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Gëzim Krasniqi

School of Social and Political Science, University of Edinburgh, Edinburgh, UK

Email: g.krasniqi@ed.ac.uk.

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This paper examines the nascent citizenship regime in Kosovo since the country's declaration of independence in 2008. It argues that the defining characteristics of the Kosovan citizenship are: (i) adoption of the "new-state" model (i.e. inclusion into its citizenship of all Kosovo residents); (ii) tension between civic and multicultural conceptions of citizenship on the one side, and ethno-national conceptions on the other; (iii) contested nature and overlapping jurisdictions. In addition, it claims that the present legal, political and territorial dispute in Kosovo seriously undermines the consolidation of Kosovo's citizenship regime and has turned Kosovo into a territory of *de facto* shared sovereignties (condominium-like constellations).

Keywords:

citizenship, Kosovo, contested statehood and territory, Serbia

1. Introduction

Kosovo was the last territory of the former Yugoslavia to declare its independence (on 17 February 2008) and embark on the path to statehood and the creation of a separate citizenship regime.[1] The most urgent and demanding task in designing and running the 'newborn' polity was to determine the nature of the polity, internal organisation and institutional arrangements, legal and constitutional order, state boundaries, as well as the nature of citizenship. However, as is

often the case, when the legitimacy of a political and territorial unit is disputed internally and externally, both the functioning of the state and the democratic consolidation of the political and citizenship regime are called into question. Consequently, other elements central to state building, such as the forging of an integrative ideology in a post-conflict society, are rendered problematic.

Following on from Krasniqi (2010a), this paper focuses on the nascent citizenship regime in Kosovo since the country's declaration of independence. It argues that the defining characteristics of the Kosovan citizenship are: (i) adoption of the "new-state" model (Brubaker 1992, p. 277) i.e. inclusion into its citizenship of all Kosovo residents; (ii) tension between civic and multicultural conceptions of citizenship on the one side, and ethno-national conceptions on the other; and (iii) contested nature and overlapping jurisdictions. Moreover, the paper argues that the present legal, political and territorial dispute in Kosovo seriously undermines the consolidation of Kosovo's citizenship regime and has turned Kosovo into a territory of *de facto* shared sovereignties (condominium-like 'constellations').[2]

As far as the adoption of the "new-state" model is concerned, it resulted both from Kosovo's peculiar path to statehood (compared to the rest of the new states in Yugoslavia) and from active international intervention in the process of state building. Unlike other territories of the former Yugoslavia that had republic-level citizenship regimes during the socialist era, Kosovo had to constitute its independent citizenry from the start. The "new-state" model chosen in Kosovo - also known as the 'zero option' – where the initial body of citizens is constituted in a territorially inclusive fashion, in some ways reflects the vision of the international actors involved in the process, who wanted to utilize citizenship as a link between a war-torn community of people and a new polity based on principles of equality and inclusiveness. As will be discussed later in the text, based on the content of the constitution and basic statehood laws, as well as the character of its symbols and overall institutional design, Kosovo is at the same time a civic state

(with elements of individual liberalism and civic republicanism) of all its individual citizens (that are equal before the law) and a multi-ethnic state of different communities (Albanian, Serb, Turkish, Gorani, Roma, Ashkali and Egyptian).

But more than three years after its declaration of independence, Kosovo still does not possess all of a state's attributes, including external and internal sovereignty. This mainly stems from the issues related to Kosovo's contested international subjectivity (as of August 2011, only 81 Members of the United Nations have recognised Kosovo's independence), and the refusal of Serbs from northern Kosovo to be integrated in the political system of Kosovo. The latter issue has created a "stateness problem" (Linz and Stepan 1992, p. 200) – a situation in which a considerable number of people question the legitimacy of the new polity and its borders. Kosovo's stateness problem, combined with the intrusive attitude of Serbia towards the former, has resulted in a condominium-like situation of overlapping Serb and Kosovan jurisdictions, at least in the northern part of Kosovo.

