

De jure vs. de facto: a pyrrhic victory in Kosovo?

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Pristina's Bill Clinton avenue remains littered with advertisements of smiling candidates from the recently held parliamentary elections. Beyond the grey Tetris shaped communist era buildings, the central part of town features modern government ministries. Outside the ministries, alongside the baby blue of the UN flag, stands the black double headed eagle and blood red backdrop of the Albanian flag, Kosovo's *de facto* flag. In the Ministry of Public Works, a large picture of Ibrahim Rugova, Kosovo's deceased independence leader, adorns the façade.

Indeed, it is all slightly confusing. It is hard to believe that this is still part of Serbia. Perhaps the only thing that is clear in Kosovo is that there is a huge divide between the *de jure* status of this piece of land and the *de facto* reality on the ground.

While Security Council resolution 1244 leaves no doubt that Kosovo is officially still part of Serbia, a stroll through Pristina quickly dispels this myth. Symbols of a Kosovar state are omnipresent; any sign of Serbia are long gone. Under the aegis of the UN since 1999, the international community has assisted Kosovar in creating institutions known as the Provisional Institutions of Self Government (PISG). While these institutions are weak, the 90% majority Kosovar Albanians are electing their representatives and the institutions are functioning with increasing independence from international oversight.

Meanwhile, with the December 10 negotiations deadline imminent, European diplomats remain divided on which is the best of the bad solutions to Kosovo's future status. Negotiations between Serb and Kosovar delegations have been effectively reduced to a zero sum game. Serbia (backed by Russia) will not accept any solution that violates its territorial integrity and Kosovars (supported by Washington) will only be satisfied with independence. It is a struggle between the *de jure* status of this piece of land and the *de facto* reality on the ground. With a declaration of independence sometime after the December 10th negotiations deadline now considered inevitable, it is important to understand what the *de facto* reality on the ground actually looks like.

Statebuilding gone sour

“When I was in school and university in the 1990s, parallel institutions were a symbol of solidarity and independence” remembers Valon Murati, the young Director of the Center for Human Rights in the University of Pristina. When Serbia restricted Kosovo’s autonomy in 1990 and changed curricula, well off Kosovars volunteered their houses so that classes could continue for the majority Albanians. A parallel education system was created.

Since NATO’s “humanitarian intervention” in 1999, many of the individuals and groups that led Kosovo’s resistance to Serbian authority have turned official. Under the UN, Kosovars have effectively created the foundations of a State. The same professors that were teaching students in private residences during the 90s are now the University of Pristina professors. Similarly, a large part of the Kosovo Liberation Army (KLA) was recycled into the Kosovo Protection Corps (KPC). Hashim Thaci, the winner of Kosovo’s November elections, was the political leader of the KLA.

Western style state building has however proved challenging in a clan based society such as Kosovo where political parties are based on family allegiances and where a hand shake means more than a signature on a piece of paper. Institutions are weak and corruption is rampant.

One of the realities first encountered by any visitor to Pristina is the constant black outs, an occurrence many would find hard to believe in the middle of Europe. A Pristina resident told me how the local government’s latest solution to the problem has been to make car registration papers conditional on having paid your electricity bill. A harsh measure considering that electricity prices are more expensive than in most of Europe and that winter temperatures in Pristina can drop below -20 degrees C.

Flaka Surroi, Director of *Koha Ditore*, Kosovo’s leading newspaper, denounces how local and international partners have made the UN backed privatisation of communist-era enterprises a costly, government sponsored scam. In one municipality, every 10 square meters of land were reportedly sold for 1 €. Surroi complains that this land was never correctly valued and that the sale of these enterprises was far from transparent.

Unemployment is currently estimated by the UN to be close to 50% and more than 50% of Kosovars are under the age of 25. After the initial euphoria, growing disillusionment with the international community and with local politicians is the sign of the day. Ordinary Kosovars are yet to gain either the economic prosperity or the independence they have dreamt of for so long.

They also resent that a gentleman from Germany named by another gentleman in NY is still “institutionally” the most powerful man in Kosovo. UN envoy Joachim Ruecker can not only still overturn many decisions made by the National Assembly but he also has final authority over the Kosovo budget. Analyst Luzlim Peci laments that the priority of UN envoys in Kosovo has been to “finish their mandates without encountering significant problems”.

