Paper prepared for the Euroacademia International Conference Identities and Identifications: Politicized Uses of Collective Identities

Zagreb, 18 – 20 April 2013

This paper is a draft Please do not cite

## Norms and identity in Kosovo, the troubled relationship

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### Abstract

TzvetanTodorov argued a decade ago that "it is impossible to speak of identity without speaking of borders and viceversa". This article aims to scrutinise both variables, adding a third one: norms. In this context, the most prominent norm is territorial integrity, whose main purpose is to provide order by perpetuating the border status quo. Identities challenge this norm by reminding us that borders are human artefacts and as such they are volatile and vulnerable to human transformations.

For the past two decades this assertion has become obvious in the Balkans with the disintegration of the Socialist Federal Republic of Yugoslavia (SFRY) and the eruption of multiple states. The most recent example, Kosovo, declared its independence in February 2008. Article 2 of its new constitution states that the "territorial integrity of the Republic of Kosovo is intact, inalienable, indivisible and protected by all means". This case of partition has transformed the frontiers of the region but it has not resolved "the border issues", which are still contested by identities placed at the *wrong side of the border*. Thus, the new boundary redrawing has created more challenges (and potential for conflict) in the form of dozens of Serbian ethnic enclaves whose allegiance is (overwhelmingly) not towards Pristina but towards Belgrade. Relying mostly on fieldwork research, the article aims to explore the relation between those challenges and the principles of "territorial integrity", "indivisibility" and "inalienability" mentioned in the Kosovo constitution.

# Keywords

Borders, Kosovo, identity, partition, territorial integrity.

# Article draft

This article aims to scrutinise the relation between norms, borders and identity. The most prominent norm regulating the fate of borders is territorial integrity, whose main purpose is to provide order by perpetuating the border status quo. Identities challenge this norm by reminding us that borders are human artefacts and as such they are volatile and vulnerable to human transformations. These two notions, ever present in borders, will be analysed in the specific context of Kosovo, an unsettled territorial dispute. The case of this territory is particularly relevant for various reasons: its recent turbulent past, the complexity with regards to identities, the use of norms by the different parties to justify their political goals and the leverage of international actors.

### Territorial integrity, the sacred norm

Territorial integrity is and has been for the past centuries one of the primary principles of International Law, International Relations and the International Political system in general. This norm is, arguably, a product of the Westphalian order. Since 1945, this principle has gained importance both formally and legally. Article 2 of the UN Charter, for instance, stresses its importance: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state" (UN Charter, Art. 2(4)). Other Intergovernmental Organizations (IGO) such as the African Union, the Arab League, NATO or the Organization of American States also mention this principle in their foundational treaties and charters. The latter refers to it in four different articles (1, 21, 28 and 29). More interestingly, the European Union, despite being often perceived as a post-territorial, post-national organization, takes this norm very seriously. In the Lisbon Treaty, it is stipulated that "the Union shall [ensure] the territorial integrity of the [Member] State" (Lisbon Treaty, Art. 3a(2))

Some questions deserve our attention with regards to territorial integrity: why do states and IGO put so much emphasis on this norm? Why has it become a semi-sacred principle of International Politics? The fact that territorial disputes have historically been one of the main causes for wars and conflicts is, perhaps, one of the most obvious justifications. Thus, the rationale is that provided that territorial conflicts generate instability, it is imperative that there is a norm that regulates this matter. Territorial integrity therefore produces and enhances order in the International System. Delving deeper into this idea,Zacher (2001, 246) points out that territorial integrity is not committed to separateness but to international political order since "recognized and respected boundaries are not what separates people but what binds them together". Finally, it should be noted that the norm is also a governmental tool, a useful strategy used by the states to fulfill one of their most sacred national interests: guarantee the indissolubility of their territory. Consequently, since it protects the inviolability of frontiers under the principle of *UtiPossidetis*(Elden 2006, 12), it benefits states and perpetuate the territorial *status quo*. As will be discussed in the next paragraphs, this norm is deplored by secessionist groups while they are unsuccessful and rapidly embraced as soon as they achieve their statehood aims.