In terms of concepts and frameworks on citizenship, this paper will rely primarily on Christian Joppke's concept of citizenship that distinguishes between citizenship as status, as rights and as identity (2007), Brubaker's "new-state" model (1992) and his distinction between territorial/political and ethno-cultural conceptions of nationhood (1992a), and Rainer Bauböck's work on "citizenship constellations" (2010) as well as on condominium, transnational citizenship and political autonomy (2007). These points are developed further in later sections.

This paper is divided into three main sections. The first section presents some limited background material on citizenship-related issues in Kosovo before 2008. The second section examines the emergence of the new Kosovan citizenship regime and distinguishes between three aspects of citizenship; status, rights and identity. The third section focuses on the issues of contested territory and statehood, and considers several possible scenarios for the future.

2. State disintegrations, war, and international administration

During the twentieth century Kosovo experienced different phases of political development and different citizenship regimes: the imperial Ottoman citizenship regime, the unitary citizenship of the royal Yugoslavia, the federal citizenship in the Socialist Federal Republic of Yugoslavia (SFRY) coupled with Serbian republican citizenship, the new federal citizenship arrangement in the Federal Republic of Yugoslavia (FRY) between 1992 and 1999, and finally, the UN-administered quasi-citizenship regime until 2008. Kosovo's experience in socialist Yugoslavia is especially important, not least because of the fact that its present borders were determined and its first autonomous institutions were created in that period. A particularly important period is that between 1974 and 1989 when Kosovo possessed extended autonomy and obtained its own constitution, parliament, government, central bank, constitutional court, as well as representation in federal institutions independent from the Republic of Serbia. It was thus a republic in everything but name. Irrespective of the fact that Kosovo, like Vojvodina, did not posses its own provincial citizenship law (natives of these provinces automatically received Serbian citizenship), and could not legally claim the right of secession which was guaranteed only to the republics (Ramet 1992, p. 77), Kosovan authorities had exclusive responsibilities for a wide range of issues, such as issuing Yugoslav passports for the residents of Kosovo with a distinct code (KA) from that issued by Serbia, issuing certificates of citizenship, and maintaining the electoral register (Krasniqi 2010, pp. 5-7, Rava 2010, pp. 4-6). There is no doubt that in many aspects, this was a quasi-citizenship regime. The situation would, however, change drastically after 1989

when Kosovo's autonomy was forcibly abolished by Serbia, and further complicated after the dissolution of the SFRY.

In the aftermath of the dissolution of the SFRY, in 1992 the Republic of Serbia and the Republic of Montenegro together established the Federal Republic of Yugoslavia (FRY) with Kosovo as an integral part of Serbia. In terms of citizenship, the FRY did not adopt a new law until 1996. In the meantime, the intensification of discriminatory practices aimed at ethnic Albanians in Kosovo resulted "in widespread involuntary migration".[3] The removal of citizenship from those who fled became an everyday practice in Kosovo and was condemned internationally (Weller 2009, p. 62). In addition, new legislation was adopted to encourage Serb settlement in Kosovo (Weller 2009, p. 31; Rava 2010, pp. 9-10). Discriminatory and arbitrary practices, including mass dismissals of ethnic Albanian civil servants from the ranks of the public administration, created a new harsh reality for the Albanian population and turned Kosovo into a segregated society. In reaction to these repressive measures, Albanians in Kosovo, under the leadership of the Democratic League of Kosovo (LDK), organised their own referendum on independence, declared Kosovo's independence, which was already a "phantom state," (Judah 2000, p. 65) and set up their own parallel system of education and health.

The situation deteriorated further after the eruption of the armed conflict in Kosovo in early 1998 between Yugoslav military and paramilitary forces and the Kosovo Liberation Army (KLA), which culminated in the military intervention of the North Atlantic Treaty Organization (NATO) in the territory of the FRY. During this period, the FRY authorities carried out a large-scale action of ethnic cleansing in Kosovo which resulted in more than 850,000 Kosovan Albanian refugees being deported into neighbouring countries; hundreds of thousands of others became internally displaced persons (UNHCR 1999).

