

KOSOVA - THINKING BEYOND THE AHTISSARI INSTITUTIONS

James Pettifer

In the development of new states, the process of institution building is always central. Yet most states do not start with a blank sheet and inherit many things from the local past, from the concrete and material aspects of buildings, administrative traditions and public sector staff to psychological habits of thought and conscious and unconscious ideologies. Kosova is no exception to this rule, with the declaration of independence in 2008 taking place in a context set by the United Nations UNMIK international administration over the preceding eight years. The Ahtissari plan was the basis for this independence and was seen as a form of 'supervised independence' by many in the international community. There is no indication that the authors of the Ahtissari plan saw the recent Kosova past as anything other than a sound foundation for the new state. This was a major weakness in the Ahtissari plan. Kosova in the twentieth century had never had a developed local state and the inheritance from the past was a very serious handicap.

The structures of material life are important. Many buildings that were central to the communist period administration of Kosova were used for the same purposes by the incoming UN government, and not only in central Prishtina but throughout the country. Perhaps the only major exception is the NATO headquarters which used to be the old Kosova Film Studios. Some of these buildings carry on at the time of writing in identical usages, so the current EULEX international administration building was previously the United Nations building and before that the Serbian administrative and military headquarters in the Milosevic period after 1989. As the political philosopher Karl Marx once pointed out, Man does not make History in conditions of his own choosing but in a framework inherited from the past. This was certainly so in Kosova after February 2008.

It is also a truism to say that institutions often take a considerable time to build. The example of the United States is relevant, where the Congress and Constitution existed soon after 1774 but took several generations before they had the settled form which we know today and the intervening years were marked by often serious social division, conflicts between the States and a devastating Civil War. The long process of English movement away from absolute monarchy and towards a full Parliamentary democracy under a constitutional monarchy also took hundreds of years.

The London Parliament took time for its role to grow to maturity. In England the absolute monarchy was ended in its old form in the mid seventeenth century but it took until 1688 for a balance between

the constrained monarchy and the Parliament to be worked out. Or as the old phrase goes, Rome was not built in a day. How are these thoughts applicable to modern Kosova? The Ahtissari plan that formed the framework of the 2008 independence declaration did not in essence create new institutions. It codified those which had existed under UNMIK. Some changed significantly, as in the case of the creation of the Prime Minister's office and government apparatus. Others like the Health and education ministries hardly changed at all. The Constitution did not have the clear and unconstrained statement of Kosova sovereignty that the 1991 'Kacanik' constitution had. There was no epistemological break in the Althusserian sense between past and present, present and future. The significant break in Kosova recent history took place in April 1999 with the establishment of the Provisional government of Kosova and the subsequent activation of majority community controlled local institutions under government supervision. In the chaotic post-war conditions there were major problems of institutional absence and democratic deficit but the attempt was nevertheless made to found a new Kosova then. It did not succeed and was overtaken by the international institutions. Why was this accomplished so easily and why was the Kosova Liberation Army demobilized?

Unfortunately a major party in Kosova decided not to join this Provisional government, abandoning the Kosova Albanian unity forged at the Rambouillet conference before the NATO air campaign, and thus opened the way for the political divisions that in turn brought many of the uncertainties and weaknesses of the United Nations UNMIK administration. The summer of 1999 brought many disappointments to the people of Kosova and fragmentation and political dissonance followed. In this climate, significant sections of the international community felt privately that the Kosova Albanians would never be sufficiently united for national independence and so they began the policy of so-called 'nursing Kosova back towards Yugoslavia', with the many setbacks for the cause of independence that came during the years between 2000 and 2004. The process of institution building in Kosova had hardly begun in 1999-2000 before it was stopped. A key potential institution in the formation of a democratic and NATO allied Kosova, a modern army, did not develop on the basis of the Kosova Liberation Army as the latter was demobilized in the summer of 1999. The political forces that chose not to join the 1999 Provisional government clearly hoped to resume their previous hegemonic role, but in conditions of modern democratic processes and fair elections this was never going to be possible. They were nevertheless able to achieve a temporary and relative ascendancy which enabled the basically Yugoslavist elements in the international community to reassert themselves and orient policy towards the influence of Belgrade.

I do not want now to trace the evolution of this period now, it is beyond the scope of this conference and it has been written about extensively, often by those involved. But I would make one observation that certain consistent threads remain. One is the question of legal authority. That was vested in UNMIK and post independence many aspects of it are tightly restricted by the Ahtissari plan proposals. The courts do not have Kosova judges in majority sovereign roles; there is a foreign controlled police force present and major foreign intelligence activity. The NATO KFOR force has brought many benefits to Kosova but is not in any sense under the control of the Prishtina government.