The norm is not free of controversies, problems and criticisms. Constructivists would stress that borders are arbitrary human artifacts and therefore subject to historical and political factors. In short, they are a product of historical and contemporary powers and as a result it makes little sense to elevate them to the category of sacrosanct. Connected with the previous point, frequently state borders do not correspond with ethnic borders and this may lead to territorial conflicts in which appealing to the territorial integrity norm may not be sufficient to reach a solution. This is complex for the very reason that territorial conflicts are usually of a zero-sum nature. Thus, those disputed territories are often the scenario where divergent narratives clash. Kosovo represents an illustrative example of this clash, which was summarised by former US Ambassador in Yugoslavia back in 1998:

"The competing claims of Serbs and Albanians in Kosovo have been hopelessly tangled in the webs of history and myth. In its essence, however, the main issue is as simple as it is intractable. The Serbian claim to hegemony is based primarily on the historical/cultural principle: the Jerusalem argument. The Albanian claim to independence is based largely on the demographic principle--the majority argument. Since these claims are mutually incompatible, there is little reason to think that Kosovo will be easy to solve" (Zimmerman, 1998).

Fifteen years later, after the NATO intervention and the involvement of International organizations (UN, OSCE, NATO, EU...) as well as the U.S. and its European allies, after millions spent by European taxpayers in peace-making, peace-keeping and institution-building, the Kosovo puzzle remains unresolved.

#### Yugoslavia and Kosovo: the challenge of the norm

Yugoslavia constitutes a paradigmatic example that illustrates this clash. Certainly, no other region has produced so many new states/borders in such a short period of time in such a relatively small territory. The causes of the collapse of this former multiethnic state in South-East Europe are complex and deserve a comprehensive study<sup>1</sup>. One of the possible explanations for the disintegration of Yugoslavia is the incapability of the federal government to produce a Pan-Yugoslavian identity able to replace (already existing) national identities. The centrally driven spirit of "brotherhood and unity", the socialist ideology, the partisan (re)constructed epic and the personality cult were used "as a sublimationmechanism in order to repress the 'nationalist impulses' of the different ethnicgroups" (Castan Pinos &Jagetić 2013, 95). The recent history of the region has proven that the strategy failed dramatically. Ethnic identities combined with a (re)discovery of religious sentiments by the different groups that constituted former Yugoslavia proved too strong to be diluted. In the early nineties Yugoslavia disintegrated violently and as a result various new republics were born. With the exception of Bosnia-Herzegovina (BIH), all the new states were constructed according to a dominant ethno-religious narrative.

The most recent example, Kosovo, declared its independence in February 2008. Kosovo can be seen, poetically, as the last act of the Yugoslavian tragedy. To a certain extent, it is an on-going tragedy. The 1980's were characterised by nationalist claims by the Albanian *majority*, such as the 1981 protests in which Albanian students demanded the status of a Republic

<sup>&</sup>lt;sup>1</sup>For an in-depth analysis on the disintegration of Yugoslavia see, for example:Glenny (1999); Petrovic (2000); Jovic (2001) and Gallagher (2003).

within Yugoslavia, and increasing ethnic violence, notably between Serbs and Albanians. The narrative of Albanians being discriminated, that is, being the victims of an oppressive Central (Yugoslavian) government appears to be insufficient to understand the overall picture.

This narrative, for instance, is contested by numerous articles by the *New York Times*(NYT)in the 1980's which depict an atmosphere of fear and distrust among non-Albanian groups. The general feeling was that the violence was orchestrated by Albanians in order to get rid of the minorities. In April 1986 the *NYT* wrote "The ethnic Albanian majority in the autonomous province of Kosovo is feared by the minority population of Serbs and Montenegrins, who believe the Albanians are seeking to drive them out of the province" (*NYT*, 28/04/1986). The same year, the president of the Republic of Serbia in the 1980's, Ivan Stambolić, labelled the Kosovo troubles as "the most delicate problem we have ever had [...]. We have to say how dangerous the Kosovo problem is to the integrity of our country" (*NYT*, 27/07/1986). Interestingly, Stambolic anticipated that identity related issues were posing a threat to the norm, that is, to the norm of territorial integrity. His prediction, which turned out real fifteen years later, visibly shows the power of ethnic tensions/identities and the irrelevance of norms when the *proverbial has hit the fan*. It should be noted that this process can be prevented, accelerated or simply triggered by external actors, as will be shown below.

