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EES NEWS

SEPTEMBER-OCTOBER 2008

Is Kosovo a Precedent? Secession, Self-Determination and Conflict Resolution

Christopher J. Borgen

Christopher J. Borgen is Associate Professor at St. John's University School of Law in New York City. He spoke at an EES Noon Discussion on June 13, 2008. The following is a summary of his presentation. A slightly different version of this essay originally appeared in International Legal Materials, a publication of the American Society of International Law. Please see Christopher J. Borgen, "Introductory Note to Kosovo's Declaration of Independence," 47 ILM 461 (2008) for the original version, including citations to references. Meeting Report 350.

When I spoke at the EES Discussion in June, 2008, about whether there was a "Kosovo precedent," I had no reason to believe that these issues would soon come to a head in South Ossetia. Having written a legal assessment of the separatist crisis in Moldova, my attention was focused more on the western Black Sea littoral than on the eastern. The essay reprinted here reflects the main points that I made at that June meeting. It considers the legal issues implicated by Kosovo's declaration of independence and the subsequent recognition by various states of Kosovo as an independent country. It also tries to set out the differences between political and legal precedent and how we may frame arguments about what Kosovo means in terms of these two different uses "precedent." In a few places I have included some short updates to reflect recent events.

What is precedent?

The February 17, 2008 declaration by the Parliament of Kosovo stating "Kosovo to be an independent and sovereign state" received a mixed reaction from other countries. While the US, the UK, France, Germany, and certain other EU member states, as well as a host of other countries, formally recognized Kosovo as a new state, others, such as Russia, Romania, Moldova, and Cyprus (and of course Serbia), argued that Kosovo's secession and/or the recognition of that secession would be a breach of international law. The majority of states have positions someplace in between these two poles. As of this writing, approximately 46 states have recognized Kosovo's independence.

One issue that seemed to influence states was whether Kosovo's declaration, and its subsequent recognition by many influential states, would be some kind of "precedent" that would effect the resolution of other separatist disputes, in essence ratifying the claims of separatists. In the years prior to the 2008 declaration, other separatists leaders, such as Transnistria's Igor Smirnov, have essentially argued that "if Kosovo gets independence, then so should we." Are they correct?

To assess this question, it is important to first note that when international lawyers and international relations theorists speak of precedent, they use the term in slightly different ways. Whereas political scientists usually use it to refer to a past event that could be politically persuasive or may be used in diplomatic dialogue, lawyers have a stricter understanding of the word and use it when a past event states a rule of law that is to be applied in the current case. As a technical matter, in *international* law as opposed to *domestic* law, precedent is not binding. For example, a previous decision of the International Court of Justice in a case between states A and B does not define the legal rule that *must* be applied in a later case between states C and D. There is, however, a very strong assumption that like cases are to be treated alike. And so, while as a formal matter the precedent is not legally binding, as a practical matter

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international lawyers will try to maintain a coherent and consistent set of rules across similar cases.

The question, then, is whether Kosovo's declaration and subsequent recognition is the type of event that international lawyers would choose to follow as an example of the elucidation of a legal rule for a particular type of case, or whether it was aberrant and should be instead viewed as a breach of international law. In the case of Kosovo, we need to look first at UN Security Council Resolution 1244 (1999), which provided a framework for approaching the stabilization of Kosovo. Besides this resolution, we need to consider the rules and norms of international law concerning self-determination and secession.

UN Resolution 1244

Serbia and Russia, referring to Resolution 1244's preambular language "[r]eaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia", have argued that Resolution 1244 does not allow the secession of Kosovo without the agreement of Serbia. By contrast, the EU has taken the position that Resolution 1244 is not a bar to Kosovo's independence as, in its view, the resolution does not define the outcome of final status talks.

On balance, it appears that Resolution 1244 neither promotes nor prevents Kosovo's secession. Although operative paragraph 1 of Resolution 1244 states that a political solution shall be based on the principles of the annexes, those annexes are silent as to the governmental form of the final status of Kosovo. The annexes only state that, pending a final settlement, an "interim political framework" shall afford substantial self-governance for Kosovo and take into account the territorial integrity of the Federal Republic of Yugoslavia. Moreover, the references to the territorial integrity of Serbia are only in the preambular language and not in the operational language. The document is therefore silent as to what form the final status of Kosovo takes. Much of the debate thus grapples with the broader issues of self-determination and secession under international law.

The law of self-determination and the problem of secession

Perhaps the single most contested issue concerning self-determination is determining what is meant by the self-determination of peoples. At various points in international legal history, the term "people" has been used to signify citizens of a nation-state, the inhabitants in a specific territory being decolonized by a foreign power, or an ethnic group.

A group of experts was convened by the National Assembly of Quebec to provide advice concerning the legal issues implicated by a hypothetical secession of Quebec (the "Quebec Commission"). In its *Report of the Group of Experts Concerning the Territorial Integrity of Québec in the Event of the Attainment of Sovereignty*, the Quebec Commission explained (in Section 3.07) that the

right to self-determination is context-dependent and that different types of peoples lead to different applications of the right to self-determination:

the very fact that the right to self-determination, in the sense of "independence," has been recognized solely in "colonial" peoples is an indication that this right takes on or can take on different meanings for other categories of peoples.

