

Kosovo

What The EU Should Not Be Expected To Do

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On the 18th February 2011, Kosovo celebrated the third anniversary of its declaration of independence, closing up a turbulent year. In July 2010, the International Court of Justice recognised through an advisory opinion the legality of the 2008 declaration of independence¹. After weeks of discussion and negotiations, in September the UN General Assembly then passed a resolution on the issue of Kosovo's status, which had long been debated and was anxiously awaited². Contrary to what had been expected, Serbia accepted at the last minute, after negotiating with the EU High Representative of the Union for Foreign Affairs and Security Policy, Catherine Ashton, to substantially change the text of the resolution it was initially planning to put forward. While still not recognizing the independence of Kosovo, and expressing its resolve not to change its position, Serbia not only abstained from requesting further international condemnation but even expressed its willingness to enter into a dialogue with Kosovo, which would be facilitated by the EU. The resolution also acknowledged and recognised the International Court of Justice's advisory opinion. This move, obtained under high pressure from key EU actors (among which were the UK and Germany), was achieved in exchange for promises that this would contribute to speeding up the EU accession process for Serbia, including a potential quick access to candidate status. While this development was then greeted with relief, and seemed to indicate that progress was in sight to resolve one of the dead ends of European diplomacy, the situation took another gloomy turn at the end of the year. Turbulent anticipated elections marred by suspicions of fraud, a re-run in several municipalities, and a laborious government nomination process cast suspicions on Kosovo's political leadership, which culminated following the publication of a Council of Europe report requesting an investigation into allegations of trafficking in human organs during the war and which involved the current political leaders³. As for the Kosovo-Serbia dialogue, needless to say it had to be postponed until a government was formed and it could only be initiated as from 8th March 2011.

A comprehensive problem.

Kosovo indeed seems to be currently caught in an impasse, which goes beyond the mere status issue and has to do with its capacity to function as a state and thus its internal organisation. Just as Bosnia and Herzegovina, the other central piece of the Balkan conflicts of the last decade, the new country has to deal with unresolved political issues, which were at the heart of the conflicts raging in the region in the 1990s⁴. If the central question is – at least at first sight – one of status, which has been polarised much more than solved by the February 2008 proclamation of independence, a number of less publicized issues are adding to the complicated situation the new state is facing, making the problem a very comprehensive one. Those issues, related to Kosovo's core state functions, can only be addressed by launching and implementing a number of (political) reforms, which should bring Kosovo up to the normal standards of a European democracy. Those

1 International Court of Justice advisory opinion, 'Accordance with International law of the unilateral declaration of independence in respect of Kosovo', 22 July 2010.

2 Resolution A/RES/64/298, 13 October 2010, adopted on the 9th September 2010.

3 On the allegations of trafficking in human organs, see the draft report to the parliamentary assembly of the Council of Europe by D. Marty, AS/JUR (2010) 46, 12 December 2010.

4 The parallel drawn with Bosnia and Herzegovina in this text is related to the fact that both states currently have to face issues related to their functioning as states — it does not imply that the situations in both countries are considered similar. One of the fundamental differences is that Bosnia and Herzegovina is an internationally recognized state, which is not (yet) the case for Kosovo.

reforms are well identified and should address a number of issues. First, the division of the country and the situation of the North, including the persistence of parallel institutions, needs to be overcome (this is one of the aims of the dialogue, but will most probably be the most difficult topic). Then, the return of all internally displaced persons and refugees has to be facilitated. The rule of law has to be established and implemented all over the territory while a number of reforms have to be launched in the area of good governance and democracy, including reforms on the freedom of the press and the fight against corruption and nepotism. Finally, measures have to be taken to address the currently very limited prospects in the economic and social development fields. In that regard, however, one of the questions which has to be urgently addressed is maybe not so much which reforms have to be carried out but how those reforms can be pushed onto the country. What are the incentives and mechanisms which will ultimately bring Kosovo's political leaders to achieve what could be seen as a painful reorganisation of the country?