Amidst a vicious circle of violent demonstrations by Albanians, repression, the deployment of the Yugoslavian National Army (JNA), massive general strikes (by Albanian Trade Unions) and ethnic tensions, the Kosovo autonomy (guaranteed in the1974 Constitution) was reduced to the level guaranteed in the 1963 Constitution (Bataković2012, 125). Beyond the reasons connected to the violence in the (former?) Serbian province, the underlying motive for the limitation of autonomy was the fear that the 1974 constitution "went too far" and its ambivalence "paved the way for Albanian separatism [...] an ethnically pure [Albanian] Kosovo" (Krstić-Brano 2004, 168) and ultimately, if untouched, it would potentially lead to an independent Kosovo. A year later, in July 1990, the Albanian members of the Assembly of Kosovo proclaimed the "Republic of Kosovo" and shortly afterwards the Serbian Assembly dissolved the Kosovo Assembly and the Kosovo executive.

In the 1990's with multi-party elections in Serbia, the province of Kosovo and the marginalised Kosovo Serbs served to fuel Milosevic's nationalist narrative and to obtain sufficient seats to guarantee his hegemony in Serbia.Milošević's iron fist, however, did not deter the demands of ethnic Albanians. According to Former U.S. Ambassador in Yugoslavia, Warren Zimmerman (1998), the 1990 decade was characterised by division. This division was translated to the institutional level: in 1991 Ibrahim Rugova, the leader of the Democratic League of Kosovo (LDK), developed parallel institutions of governance. The conflict between Albanians and the Milošević administrationescalated due to a violent campaign from the Kosovo Liberation Army (KLA), which targeted police stations, Serbian officials and civilians as well as Albanians seen as "collaborators", in 1996. After the failure of Rambouillet (non)agreement and the subsequent NATO intervention in March 1999, which included a 78 day bombing campaign and the deployment of ground troops through KFOR, there was what can be conceptualised a sudden power shift.

The UN peacekeeping mission, UNMIK, created the transitional political institutions "Political Institutions of Self-Government". After the unilateral declaration of independence in February 2008, these embryonic institutions would be transformed into the institutions of the self-proclaimed "Republic of Kosovo". This necessarily implied a reconfiguration in the UN mission. According to the research carried out by the author on the ground, the role of the so-called "International Community" with regards to institution-building and the status of Kosovo is not unanimously supported. A senior UNMIK officer stated: "*Knowingly or unknowingly we [UNMIK] created all the state structures and then transferred them to provisional institutions. We replaced the Serbian government and started training Albanians. Simply put, we took power from one community and gave it to another<sup>2</sup>". The harsh words of this international officer lead us to another significant factor shaping the complex relation between norms and identities: international involvement.* 

### The international dimension of the conflict

As explained previously the causes of the Yugoslavian disintegration are multi-faceted. One of them, international interferencerole in fuelling and triggering the existent ethnic conflicts, is often neglected. This dimension is of particular significance in the case of Kosovo since it had implications in terms of borders, norm violations and somehow it reshaped the ethnic *equilibrium* of this territory.

The involvement (and interference) of the so called international community in Kosovo was significant in the late 1990's but it is still relevant today. The flavour of foreign imposition or *diktat* can be found in many declarations and statements from Western Policy makers. Wesley Clark (2001, p.418) the NATO Commander of the Operation Allied Force in

<sup>&</sup>lt;sup>2</sup>UNMIK officer, author interview, Priština, 2<sup>nd</sup> August 2012.

Kosovo, provides a subtle hint of this policy of enforcing the interest of the Atlantic alliance when he describes the Kosovo campaign as "coercive diplomacy" which used "armed forces to impose the political will of the NATO nations on the Federal Republic of Yugoslavia". It is essential to note that this imposition of the NATO political will represented a blatant violation of international laws and norms. The NATO aggression was not authorised by the UN Security Council and, as argued by O'Connell (2000, p.57) inconsistent with both the UN Charter and the UNSC practices. In effect, the principle of collective self-defence, recognised by article 51 of the Charter, does not apply in this case, since Yugoslavia had not attacked any UN member. In addition, NATO did not respect its own treaty since Yugoslavia had not committed an armed attack against any of its members and therefore the collective self-defence principle did not apply either.