So long as a state provides a minority group the ability to speak their language, practice their culture in a meaningful way, and effectively participate in the political community, then that group is said to have "internal self-determination." Secession, or "external self-determination," is generally disfavored in diplomatic practice. In the opinion *re Secession of Quebec*, the Supreme Court of Canada found (at paragraph 123) that "[a] right to external self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises *only in the most extreme cases and, even then, under carefully defined circumstances...*" (Emphasis added.)

Since the birth of the United Nations, diplomats and jurists have emphasized that a right of self-determination was not a general right of secession. Allowing secession as a remedy would have clashed with a cornerstone of the UN, which is to protect the territorial integrity of states. However, one also cannot say that international law makes secession illegal. If anything, international law is largely silent regarding secession. Attempted secessions are, first and foremost, assessed under domestic law. However, a secessionist dispute may implicate international law under specific circumstances including, among others, (a) when a new entity seeks recognition as a sovereign state (in which case there are rules for recognition or non-recognition) and (b) if there is a threat to international peace and security (which would thus likely become an issue for the UN Security Council). Thus, the law of self-determination can be summarized as follows:

- ◆ Self-determination for colonized peoples allows for the ability to separate the colony from the colonial state so that the colony may gain independence and become a sovereign state;
- ◆ For a state as a whole, self-determination means the right to be free from external interference in pursuit of its political, economic and social goals;
- ◆ For communities that are not colonies and are within existing states, self-determination means "internal self-determination," the pursuit of minority rights within the existing state; and,
- ◆ Some argue that in non-colonial cases, self-determination may also allow for secession under "extreme cases" and

“carefully defined circumstances” (to use the terms of the Canadian Supreme Court from the *Secession of Quebec* opinion).

Whether self-determination gives a remedy of secession outside the colonial context is, in the words of Professor Malcolm Shaw, “the subject of much debate.” Jurists who interpret the law of self-determination in this way generally contend that any attempt to claim secession as a remedy must *at least* show that:

- (a) the secessionists are a “people” (in a sense recognized by the international community);
- (b) the state from which they are seceding seriously violates their human rights; and,
- (c) there are no other effective remedies under either domestic law or international law.

I will consider Kosovo under this framework and subsequently turn to the question of recognition.

Application to Kosovo’s declaration

The first hurdle is to assess whether the Kosovar Albanians are a “people” for the purposes of the right of self-determination. As explained above, there is little agreement as to what the definition of people even includes. One may argue that the Kosovars are a people, inasmuch as they are of the same ethnicity, perceive of themselves as a group, and have inhabited Kosovo for centuries. Others may respond that they are an Albanian ethnic enclave, rather than a nation unto themselves. In the debate over the declaration and subsequent recognition of Kosovo, the “peoplehood” aspect of the claim has been discussed the least.

Assuming, for the sake of argument, that one finds that the Kosovars are a people, one must then assess whether they can credibly fear the recurrence of serious human rights violations if they stay integrated with Serbia. The International Committee of Jurists who arbitrated the status of the Aaland Islands in 1920-21 found that there was no right to secede absent “a manifest and continued abuse of sovereign power to the detriment of a section of population.” Here, there is at least a credible argument that the Serbs were responsible for serious human rights abuses against the Kosovars. Resolution 1244 noted that there was a “grave humanitarian situation” and a “threat to international peace and security.” Indeed, it was mass human rights abuses that led to NATO’s 1999 intervention. It should also be noted, however, that human rights abuses have been reported to have been committed by Kosovar Albanians as well. To the extent that the international community considers it relevant whether human rights abuses are ongoing, as opposed to historic, the situation in Kosovo is ambiguous. In relation to this question, one may argue that the ongoing international presence in Kosovo is legally relevant as it is evidence of the

international community’s determination that the situation in Kosovo was and is highly volatile and that it cannot be solved completely via domestic political structures. However, the response is that Serbia has evolved since 1999, and that Kosovars should have no fear of renewed violence.

Finally, assuming the first two tests have been satisfied, one would have to be confident that secession is the only realistic solution to the problems. On the one hand, the political situation prior to the declaration of independence was bleak. As of December 2007, the two sides could not seem to resolve their differences and the political negotiations were declared a failure by the mediators. Given Kosovar expectations, it is unlikely that anything short of military intervention could have kept Kosovo within Serbia. On the other hand, it could be argued that the real bar to a negotiated solution was intransigence on the part of the Kosovars and their supporters: the political situation was bleak because it was made so by one side.

In short, an argument claiming a Kosovar *right* to secede has numerous hurdles to pass. Perhaps the tallest one is the belief by many international lawyers that, outside of decolonization, there is no right to secession. Secession may exist as a *fact*, but it cannot be claimed as a *right or remedy*. Issues of legality would then focus on recognition, to be considered below.

If one does assess Kosovar claims based on the model that external self-determination may be allowed in extreme cases, there are still various difficulties—ranging from how one defines “people” to whether secession really is the only realistic solution. That being said, the facts of Kosovo’s case are more persuasive than those of other separatist groups, such as the Transnistrians in Moldova. This sense that Kosovo has *at least a better case* than most other separatist groups is reflected by the debates over whether or not to recognize Kosovo’s declaration.

The law and politics of recognizing Kosovo’s declaration

Daniel Thurer has argued that in difficult situations such as these, the issue of legality often shifts from the question of the legality of *secession*, to the question of the legality of the *recognition* of secession—a subtly different, but nonetheless different, question. The general understanding is that recognition itself is not a formal requirement of statehood. Rather, recognition merely accepts (or “declares”) the factual occurrence of the establishment of a new state. Nonetheless, no state is required to recognize an entity claiming statehood.

