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### **Constructing Democracy in Kosovo and the Balkans**

**By Tim Judah**

*The development of democratic governance in the most difficult of environments, post-conflict settings in particular, poses daunting challenges—and is certainly a topic at the forefront of the international arena today. Is democratic process capable of addressing or at least accommodating deep societal cleavages, be they religious, ethnic, or otherwise? Core values of a democratic system include power-sharing, checks and balances, and compromise. How can such values emerge in contexts in which recent violence or centuries-old traditions work strongly to the contrary? Are such attempts realistic in all cases? Or are there practices to be taken advantage of that can inform policymakers and guide international support in helping countries turn the corner?*

### **Constructing Democracy in Kosovo and the Balkans**

*Tim Judah*

On September 6 Miroslav Lajcak, whom one might describe as the international community's governor general in Bosnia-Herzegovina told parliament in Sarajevo, that now was not the time for "business as usual" and that the country had slipped into the "dark valley of isolation and self-indulgent rhetoric".<sup>1</sup> Who is this man, a Slovak, to tell the Bosnians what to do and why was he doing it? Broadly speaking that is what this paper and my discussion will be about.

A few words of introduction though. Thinking about how to approach the issues we have been asked to look at I was struck by several things. First the singular difference between Kosovo and the Balkans on the one hand and every single other place we have been considering, from Afghanistan to Peru. Secondly, the fact that this discussion is being held in Washington and, in part under the aegis of Latin American Program, means that what is now taken as self-evident by many in London, or Brussels or Pristina or Zagreb, clearly is not here. Hence the need for some explanation, first of the theory – and then what the practice might look like, especially since it could be rather different.

So, firstly, why should Kosovo or Bosnia or the rest of the region we now call the Western Balkans (that is the former Yugoslavia minus Slovenia but plus Albania,) be fundamentally and absolutely different from the rest of the world? Simple: It is in Europe, or more particularly surrounded by the European Union. So? So, the region has what is called a "European perspective". That means the EU has given a commitment that this region will, sooner or later, join the now 27 member body. And, as I will describe everyone knows (up to a point,) what has to be done. This is what Mr Lajcak, who is also the EU's special representative in Bosnia, was talking about. "Integration or isolation" he thundered to parliament in Sarajevo, or as is often said, the choice is "Brussels or Belarus".

At its simplest the theory is this: There are 100,000 pages of laws, rules and regulations which need to be harmonised with the EU subdivided into 35 chapters of subjects which need to be gone through to make sure you are a fully functioning modern, European democracy. If you can fulfil these targets you can join the EU.

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<sup>1</sup> [http://www.ohr.int/ohr-dept/press/p/presssp/default.asp?content\\_id=40431](http://www.ohr.int/ohr-dept/press/p/presssp/default.asp?content_id=40431)

That is the target, that is what you have to aim for. And that is the difference between Peru and Afghanistan and Kosovo. What is the target in Peru? What is the right model for Afghanistan? How is it going to be done there, what is going to be done? “For countries such as Turkey, Serbia or Bosnia,” says Mark Leonard, the head of the European Council on Foreign Relations, “the only thing worse than having the bureaucracy of Brussels descend on your political system, insisting on changes, implementing regulations, instigating state privatizations and generally seeping into every crack of everyday political life, is to have its doors closed to you.”<sup>2</sup>

And this says Leonard, correctly in my view, is “the contrast between how Europe and America have dealt with their neighbours...the threats are the similar – drug trafficking, large flows of migrants across leaky borders, networks of international crime – but the responses could not be more different. The United States has sent troops into its neighbours more than fifteen times over the last fifty years but many of the countries have barely changed – limping from crisis to crisis and often sucking American troops back into their problems.”<sup>3</sup> In other words, the EU says “do this, join us, be part of the big club, not a lonely little powerless country” while the US says, “do this” or “we are giving you cash to fight drug smugglers,” or whatever, because it is in the interest of the US but there is no big, long term motivating factor for change within the country otherwise. There is no major incentive. After all, what is it that the average Bosnian or Haitian might like, apart from freedom or prosperity in his own country? It is the right to live and work legally and travel freely, without restriction wherever he would like in the EU in the first case or the US in the second. The Bosnian knows what his leaders have to do to make this happen. The Haitian does not, because it is not on the agenda.

