

# THE ENGAGEMENT OF EU IN THE CREATION OF SUBJECTS OF INTERNATIONAL LAW: KOSOVO CASE

**Olga Brusylowska, PhD candidate**

*Department of International Relations  
I.I. Mechnikov Odessa National University*

## ***Abstract***

*The theory that has had an impact on the theoretical frames of the present topic was produced by a famous American sociologist Amitai Etzioni (“From Empire to Community: A New Approach to International Relations”). This topic has the aim to analyze the EU politics toward Kosovo independence, and get the answer: Can the European Union act efficiently when acting independently from other international actors? Involvement of EU in Kosovo problem was strengthening from the beginning of 2005. In mid-March 2007 Ahtisaari presented to the Secretary General a plan in the form of a short “Report” and a lengthy “Comprehensive Proposal”. Ultimately, Kosovo is, and will remain until resolved, a European problem. Failure to act would also discredit the EU’s CFSP (Common Foreign and Security Policy) and its efforts to project itself as a credible international actor in conflicts elsewhere. The new international presences in Kosovo described in the “Comprehensive Proposal” of Ahtisaari. It includes ICR, ICO, EULEX, IMP, and ISG, which will review the mandate of these presences after two years. EULEX, the EU’s biggest ever ESDP operation, was agreed in February 2008. The EU states which have recognized Kosovo interpret the decision on EULEX (Joint Action Plan, 4 February 2008) to mean that EULEX will work together with the Kosovar institutions and authorities. The opposite point said that EULEX did not prejudge the status issue and was thus consonant with UNSCR 1244. EULEX reached full operational strength on the 6<sup>th</sup> of April 2009. Among the main achievements we can see: 1) EULEX was able to reestablish control of border crossing to Serbia in the north; 2) EULEX judges had commenced holding sessions in the District Court House in the North Mitrovica. These judges are widely respected by local colleagues; 3) EULEX is investigating widespread corruption at the highest levels (ministries, government institutions). These raids should exert a positive effect in deterring corruption. But at the same time the EULEX similar to UNMIK was much too passive, and we can see a lot of problems. Answering on the main research question - can the European Union act efficiently when acting independently from other international actors - we should conclude that it is almost impossible. Lack of coordination between different international actors remains one of the most serious problems for the Kosovo future. But it does not mean, of course, that the EU made a big mistake then it was evolved in decision of this problem. In*

*fact, there was no alternative to strengthen their presence in Kosovo, integral part of Europe.*

**Keywords:** *EU politics, Kosovo, EULEX.*

## **Introduction**

The theory that has had an impact on the theoretical frames of the present article was produced by a famous American sociologist Amitai Etzioni. A very important fragment of Etzioni's work "From Empire to Community: A New Approach to International Relations" (2004) considers the civilization interactions. In his conception these interactions are presented in the form of mutual cultural enrichment, unlike the "clash" conception proposed by Samuel Huntington or the unilateral rejection of the traditional behavioral norms advocated by Francis Fukuyama. The process that takes place at the borders of civilizations seems to be "more like a chemical reaction rather than a purely mechanical junction of elements" - a natural synthesis of the Western respect for individual human rights with the Eastern deference to social commitments.

This topic has the aim to analyze the EU politics toward Kosovo independence, and get the answer: Can the European Union act efficiently when acting independently from other international actors? In the modern society new security challenges appear. Most of these challenges are also connected with Kosovo crisis. They are as follows: 1) terrorism and extremism, 2) illegal migration and related problems, 3) environmental problems, 4) illegal trafficking, 5) intrastate conflicts, regional conflicts, ethnic conflicts, 6) organized crime. Therefore this topic has a big degree of actuality.

