Paradoxes or Strategies in International Governance?
The Case of Kosovo

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I. Introduction

The 21st century has entered the international scene as an era where international governance is taking on a major role and states are finding themselves forced to reconfigure their functions. The last 15 years have both witnessed tendencies weakening the state and efforts to reinforce it. There are two ways to apprehend these tendencies; either as contradictory and hence as a paradox, or as complementary in an effort towards weakening the state and then they can be perceived as a strategy. The first part of this paper will briefly introduce these two different perspectives from both an internal and an external point of view, before trying to apply them to the case of Kosovo in the second part.

A. A Paradoxical Development

Looking at the 21st century from the paradoxical point of view, the state seems to be stuck in a crossroad between the two tendencies, one reinforcing the state and the other weakening it. The external reinforcement of the state is demonstrated by the many state-building projects created by international organisations, at times grouped under headings such as international governance\(^1\). Peace-building and state-building institutions are multiplying and states needing help after conflicts also seem to increase in numbers. All these organisations trying to rebuild or reconstruct the state, imply that there is a will to keep the state in its contemporary form with the juridical, external sovereignty intact no matter what the internal situation looks like\(^2\). At the same time though, there is an opposing tendency with an increasing demand for the introduction of conditional or limited sovereignty for states not corresponding to the latest liberal demands for good governance and democracy\(^3\). These demands are however often expressed by the very same organisations and institutions

\(^1\)In this paper, International governance refers to both governmental and non-governmental interaction across national boundaries to address issues that span beyond borders.


later rebuilding the states. The end of the Cold War meant an increasing insistence upon good governance and human rights norms as the condition for enjoying other norms, such as sovereignty. The conditional sovereignty often proposed as an option for states in post-conflict phases means less protection against foreign intervention and consequently less independence. A development in the opposite direction from the state-building projects, one might think.

If we take a step inside the state and look at the internal dimension of the state, still from the perspective of a paradox, there appears to be a tendency to gradually reinforce the state’s authority towards its citizens through the creation of new and stricter laws. The official objectives of these laws are to protect the citizens from outside threats. During the last few years the terrorist threat has been the overwhelming reason to create new means to protect citizens and it has provided a basis for an escalated exclusionary discourse. States are hence reinforcing their authority on a domestic level. At times this goes so far as to coincide with a restriction of the personal freedom of citizens (see for example the new terrorist laws, the debates in the UK about the surveillance cameras etc.). The threats can be both real and constructed, but they always have a ‘what if’ clause which reinforces the claimed necessity of the laws. This development can be interpreted as a reinforcement of the substantial sovereignty, the state’s authority, in other words.

However, at the same time as the states try to justify their growing internal authority, they seem to be challenged by an increasing number of NGOs. International organisations, NGOs and lobbying groups are having more and more influence on the international arena and often they represent an alternative political identity to the citizens when that of the state seems insufficient or unsatisfactory. Human Rights organisations, environmental groups and issue groups are becoming popular channels for expression and

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6 Ibid. p. 145.
7 Ibid. p. 157.
8 Ibid. p. 155.
political cohesion, creating new political identities across borders\(^9\). This development help to buttress the opinion that privatization both in economics and in force are considered increasingly legitimate, which in turn foster a de-nationalisation and de-statisation of politics\(^10\). At the same time the depth and the intensity of rules by NGOs increase, leading to a more assertive role vis-à-vis individual states and at times involving an identity crisis for the NGO themselves on what role they should play in international relations\(^11\). In a limited and regulated version, these groupings may not have an effect on states, but if the acceleration of their influence continues they might prove to be a challenge to the state.

B. …Or a Strategic Development?

If we change the perspective and analyse these developments from the strategic thesis mentioned in the introduction, they can be perceived as indicators of a strategy to transform the state form under external pressures\(^12\).

From this point of view, the objective of state-building is not to reinforce the state, but rather to hide the fact that the state is disappearing. In other words there are efforts to keep the external, legal shell of the state, while the inside either is a failed state, or a state reconstructed by external forces\(^13\). With only a legal shell, the state lacks substantive sovereignty to control its internal dimension. The increasingly strong claim for human rights to decide the degree of sovereignty a state is entitled to; is seen as part of this process. Likewise the NGOs promoting liberalism, democracy and good governance are considered influential in the process of

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\(^10\) Ibid. p. 134.


\(^13\) Ibid. p. 35.
reconstructing ‘phantom-states’, by their demand for states to meet the liberal legitimacy standards\textsuperscript{14}. The interpretation of sovereignty becomes in this context more of a duty or a responsibility associated with capacities instead of legal and political rights\textsuperscript{15}.