To the contrary, a good argument may be made that states should not recognize a new state if such recognition would perpetuate a breach of international law. In the words of the influential treatise *Oppenheim’s International Law (Ninth)*: “Recognition may also be

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withheld where a new situation originates in an act which is contrary to general international law.”

State practice evinces that, absent a clear indication of illegality, in matters of state recognition there is considerable deference to the political prerogatives of outside states to decide whether or not to recognize an aspirant state. This does not, in and of itself, make Kosovo’s secession legal. But, it does give a window as to how acceptable a particular secession is to other states and, possibly, whether they view that recognizing the secession would perpetuate an illegality.

Russia and Serbia argue that, inasmuch as Serbia did not consent to an alteration of its borders, there can be no legal recognition. Absent any qualification, that analysis is inaccurate. Changing the boundaries of a sovereign state (Serbia) in and of itself would not make Kosovar independence illegal because, as discussed above, the international community has come to accept secession as a fact under certain circumstances. As a comparative matter, the international community has been relatively enthusiastic for Kosovar independence compared to other secessions. Although some have argued that Kosovo’s declaration is a failure for having garnered “only” 46 recognitions (as of this writing), this is actually quite successful compared to attempted secessions such as those of the Turkish Republic of Northern Cyprus, Transnistria, Abkhazia, South Ossetia and Nagorno-Karabakh. Those secessionist entities have held territory anywhere from 15 to 30 or more years and, at best, have one or two states that recognize them. The secessionists may hold territory, but they are political pariahs. (It will

international community considered the situation to be volatile. While secessions are primarily an issue of domestic law, Resolution 1244 internationalized the problem and moved Kosovo from being solely under Serbian sovereignty into a grey zone of international administration. Although this area of international law is not sharply defined, reintegrating such a territory is different from assessing a claim by a separatist group that, on its own, is seeking to overturn the authority of the pre-existing state and unilaterally secede. This, however, is a controversial position.

That being said, one should note that as of this writing, neither the United States nor other major recognizing states have used the argument that Kosovo is owed sovereignty *as a legal right*. In short, it is too early to tell whether, *as a matter of law*, the events in Kosovo will lead to a shift in legal interpretation.

Regardless, Kosovo’s declaration, and its recognition by dozens of states, has already started to play a role in the evolving political rhetoric of parties involved in secessionist conflicts. So, while there is no Kosovo “*precedent*” in international law (as of yet), there is now, based on the reactions of other secessionist entities, as well as Russia, a Kosovo *argument* in international diplomacy. Even before the August fighting, Kosovo’s declaration had seemingly redoubled claims by Abkhazia and South Ossetia for independence from Georgia. Soon after Kosovo’s declaration, Russia ended its adherence to a 12-year-old economic embargo of Abkhazia, although Russia stated that its policy shift was not a reaction to the declaration.

Much of Russia’s political rhetoric during the August fighting had echoes of Kosovo. Yet, the echoes were not from the declaration and recognition of Kosovo but from the political language related to NATO’s 1999 campaign (with its references to ethnic cleansing). It has been careful, however, not to state that Kosovo’s declaration itself was legal and provided legal precedent for South Ossetian secession. Legal precedents have a way of being applied in places where you least expect them and the last thing Russia wants is to empower Chechen separatists.

Some Russian politicians have stated that the situation in South Ossetia is unique. This would make it the second “unique” secessionist crisis in six months. Despite the declarations and best intentions, simply saying something is “unique” may not be enough to prevent a shift in state practice. For example, a good argument could be made that while recognizing Kosovo would be consistent with international law, recognizing South Ossetia would not be. Thus, as a matter of law, one is not a precedent for the other. However, in the end, we need to keep in mind that sometimes the most effective law in politically-charged situations may be the law of unintended consequences. Political precedent is not the same as legal precedent. ■

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be particularly interesting to see what happens in terms of recognizing South Ossetia.) And there are the various secessions, such as Katanga and Biafra, which collapsed quickly due in part to the absence of foreign recognition. In this light, Kosovo is closer to the “successful” secessions of Bangladesh and Eritrea.

Is Kosovo unique? Implications for other secessionist claims

Does the example of Kosovo set a legal precedent for the other separatist conflicts, such as those in Abkhazia, South Ossetia, Nagorno-Karabakh and Transnistria? Or, as the US and UK have argued, is Kosovo *sui generis* and of no precedential value?

It can be argued that Kosovo is different from other secessionist claims because Kosovo has been under international administration due to the fact that the

Where is Serbia Going?

Vladimir Matic

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Slobodan Milosevic was removed from office in October 2000, after a historic election which he lost to the Democratic Opposition of Serbia (DOS) candidate Vojislav Kostunica. For the past eight years, Serbia has been muddling through its transition from being an international pariah state with a controlled economy—a society isolated from the rest of the world, burdened with its past and suffering from virulent nationalism—to a modern European state with a market economy and thriving democracy.