The Rambouillet meeting, in February 1999, between a Yugoslav delegation, representatives from the Kosovo-Albanian community and Western diplomats led by U.S. Secretary of State Madeleine Albright, is particularly useful in order to illustrate the international interference, or more specifically NATO involvement, in Yugoslavian internal affairs. Former U.S. Secretary of State, Henry Kissinger, labelled the negotiations as a "provocation, an excuse to start bombing" (Bancroft, 2009). Likewise, Michael Parenti (2000, p.113) states that far from being a negotiation settlement, Rambouillet represented an ambush, "an ultimatum for unconditional surrender". The rejection of the Yugoslavian delegation to accept the conditions laid out at the document elaborated by the U.S. State Department ("Rambouillet Agreement: Interim Agreement for Peace and Self-Government in Kosovo") are unsurprising. The provisions with regards to the Kosovo autonomy, that is, the way a sovereign state should organise its own territorial affairs were not the most controversial. The conditions that the Yugoslav president and the elected Yugoslav Parliament did not (and arguably could not) accept were the deployment of NATO forces in Yugoslavia (Chapter 7, Article 1b), which would be immune from legal prosecution and would be guaranteed "free and unrestricted passage and unimpeded access throughout the FRY including associated airspace and territorial waters" (U.S. State Department, 1999). The analysis of John Pilger (1999) is particularly accurate: "the peace negotiations [in Rambouillet] were stage-managed, and the Serbs were told: surrender and be occupied, or don't surrender and be destroyed". This ultimatum presented as a *fait accompli* bears strong resemblances with the Meliandialogue, in which Athenian leaders attempted to peacefully conquer the Island of Melos, described by Thucydides in 416-415 BC. In both cases, we can identify the logic of power politics (the weak has to accept the rules of the great power) in action and in both cases persuasion failed. In addition, the Melian case and Kosovo show that the reputation of the great power (NATO/Athens) was a crucial element. Sperling and Webber (2009, p.495) point out that NATO was compelled to act in Kosovo in order to show credibility, purpose and to establish itself as a security organization with a future. Like the Athenians, non-actions would have shown signs of weakness to the enemies. Finally, after the failure of negotiations, in both cases the great powers conquered and subjected the weak one by military means.

The NATO attack on Yugoslavia ended in June 1999 with the Military Technical Agreement, signed between KFOR and the Yugoslav government. It encompassed many of the aims of the Rambouillet Agreement: withdrawal of Yugoslavian troops from deployment of NATO (KFOR) and authorisation of the KFOR deployment. The KFOR troops are still present today in Kosovo (5565 as of November 2012<sup>3</sup>) as well as civilian international institutions such as UNMIK, OSCE and Eulex. To a significant extent, the process towards secession has been monitored, groomed and assisted and often supported by the mentioned organizations as well as by individual states, most notably the U.S. One of the evidences of this support was the unprecedented speed with which states such as France, the UK, Turkey and the U.S. recognised Kosovo's independence: the day after it was unilaterally declared. In addition, the UN special envoy on the Kosovo's future status stated unambiguously in March 2007 that "Independence with international supervision is the only viable option" (UN 2007). Finally, the pressure exerted by Western governments to recognise Kosovo's independence can be seen as further confirmation of the mentioned international involvement.

The case of Kosovo, therefore, suits perfectly in James Fearon's (2004, p.394) assertion that "nations are not born but made, partly in response to international incentives and major power policies". The Kosovo case completely fits in the "paternalistic approach", in which powerful outsiders determine the nature of the settlement, defined by O'Leary (2006, pp.7-8). In the case of Kosovo, major powers took sides and, generally, taking sides inevitably imply a certain degree of double standards with regards to norms.