## **Consequences of 1999 NATO Intervention**

Historians and politicians for a long time will debate on the merits and demerits of US and NATO intervention in Kosovo and the Federal Republic of Yugoslavia. This intervention put an end to the oppressive regime imposed on Albanians by Milosevic, but did not affect positively on the coexistence of the Albanian and Serb communities in Kosovo's territory. On the whole, national minorities' safety problem has not been solved. The explosions of violence of Serbs have not been stopped yet. From 4,35 thousand terrorist acts 4,12 were against Serbs and Montenegrin people; 910 people were killed; about a hundred churches and monasteries were destroyed. KFOR efforts on Serbs' protection are not enough. Serbs

continued to live in enclaves (practically in ghetto) in poor conditions. "The defenseless Serb minority became the target of ethnic violence, including intimidation, kidnapping, looting, arson, and assassination carried out by hard-line Albanians, some directly or closely associated with the KLA. Kosovar leaders Ceku and Thaci generally condemned incidents of violence against Serbs" (Cohen, 2000, p. 118 - 119). Insecurity of Serbs leads to their radicalization: they create parallel structures of power.

Among the other unsolved problems, economy issue is one of top priority. Economy reconstruction is very slow. The reparation of electricity, the roads and bridges is not over yet. Among 128.000 destroyed houses only 18.000 are reconstructed (NATO handbook, p. 158). Half of the manufacture enterprises are closed. Enterprises lack specialists, because Serbs worked there. But Albanians do not want to work in manufacture sphere. They prefer business, mostly half legal or illegal. State became the part of international trafficking of weapons, drugs, and people sale. Part of the inhabitants is involved into the Mafia structures, the other part lives on money provided by relatives working abroad. Unemployment level in Kosovo reached the number of 40% to 50% (70% among youth) (Cohen, 2005, p. 373). Half of the population still lives under the poverty line.

Undecided Kosovo problem influenced the neighboring countries negatively. Firstly, the problem of refugees was constantly aggravating (more than half million people during the year of the conflict). They settled in Albania, Macedonia, Montenegro, and Bosnia. The majority of them lived in dissatisfying conditions, supplementing the "risk groups" in these unstable countries. Secondly, Kosovo crisis caused an uncontrolled drug business. During the second half of the 90s its profits were used to finance illegal Kosovo army. Nowadays Albanian drug mafia (the union of Albanians from Kosovo, Macedonia and Albania itself) controls up to 80% of the whole turnover of drugs in Switzerland and Hungary, about 70% in Germany, and 40% in former SFRY. They distribute most of Europe's heroin (Trajkovic).

### **Involvement of the EU in the Kosovo Problem**

When Kosovo was not an independent state, the European countries unofficially recognize it. As Oli Rehn, the Head of the Commission of EU enlargement emphasized: "Kosovo will not be the US' 51th State but shall become EU's territory" (Cohen, 2005, p. 373).

Involvement of the EU in Kosovo problem was strengthening from the beginning of 2005. At this time President Ibrahim Rugova resisted the heavy pressure to dissolve his party's (Democratic League of Kosovo) alliance with the Alliance for the Future of Kosovo (Haradinaj's party). New coalition was made with the main opposition party - the Kosovo Democratic

Party (PDK) of Hashim Thachi. This choice was made under the pressure of EU foreign policy Chief Javier Solana.

After these changes the EU proposed new plans concerning the Kosovo problem. The former Finnish president, UN Special Envoy Martti Ahtisaari was entrusted with the task of working out a compromise with Serbian and Kosovar representatives. In mid-March 2007, after 14 months of negotiations that failed, Ahtisaari presented to the Secretary General a plan - in the form of a short "Report" and a lengthy "Comprehensive Proposal" - which contains fundamental guarantees for the Serbian minority in Kosovo (extensive rights, security, privileged relations with Serbia) and forecasts *conditional independence (supervised independence)* for Kosovo under international supervision (primarily the EU and NATO) (Delevic, 2007, p. 80).

The Ahtisaari plan had several advantages. It gave rights to Kosovo's 100,000 Serbs to manage their own affairs within a democratic Kosovo, which would be protected and monitored by the international community. It also required protection for Orthodox and Serbian cultural and religious sites. Finally, it provided for an international presence that would oversee the institutions of Kosovo and monitor the implementation of settlement. It also placed Kosovo on the road toward EU integration (Evans, 2007).

The EU has backed the Ahtisaari plan but a number of its members are skeptical about the practice with it in the absence of a Security Council blessing. On May 2007 the US and the EU submitted discussion documents amongst Security Council members outlining the "13 elements" they recommended for inclusion in a future UN resolution, including a confirmation of Ahtisaari's recommendations. Russia has made its own proposals in response to the "13 elements". All of them are in the Ahtisaari proposals, but Russia was against any form of independence until they are fully implemented. The main point of disagreement is whether Kosovo will be in a better position to meet these obligations as a part of Serbia or as an independent state, with substantial international support and assistance.