After 2000, when a loose coalition of democratic parties formed a new government, President Kostunica (Democratic Party of Serbia [DSS]) and Prime Minister Zoran Djindjic (Democratic Party [DS]) disagreed over the direction of reforms, the concept of the state and the nation's goals, which prevented the country from making quick progress. The assassination of Prime Minister Djindjic in 2003 further hindered the democratic transition. More troubling was that the lack of progress created de facto continuity with the policies of the Milosevic regime.

Competition between DSS and DS eventually gave way to powersharing and cohabitation, with Boris Tadic as president and Vojislav Kostunica as prime minister, since 2004. The parliamentary elections in early 2007 once again reflected the balance in the Serbian electorate, since neither the democratic nor the ethno-nationalist bloc won decisively. In the end, the government was formed by the DS-G17 and DSS-New Serbia (NS) with Kostunica in the position of the prime minister.

As has become the custom with every election since 2000, international attention again turned to Serbia last May to see if the country would finally decide to move full speed ahead toward Europe. Once again, the elections offered voters the option to choose between continuing with the nationalist fantasy or accepting reality and proceeding toward the European Union. The results proved Serbian voters to be almost equally divided yet again, and so Serbia now has a government that will pursue both goals at once, as irreconcilable as they may be.

Over the past several years, but especially in the last two, Kostunica has successfully made Kosovo the central issue of Serbian politics and has imposed his own hard-line position on his coalition partners, the media and the public. Long before Kosovo exploded, in his 1993 book *The Wars are yet to Come*, Nenad Canak wrote that Kosovo is a crucial element of the Serbian regime's strategy because there was no better way to ethnically homogenize Serbia, to legitimize that policy and to eliminate any opposition to it than giving it the label "defense of Kosovo." Strongly backed by Kostunica,

this policy became part of the new Constitution, and a "national consensus" on Kosovo was formed and maintained based on his concept. It has become a dogma that few dare to challenge.

The continuous promotion of the so-called national project has provided fertile ground for the kind of conservative and xenophobic traditionalism advocated by the radical right-wing forces and the Serbian Orthodox Church. The "defense of Kosovo" platform has

"Serbia is a complicated country. To understand it we need to know that Serbs have three big dreams which are all in a way correct and legitimate, but have never materialized: socialism, nationalism and traditionalism. With these dreams one makes policy in Serbia...Milosevic played very skillfully all three dreams to keep in power, but we have to add one more, the fourth idea, and this is to finally accept the reality. We have to finally take our place in Europe."

Zoran Djindjic, 1999 interview to Suddeutsche Zeitung

manifested itself in foreign policy in Serbia's anti-Western stance, particularly through anti-American and anti-NATO positions that purport to protect the sovereignty and territorial integrity of Serbia. This was coupled with a shift toward Russia and, to a lesser extent, China, India and the former non-aligned countries. The return to "patriotism" during the DS-DSS cohabitation period was not publicly opposed by the DS or President Tadic, though they did not participate in the campaigns and used softer tones.

Initially, the coalition government created in May 2007 survived Kosovo's declaration of independence last February and consensus was maintained despite friction between the parties over many issues. Based on a contingency plan prepared by the government (but never made public), Serbia acted quickly by recalling its ambassadors from the countries that recognized Kosovo, including the United States and some 20 EU members and banned government officials from all contact with diplomats from those countries. (Serbian ambassadors were returned to EU capitals in July, but other countries, including the US, still do not have an ambassador from Serbia.) Serbia began a vigorous diplomatic offensive to prevent additional countries from recognizing the new state and international organizations from including Kosovo as an independent state. Serbia's relationship with the EU as well as its status as a candidate for membership was in serious jeopardy. Prime Minister Kostunica wanted to put it on hold until the "EU

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explicitly recognizes sovereignty of Serbia over Kosovo.” The Democratic Party and Tadic took the position that only a strong Serbia on its way to Europe can defend Kosovo and claimed that the two goals should be pursued in parallel. These differences eventually led Kostunica to bring the government down, expecting that an early parliamentary election—with Kosovo as the central

EU accession is consistently supported by about two-thirds of Serbian citizens. But when asked whether they would accept giving away Kosovo as a price for EU membership, more than half say no.

issue—would strengthen his position and enable him to form a new government with the Radicals and the Socialists, relegating the DS to the opposition.

In a campaign full of vitriol, the dividing line was clearly drawn. The main competitors remained the Democratic Party and the Radical Party of Serbia (SRS), and polls showed the Radicals enjoying a slight lead. The presidential election held in February confirmed Tadic, who narrowly beat Tomislav Nikolic in the runoff election, 50.5 percent to 47.9 percent. Many feared that the result from the parliamentary elections would be different, since Kostunica and the Radicals urged Serbs to shun the EU because a “false state was created on the sacred soil of Serbia and Kosovo was stolen.” EU accession is consistently supported by about two-thirds of Serbian citizens. But when asked whether they would accept giving away Kosovo as a price for EU membership, more than half say no.

President Tadic led the “For European Serbia” coalition, which combined the DS with a few small parties. The foundation of their platform was the slogan “Both Kosovo and Europe.” Tadic’s coalition and slogans were fully supported by the EU and the US, fearing that Serbian relations with the West would deteriorate further if Kostunica’s nationalist bloc of Radicals and Socialists would win. In support of Tadic, the EU signed the Stabilization and Association Agreement with Serbia, allowing them to begin the accession process on the eve of elections. This was followed by a framework agreement between Crvena Zastava (formerly the main car producer in Yugoslavia) and the Italian company Fiat. Most local analysts agree that these two events, coupled with continued negotiations on facilitating the visa regime, added a few percentage points in support of Tadic’s coalition.