'Habitual residents' under international administration

After the end of the conflict in Kosovo in 1999, the country was placed under direct international (interim) administration, under the authority of the United Nations. UN Resolution 1244 created a new reality in Kosovo, which in the context of citizenship, was rather complex and unique. Despite the fact that the body mandated to administer Kosovo, the United Nations Interim Administration Mission in Kosovo (UNMIK), took significant steps towards the complex task of creating a political regime for democratic self-government in Kosovo, or "democratisation without a state" (Tansey 2007), regulation of the citizenship issue was considered to be outside its mandate. This was due to the fact that internationally Kosovo was still part of the FRY and its inhabitants were legally Yugoslav citizens.

Nonetheless, UNMIK created a separate civil register (Central Civil Register of Kosovo) for the residents of Kosovo, which in a way became a substitute for citizenship regulations, and issued UN Travel Documents to habitual residents in Kosovo (Krasniqi 2010, pp. 9-11). Hence, in certain aspects, UNMIK, which was mandated to administer Kosovo until the moment of final status settlement, set up the foundations of a new quasi-citizenship regime, quite similar to the one that existed between 1974 and 1989. Residents of Kosovo could be divided into two categories: those who still possessed Yugoslav passports[4] (and UNMIK documents) and those who possessed only the UNMIK ones. The latter were *de facto* stateless. In fact, in 2004 Serbia adopted a new citizenship law, which did not make any specific provision for the residents of Kosovo or take into consideration the new reality in Kosovo (see Vasiljević in this volume). Its residents were in principle considered to be Serbian citizens.

3. Politics and citizenship in the 'newborn' state of Kosovo

After 15 rounds of negotiations, and with no compromise between leaders of Serbia[5] and Kosovo on the horizon, on 26 March 2007 Martti Ahtisaari, the Special Envoy of the Secretary-General of the United Nations for Kosovo, presented his final version of the Comprehensive Proposal for the Kosovo Status Settlement (known as the Ahtisaari Plan) to the Security Council and the Secretary General. According to Weller, this proposal, which contains a short framework agreement and twelve annexes, "provided everything that Kosovo would require to form itself into a state, and for others to recognise it as a state should they so wish" (2009, p. 209). Having already endorsed the Ahtisaari Plan and with the UN Security Council unable to agree on a new resolution in March 2007, Kosovo declared independence on 17 February 2008. Kosovo was declared "to be a democratic, secular and multi-ethnic republic, guided by the principles of non-discrimination and protection under the law."[6] Shortly thereafter, the Kosovan Assembly adopted a whole package of basic statehood laws, including the Law on Citizenship,[7] and started the process of replacing UNMIK documents (IDs and passports) with Kosovan ones, in this way setting up the contours of an independent citizenship regime, the first in the history of Kosovo.

Because of strong international participation during its creation as a state, Kosovo can be considered a "state of international design" (Bose 2005, p. 322). This involved the application of a certain vision of state-building, which combined multicultural and civic elements, in a country where the number of minority groups does not exceed 10 per cent of the population. Implementing such a vision, however, was going to be a big challenge because of ethnic tensions and divisions in post-war Kosovo on the one hand, and the desire of local leaders to have a state that reflects the wishes of the ethnic majority (Albanians) on the other. In Brubaker's (1992a, pp. x-xi) terms, this represents a tension between two different understandings of nationhood:

territorial and political (the French model), where nationhood is understood as political fact, and ethno-cultural (the German model), where nationhood is understood as an ethno-cultural fact. Indeed, this tension is still very much present in Kosovo.