I have not talked yet about the ethnic and other challenges which we have been asked to look at, but I will, however we need to examine the theory of the issue more closely before we get on to the practice. What we need to do now is look at the map. Today, Bosnia, Macedonia, Kosovo, Serbia, Croatia, Montenegro and Albania, countries whose combined populations are a little over 20m are an enclave surrounded by the EU. Sometimes we call this the “Balkan ghetto”. Let’s forget so-called “enlargement

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<sup>2</sup> Mark Leonard. *Why Europe Will Run the 21<sup>st</sup> Century*. (2005) p.51

<sup>3</sup> *Ibid*

fatigue” for the moment. The theory is that these small and often weak countries need to be tied down with the EU framework to make them functional, stable and democratic. The system to do that has been evolving for decades. Firstly it absorbed the formerly authoritarian states of Spain, Portugal and Greece and then of course, the ten former communist countries of central and eastern Europe.

Let me describe here the path. Firstly the Copenhagen criteria. These are rules laid down in 1993 which describe, in outline, what a state needs to do:

Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate’s ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.<sup>4</sup>

Ever since then these rules have been subject to interpretation and definition, but at its simplest, any country which does not fit the criteria, as say Switzerland or Iceland would (more or less) if they applied today, needs to be completely overhauled. And this is the great success of the recent enlargements, that is to say taking ten former communist countries, and in effect rebuilding them as modern democracies.

The procedure for doing this has, of course, varied over the enlargements but let me describe here, very briefly, the pathway outlined for the Western Balkan states. This is the Stabilisation and Association Process (SAP). After a period of negotiation a country signs its first contractual agreement with the EU, a Stabilisation and Association Agreement (SAA). The modernisation process begins in earnest, leading after the European Commission has given a green light, to Candidate status. After gaining this all sorts of intensive harmonisation and so-called screening begins. This is done chapter by chapter. Now there are 35 and their subjects range from Justice, freedom and security to food safety to tax to the judiciary and fundamental rights.

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<sup>4</sup> [http://ue.eu.int/ueDocs/cms\\_Data/docs/pressdata/en/ec/72921.pdf](http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/72921.pdf)

During all of these years EU money to assist in the transformation is disbursed via the Instrument for Pre-Accession Assistance. Twinning arrangements are another feature of assistance, in which for example, civil servants might be despatched from say Finland, specialists in maritime safety for example, (this is a real example,) to help their Estonian colleagues upgrade their maritime safety, rules, regulations and procedures to meet EU standards. At the end of this procedure, the political decision is taken and then the candidate becomes a member.

Where are the states of the Western Balkans in this process? Croatia and Macedonia are candidates, but Croatia is much further advanced down the track than Macedonia and has the realistic chance of completing the so-called *acquis communautaire* and joining the EU within a few years. Albania and Montenegro have both signed SAAs and they should come into force soon. Serbia has finished negotiating an SAA but whether it will be initialled will depend on above all, cooperation with the UN Yugoslav war crimes tribunal, and a report to be submitted in the next week or so by Carla Del Ponte, its chief prosecutor. Kosovo is of course not a state, but it has what is called a tracking mechanism so as to keep it on course until its status is decided. Bosnia has negotiated an SAA but the political conditions laid down by Brussels before it can be signed have not been fulfilled. These are highly intrusive and the main one concerns police reform and how the police forces of Bosnia should be run and organised. Let me quote here from that speech by Mr Lajcak before the Bosnian parliament talking on the question of police reform, and you will see what I mean:

The first EU principle requires that all legislative and budgetary competences for all police matters be vested at the State Level. [Bosnia is divided into two “entities” – one Serb dominated and other Croat and Bosniak.] This means, among other things, that only this body, the BiH [Bosnian] Parliamentary Assembly, can adopt legislation and budgets related to police matters. It means that all police bodies in the future will be legally defined as organisations of the BiH state. The second principle – that there should be no political interference in the operational work of the police – means exactly what it says: there will be oversight at the policy level, but operational independence must be guaranteed. Getting politics out of the daily work of the police is something that we know the overwhelming majority of BiH citizens agree on. The third principle – that

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functional local police areas must be determined by technical policing criteria, where operational command is exercised at the local level is the best way to bring policing to the community that it serves.<sup>5</sup>