Speculation over the composition of the new government had started even before the elections, when parties already began posturing and taking positions. While Kostunica made it clear that he would not accept a coalition with DS again (making the SRS and SPS his only potential partners), Tadic kept this options open despite harsh attacks from DSS and their strong anti-

European rhetoric. There were some rumors about the possibility of a collusion between the Democrats and the Socialists which, under the leadership of Ivica Dacic, formed a coalition with the Party of United Pensioners of Serbia (PUPS) and United Serbia (JS) to increase their chances and leverage.

The unexpected success of the Democratic Party, which won 102 seats in the 250-seat National Assembly, was immediately declared a great victory for the pro-European forces and created euphoria, not only in the DP and among its supporters, but also in the EU, the European capitals and in the United States. However, the numbers show a different picture. The democratic bloc (coalition For European Serbia, Liberal Democratic Party [LDP], parties of minorities) won 120 seats while the ethno-nationalist bloc (SRS, SPS, DSS) garnered 130. The last three began negotiations to form the new government followed by rumors that the Socialists were considering switching sides.

The results of the elections in the last four years show a growth of support for the democratic bloc (DS, G17, LDP, minorities) and incremental losses by the ethno-nationalist bloc (SRS, SPS, DSS). The December 2003 parliamentary elections gave the ethno-nationalist bloc 53.1 percent of the vote, while the democratic bloc won 32.1 percent. In January 2007, it was 51.3 percent to 37.4 percent, and last May’s was the closest result ever, with 48.64 percent to 45.86 percent. Interestingly, the opposite trend can be seen in presidential elections, since Tadic won the July 2004 presidential elections against Nikolic 53.7 percent to 45 percent, but in February 2008 the results were 50.5 percent to 47.9 percent.

The proportional electoral system in Serbia has led to the establishment of what is often called a “partocracy.” In this system, citizens vote for parties, which are not obliged to honor the candidate lists submitted at the time of elections. Therefore, parties can replace any of their MPs at their discretion, which ensures party loyalty and concentrates power in the hands of the party leaders.

Immediately after the elections, the media was filled with contradictory statements made by party representatives and rumors about party negotiations which added to the confusion over the results. In retrospect, it is obvious that the Democratic Party and the Socialist Party had reached an agreement early on, but both needed time to prepare their rank and file members—as well as the general public—for the new coalition. The platforms of both parties were very general regarding social and economic issues and were therefore found to be compatible. Also, both parties viewed Serbia’s territorial integrity as a top priority for the country and EU accession also ranked high. Ironically, the national consensus on Kosovo imposed by Kostunica created the framework for the coalition between the

Democrats with the Socialists, while a gradual shift in public attention away from Kosovo to the more pressing issues of the economy, unemployment and declining living standard—all linked to relations with the EU—helped the democratic bloc score better in the end and gave the Socialists the role of kingmaker, which had previously been held by Kostunica.

The new coalition government controls 128 of the 250 seats in Parliament. It has the support of 13 MPs from the LDP coalition and one Albanian for pro-European legislation and democratic reforms. The opposition now reduced to SRS and DSS-NS, has 108 MPs and, though it cannot prevent the adoption of government proposals, it can delay them through obstruction, as it has already done since the beginning of the new term. The new Prime Minister presented six key elements of the coalition's program to Parliament, including Serbia's European future; non-acceptance of the independence of Kosovo and Metohija; strengthening the economy; social responsibility; the struggle against organized crime and corruption; and respect for international law.

In terms of foreign policy priorities, the coalition lists EU as a top priority; Russia appears next, and then mentions strengthening its relations with the United States "with the goal that the largest power in the world...respects the interests of Serbia and the Serbian people to a higher degree." Mentioned also are China, India, the Mediterranean and the nonaligned countries. Regarding Kosovo, all coalition partners agreed that its independence will never be recognized and that all legal and diplomatic steps will be taken to keep it within Serbia. This will be done in cooperation with Russia and other states that are against or have not yet recognized Kosovo's independence. Related to the commitment of Serbia to strictly respect international law and its obligations and require the same from others, the ICTY is mentioned in one sentence that states that Serbia will insist that all crimes be treated equally and that there are no less valuable victims and privileged criminals (in reference to acquittals of Ramush Haradinaj and Naser Oric). The goals of the economic policy have been set very high and are coupled with a social policy that will require considerably higher government spending. The program is, however, not elaborated and strategies to achieve all of the goals mentioned remain to be developed.

Initially, the prospect of an odd coalition of DS and SPS with Tadic courting the Socialists was met with opposition. Nevertheless, strong support from the major Western countries (though discrete it became known) caused a "thundering silence" in the media and muted criticism along with some confusion in both parties and the general public. The formation of the government eight weeks after the elections was generally welcomed: tensions that had been felt in Serbia for months were finally relaxed. After a long crisis, voters desperately wanted to see a way out and were ready to accept almost

anything. The acceptance of the new government seems to be growing over time. However, faith in the government platform requires a lot of wishful thinking. If disappointed once again, many voters may turn to the next option, and it may be far worse.

