State-Building in Kosovo - Challenges of Legitimacy

In the years since the 1999 NATO intervention to end violent conflict in Kosovo, state-building efforts have faced numerous challenges regarding, for example, the rule of law, security, economic development, and corruption. This essay, however, will focus on issues of legitimacy, arguing that these have presented and continue to present a fundamental challenge to state-building efforts in Kosovo. The essay will begin with a brief conceptual discussion of state-building and the importance of legitimacy within it. The following sections will then explore three dimensions of legitimacy, both conceptually and in relation to state-building in Kosovo. The first of these will address the domestic legitimacy of external state-builders, arguing that both a lack of local input and unmet expectations have undermined this in Kosovo. The next section will highlight the Kosovo Serb community's role in challenging the domestic legitimacy of the state that is being built. Finally, the implications of Kosovo's contested international legitimacy for its ongoing state-building process will be assessed, arguing that the difficulties this poses for future EU membership could undermine progress in its state-building.

It is important to begin by discussing what is meant by state-building. Paris and Sisk (2009) provide a concise definition of state-building as "the strengthening or construction of legitimate governmental institutions" (p.14) within a country. There are two key aspects contained within this definition. One of these is establishing effective and well-functioning government institutions, which involves building the state's capacity to provide security and the rule of law, collect taxes and provide basic services, for example. Some conceptions of state-building, such as that of Fukuyama (2004), focus almost exclusively on institutional effectiveness. However, Paris and Sisk's (2009) definition above includes another important aspect of state-building that is easily overlooked in a more functional approach – legitimacy. These authors note the importance to state-building of both domestic and international sources of state legitimacy (Paris and Sisk, 2009, pp.14-15), and Krasner and Risse (2014, pp.555-8) also highlight the legitimacy of external state-builders as crucial. While effectiveness is also clearly important to state-building, this essay will focus primarily on these three dimensions of legitimacy within state-building, due to the internally and externally contested nature of the state in Kosovo, as well as the heavy international involvement in its state-building.

In cases of internationally-led state-building, such as in Kosovo, the domestic perception of the external state-builder as legitimate is of vital importance. Krasner and Risse (2014, p.556) highlight two particular forms of domestic legitimacy relating to external actors – "input" and "output legitimacy", terms they borrow from Scharpf (1999). Output legitimacy relates to the ability of the external actors to meet local expectations. Typically, this can involve effectiveness in the fields of security, the rule of law and the provision of services. External actors also face the challenge of managing local expectations, and at times may have little power to meet often inflated expectations (Chesterman, 2007, p.20). Input legitimacy, on the other hand, refers to the level of domestic participation in the statebuilding process, which is closely linked to the idea of local ownership. The long-term goal of external state-building is for the international actors to be able to step away and allow domestic actors to govern their country through effective and legitimate state institutions (Narten, 2009, p.252). Some level of local ownership of the process of state-building is therefore desirable in order to ensure the resulting state is representative of the country and is seen as legitimate by the local population. However, Narten (2009) identifies dilemmas that external state-builders face in seeking to ensure local ownership, relating to questions of when, how much and to whom local ownership should be given. Faced with these challenges, and seeking to minimise risk, international state-builders may miss opportunities to involve local stakeholders, resulting in characterisations of their efforts as neo-trusteeship (Fearon and Laitin, 2004) or imperialism (Chandler, 2006). These dynamics can easily lead to domestic popular resentment

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at internationally-imposed policies and the bodies overseeing them, as is clearly demonstrated in the case of the UN interim administration in Kosovo.