One thing the EU is particularly bad at is singing its own praises. However, despite the grumbling you sometimes hear that the rules were softened for Romania and Bulgaria, no one doubts that enlargement has been a huge success in terms of modernising the 10 former communist countries. There is no time now to examine in great detail the effect of EU conditionality but lets just take Bulgaria. A decade ago it was considered an economic and political basket case. Now the country is growing by leaps and bounds. Since 1998 the economy has been expanding at annual rates of more than 4% a year. Unemployment was 18% in 2001 but by last year had fallen to half that. From 1992 to 1996 annual average FDI was \$153m since 2003 it has been \$2bn a year. “European member-state building,” write Gerald Knaus and Kristof Bender of the European Stability Initiative (ESI) “does contribute directly to the building of more transparent public institutions through the adoption and enforcement of European standards in public procurement, state aid and financial auditing, the requirement of increased participation of non-governmental interest groups in government decision making and the provision of activity reports, policy plans and financial data to the public.”<sup>6</sup>

So much for the theory then. Now for the practice. The question is whether what worked for eastern and central Europe will work for the Western Balkans, which, after all are not just countries in transition but also recovering either from war or conflict directly, the trauma of the collapse of Yugoslavia and its legacies or just collapse as in the case of Albania. Also, unlike eastern and central Europe, many of the issues which produced the wars have not been settled, the most important of course, being Kosovo and to a lesser extent Bosnia. On top of this, notes Heather Grabbe of the European Commission:

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<sup>5</sup> [http://www.ohr.int/ohr-dept/presso/presssp/default.asp?content\\_id=40431](http://www.ohr.int/ohr-dept/presso/presssp/default.asp?content_id=40431)

<sup>6</sup> Kristof Bender & Gerald Knaus. The Bulgarian Miracle and the Future of EU Balkan Policy in *The Balkan Prism* op cit, p. 449.

...when it comes to the most sensitive and difficult issues in the region, such as the status and treatment of minorities, human rights, corruption, organised crime and constitutional reform, the EU has no detailed policy guidance to offer from its own rule book. Although potential members have to meet the political conditions, the EU has no democratic *acquis* on which to draw to provide detailed guidance to the candidates. The member states themselves have diverse policies on the provision of bilingual education for ethnic minorities, or on tackling corruption in the public sector. Although the members form part of a community of nations and share norms on what is and what is not acceptable behaviour on the part of the state, the trickiest dilemmas of democracy cannot be solved by drawing on a codified guidance set down in EU law.<sup>7</sup>

So, now we come to the core of the issue. Let me describe briefly where we are in terms of Kosovo and the rest of the region. The war in Kosovo ended in 1999. The territory was then put under the jurisdiction of the UN. In the wake of the conflict hundreds of thousands of ethnic Albanians who had fled or been ethnically cleansed flooded back and then tens of thousands of Kosovo Serbs fled or were ethnically cleansed in their turn. Today there are some two million people in Kosovo of whom about 90% are ethnic Albanians while about half of the rest are Bosniaks, Roma and other minorities and the other half Serbs. In many places the Serbs live in enclaves. So, most of the north of Kosovo, which abuts Serbia proper is Serb, plus a swathe of land around Pristina, the capital and in certain other places. Serbia argues that because Kosovo was its province and not a republic, like Croatia or Macedonia, in the old Yugoslavia it has no right to independence. Albanians argue that they have the right to self-determination.

In March of this year, after fourteen rounds of mostly fruitless talks between Serbs and Albanians, Martti Ahtisaari, the former Finnish president presented the UN with a plan for so-called “supervised independence”. This meant that Kosovo would become an independent state but that a large and powerful EU justice and security mission would replace the UN along with a so-called International Civilian Office (ICO),

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<sup>7</sup> Heather Grabbe. What the EU Can and Cannot Do for the Balkans in *The Balkan Prism: A Retrospective by Policy-Makers and Analysts*, edited by Johanna Deimel and Wim van Meurs. (2007) p. 436.

which would play a role similar to that played by Mr Lajcak in Bosnia, ie., a kind of international governor general.

This plan was torpedoed by a resurgent Russia. Mindful of several “frozen conflicts” in the former Soviet Union, Russia, whose diplomats were also keen to take revenge for their humiliation in 1999 in being unable to prevent the bombing of Serbia, simply said it would veto the Ahtisaari plan. Now a new mediation mission has begun. If no results are forthcoming by December 10, when the diplomats involved have to report to the UN, Kosovo’s Albanians may well declare independence. The US has already said it will recognise the new state and much of the EU looks set to follow. This may not happen, but as of now it looks like the most likely scenario. What then? The plan the diplomats had devised was that Kosovo would in effect be taken over by the EU and hence put on the path to membership. The justice and security mission would have come under the aegis of the EU’s European Security and Defence Policy (ESDP) and the ICO head would also have been the EU Special Envoy. This may yet happen, but without a UN mandate his power will be weaker and if Europe is divided then there may be no ESDP mission. However, here we are talking in the realms of speculation. We simply do not know what is going to happen.