Questioning the 'whole of the EU approach'

The change in Serbia's stance regarding the resolution it presented to the UNGA was perceived (and greeted) as a signal that the EU could indeed play an important role in Kosovo and promote peaceful changes, stability and reconciliation in a region where its power of attraction is important. This perception is somewhat reflected in the EU implication as a facilitator in the Kosovo-Serbia dialogue. It is indeed a widespread assumption in European policy-making circles that the EU is the best suited, or even the only, actor which is able to promote the comprehensive set of reforms needed to make Kosovo a functioning state⁵. It remains to be seen, however, whether the EU is really the best organisation to promote a series of reforms which have a very important political component. This question of the nature of the role that the EU has to play in Kosovo (including the dilemma about a political vs. a technical role) will here be further explored, starting with acknowledging a number of limitations as far as the capacity of the EU to play a major role in Kosovo is concerned.

The first question, indeed dominating the whole Kosovo agenda, relates to that of status. This issue has had and will potentially have repercussions far beyond Kosovo: in spite of Kosovo being branded as a sui generis case, a number of sub-state entities or separatist movements still look at Kosovo as a potential model, and should they decide to follow that path, the EU might find it quite difficult to face its contradictions⁶. Moreover, this issue is of direct concern for five EU states, which have still not recognised Kosovo, precisely because they fear the message that could be sent to some independence movements active on their territories⁷. This situation, compelling the EU to craft clumsy arrangements to overcome the obvious associated political limitations (how can the EU work towards the integration of an entity which is not recognised by five of its states?) affects the EU's credibility in the country (and the region) and diminishes its actual leverage potential, especially in the political area⁸.

If the absence of an EU unanimous position on the recognition of Kosovo has to be seen a minima as a complicating factor regarding the relationship between the two actors, a series of assumptions often taken for granted also deserve further examination. Among them is the idea that the EU would be the best suited actor to

5 The same reflection holds true for Bosnia, where the debate about the dysfunctions of the state has in the recent past been overshadowed by sterile discussions about the opposition between the EU and the High Representatives.

6 Although it would be quite easy to justify opposition to Republika Srpska's move towards independence in Bosnia and Herzegovina, highlighting the fact that RS (relative) ethno-geographic homogeneity is an artificial creation, forged through a policy of ethnic cleansing, it might be more complicated to find some legal grounds to oppose Abkhazia's or Nagorno-Karabakh's ambitions.

7 The five EU states which have not recognised Kosovo are: Spain, Greece, Romania, Slovakia and Cyprus.

8 The most flagrantly 'weird arrangement' is the official designation of Kosovo as 'Kosovo *under UNSC/ 1244/1999'.

act in the region because of its geographical proximity and shared concerns with states which are potential EU candidates. In this regard, a few points need to be made.

First, the same assumption was already made in the early 1990s, when the Bosnia and Croatia wars were raging: 'The hour of Europe has come' was pompously declared in 1991 – we all know too well how this led to a negotiation (and human) disaster⁹. Second, while it could be argued that the EU today is not the one of the 1990s, it is worth noting that the EU is currently managing a complex institutional restructuring, which might affect its efficiency in the short term – in the best case scenario. Furthermore, a 27-member EU is facing quite extensive difficulties in designing and implementing a coherent foreign policy, in spite of the new posts created in that area. There is a real risk that the necessity to look for a lowest common denominator will impede the EU's capacity to promote painful and complicated reforms. Third, the EU is currently facing a severe economic and financial crisis which takes its toll on its potential for coordinated action. Incidentally, it might also render the EU somewhat less attractive and thus raise the costs of reforms. Finally, regarding its policies towards the Balkans, the EU has not always been very consistent about its objectives and the criteria set to attain them. The case of Bosnia, where the EU lowered its criteria for the signing of the SAA, is certainly a wrong signal sent to other Balkan countries that the EU can easily be manoeuvred.

Although not breaking news as far as the EU is concerned, far from it, those points however tend to downsize the postulation that the EU is naturally the best actor to promote change in the Balkans.