In the aftermath of NATO's intervention in the violent conflict in Kosovo, the UN Security Council (UNSC) passed Resolution 1244 which set up an interim administration in the country, known as the United Nations Mission in Kosovo (UNMIK) (UNSC Res 1244, 1999). Alongside providing for the initial peacekeeping and security considerations needed, the mission set up a transitional administration that could govern Kosovo and provide autonomy from the rump Yugoslavia while also developing provisional institutions of self-government (PISG). One of the key challenges to the state-building efforts of UNMIK was its weak domestic legitimacy. The Kosovo Albanian majority initially welcomed the arrival of UNMIK in 1999 as a source of liberation (Lemay-Hébert, 2009a, pp.66). However, within a couple of years, the situation had changed significantly. Much of this was due to a lack of input legitimacy. UNMIK, overseeing a difficult transition from the highly destructive war, exerted significant top-down control over the state-building process (Lemay-Hébert, 2011, p.199). This was especially due to its decision to build from scratch rather than try to draw from what was left of the previous unofficial parallel governmental structures. UNMIK thus struggled to create a sense of local ownership, though of course they faced serious dilemmas in doing so. One of these was deciding which local actors to involve. UNMIK was faced with a choice between the members of the previous parallel structures and former Kosovo Liberation Army (KLA) leaders who retained significant power within the country (Lemay-Hébert, 2011, p.200; Narten, 2009, p.271). They sought to co-opt the latter, despite many of these being suspected of previous and continued involvement in illegal activities and war crimes. At least initially, though, this engagement primarily involved consultation and gave more of a show of local ownership than the reality of it. The desire within Kosovo for a greater say in the state-building process only increased as expectations increasingly went unmet.

The failure of UNMIK to meet local expectations – the loss of output legitimacy – also played a significant role in undermining its domestic standing in Kosovo. Alongside slow progress on improving living standards, a central reason for this was the question of Kosovo's final status, which was left unresolved by UNSC Resolution 1244. The uncertainty within its text meant that both of the main ethnic groups, Kosovo Albanians and Serbs, saw the Resolution as supporting their aspirations (Crampton, 2012, p.162). The expectation among the Kosovo Albanian majority was that independence would come soon, and UNMIK, as a proxy for the international community and with the mandate to facilitate the status resolution process (UNSC Res 1244, 1999, 11e), began to receive the backlash. The policy of 'Standards before Status' that was introduced by UNMIK in 2002 did little to resolve this, as it was perceived as a delaying tactic, with many of the standards seen as either impossible or beyond Kosovan control to implement (Crampton, 2012, p.166). UNMIK's loss of both input and output legitimacy culminated in the riots of March 2004, which resulted in 19 deaths, buildings destroyed, and thousands of people displaced (ICG, 2004, p.i). It should be noted that there were many factors involved in the riots, and Kosovo Serbs endured most of the violence. Nonetheless, there was significant anger and violence directed towards UNMIK, and by implication the wider international community, over the level of its direct control over Kosovo and the unresolved final status (Lemay-Hébert, 2009a, pp.71-2). Indeed, a survey from April 2004 suggested that sixty percent of people in Kosovo held UNMIK responsible for the political situation (UNDP and USAID, 2004, p.4). The international response to these events was a rather rapid handover of significant competencies to the self-government institutions, for which they were not sufficiently prepared (Narten, 2009, p.277). The legacies of this can be seen in the continuing dependence of the Kosovo on international support in many areas, coming primarily from the EU after 2008. UNMIK's loss of domestic legitimacy thus compromised its ability to build a self-sufficient state. It is therefore clear that the lack of local ownership, combined with unmet expectations over Kosovo's final status, undermined both the legitimacy of UNMIK and its state-building efforts in Kosovo.

Societal perceptions of the authority of the state being built as legitimate are also crucial to its functioning (Lemay-Hébert, 2009b). Societal views of the state's (il)legitimacy may be linked to its perceived (in)effectiveness, but they go beyond this. In particular, challenges to the state's domestic legitimacy may also stem from what Linz and Stepan (1996) term "stateness" problems. This term is used to highlight the challenges for establishing democracy within a multinational state, where the different nationalities may contest the authority of that state over them. One possible scenario they outline is where minority groups feel that they belong to a neighbouring state and consequently refuse to engage with the state they inhabit. Because democracy relies on the engagement of its citizens, stateness

problems can undermine the possibilities for a functioning democracy within a state. In the context of statebuilding, if one section of the population does not recognise the state's authority as legitimate and thus refuses to engage with the institutions that are being developed, then this clearly has the potential to undermine the success of the state-building process. This type of situation therefore requires state-builders to find ways of generating state legitimacy by accommodating all groups within a multinational state and assuaging fears of potential forced cultural assimilation of minorities by the state (Lemay-Hébert, 2009b, p.41). However, even with these measures, the nature of these issues suggests that there will be no easy or quick resolution.