A member of Kosovo’s most outspoken and radical groups, the youth led *Vetevendosje!* (literally Self determination), takes this disillusionment several steps further. Between sips of his double macchiato, he calls for an immediate referendum quoting Antonio Cassese’s “Self determination of peoples”, demands the exit of UNMIK and threatens that “peaceful means in Kosova are exhausted day by day”.

De facto scenarios

Today, beyond the UN sponsored government institutions, a different kind of institutions exists: Serbian parallel institutions. While only 6% of the Kosovo population is Serbian and many have left, Serbians are the overwhelming majority and control the territory north of the Ibar river and a number of enclaves in the south. Since 1999 Belgrade has enforced a ban on the incipient Kosovar institutions by encouraging Serbs not to vote in elections and paying double salaries to teachers, doctors and civil servants in these areas.

The divided city of Mitrovica symbolises the tension that still exists between the northern Albanian majority and the southern Serb majority. A member of the Serbian National Council and of the infamous Mitrovica "bridgewatchers", agrees to meet in the privacy of a local NGO. He tells me that after the March 2004 riots in which 21 Serbs were killed and many Serb orthodox churches destroyed most of his neighbours are afraid to cross the bridge into the Albanian south. He also assures me that even if independence is declared, the Serb majority north of Kosovo will remain part of Serbia.

Just as before the Albanian Kosovars did not feel represented or protected by their Serb masters, today Serbs feel the same about the Albanian Kosovar dominated institutions. Despite widespread violence, in the first two years as a UN protectorate, not one Kosovo Albanian was convicted of the murder of a Kosovo Serb. A UN official in Mitrovica says, "We came to protect Albanians from Serbia and we have ended up protecting Serbs. As has happened so many times before, the victim has become the aggressor."

Can the UN's most ambitious state building project be considered a failure then? The truth is that despite progress in the last years both internationals and Kosovars are extremely sceptical of the UN's role in Kosovo. While institutions are functioning, there is a general consensus that long term objectives such as respect for the rule of law and economic development have been sacrificed in favour of short term objectives, namely maintaining international support and trying to appease the Albanian majority's demands.

Balanced observers both in Serbia and Kosovo coincide in that at this point a negotiated outcome with international consensus is impossible and that there are dangerous trade offs for all the realistic outcomes. It does seem clear however that Kosovars will declare independence sooner rather than later. They have struggled many years for independence, they are increasingly sceptical of the UN, they have the support of the US and they now have working institutions.

Then there is the reality of a northern piece of Kosovo that is almost entirely Serbian and run from Belgrade. Assuming that Kosovars will declare independence without UN Security Council approval and that the Serbian government will not recognize this independence, the question remains as to what Serbia's reaction will be and what effect this reaction could have elsewhere, principally Bosnia and Herzegovina.

While violence seems unlikely, Belgrade's support to the northern Serb majority Kosovo municipalities is likely to continue, leading to what could become a de facto partition. Many Serbs in the enclaves in the south may choose to move north and all Kosovars would suffer from a Belgrade led embargo that could affect power supply and food imports among others. In other words, a frozen conflict of sorts where neither side is fully satisfied and where the international community divisions are exposed.

The majority of EU member states are convinced that a Kosovar independence supervised by the EU along the lines of the Ahtisaari plan is now the best realistic solution. They argue that the concerns of some member states over creating a precedent for the Republica Srpska and others must be overcome. But if divisions remain, the EU would have to find a coalition of the willing to ensure Kosovo does not become a black hole in Europe.

As we watch events unfold in this patch of the Western Balkans, now firmly tucked into the EU's geographical belly, we should not forget to ask ourselves if this situation could have been avoided. If Kosovo's independence was the foreseeable outcome, perhaps deciding on Kosovo's status earlier - when the international community had some moral authority - would have been easier. There are indeed many lessons to be learnt from Kosovo. Years from now we should know whether this likely victory of *de facto* over *de jure* was in fact a pyrrhic victory of sorts.

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