Sabine Freizer (2007) underlined: "Clearly the provisional authorities and the people of Kosovo cannot move forward on reform until they have the responsibility for governing their own state. Giving them an opportunity to build a multi-ethnic state under the EU tutelage is the best option available". But by late July 2007, the UN Security Council had failed to draft a resolution to implement Ahtisaari's proposal, largely due to Russian objections to it (Schmidt, 2008, p. 28). The negotiations of the Troika (the EU, Russia, and the USA) ended inconclusively at the end of 2007. So, strategy of the EU and the USA to bring Kosovo to supervised independence through the UNSC has failed, following the declared veto of Russia.

Johanna Deimel and Armando Garcha Schmidt (2009) (International Civilian Office) insisted: “Russia, which until the middle of 2006 still supported the views of the Balkans Contact Group (Germany, France, the United Kingdom, Italy, US, and Russia) on the negotiations under Ahtisaari, is using Kosovo to further its global political ambitions. Despite the fact that it has counteracted its own arguments based on international law by its recognition of South Ossetia and Abkhazia, in the UN Security Council, Moscow has blocked all attempts to reorder the legal framework for the international presence in Kosovo”. The position of UN is also tied with Russia. Ban Ki-moon cannot be expected to act against the Russia pressure - especially without certainty that the EU itself will be firm.

### **New International Presence in Kosovo EULEX**

At the same time the political process, once begun, could no longer be stopped. Openly supported by the US and expecting to obtain approval from the EU, Pristina declared itself independent on 17<sup>th</sup> February 2008.

During 2008 there was a partial turning point in the relations between Brussels and the capitals of the Balkans, due to several factors, most notably the fact that the EU Presidency of the European Union in the first semester was from Slovenia. This represented, from the politically point, an extremely significant event for the Western Balkans. This was considered a European success story: the speed of the development of a European perspective. The program of the Slovenian Presidency considered as priorities the Western Balkans and the question of Kosovo.

On 15<sup>th</sup> June 2008 the first constitution of the new state entered into force, heralding the transfer of main powers from UNMIK to the Pristina government. Both the Declaration of Independence and the Constitution of the Republic of Kosovo refer to the Ahtisaari plan and its implementation. The new state invited the ICR, EULEX and KFOR.

Ultimately, Kosovo is, and will remain until resolved, a European problem. Failure to act would also discredit the EU's CFSP (Common Foreign and Security Policy) and its efforts to project itself as a credible international actor in conflicts elsewhere. Before the Declaration of Independence, the EU had given the impression of being united on the issue. As late as 4<sup>th</sup> February 2008 the 27 EU member states emphasized that they were willing to assume a leading role if Kosovo agreed to implement the Ahtisaari plan. In the report of the International Crisis Group it was declared: “Europe risks a new bloody and destabilizing conflict. To avoid chaos on its doorstep, the EU and its member states must accept the primary

responsibility for bringing Kosovo to supervised independence” (Kosovo's First Month).

The EU responded to Kosovo’s independence with remarkable unity, even in the face of hesitancy among some member states. On 18<sup>th</sup> February 2008 it took common note of the independence declaration and committed to play a leading role in helping the new state. On 28<sup>th</sup> February in Vienna, several EU member states and the US took the lead in establishing an International Steering Committee (International Steering Group) to supervise independence. EU High Representative Javier Solana, Swedish Foreign Minister Carl Bildt and NATO Secretary General Jaap de Hoop Scheffer were the only senior officials to visit Kosovo in the first month of independence.

But now, five EU states have still not recognized the independence of Kosovo - Greece, Romania, Slovakia, Spain and Cyprus. They refused to recognize Kosovo for reasons associated with domestic policy issues (they worry about potential separatist elements at home) and international legal reservations.

At the UN assembly on 8<sup>th</sup> October 2008, 77 states supported the Serbian resolution requesting the International Court of Justice at The Hague to assess the legality of Kosovo’s Declaration of Independence. On 22<sup>nd</sup> July 2010 judges at the ICJ voted in favor of the advisory opinion: Kosovo’s independence was legal. But Romania reaffirmed its position and said: it was only decision about legality of Kosovo’s act of declaring its independence and not the question and consequences of the act of appearance of a new state.