A second assumption states that EU integration is the main – or the best – tool to promote reforms in the Balkans. This needs to be taken with even more caution. Here again, a few preliminary remarks could first be useful to better understand the situation. The first question relates to EU integration: is it a goal, or a means? Although, historically, the EU was meant as a tool to promote reconciliation and prosperity in Europe, since the beginning of the 1990s and the establishment of the Copenhagen criteria, it can be argued that EU integration is currently more an end in itself than a tool. The debate will remain open for a long time and the discussion is definitely a fascinating one. It is all the more important that it takes place concerning the region known as the Western Balkans, since it is sometimes too easily assumed that the EU's mere power of attraction will be a pull factor for prospective candidates and will convince them to adopt the required reforms. This was maybe true in the 1990s, when the candidate states had to adopt mainly technical (though sometimes complicated and painful) reforms to fulfil the criteria. It is another story in Kosovo and in Bosnia, where the reforms promoted are sometimes directly related to the war goals of the 1990s, and have indeed nothing to do with the EU integration process.

In addition, one has to note that EU integration is, in the case of Kosovo as well as Bosnia, a distant prospect. The current crises (economic, financial and institutional) mentioned earlier make this prospect even further away – even within the EU, some states are currently extremely reticent about admitting new members in the short and medium terms. This situation potentially contributes to diminishing the inducement power of the EU. Furthermore, the EU-oriented approach is too close to a 'stick-and-carrot' approach that would be the only one which is valid for those countries: would it not be a better option to convince local people and decision-makers to adopt reforms for their own sake (and for the direct benefits which the population would receive from them) than to justify those reforms with EU integration prospects? In the end, Kosovo citizens might prove more receptive to arguments related to stability, employment, children's education, social protection etc., than

⁹ In 1991, Jacques Poos, the then Luxembourg Minister of Foreign Affairs, made this declaration while heading for negotiations to end the crisis in the former Yugoslavia.

the distant perspective of joining the EU.

Finally, on top of those main question marks, a few points need to be added regarding the EU's approach towards its capacity to promote reforms in Kosovo. A first series of concerns are related to the risks of the EU being both a judge and a party: if EU integration is both a goal and a means and if the EU assumes the role of a reform implementing agent (through missions such as Eulex), it is both the final judge which will decide on accession and a party which has worked to promote the reforms that will open the accession process. The associated difficulties are quite obvious. Similarly, questions may be raised concerning the nature of the role that the EU would have to play: political or technical? The issue in this regard is whether the EU is politically strong enough to take on those demanding tasks. Whereas it can be argued that the EU has become a political actor and that the accession question is of a political nature, the types of measures that have to be taken in order to push for reforms in Kosovo are far beyond the usual tasks of technical counselling undertaken by the EU in traditional accession processes. There is also a need to foresee measures that should be taken in the case of non-compliance (beyond the mere stalling of the accession process). Furthermore, the EU's lack of unity regarding the recognition of Kosovo makes the integration tool much more complicated to play at the political level: how can one use the 'carrot' of EU integration while five EU members do not recognise the country in question? A third point to be made is related to the risk of creating false expectations, which can, in turn, generate frustration and bitterness. This may in the end have a boomerang effect and affect the very power of attraction which the EU has. In that regard, we can also wonder if the EU policy-makers are not too 'patronizing' or over-confident concerning the EU's power of attraction. It sometimes seems that EU proponents believe that the sole perspective of joining the EU will be a driving force for reform in the targeted countries. There is also a need for EU policy-makers to adapt their thinking on the situations on the ground, to understand the expectations of the countries and the roles of other actors which are active in the region. They would thus be able to develop more adapted and more efficient policies in order to promote the required reforms. Finally, the lack of consistency in EU politics, as already mentioned, can be very damaging for the credibility of the EU. This is all the more important in the case of Kosovo, as the EU will also be active towards Serbia, a situation which has a high potential to create bitterness and frustration.

What role is there for the EU?