What does this mean for democracy in Kosovo, especially since elections are due on November 17<sup>th</sup>? Indeed, where are we in terms of democracy? The answer is that we have in effect two parallel societies which don’t meet much. Given instructions from Belgrade Serbs barely participate in Kosovo’s institutions and they have been instructed not to take part in Kosovo’s elections. Anyone who does will, as has happened before, be branded a traitor. Albanians for their part will do the minimum necessary to make politically correct statements about inclusion but these are widely disbelieved. The division is best seen in Mitrovica, a town which has an Albanian south and a Serbian north, divided at the river Ibar. In the south they talk Albanian, use euros, have Kosovo papers and number plates and look forward to independence. Across the bridge everyone speaks Serbian, uses dinars (and euros), have Serbian papers and documents and in almost every way are fully part of Serbia. To a lesser extent this situation prevails in the enclaves too. In the years after 1999 it was dangerous for Serbs to venture into Albanian areas and in the main Serbs tend to avoid them today, even if the danger has subsided. On both sides politics is to a great

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extent a kind of party patronage system and, as in the rest of the Balkans, there is an overlap with big business, tycoons and organised crime. This is one of the central problems of Kosovo, the wider region and for outsiders who have to deal with it. That is to say that in a non-transparent system like this it is hard for a democratic culture to flourish, especially if some of the mafia-bosses, for reasons of realpolitik are coddled by western protectors. This is a major problem and it is one which is not talked about. In Kosovo journalists cannot write about many sensitive issues because of the structure of media ownership and because they don't want to get killed and people like me cannot inform the rest of the world about such things – even in this context – because of the constant threat of litigation.

In Bosnia the legacy of the war is as I have said, a country divided into two “entities” with a weak central government. The Serbian dominated Republika Srpska is run as one unit while the Croat-Bosniak federation is sub-divided into ten cantons. There is also an autonomous region called Brcko. This is not an efficient way to run a country of 3.5m people (Bosnia has some 16 police forces,) and the country needs reform, but in way the biggest failure of the country, post-war is that it is a state without people. That is to say that its citizens are Bosniaks (Muslims), Serbs and Croats. And, Serbs and Croats are there, not because they want to be but because the war ended this way. Today Croats are a declining factor in Bosnia – but many would like their own federal unit, something resisted by Bosniaks who see that as a prelude to the eventual demise and formal partition of the country between Serbia and Croatia. Bosnia's main Bosniak leader Haris Silajdzic wants to abolish the entities arguing that he wants a state of citizens which Serbs see a code for domination by the more numerous Bosniaks while the Republika Srpska's leaders are fighting to maintain their autonomy and constantly threatening a referendum on independence. And yet, there has been good news from Bosnia too. The country is unrecognisable from the way it was in 1995 and, unlike Kosovo, levels of inter-ethnic alienation are much lower.

One reason why Bosnia is now politically blocked though is because of Kosovo. In that sense, this is another major difference from central and eastern Europe. Yugoslavia may no longer exist but the Yugoslav space does. Much remains connected. At the moment Kosovo dominates politics in Serbia. Bosnia to a great extent remains a hostage to Serbia via the cues given to the Republika Srpska

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leadership from Belgrade which is happy to encourage the leadership of the Republika Srpska to be intransigent because it is a threat related to Kosovo – ie., if Kosovo, not a former Yugoslav republic has the right to independence and even, maybe, union with Albania, then the Republika Srpska can have the same right. Macedonia is also umbilically linked to Kosovo since a quarter of its population is ethnic Albanian. If ever the borders of the Western Balkans were redrawn then Macedonia would be divided with its western part joining a greater Albania or perhaps a greater Kosovo. Over the last fifteen years a process of ethnic winnowing has been taking place with Albanians and Macedonians who lived in mixed areas separating out. Like Bosnia though, the news is not all bad. Indeed Macedonia, given candidate status, is not doing so badly. A brief conflict in 1991 was rapidly snuffed out and indeed the prospect of EU membership is the glue that has kept the country together, just as it is, in part, in Bosnia. Power-sharing is not perfect and in Macedonia, as elsewhere, often means patronage or loot-sharing but it is a system which has kept the state on the road for the last 15 years.