After a troubled experience with Kostunica and the snail speed at which reforms were made, many people took the position that his removal has been a success in itself. Though the platform of the Socialists matches Kostunica's when it comes to Kosovo, the EU and the West, most analysts notice that Ivica Dacic (an apprentice of Milosevic) is pragmatic and has realized the potential of this window of opportunity. He accepted the policy of "both, Kosovo and Europe" as the price for laundering his party's history and his own role in it. His party's associates have gained access to positions in the government and in profitable state-owned enterprises and now have a vested interest in keeping the government in place. His party gained control of the Ministry of Interior, which had been cleansed of Djindjic government appointees by Kostunica and filled with the old cadres and their young qualified relatives. A prominent military analyst has said that the "secret services are deeply privatized and owned by the parties (*Blic*, July 5, 2008). Tadic appointed Sasha Vukadinovic, an untainted

Serbia was making some progress on its way toward the EU, though slow and uneven, until last February when Kostunica blocked it completely in response to the Kosovo declaration of independence. The May elections and the odd coalition government may look like more of the same, but there are major differences that allow for hope.

professional (36 years old, formerly a public prosecutor) as the new director of the Security Information Agency.

Serbia was making some progress on its way toward the EU, though slow and uneven, until last February when Kostunica blocked it completely in response to the Kosovo declaration of independence. The May elections and the odd coalition government may look like more of the same, but there are major differences that allow for hope. Dacic and his Socialists do not have the power to assume the leading role in the government or bloc major decisions. After all, the government led by DS can survive their withdrawal since LDP can replace them. This seriously limits their capacity to block reforms. It also enhances the capacity of LDP to balance the influence of SPS and keep playing the role of the conscience of the Democratic Party.

The changes strengthen Tadic and establish in practice a semi-presidential system. He now has a real chance to lead Serbia into the future and the EU. Despite

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the inherent contradictions (democratic bloc in coalition with Milosevic's Socialist), the new government may prove to be long-lived and establish the stability that Serbia badly needs. Nevertheless, we cannot expect the new government to be an agent of modernization, since it is the product of the existing institutional structures and hierarchies, which are inherently resistant to change. Since 2003, traditionalists have prevailed in Serbia and have determined the pace and modalities of the transformation. Advances in trans-Atlantic integration (PfP, SAA) were the result of incentives and support given to the democratic forces by international actors, and do not reflect real progress in Serbia. The fear is that this coalition will legitimize the current continuity with Milosevic's policies. The declaration of reconciliation between the parties negotiated by Tadic and Dacic may be an important step toward a wider political reconciliation, but it is tantamount to burying the past without really facing it. At worst, this reconciliation may lead to the vindication of Milosevic's policies and an absolution for those who had committed crimes. This would only deepen the

progress and the stabilization in the wider region. However, Serbia has no capacity for another armed conflict, nor is there a will to start one. The military, with some exceptions, is being reformed and makes consistent progress in its cooperation with NATO. But the continuity of Kostunica's foreign policy, with its emphasis on the diplomatic offensive at the UN General Assembly session, will continue to hold the country back. Serbia's intransigent position on Kosovo has been built into the foundation of the national interest and anchored in the new Constitution. This prevents flexibility and stands in the way of possible solutions to the conflict. This policy is to keep the issue open in hope that the international balance of power will change in Serbia's favor, allowing Serbia to "keep" Kosovo or maybe redrawing the borders in the Western Balkans. The recent crisis in Georgia may only strengthen these expectations.

The May elections demonstrated that there is not yet an electoral majority in Serbia to allow a radical departure from the policies of the past. The new coalition reflects the ambivalent positions of the voters and the confusion created by intensified nationalistic propaganda and distortion of realities. A majority still believes that it can "keep" Kosovo and also get to the EU. The symbiotic relationship forged in the 1990s between tycoons, parties and government institutions (particularly the security services) remains intact, with the tycoons enjoying a dominant position. Yet, the process of accession and economic progress may lead to an incremental shift in the public away from nationalism and toward true democracy. Despite its managed democracy, Serbia has the capacity for transformation. Continued pressure of the civic sector, however fractured, is indispensable for further reforms and democratization to succeed. The need to meet the requirements for EU accession may help accelerate the transition. But Serbia cannot do it alone: support from the EU and the US remains crucial for success. ■

The new government needs economic progress which requires foreign investment and this can be achieved only with a more orderly market, laws and a reformed and independent judiciary, which can deal with rampant corruption.

divisions in society and nourish resentment and instability, both in Serbia and in the wider region.

The new government was greeted almost enthusiastically in the EU. Olli Rehn, welcoming the 'new pro-European' government has said "it is better to rely on evolution than catharsis," and stated that Serbia has a chance to achieve candidate status by December 2008. Active support of the new coalition by the EU and the US may have helped to achieve the desired result. But by participating actively in the process, Western powers have committed themselves to support the new government even if it does not fully meet their expectations. The new government needs economic progress which requires foreign investment and this can be achieved only with a more orderly market, laws and a reformed and independent judiciary, which can deal with rampant corruption. The outcome may be that the EU will be forced to accept watered-down requirements in the accession process. All of this portends the continuation of slow-paced reforms, even as Serbia moves along in the process of European integration.

Kosovo and the cooperation with the ICTY (the transfer of General Ratko Mladic after Radovan Karadzic was apprehended) remain the two major issues that may seriously hamper Serbia's accession process, its economic

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Capacity Building and Education for Stability and Integration in Kosovo and the Western Balkans

Arben Hajrullahu

Arben Hajrullahu is a Fulbright Humphrey Fellow and WWICS public policy Scholar. He spoke at an EES Noon Discussion on May 28, 2008. The following is a summary of his presentation. Meeting Report 349.