Do the doubts and questions mentioned above mean that the EU should not act at all in Kosovo? Certainly not. The EU is a key actor in the Balkans and withdrawing from a region which has a potential European future would be pointless. But there is a great need for clarification regarding the role that the Union can play, and in particular the nature (political vs. technical) of EU involvement in Kosovo. Because of the current European divisions on the status issue and because of the political weakness of the EU (especially in the area of foreign affairs), it would be misleading to believe that the EU can assume, on its own, the very political role of a reform-pusher, relying on the sole argument of EU integration. Unless all EU members are ready to accept the Western Balkan states in the EU before criteria are fulfilled (on the basis that reforms would be easier to promote within the EU), which is quite an improbable scenario, the EU should widen its strategy and go beyond the mere integration process argument. The EU is already involved in and can be a centrepiece actor facilitating the Belgrade-Pristina dialogue, but there is also room for the Union to assume a more practical role, advising in a technical capacity – and even taking part through its field missions – on the various reforms decided by the authorities. This can be done in coordination with other partners – Turkey, the US and other international organisations. In that perspective, reforms should be promoted under the argument that they will benefit Kosovo by making it a functional state and not because they will lead Kosovo into the EU. This argument is less politically sensitive for EU members and less potentially frustrating for Kosovo citizens than that of EU

integration. It does not preclude any EU accession process— but it does not make it the main and sole goal.

Accordingly, there is a need to identify concrete incentives that can be implemented in the short or medium term by the EU and would directly benefit the population (visa liberalisation, education grants, EU-sponsored investments...). In order to reach the Kosovo population, a vast public relations campaign would also have to be launched so that citizens are aware of what the EU and other international actors are doing in the country, what they are promoting and what are the responsibilities of the Kosovo government¹⁰. The citizens of Kosovo would thus be made aware of the reforms for which they have to hold their government accountable.

The role of other actors: who remembers the OSCE?

Needless to say, any such EU strategy should involve other key international actors present in Kosovo, including Turkey and the US. But other international organisations also play an important role in Kosovo and will have an important role to play in the coming years. As indicated above, the problem is not so much what types of reforms have to be fulfilled, but how these reforms will be undertaken by local politicians. In that regard, the role of the OSCE, which has the largest and oldest civilian presence in Kosovo, should not be underestimated. With a focus on issues of fundamental relevance such as human rights, governance (central and local), the rule of law, public safety, media standards, education and legal system development, the OSCE mission is precisely working on those topics that have been identified as essential for the development of the core functions of the state. The prism of the OSCE is not to teach local people how to act in order to fulfil externally established criteria, but to develop a political culture based on democratic principles and accountability. This should indeed be a track to explore in a country like Kosovo, where the seeds of such culture still have to take root.


Other questions will have to be tackled in other frameworks: the issue of the North of Kosovo for instance, which will have to be addressed quickly as a central one¹¹. This question certainly has to be tackled at the regional level, and will be part of broader negotiations on the normalisation of relations with Serbia. Here again, the OSCE could provide a forum for negotiations, while a potential way out could be to resort to international arbitration (as in the cases of Brcko in Bosnia or Abyei in Sudan), through the Permanent Court of Arbitration for instance.

Conclusion.

The EU is an important actor in the Balkans, but overestimating its capacity to promote reforms in post-conflict situations is risky. It is risky for the EU itself, which will be confronted once again with its lack of political cohesion and power in that area, and it is risky for Kosovo, which might not be given the correct impulse to move forward. EU (and NATO) integration are useful tools (i.e. carrots), which should be used as such, but they should not conceal the main reasons for which Kosovo has to undergo reforms to become a functioning state: the well-being and prosperity of its population, the future of its citizens and the stability of the region. This might be achieved within the EU, but this might also be achieved outside the EU. And those arguments and perspectives might be more telling for the local populations (and voters), whose support is crucial to ensure the success of reforms.

¹⁰ The affair of the visa liberalisation policy in 2009 should be used as an example of what has to be avoided in terms of EU public diplomacy.

¹¹ See for instance Kosovo and Serbia after the ICJ opinion, ICG Europe report, no 206, 26 August 2010.



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