State-building efforts in Kosovo have been profoundly challenged by the contested domestic legitimacy of the state. Among the Kosovo Serb community, there has been strong resistance to the idea of an independent Kosovo and a continuing feeling of belonging to Serbia, which results in a refusal to engage with the state. This situation closely corresponds to the above scenario outlined by Linz and Stepan (1996) regarding stateness problems. In response to these dynamics, UNMIK sought to set up a multi-ethnic state that could accommodate all groups, with guaranteed seats for minorities, in the hope of eventually gaining the trust of the Kosovo Serbs (Lemay-Hébert, 2009a, pp.73-74). Likewise, the constitution adopted in 2008 included a range of minority rights provisions, though there were questions regarding how fully these would be implemented (Weller, 2009, pp.257-8). However, given the demographics of the country, in any system the Kosovo Albanians – about 92% of the population – would always be politically dominant over the minorities, including the Kosovo Serbs who make up approximately 4% of the population (figures based on estimates from UNDP and USAID, 2016, p.21). More fundamentally, the Kosovo Serbs had no desire to become citizens of a multinational Kosovo, but instead broadly continue to consider the territory as part of Serbia. In addition, the memories of atrocities committed by Kosovo Albanians against Kosovo Serbs at the end of the war, and the March 2004 riots where they were again the victims of serious violence, have produced fear of life under Kosovo institutions (Clark, 2014, p.537). In this context, the prospects for building a multi-ethnic state seem rather bleak.

In practice, the Kosovo Serb community has sought to minimise its engagement with the central Kosovo institutions. Due to their concentration in segregated enclaves around the country and ongoing support from Serbia, Kosovo Serbs have been able to maintain parallel institutions, such education in their own language and health services, with security for the enclaves provided by NATO's KFOR (Dahlman and Williams, 2010, pp.421-2). Over the years, differences have emerged between ethnic Serbs heavily concentrated in four municipalities in the north of Kosovo, close to the Serbian border, and ethnic Serbs concentrated in enclaves dotted throughout the rest of the territory. For example, the 2010 parliamentary elections saw turnout rates of over 45% in Serb-majority municipalities in the south of Kosovo, slightly higher than the overall turnout rate (Bieber, 2011, p.1797). This contrasts with a rate of 2.3% in the Serb-majority areas in north Kosovo and suggests, Bieber argues, that ethnic Serbs in the south have become more willing to acknowledge and engage with the state. Clark (2014, p.527), however, insists that Kosovo Serbs in the south have been forced to engage with state institutions by necessity, whereas those in the north exist in a Serb-dominated bubble with their own institutions, strongly backed by Serbia across the border. This has allowed the north Kosovo Serbs to avoid encountering the central Kosovo institutions, and Kosovo Albanians, in everyday life. The Kosovo state has little control over this northern region, and various solutions have been proposed to resolve this situation, including partition (Economides et al., 2010). Forward movement on this issue occurred in 2013, with EU-brokered negotiations between Serbia and Kosovo producing an agreement to grant the north Kosovo Serbs greater autonomy within Kosovo (Beha, 2015, p.103). Progress on the implementation of the agreement has been slow, however, and there has been strong resistance to the agreement, with a recent survey finding that 94% of Kosovo Albanian respondents opposed it (UNDP and USAID, 2016). Following protests on the streets and in parliament from opposition parties within Kosovo who fear it implies a loss of sovereignty, the Constitutional Court suspended implementation in 2015 (Yabanci, 2016, p.358). Given this level of popular opposition, the resolution of this issue is far from complete. Thus, whatever happens, efforts to build a strong state in Kosovo will be hindered so long as the state's control of its territory remains incomplete.

A final concept worth exploring is that of a state's international legitimacy, which relates to the question of whether the members of the international community have recognised it as a sovereign state and a formally equal member of that community. This is of particular relevance to unrecognised states, such as Kosovo post-2008, which have declared independence, possess the main features of a state such as territory, a population and government

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institutions, and yet have not had their sovereignty (fully) recognised by the other states (Fabry, 2013, pp.165-166). There is a general norm within the international community that unilateral secession should not be recognised, based on the central principle of territorial integrity within international law (Fabry, 2010, p.13). Alongside legal considerations, non-recognition also arises from a state's own political interests (Ryngaert and Sobrie, 2011, p.489), such as the desire to discourage minorities within their own country who may be seeking self-determination. States may, however, choose to engage with a contested state without formally recognising it (Ker-Lindsay, 2015). This allows states to interact with the de facto realities of the unrecognised state, without this necessarily boosting its international legitimacy. This brief discussion of the issue of recognition suggests that a state's international legitimacy does not derive directly from its internal situation, but rather the considerations of other states within the international community.