Last December, a distinguished British-American scholar told me that his grandfather, who was a local politician in a small town in Briton and who did not have a deep knowledge about the global politics, was nevertheless know to everyone in that small town as an expert on world politics. He gained this reputation because he would often say “in the spring the Balkans will face conflict,” and he was almost always right.

I mention this story for two reasons: first, to reflect on the difficult history of this European region and, second, to show that often it is much easier to predict the future for this region than it is to explain recent or past developments. Here, I will try to keep the focus on the difficult part—I will try to explain why recent developments unfolded as they have. I argue that in order to create a sustainable peace and integrate the Balkans into the rest of Europe, there is a stark need for capacity building and education throughout the region.

The Western Balkan region has three chronic problems. First, none of the states that comprise the region have the capacity to function at a reasonable level. Second, there is little co-operation between these state and no realistic long-term strategies of how to build cooperation. Finally, the entire region continues to suffer economically and is in desperate need of reforms that create a sustainable economic and social base in each country.

GDP is a good first indicator to get an overall sense about the development stage of a country. Comparing GDP rates of the countries of the Western Balkans illustrates the diversity of the region and the disparity among neighboring countries. The highest GDP in the region is in Croatia, with more than 6,000 euro per capita per year, while the lowest GDP can be found in Kosovo, at about 1,000 euro per capita per year. Factoring in the informal economy, the real GDP should be something higher than the statistics indicate. Distinctions also arise when looking at the map in terms of where the countries of the region are regarding the EU-integration process. Two groups can be clearly identified: in the first group of candidate countries are Croatia, Turkey and the former Yugoslav Republic of Macedonia, while in group of potential candidates includes Albania, Bosnia and Herzegovina, Kosovo, Montenegro, and Serbia.

All of the Western Balkan countries would like to believe that EU membership is no longer a question of ‘if,’ but of ‘when.’ However, just as other member states, the countries of the Western Balkans will need to meet the same membership criteria before they can qualify.

The membership criteria, which are often referred to as the ‘Copenhagen Criteria’ consist of:

- ◆ stability of institutions, the rule of law, human rights and respect for and protection of minorities;
- ◆ functioning market and competitive economy;
- ◆ the ability to take on the obligations of the EU membership.

In an effort to support the integration process, both within these countries and in the region as a whole,

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the European Commission has planed to spend approximately 4 billion euros between 2007 and 2011. This funding, called the pre-accession instrument (IPA), and is by far the largest amount provided by the EU to any region in the world. However, the amount of foreseen support for the Western Balkans hardly seems sufficient when one considers that it is the equivalent to 30 euros per capita per year. EU enlargement experts argue that the EU should adapt its enlargement strategies so that they address the specific situation in the Western Balkans.

Because the countries of the Western Balkans have made little progress in recent years on EU integration, many experts argue that the EU should rethink its enlargement strategy. On the one hand, there is the argument that the conditional approach that brought Central European countries into the EU is not working in the Western Balkans. On the other hand, the European Union’s capacity to enlarge to include the Western Balkans seems to be exhausted. Additional barriers to enlargement continue to pop up, such as the amendment to the French Constitution requiring a national referendum to be held on any future EU expansion following that of Croatia. The good news for the Western Balkans may be that the French government has again initiated the procedures to change this rule introduced shortly before the unsuccessful referendum on the EU’s constitution. This provides yet another example of how much more complex the process has become since the last wave of enlargement, since it now depends on political developments within the EU as

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well. In other words, it seems as though the Western Balkan countries have missed the “easy train” to the EU.

In addition to EU support for the Western Balkans, support has been sent from other countries as well, including the US, Japan and Canada. For example, US aid for the region in the phase immediately following the conflicts in Bosnia and Herzegovina and Kosovo was much greater than other post-war countries throughout the world. This illustrates that the familiar claim that the Europeans are the payers and the Americans are the players in the Balkans is not entirely true. Experience shows that the combination of American hard power and European soft power has worked well in the Balkans. Europeans should also recognize that whenever something difficult had been done in the Balkans, it was

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done through US leadership. At the rhetorical level, the United States and the European Union have identified rule of law and democracy promotion as strategic priorities for transatlantic cooperation in the region. The two partners have recently cooperated closely in the Western Balkans on the final status of Kosovo.

I join the many scholars and policy makers who have underlined the need for multi-level cooperation and reconciliation in the region. However, I do not have a clear recipe for how cooperation could lead to sustainable results when regional actors do not create basic preconditions for successful cooperation, such as mutual recognition of states as equal partners. No example illustrates this more clearly than the relationship of Serbia and Kosovo, which shows how difficult is to achieve cooperation and reconciliation.

The lack of real accountability of both international and local authorities, and the arbitrary implementation of the rule of law has not helped the democratization process. Western Balkan countries are still weak states with ethnically divided societies. Instead of achieving democratic ownership, countries such as Bosnia and Herzegovina or Kosovo remain international protectorates. Kosovo in particular is faced simultaneously with economic transition and a nation-building process, which pose huge political, social and economic challenges. Today, Kosovar society is at a turning point, hoping to move from this transitional phase to an open society.