Closely connected to this development is the increasingly popular concept of human security. The former UN Secretary General Boutros Boutros Ghali’s report in the 1992 Agenda for Peace introduced one of the first presentations of the idea that people faced more threats than states in the Post-Cold War era and consequently should be protected accordingly\textsuperscript{16}. Following this report several institutions and organisations have continued to use the concept, and with the publication of “The Responsibility to Protect” in 2001 by the International Commission on Intervention and State Sovereignty, the concept seems to be established on the international arena, although still with a rather vague definition that ranges from notions of freedom from fear and freedom from want, environmental challenges and poverty reduction\textsuperscript{17}. Notwithstanding the problem of definition, the concept involves a reinterpretation of sovereignty and places the former juridical based idea of ‘humanitarian intervention’ closer to the terrain of moral duty\textsuperscript{18}, hence undermining the principle of sovereignty. This tendency seems to entail a priority shift from international law to human rights, letting human rights precede international law instead of the other way around\textsuperscript{19}. The introduction of human security makes hence interventions somewhat less controversial, and facilitates subsequently the undertaking of state-building by external forces. In a way, this development moves authority upwards, above the state to intergovernmental organisations and international governance\textsuperscript{20}. If not regulated, this development can lead to an erosion of the ties between power and accountability, enabling international interveners to distance

\textsuperscript{14} Ibid. p. 39.
\textsuperscript{15} Ibid. p. 35.
\textsuperscript{16} Duffield, Waddell, \textit{supra note} 10, p. 7.
\textsuperscript{17} Remacle, Eric, (2007) \textit{forthcoming}.
\textsuperscript{18} Ibid. p. 8.
\textsuperscript{20} Leander, \textit{Supra note} 8, p. 136.
themselves from responsibility\textsuperscript{21}. From the strategic perspective, this development corresponds, according to some authors, to a “constructive instability”, deliberately created by external forces in a situation where exterior aid is already needed\textsuperscript{22}. Viewed from this standpoint the chaotic state-building in Afghanistan, Iraq and to some degree Lebanon, represent western strategies to increase their power and influence in the region\textsuperscript{23}.

II. The Example of Kosovo

Kosovo is and has been the centre of attention for the developments regarding state-building and sovereignty the last few years and is therefore a pertinent case to analyse. It has now been almost 8 years since the UNSCR 1244 was implemented and Kosovo became a UN protectorate\textsuperscript{24}. This represents an exceptional case in international relations. The UN administration has taken over all the power of the final decisions and has hence a final and unlimited authority over Kosovo. The political initiatives taken by the local government have to be approved by UN Mission in Kosovo UNMIK and the monopoly of a legitimate use of force rest with KFOR and UNMIK. In the UNSCR in 1999 it was stated that the international administration should stay for an initial period of 12 months and thereafter continue until the SC decides otherwise\textsuperscript{25}. In October 2005 the negotiations for the final status was launched after reports from the UN envoy Kai Eide, 6 years after the resolution was taken\textsuperscript{26}. This has been called a case of suspended sovereignty, but there are few observers who have identified any sovereignty at all\textsuperscript{27}.

\textsuperscript{21} Chandler, Supra note 11, p. 33
\textsuperscript{23} Ibid.
\textsuperscript{24} S/RES/1244, 10 June 1999.
\textsuperscript{25} Ibid.
\textsuperscript{26} S/2005/635, 7 October 2005.
The UNs Special envoy Martti Ahtisari briefed the Contact Group’s member on his plan for Kosovo in the beginning of February\textsuperscript{28}, a plan which is strongly influenced by the report “Kosovo: Toward Final Status” that was written by the NGO International Crisis Group in 2005\textsuperscript{29} for which Ahtisaari is Chairman Emeritus.

In this report it appears as the international pressure has resulted in another version of limited or conditional sovereignty, a suggestion that has been encouraged both by the Contact Group and the European Parliament in earlier drafts\textsuperscript{30}. In this latest report it is stated that Kosovo’s sovereignty should over a period of time be limited by an international presence. This international monitoring is judged necessary in order to maintain the multiethnic character of Kosovo and to safeguard the security and interests of the minority\textsuperscript{31}.

The provisions of the settlement will take precedence over all other legal provisions in Kosovo. A constitution is to be drafted by the Kosovo population but it needs to be in accordance with the provisions of the settlements in order to be applicable. The international presence remains and will consist of three components including an International Civilian Representative (ICR) which is also the EU Special Representative and who is appointed by an International Steering Group (ISG). The ICR will have the ultimate authority over the implementation of the settlement with specific powers to annul decisions or laws adopted by the Kosovo authorities if they are considered inconsistent with the spirit of the Settlement. In addition the ICR can also remove public officials for the same reason. A European Security and Defence Policy Mission (ESDP) will also be established to monitor and advice on areas related to the rule of law, in particular, to create an efficient and fair justice system. Finally there will be a NATO-led International Military Presence to provide a safe and

\textsuperscript{31} Ahtisaari, supra note 26.
secure environment\textsuperscript{32}. The plan does not mention the word independence or sovereignty, which means that Kosovo remains a UN administered province and part of Serbia until a new UNSCR can replace the former 1244. However, since the Settlement does leave the door open for membership in international organisations, it gives a sort of international recognition usually only applicable to a state or a sovereign territory, which Kosovo is not.

