.

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