Croatia, Macedonia, and Albania have achieved a much higher degree of political stability, with a clearer perspective. By contrast, Serbia seems paralyzed at the crossroads between two incompatible choices: 19th

century ethno-nationalism and European integration. The Western Balkan region merits unlimited support for a stable future. The best support for the people living in Serbia is to recognize the independence of Kosovo. Sending unclear signals to the people living in the region would only be a further boon for nationalistic politicians. The political and economic future of the Western Balkans is primarily a matter of the EU integration process: the interventions in the Balkans during the 1990s will be justified only if all countries in the region, sooner rather than later, become EU and NATO member states.

Last February’s declaration of Kosovo’s independence, based on the, and its prompt recognition by many countries is closing a chapter of European history. Three guidelines led this process: first, the international community excluded the option of returning Kosovo to Serbian control, as it was before 1999 or changing Kosovo’s borders and would not allow Kosovo to form a union with neighbouring states. Thus, Kosovo has declared its sovereignty in coordination with the key players of the international state community and not in a unilateral manner. It would serve the interests of every state in the Western Balkan region to recognize the reality and to look forward to EU and NATO integration as key factors for stability in this region. This is the only way to achieve a win-win situation for all the countries of the region and for the international community involved in this region as well. Unfortunately, it is difficult to disregard the strong emotions that are the result of the region’s long history. But it is also important to realize that the emotional tone that has dominated politics in the Western Balkans is also the cause of the wars and conflicts there, and this cycle should be brought to an end.

Serbia’s plan to create a “functional partition of Kosovo” has been widely rejected by the international community, by the Kosovar authorities, and by the Kosovar people (including Kosovar Serbs), since it would create a situation of permanent tension and would create dysfunctional states. The Western Balkan countries need functional states and integrated societies. The only way to achieve this is by creating strong, representative and accountable governments. In Serbia, this means that politicians should spend their energy and resources on concrete, social problems such as the economy, education and infrastructure.

The most important element in creating cooperative and democratic societies the Western Balkans is education. Increased efforts to improve the quality of education would help local economies and contribute to stability and development. However, statistics show that education and research are two of the lowest priorities in the Western Balkans’ regional and domestic political agendas. As a result, many highly skilled people have left the region, which has contributed to what is known as brain-drain. If these societies are to create capable governments and achieve inter-regional cooperation and European integration, functional political elites are needed. Therefore, education plays the most important

role in achieving integrated societies, cooperation and the important local ownership of the system. Countries with unstable and problematic transitions, such as in the Western Balkans, tend to become chronically dependent societies, and this offers neither a solution for the countries themselves nor for the international community which is trying to help them.

In 1991, the foreign minister of Luxembourg, Jacques Poos, proclaimed that “the hour of Europe has struck.” The implication was clear—the European Community had a moral responsibility to intervene in the Yugoslav crisis in order to prevent an escalation of the conflict. Europe’s difficulties in coping with the challenges posed by the disintegration of Yugoslavia were obvious for long time. Instead of preventive and solution-oriented actions, the EU has often acted only after conflicts were already underway. Today, the EU perspective of the Western Balkan countries continues to be problematic. Recent developments in the Western Balkan region (especially the independence of Kosovo) illustrate that the dissolution of Yugoslavia has finally ended. This offers the EU a second chance to take the initiative and seize the opportunities that it had missed before. The EU must find a way to speak with one voice on the Balkans and to offer a concrete roadmap for the region. Nothing less than full EU membership for the region would lead to a win-win situation for the countries in the region and the EU itself.

Simply put, the challenge of the Western Balkan countries in the twenty-first century is how to revive the state in order to provide good governance as a prerequisite for reconstruction and reconciliation of weak states and divided societies. EU integration and sustainable peace cannot be achieved in the Western Balkans without functional elites, and neither societies and nor education systems can be integrated without functional states. ■

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WEDNESDAY, 24 SEPTEMBER: Noon Discussion, 12:00-1:00

*Missile Defenses in Eastern Europe:
Who Threatens Whom and How?*

6th Floor Auditorium

STEPHEN BLANK, Professor of National Security Studies,
Strategic Studies Institute, US Army War College

THURSDAY, 2 OCTOBER: Noon Discussion, 12:00-1:00

*Blue Helmets and Black Markets: The Business of
Survival in the Siege of Sarajevo*

5th Floor Conference Room

PETER ANDREAS, Associate Professor of Political Science
and International Studies, Brown University

WEDNESDAY, 8 OCTOBER: Noon Discussion, 12:00-1:00

*Talk of the Nation: Language and Conflict
in Romania and Slovakia*

5th Floor Conference Room

ZSUZSA CSERGO, Assistant Professor of Political Studies,
Queen's University

TUESDAY, 14 OCTOBER: Noon Discussion, 12:00-1:00

*A Litmus Test of the Century and its Social and Moral
Order: Lithuania in the Twentieth Century*

6th Floor Auditorium

LEONIDAS DONSKIS, Professor of Political Science and
Director of the School of Political Science and
Diplomacy, Vytautas Magnus University

THURSDAY, 16 OCTOBER: Seminar, 3:30-5:30

*The Red Prince: The Ukrainian Mission
of a Habsburg Archduke*

5th Floor Conference Room

TIMOTHY SNYDER, Professor of History, Yale University
*this meeting is co-sponsored by the
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