As previously discussed, UNSC Resolution 1244 that established UNMIK in 1999 left the issue of Kosovo's final status to be resolved at a later date. There was disagreement amongst the permanent UN Security Council members regarding how to resolve this issue, and thus Resolution 1244 deliberately sought to keep all options open on the matter (Crampton, 2012, pp.160-1). This meant that, prior to the unilateral declaration of independence in 2008, the international community were able to engage with the state-building process in Kosovo without any necessary implication of recognition. Indeed, the level of devastation within Kosovo following the war meant that the international community was united in the need to engage in state-building as long as it did not prejudice its final status. Kosovo's unilateral declaration of independence, however, has divided opinion within the international community. In the past decade, 114 out of 192 UN member states have formally recognised Kosovo's independence, though Serbia contests this number (Rudic and Morina, 2017). Many have cited the unique set of circumstances involved as crucially different from other cases of unilateral secession (Ker-Lindsay, 2013). Nonetheless, there remain significant obstacles to Kosovo's full membership of the international community. For example, it does not have UN membership, as Russia and China, UN Security Council members with veto powers, do not recognise it.

Following the unilateral declaration of independence in 2008, UNMIK transferred executive functions to the Kosovo authorities in many areas and to the EU in others, as well as giving the EU the role of supervising Kosovo's independence (Crampton, 2012, pp.171-2). The EU's role in Kosovo involves three main elements – the stabilisation and association process (SAP) towards 'member state building', dialogue between Kosovo and Serbia to normalise relations, and EULEX, its rule of law mission (Yabanci, 2016). The EU has been willing to take on this state-building role despite the fact that five of its member states have not recognised Kosovo, due to domestic concerns over their own minorities seeking greater self-determination and relations with Serbia. As Ker-Lindsay and Economides (2012, p.82) note, the EU has actually been able to engage with Kosovo without agreeing a common position on recognition, as all member states accept the pressing need to improve the situation on the ground. For the moment, deficiencies in areas such as the rule of law and corruption mean that technical readiness for full EU membership is a distant prospect. However, the options available to Kosovo in the long term are limited given that the apparent eventual aim of the state-building process – full EU membership – appears impossible without it gaining full international recognition (Ker-Lindsay and Economides, 2012, p.87). A recent incident that demonstrates this is Spain's argument that Kosovo should not be included in the broader accession plans for states in the Western Balkans (Rettman, 2018). Spain is one of the five EU member states that does not recognise Kosovo, as it has its own issues with the secessionist movement in Catalonia. Thus, Kosovo's lack of full international legitimacy threatens to undermine the long-term direction of the state-building process. The challenge that this presents is that, without this clear sense of direction, it may be difficult to sustain domestic political support for this process given the numerous reforms it still requires. Indeed, Yabanci (2016, p.363) highlights the decreasing output legitimacy of the EU as an external state-builder. It may be difficult for Kosovo to sustain a process of overcoming the repeated hurdles of difficult state-building reforms if the end goal, full EU membership, appears increasingly unattainable. Without serious efforts to reinforce this motivation from the EU, progress on Kosovo's state-building process is likely to slow. It is therefore clear that Kosovo's lack of full international legitimacy presents serious problems for its ongoing state-building process.

This essay has argued that issues of legitimacy have challenged and continue to challenge state-building efforts in Kosovo in different ways. The domestic legitimacy of UNMIK as an external state-builder in Kosovo was strongly contested, both due to its lack of local input and unmet expectations regarding the resolution of its final status,

resulting in it leaving behind a state still dependent on international support. The ongoing resistance of Kosovo Serbs, particularly in the north, to accepting the authority of the domestic state institutions undermines attempts to build a strong, multi-ethnic state in Kosovo. Finally, Kosovo's contested international legitimacy also calls into question the end goal of EU state-building in Kosovo, potentially leading to a loss of domestic support for the process. Thus, the internally and internationally contested nature of the state, as well as domestic resentment at almost twenty years of heavy international involvement, have together significantly damaged state-building efforts in Kosovo.

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