Nicholas Whyte (2005) (Europe Program Director, International Crisis Group) commented: “Those, who criticize proposals for Kosovo independence as some sort of risky exception for the Balkans, as dangerous, obsolete and anti-European decision, must know that there is no one-size-fits-all solution to building lasting peace there. The situations in Bosnia, Serbia and Kosovo are completely different. Little surprise then, that the solutions will be different as well”.

Now the EU has procedures (“constructive abstention” and “enhanced cooperation”) that allow decisions to be taken and action to be set in motion when unanimity is not available (Articles 23 and 27 of the Treaty on European Union).

The EU informed the UN that it would no longer fund the economic reconstruction pillar of UNMIK. Apparently, this decision had not been coordinated with UNMIK. On the other hand, the EU High Representative for the Common Foreign and Security Policy of the EU informed the Secretary-General of the willingness of the EU to play an enhanced role in

the area of the rule of law in Kosovo “within the framework provided by resolution 1244 (1999)” (Weller, 2008).

During 2008 the international community has not managed to come up with a new legal framework for the missions. The new international presences in Kosovo described in the “Comprehensive Proposal” of Ahtisaari. It includes a lot of actors - ICR, ICO, IMP, ISG, and EULEX, which will review the mandate of these presences after two years.

EULEX, the EU’s biggest ever ESDP operation, was agreed in February 2008 by Joint Action resolution. But one fundamental difficulty was a lack of legal clarity. Serbia refused to cooperate with the European EULEX rule of law mission and the International Civilian Office (ICO), which were based on the basis of the Ahtisaari plan after the Declaration of Independence. That is why UN Secretary General Ban Ki-Moon since June 2008 has been trying to find a way out of this deadlock. He attempted to receive the support of Belgrade for the reconfiguration of UNMIK and the deployment of EULEX. According to these proposals EULEX would operate under the umbrella of the UN, that is, of UNMIK.

The UN and the EU concluded technical talks on reconfiguration of the international presence at the end of July. Notwithstanding Serbian opposition, UNSG Ban has ordered reconfiguration by October, to be replaced by the EULEX mission. There have been delays in EULEX deployment, however, and the EU has been unable to deploy in Serb areas.

On 26<sup>th</sup> November 2008 Serbia, EU and UN had reached agreement on the Six-Point Plan (about customs, police, justice, transport, telecommunications, and religious and cultural heritage in the Serbian enclaves). The Security Council gave its sanction to the deployment of EULEX within the framework of UNSCR: 1244 and under the umbrella of UNMIK, which thus continues in existence. Thus EULEX will act as a technical mission and be status-neutral. As Serbia sees it EULEX, like the OSCE, will operate under the UN mandate.

So, the transfer of the full mandate to EULEX and the withdrawal of UNMIK are now dependent on Belgrade. Position of Belgrade is defined by 2 factors: 1) willingness to have progress towards EU membership candidacy status and visa liberalization; 2) not to lose Kosovo.

Kosovo has agreed to EULEX primarily because it opens the prospect of integration into NATO and the EU. But Prishtina must continue to adhere to the Ahtisaari plan. There can be no doubt about the fact that for the future the country needs a great deal of help in the areas of justice and public administration, relationship between Albanian and Serbs, and that here EULEX will perform essential tasks.

The EU states which have recognized Kosovo interpret the decision on EULEX to mean that EULEX will work together with the Kosovar

institutions and authorities. The opposite point said that EULEX did not prejudge the status issue and was thus consonant with UNSCR 1244. The head of EULEX, Yves de Kermabon, received orders from the EU's PSC (Committee for Policy and Security), and Javier Solana.