#### Partition(s)

It is relevant to highlight that both the Constitution of the Republic of Serbia (2006) and the Constitution of the Republic of Kosovo (2008) embrace the norm of territorial integrity and they both explicitly mention that their territories are indivisible. Thus according to the Serbian Constitution: "the territory of the Republic of Serbia is inseparable and indivisible" (Art. 8). Likewise, the Kosovo Constitution claims that "the Republic of Kosovo is an [...] indivisible state

<sup>&</sup>lt;sup>3</sup> See http://www.nato.int/kfor/structur/nations/placemap/kfor\_placemat.pdf

(Art. 1.1). The [...] territorial integrity of the Republic of Kosovo is intact, inalienable, indivisible and protected by all means provided in this Constitution and the law (Art. 2.2). The paradox is that the latter Constitution would have never been possible without the violation of the former.

In an exercise of dialectical acrobatics, former US ambassador in Yugoslavia attempted to explain the position of his country in 1998 with regards of the Kosovo status. Rather than shedding light into the matter, his answer adds confusion:

The United States has never challenged the legitimacy of Serbian authority in Kosovo, but neither has it consistently accepted Serbian sovereignty [...]. American acceptance of Serbian authority in Kosovo derives from the view that Kosovo has been historically Serbian [...]. The U.S. refusal to recognize Serbian sovereignty in Kosovo, on the other hand, is meant to acknowledge that the Albanian majority there has valid rights that are being denied (Zimmerman, 1998).

As has been shown above, the position of the U.S. and its allies has shifted after 1999 and nowadays they do not recognise the sovereignty or the authority of Serbia over Kosovo. This leads us to the issue of partition, which is in some way connected with the principle of self-determination. Brendan O'Leary (2006) highlights the main arguments for and against partition. His conclusion denotes that the debate is by no means an easy one: "It cannot be definitely known in advance that there will never be cases where partition truly is a better policy option for the affected peoples than the alternatives". The advocates of partition generally emphasise that partition reduces conflict (Johnson, 2008) and that often it represents the only viable solution for territories affected by ethnic conflicts (Kaufmann, 1996). The *antipartitionist*front, on the other hand, would counter-argue that by violating territorial integrity, partition constitutes a precedent and thus creates a less secure international environment. In addition, it triggers and encourages separatism elsewhere (Fearon, 2004). For Horowitz and Weisiger (2009) partition comes with a very high price: notably ethnic cleansing. Finally, Jenne (2009) adds that far from contributing to a lasting solution, partition perpetuate nationalist conflict.

In Kosovo, partition has transformed the frontiers of the region but it has not resolved 'the border issues', which are still contested by identities placed at the *wrong side of the border*. Thus, the new boundary redrawing has created more challenges (and potential for conflict) in the form of a more or less Serbian territory in the North whose allegiance is not towards Pristina but towards Belgrade. Thus the municipalities of Zvečan (97%), Leposavić (95%), ZubinPotok (93%) and Northern Mitrovica(76%) are overwhelmingly populated by Serbs. Consequently, the problem of Kosovo, and here both *partitionists* and *antipartitionists* would agree, is that the partition is incomplete. The partition of the partition solution, that is, returning the four Northern municipalities to Serbia is an option that is being contemplated. It is officially rejected by Belgrade since accepting it would *de facto* imply recognising the independence of the rest of Kosovo. It is however an option that *sotto voce* many officials of International Organizations support as an alternative way out from the current *impasse*. The architects of the Kosovo independence, however, openly oppose it, stating that:

"The boundaries of an independent, sovereign Kosovo are clear and set" (H.R. Clinton, Former U.S. Secretary of State, *NYT*, 31/10/2012)

"The map is finished in Southeastern Europe" (William Hague, UK Foreign Secretary, UNHCR, 25/10/2012)

"The map of Southeastern Europe has been laid down and completed" (GuidoWesterwelle, German Foreign Minister, *EU* observer, 27/08/2010)

The above statements are tremendously enlightening. They show, firstly, that as explained in the previous section the Kosovo independence has a clear "international stamp". They also display a blind faith in the indivisibility of borders, ignoring their contingent and human nature. More ominously, they implicitly entail a neo-colonial attitude according to which *they* are able to re-shape the geopolitical map of the region but those in the region are not able to *touch* it or question it. O'Leary (2006, p.24) asserts that there are two brute factors that determine the viability of reversing a partition: demography and geopolitics. It could be argued that these very same reasons are also the ones that contribute to a partition. Since these two factors are in constant change, to claim that the map in Southeastern Europe (or anywhere else) is "finished" or "completed" appears to be ratherincongruous.

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