Are the Balkans different from elsewhere in Europe? Yes and no. Conflicts are fresher and deeper. But compare with Northern Ireland, with Spain and with Belgium. Will Belgium exist in fifteen years let alone Bosnia? Belgium had elections in June and if this were Bosnia or Serbia we would lament the fact that it still has no government. How many Spanish flags do you see in Catalonia or the Basque country? Not many. Is there panic in England that Scotland's election was won by a pro-independence party? No, of course not. In terms of one of the questions set by this conference the answer would be that, thus far, the democratic process has been capable of "addressing or at least accommodating deep societal cleavages...." But of course these are countries with a long experience now of the democratic tradition and tied down by the EU. But as Heather Grabbe pointed out the EU is not the answer to everything. Cyprus is, of course, the case in point.

And yet, it is the only tool we have. The prospect of EU membership in fifteen years cannot solve the Kosovo question or make Bosnians happy to be Bosnians. But what other tool is there? And this is where the question of "enlargement fatigue" comes in. Experience has shown that it is that when EU membership is in serious prospect, that serious amounts of FDI begin to flow in and that FDI, beyond privatisation, is the oil RTI-WCC Conference paper: Please do not cite or distribute.

which lubricates the process of modernisation, the demand for a state of the rule of law, and hopefully helps nurture a democratic culture. (Though this need not be so.) Even though it is arguable that enlargement had little to do with the defeat of the EU's constitutional project in the French and Dutch referenda of 2005, the loss of nerves when it comes to enlargement is potentially disastrous. Why take on the difficult questions, why make people endure pain if the end of the tunnel is not in sight? If joining is a receding prospect then modernisation stretches out too. In that sense the argument should perhaps be to accelerate giving candidate status to those countries in the Western Balkans which do not have it so that, as Knaus and Bender argue: "it would be up to political elites in these countries to ensure that the Bulgarian miracle of the past decade [is] repeated in Serbia, Albania [and] Bosnia and Hercegovina."<sup>8</sup> There are important tools which can be used for this but none is more important than visa liberalisation. If the people, and especially the young people of the region, are literally penned in and cannot travel freely to the EU, then how is it possible to maintain over a long period of time, the necessary enthusiasm for joining and hence the work that needs to be done by politicians and leaders for their countries to join?

Kosovo, which is now a football in the international arena, has the potential to derail the progress which has been made in the Balkans in the last seven years. Indeed turbulence is definitely ahead. Serbia's leadership is already bitterly divided between those that, broadly speaking, say Kosovo is more important than the EU and those that argue the contrary. But, in the long run, after the formal loss of Kosovo what has Russia to offer Serbia? Not much. Can Serbia stay out? Yes, of course, but it is not Switzerland or Norway to have such a luxurious choice. And besides, Serbs want to work and travel freely in the EU and sell their goods there, not Russia. In the long run, the EU and its 100,000 pages are the future, as they are for the rest of the region, but its leaders need a credible promise of accession to keep the momentum of reform going and Kosovo needs a solution. Given both of those, (which of course is not a given,) Bosnia will simply fall into the slipstream of a Brussels bound Serbia and Croatia. None of this will be easy though and I will not end with a cliché of there being no other future. There is, as Lajcak has indicted, "the dark valley of isolation" and, if integration and all that it promises falls of the agenda, then as Ivan Krastev the

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<sup>8</sup> Kristof Bender & Gerald Knaus. Op cit, p. 450.

Bulgarian political scientist argues empire, as in the maintenance of protectorates in Kosovo and Bosnia and much oversight or crisis –management elsewhere is in prospect:

In the language of *realpolitik* blocking the accession of the Balkans to the European Union equals the destruction of pro-reform leaders and constituencies in the region and turning the Balkans into the land of “unknown unknowns”...The nature of the Balkan crisis could make the European public aware of the real danger of the decline of the EU’s soft power and force them to make a different choice than the one that it is making now. In not, let’s pray for the efficiency and benevolence of the new empire.<sup>9</sup>

In Europe we don’t have the answer to everything. But we do have some answers. The Balkans are ripe for reform and EU enlargement is the way to do it, even if it cannot solve everything. Enlargement provides many of the pointers but it needs political will on the ground and in the EU member states, in other words leadership. The process may not work, or may take much longer than it did in eastern and central Europe, but the price of failure and all that that entails in the Balkans – this island within the EU – would be much higher than the costs involved in making it work.

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<sup>9</sup> Ivan Krastev. European Union and the Balkans: Enlargement or Empire in *The Balkan Prism* op cit, p. 100.