Another new problem was tied with International Civilian Representative (ICR) and EU Special Representative (EUSR). Dutchman Peter Feith became the first ICR. His mandate derives only from those states which have recognized Kosovo and their International Steering Group (ISG), over which he presides. Status of ICO and ICR are unclear to both the international actors and the population of Kosovo. Since the UN Security Council has again given UNMIK the task of ruling the international supervisory process, ICO lacks a strong mandate and the question thus arises of the extent to which the Kosovar institutions are willing to follow advice emanating from ICR. But Feith, as proposed in the Ahtisaari plan, is also the EUSP. The function of EUSP is coordination of EU activities in Kosovo. The function of ICR is coordination of the international actors activities in Kosovo. This dual function of Feith is beginning increasingly to cause difficulties. Let us simply say it is difficult to understand who is responsible for what.

Peter Feith has done a great deal of consultative work for the Kosovar institutions since February 2008. But, first the bomb attack on the ICO building on 14<sup>th</sup> November 2008 shows that the ICO is working in a difficult political environment. Second, we can see some disagreements between Feith and Pierre Mirel ((European Commission) concerning the leadership and steering function of EULEX shed a revealing light on the imperfection of the coordinating processes within the EU.

EULEX reached full operational strength on the 6<sup>th</sup> of April 2009. There were 2569 people in the EULEX deployment, 1651 of them internationals and 918 locals. Alongside the personnel from EU member states, there are also persons representing countries outside the EU (Croatia, Norway, Switzerland, Turkey, and the USA).

Among the main achievements we can see: 1) EULEX was able to reestablish control of border crossing to Serbia in the north; 2) EULEX judges had commenced holding sessions in the District Court House in the North Mitrovica. These judges are widely respected by local colleagues; 3) EULEX is investigating widespread corruption at the highest levels (ministries, government institutions). These raids should exert a positive effect in deterring corruption. In some respects, Kosovo's reputation for lawlessness is exaggerated. The country has a low rate of violent crime, inter-ethnic crime is rare, and Serbs in most of Kosovo live securely (The Rule of Law in Independent Kosovo).



But at the same time the EULEX similar to UNMIK was much too passive, and we can see a lot of problems: 1) EULEX staff of international judges and police officers works on short-term contracts. They do not understand enough Kosovo realities; 2) some EULEX's employees are demonstrating they are above the law (they would implement it for Kosovars but not for themselves); 3) millions of euro were spent on staff, their cars, headquarters etc. So now there is a need to restore the credibility of EULEX by Kosovo population; 4) EULEX judges are fighting with three different legal systems (Serbian, Kosovo, and international); 5) EULEX fails struggle with drugs trade, trafficking of women and children; 6) organized crime and corruption are widespread and growing; struggle with corruption has low effect: from 168 cases registered from 2007 to 2009 only five have resulted in indictment and another five in arrests (The Rule of Law in Independent Kosovo).

Until today, the newly born Kosovo State does not yet have control over all its territory because of the northern Serb-majority receiving support, loans and subsidies from the Serbian authorities (and Russian). In July 2011, the Kosovo authorities tried in vain to regain control of the border areas between the northern municipalities of Kosovo and the Serbia.

There are no legal obstacles to a Stabilisation and Association Agreement (SAA) with the EU, the antechamber of the accession process. Spain, Greece, Romania, Cyprus and Slovakia still do not recognize Kosovo. European integration is related to the normalization of relations with Serbia. Until September 2010, Serbia followed the policy of double track: EU integration and territorial integrity. But Brussels put Serbia in front of a choice: either Kosovo or Europe, and Serbia chose the second. Serbia after the conquest of the status of candidate country in March 2010, will not go forward in the process until there will be significant progress in relations with Kosovo. The latest Serbian proposals provide for the adoption of a measure of autonomy, but not to independence, with recognized status to the Serbian minority living in the northern Albanian-majority region.

The irruption of the economic and financial crisis at the end of 2012 was the main problem of Europe. The fact that the main issue of European governments had become the economic crisis, if not the only, put in the background the question of Balkans with considerable repercussions on the accession process. Member States, hit hard by the international crisis, turned all the attention for possible solutions to the crisis of saving money and the bailout of Greece, which, among all EU countries, has been hit hardest by the speculation. This attitude led to the removal of a large amount of time and resources previously reserved to the region. Today Kosovo again is in an extremely vulnerable position: in fact, could not boast a solid and stable economic structure and at the same time, depending in large part on foreign

investments, began recording growing deficit in balance sheet. The annual Communication on the Enlargement Strategy presented in 2009, reflected this state of affairs, in which, while reaffirming rhetorically the prospect of accession, photographed Kosovo in a phase of stagnation.