It may be observed, of course, that this is inevitable in independence transitions, particularly in this region. This is a disingenuous argument and is not the case. There are no foreign rule of law personnel in Croatia, say and very few in even Bosnia, particularly Republika Serbska. Kosova is unique in having a form of independence without the central features essential to all sovereign states, as usually understood. In many aspects of state and institutional life it remains a European Union protectorate with a NATO security role. It is generally accepted that many parts of the state are deeply dysfunctional, so that, for instance, the crisis in Northern Kosova continues unabated, with no effective rule of law, institutionalized smuggling and economic law breaking and above all no customs so that the Prishtina government always lacks local revenue.

Some analysts with much experience in this region would say this does not matter, like Susan Woodward, in a modern globalised world certain structures and forms of sovereignty are weakening and disappearing. I would point out though, that this is an uneven process. Sovereign rights may be given away, all well and good, but it is necessary to have them in the first place to do so. Often the most powerful and respected nations choose not to do so. The decision of the US government not to allow international legal jurisdiction over its armed forces is a good example of a contemporary decision.

The problem for Kosova is that it does not have many rights, such as the key attribute of all sovereignty, the right to form an armed force to defend the borders of the country. It has not been asked to forego this right, by mutual agreement between the government and the international community, as happened say for a time under the Allied Control Commission in Germany after World War II. It took almost a generation before the Bundeswehre became a normal army, a role in which it now acquits itself with considerable distinction. It certainly was not a normal army, in, say, 1950.

In this sphere Kosova has made even greater sacrifices. The soldiers of the ex-Kosova Liberation Army who sacrificed so much for the independence of Kosova have lost much of the position they had in the Kosova Protection Corps after 2003. This at the time seemed to me to be the potential core of a future army, with a responsible and productive leadership. The TMK and its forebears received widespread international approval for its valuable contribution in two civil emergencies after 2000. This foundation of achievement has not been built on by the international community, and the patriotism and good intentions of the ex-soldiers neglected.

I think it at least an open question if there was a major civil emergency today in the government has the resources to meet it in the way the TMK did then. But of course a military force does not exist only to cater for civil emergencies, important and indeed vital though that is. In all traditional political thinking,

quite literally from the ancients onwards, the first duty of a government is to defend its citizens. The Pristine government does not have that capacity today.

Thus, in the process of thinking beyond the Ahtissari plan, addressing the democratic deficit is important. The democratic deficit exists in many ways, as the current political manipulation of justice in the re-arrest of Ramush Haradinaj by the ICTY illustrates. It is an axiom of English law, and has been for hundreds of years, that a person cannot be arrested and imprisoned and tried again for an offence if he has been acquitted. The weaknesses of Kosova sovereignty allowed the re arrest of Haradinaj

So what needs to be done to think beyond the Ahtissari plan, to complete the sovereignty process? A degree of realism is needed on all sides. NATO and KFOR are not about to immediately disappear from Kosova although KFOR today is a very different organization and mission from what was here in 1999. Equally the EULEX rule of law mission has just been renewed for 2 more years although what it can achieve in that period that it has not achieved already is not clear to me.

So how do we judge the Ahtissari institutions? In the eyes of some, they are more than the Kosova Albanian majority should have had. We only need look back to the difference between the January 2007 Ahtissari draft document and the final document to see that. They represent what US diplomat Nicholas Burns has called 'supervised' independence. What is supervised independence? Does anyone really know? There are few or maybe no direct precedents for our situation here. Some people have written Bosnia is a precedent. I reject this view; the Bosnian situation is completely different. Other people compare further back the Allied Control Commission after the Second World War in Germany. EULEX has been compared by one analyst to the UN mission in East Timor. What has East Timor in common with Kosova? Not very much.

The simple issue that has to be faced is that the Ahtissari Plan was an is permeated with discredited ideas stemming from a basically Yugoslavist mentality, where the majority's national rights for a normal state and nation building process were neglected in favour of an almost exclusive concentration on ethnic balance issues. Ahtissari does not squarely face the national question, the right of the Kosova people to self-determination under the terms of the Helsinki Final Act.