A. Kosovo: A Consequence of Paradoxes or Strategies?

Kosovo is an exceptional case in international relations today, but considering that it stands in focus for recent state-building efforts and sovereignty questions, it is a relevant example to study from the perspectives of the two theses introduced earlier.

If we start to look at it from a paradox perspective, it is a case where one can claim that both the weakening and the strengthening tendencies are visible. The state-building efforts undertaken by the international community can be seen as an example of strengthening the state. There have been enormous resources spent on the administration of Kosovo to rebuild the functions\textsuperscript{33}. Several international organisations, including individual states have made efforts to reconstruct Kosovo through various approaches. At the same time though, the final status is after 8 years, still not established. Nor has Kosovo independence or sovereignty and it continues to be regulated by an international administration.

If we once again take a step into the state to look at the substantial sovereignty, the inner control of the state, the question of NGOs becomes almost absurd, since the province is a gathering place for NGOs of all sorts, not to mention the international organisations governing the area. It is hard to talk about political cohesion in a case like this, as there is no state with

\textsuperscript{32} Ibid.
authority or accountability, just a local government who is supervised by an international administration.

The reinforcement of the internal dimension of the state through the creation of stricter laws is an impossible scenario for the Kosovo government as their propositions are revised and at times rejected by the international administration, specifically if they are considered discriminatory\textsuperscript{34}. This development is likely to continue even after the final status report as the ICR will have the necessary authority to oppose government decisions which can prevent the implementation of the Settlement in any way\textsuperscript{35}. The notion of reinforcing the internal authority by passing more and stricter laws is hence hard to apply to the Kosovo case as it is not the government in itself that decides this.

There are hence aspects of a paradox in the Kosovo case particularly concerning the external dimension of the province that has received enormous attention the last few years. However, if we put the paradox perspective aside and look at Kosovo through the strategic thesis discussed earlier, what could be a possible alternative to a paradoxical development?

The strategic perspective, which is so far receiving little attention in the international relations literature, introduces the theory of state-building as concealing the disintegration of the state form\textsuperscript{36}. This theory believes contrary to the paradox theory, that there are no attempts to reinforce the state, only to weaken it. The state-building process as demonstrated in Kosovo is seen more as taking over the capacity from political institutions and undermining their legitimacy then actually reinforcing the state. The shared sovereignty becomes in this view more of an indeterminate extension of external regulation and denial of political autonomy, then part of a reconstruction process\textsuperscript{37}.

\textsuperscript{34} Ahtisaari, supra note 26
\textsuperscript{35} Ibid.
\textsuperscript{36} Chandler, Supra note 12.
The fact that it has taken 7 years to even start the negotiations for an independent Kosovo supports in a way this thesis. The aim, according to this perspective is not to create states as classically understood, independent and autonomous, but rather to emphasise the legal shell of a state while abandoning its political content. This means that it is possible to redefine sovereignty as a duty or responsibility which is associated with capacities rather than political and legal rights. The responsibility lies then with the weak state in question (or province as in this case) but the ability to decide lies with the external powers. The political autonomy is absent while there is an exaggeration of the importance of the international legal sovereignty.

This scenario could be applied to Kosovo as the international administration has made it impossible for the local Kosovo authorities to take independent decisions while at the same time designing them as accountable to the people. The link between accountability and power is hence absent and substituted by two links – one between power and the international administration and the other between accountability and the Kosovo government. There is hence no accountability for the international administration, which often has more or less an absolute power. This governing system seems almost contra productive, as the aim is to ‘teach’ the local government how a democratic system is supposed to work from an international administration that does not provide a ‘good example’, rather the contrary.

This is a situation which undermines both power and accountability for the Kosovo authorities and risks to destabilise the democratisation process in the future.

Kosovo is not and was not an independent state before the war which means that the question of sovereignty becomes even more confusing. The new report issued by Ahtisaari shows that although there is a framework set for interpreting Kosovo as an autonomous province, with their own flag, language and constitution, it is not politically and legally autonomous for yet some time to come, with an overarching international presence.

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38 Chandler, Supra note 12, p. 34-35.
39 Ibid. pp.36-38.
keeping the final authority in their hands. Kosovo will however be able to enter international organisations such as the UN and the EU as an individual member, a scenario which definitely raises questions about the role of the state and international governance today. Whether this is the result of a strategic development or just the consequences of paradoxes is a question that needs to be answered in the years to come.