## **Conclusion**

Nowadays the EU is committed to take over further responsibility for security and stability in Kosovo from the UN-mandated Interim Mission in Kosovo (UNMIK). The EU has the lead role in a new International Civilian Office, and has deployed an ESDP rule-of-law mission (EULEX). These work in coordination with the NATO military presence (KFOR), the OSCE mission and other international partners.

The EU must create a coherent framework for its policies. The success of EULEX stands or falls with the backing which the ESDP mission has in the EU. The EU's own reputation is at stake. Therefore, the European Commission must engage intensively with EU member states skeptical about the independence of Kosovo, explaining clearly and publicly the high cost of inaction in terms of Balkan and thus European stability, and the credibility of EU CFSP. A pragmatic willingness to compromise, as it is being demonstrated by Slovakia and Greece, two non-recognition states, with regard to the recognition of Kosovo passports, opens up further room for maneuver. Maybe EU should use the Montenegrin model (Twin-Track Accession Process) in Kosovo.

EU economical strategy in Kosovo also has a lack of logic: EU spend a lot of money - millions of euro - for aid but refuse to open up EU markets to Kosovar labor. So maybe short term contracts or the opportunity for seasonal employment in Europe could be of great benefit to Kosovars. Kosovo does not remain an isolated poor house in Europe. EULEX most of all needs to change its politics in economic and social situation; to put money in agriculture, education, health care; to control process of privatization and investments in big projects. Now corruption is one of the biggest problems, but EU tactics should be changed: prevention is as important as prosecution.

EULEX needs structural changes in personnel policy such as longer-term contracts and well trained staff. Also there is a need of bigger transparency of EULEX politics; maybe through including in evaluation process not only international actors, but representatives of civil society and independent scientists.

So, answering on the main research question - can the European Union act efficiently when acting independently from other international actors - we should conclude that it is almost impossible. Lack of coordination between different international actors remains one of the most

serious problems for Kosovo future. But it does not mean, of course, that the EU made a big mistake then it was evolved in decision of this problem. In fact, there was no alternative to strengthen their presence in Kosovo, integral part of Big Europe now and tomorrow.

## References

Трайкович, З. США и ЕС открыли терроризму пути в Европу, <http://www.mirros.ru/politics/europewar/>

Этциони, А. (2004). От империи к сообществу: новый подход к международным отношениям. Москва: Ладомир.

Cohen, L. J. (2000) Kosovo: "Nobody's Country". *Current History*, 99 (635), 117-123.

Cohen, L.J. (2005). The Balkans Ten Years After: From Dayton to the Edge of Democracy. *Current History*, 104 (685), 365-373.

Deimel, J., & Garcha Schmidt, A. (2009). Kosovo 2009: Uncertain Future. *Spotlight Europe*, 01, <http://www.bertelsmann-stiftung.de/spotlight>

Delevic, M. (2007). Regional Cooperation in the Western Balkans. *Chaillot Paper*, 104, 5-104.

Evans, G. (2007). Kosovo Must Be Independent. *The International Herald Tribune*, <http://www.crisisgroup.org>

Freizer, S. (2007). Kosovo's Appointment in Samara. *EU Observer*, <http://www.crisisgroup.org>

Kosovo's First Month. *The report of ICG*, <http://www.crisisgroup.org>

Marcus, J. (1999). A Distant Trumpet. *The Washington Quarterly*, 22 (3), 7-10.

*NATO Handbook* (2001). Brussels: NATO Office of Information and Press.

Schmidt, F. (2008). Kosovo – Post-Status Challenges to Governability. *Chaillot Paper*, 107, 27-39.

Simma, B. (1999). NATO, the UN and the Use of Force: Legal Aspects. *EJIL*, 10, 1-22.

The Rule of Law in Independent Kosovo. *The report of ICG*, <http://www.crisisgroup.org>

Weller, M. (2008). *Negotiating the Final Status of Kosovo*. *Chaillot Paper*, 114, 5-94.

Whyte, N. (2005). Comparison of Kosovo with Bosnia and Serbia is Flawed. *European Voice*, <http://www.crisisgroup.org>