Where you have three large entities, as in Bosnia, this is understandable although it should always be noted there that the Dayton Accords allowed the Serbs, in the form of Republika Serbska, to retain what they had gained by force and ethnic cleansing. In terms of the key component of sovereignty, an armed force under civil control of an elected assembly, Republika Serbska has something, de facto, that the current government of Hashim Thaci does not. This is not a view that will commend itself to all, I know, particularly among the European Union. It is an open secret that the United States and the United

Kingdom would have been happy to see a small army under tight NATO supervision form part of the Ahtissari Plan but it was vetoed by the Europeans who thought it would upset Belgrade.

Perhaps it would have done but the question the Europeans have to answer is Do they expect NATO and KFOR in their current form to be here in a hundred or a thousand years time? I would venture to suggest this is not what NATO is for. We have seen a continuous run down of KFOR over a number of years. What will the situation be in say, 5 years time? This is a question I think we are entitled to ask and which the Europeans have a main responsibility to answer. It seems to me quite iniquitous that nations which have not even yet recognized the 2008 independence declaration should have a voice in this matter of an armed force development.

The creation of an armed force is the single most important institutional development that is needed. I think in the era of international crime we can all see a role for international input here although I personally do not think the EULEX mission with its many hangovers from the failed UNMIK international administration is the right way to achieve much. We have all seen the current Limaj investigation. The question of sovereign control of policing is also critical. Kosova has many capable and dedicated policemen after their training in the excellent Police Academy under US leadership. But they are not trusted to police an independent Kosova, their own country. Instead, a EULEX 'rule of law' mission effectively holds this authority under the Ahtissari plan. As a result, unsurprisingly, organized crime and corruption is common.

I do not think it is appropriate to comment here on details but I would say this, that there are corruption problems everywhere in governments throughout the world, as the current Greek crisis indicates. Organized crime was not invented in the Balkans and does not only exist in Kosova. The tone of the investigation is suffused with moral superiority. Is this appropriate from a mission whose countries include, to take a few examples, the nations where the Prime Minister himself is almost continually defending himself from arrest and trial, another where the European Union and European Central Bank is scrutinizing all its financial institutions in detail, and another where an energy trading cartel was vast and the subject of a major Hollywood film.

Underlying many of the problems is the issue of a false and empty nostalgia. We saw this with the appalling lurch in the UNMIK mission into Yugonostalgia after 2000. I thought this led directly to the violence in 2003 and 2004 and friends of Kosova do not want to see this happen again.

Many of the leaders of the international community in their hearts would still like to bring into being a kind of new Yugoslavia, post-modern and European in content where what I would see as legitimate national independence and pride in it is crushed in a European federal superstate. This is retrograde and

dangerous. There is never going to be Belgrade or any other foreign sovereignty again over any inch of Kosova territory and any talk of partition would lead to another spasm of serious violence, as all partitions in history do, and probably major repercussions in Macedonia and elsewhere. Belgrade should be made to understand independence and territorial sovereignty is here to stay and if the north is to progress Serbs should take part fully in Kosova institutions. If they do not do so that is their choice.

The remedy for this situation lies in the hands of the government in Prishtina. There is at the moment a strong tendency to see the Ahtissari framework as final and something that will lead to acceptance in 'Europe'. It is not clear what is meant by this. There is no immediate perspective at all for Kosova to become part of the European Union. The talks currently proposed between Kosova and Serbia on technical issues are a trap for Kosova, and offer little or nothing to the Kosova majority community. They are designed to smooth the way for Serbia to join the European Union without recognizing Kosova. Instead of seeing the Ahtissari plan as a timeless construct, the political leadership in the government should make clear that why it was a welcome framework for the initial independence period, it was a temporary framework and should in time be superseded. The two issues that will need to be addressed in the post-Ahtissari period, control of the police and the formation of a national army need not await international sanction. There are many examples in history where nations with a growing national consciousness started to form informal state institutions within existing colonial systems, in the Home Rule period for Ireland, for instance. If it is done in the right way, the more sensible elements in the international community in Kosova would welcome the new situation, and it would ease the way for the closure of what has always been an unsatisfactory and largely failed mandate after 1999. It is impossible for colonial and semi-colonial institutions to function if the majority of the population does not work with them.

The final question is that of responsibility. Kosova needs to become fully responsible for itself and for its own future. This is the right of every free national state and great sacrifices have been made by many Kosova families to try to achieve this. The independence date of 2008 was a great landmark but it is also part of a process that remains incomplete. Kosova needs to take its own destiny into its own hands.

I would conclude with the observation of Aristotle, loosely translated. Democracy only works for those who take part.