In what follows I look at the Kosovan citizenship regime using Joppke's (2007, p. 38) concept of citizenship that distinguishes between at least three aspects of citizenship; status, rights and identity. The first aspect of citizenship denotes formal state membership and its associated criteria; the second aspect is both about 'classical' civic, political and social rights, as well as about the new generation of rights, namely multicultural recognition; the third aspect refers to the behavioural dimension of individuals at a time when membership in a state and identity often diverge (ibid).

a) Citizenship as status: openness/restrictiveness[8]

Kosovo is not defined as a national state of its titular nation, but a multi-ethnic state of all citizens, guided by principles of non-discrimination and equal protection under the law of all communities. Constitutionally, Kosovo is defined as "a state of its citizens" (Article 1.2). Its citizens are tied to the new country based on a common citizenship, rather than on their national belonging or descent. Based on its legislation, Kosovo is, using Walzer's (1983, p. 41) typology, more of a 'French political club' than a 'German family home'. Certainly, citizenship aims at replacing divisions of ethnicity, religion or social status, therefore serving as a mechanism of ensuring equality before the law.

In the absence of a previous independent citizenship regime on which it could be based, Kosovo's only viable solution was to opt for what Brubaker calls the "new-state" model.[9] The two main provisions that define the scope and character of citizenship in Kosovo, including the

body of citizens, inclusiveness, and openness, are articles 28.1 and 29.1 of the law. Article 28.1 of the new law provides that any habitual resident of Kosovo based on UNMIK Regulation 2000/13 is considered *ex lege* a citizen of the Republic of Kosovo. Thus, paraphrasing Brubaker, "[by] constituting the population of its territory as its citizenry, the new state extends its jurisdiction and asserts its authority evenly throughout its territory" (1992, p. 278). Such a territorially-inclusive definition of citizenship brings Kosovo closer to the new-state model commonly called 'zero option', which was applied in the case of newly-created post-Soviet states. Article 29.1, on the other hand, enables all pre-war residents of Kosovo (who were citizens of the FRY) and their direct descendants to be considered as citizens of Kosovo. This provision leaves open the possibility that people who left or were driven out of Kosovo in the course of the conflict (mainly Serbs and Roma) can claim their citizenship rights upon their return to Kosovo. In a similar vein, the principle of dual citizenship is especially important in the case of Kosovo and was introduced mainly to accommodate the needs of the Serb minority in Kosovo (but also many Albanians living in diaspora). Dual citizenship in Kosovo is considered to be an "open door" for integration of the Serb population into the Kosovan state and society.[10]

Irrespective of the fact that it has a considerable diaspora, estimated at between 400,000 and 800,000 (Mustafa et al 2007, Haxhikadrija 2009) and is surrounded by ethnic Albanians living as minorities in the former Yugoslav republics, namely Serbia, Macedonia and Montenegro, Kosovo's capacities in designing and implementing diaspora or kin-state policies are limited both legally and practically. Kosovo's constitutional definition as a state of its citizens (as opposed to an ethno-national state) formally prohibits Kosovo from adopting paternalist policies toward the Albanian minorities in the neighbouring states, especially those residing in Presevo Valley (an Albanian inhabited region in southern Serbia) who have multiple political, cultural and economic ties with Kosovo. As far as the Kosovan diaspora is concerned, despite the

fact that the law foresees facilitated naturalisation for this category, it does not define or differentiate it on the basis of ethnicity. Moreover, unlike some other countries in the region (Croatia and Macedonia) the Kosovan Parliament does not have reserved seats for the diaspora.

In the case of Kosovo, the task of constituting the initial body of citizens is further complicated by the stateness problem that Kosovo faces in its northern territory, as well as by the issue of the Serb and other non-Albanian (mainly Roma) IDPs (Internally Displaced People) and refugees that left or were forcefully driven out of Kosovo in 1999. Serbs from northern Kosovo have so far refused to accept the boundaries of Kosovo and question the legitimacy of the new state. They have continuously boycotted elections organised by Kosovan institutions, refused to cooperate with the latter as well as to accept Kosovan documents, although some reports suggest that hundreds of Serbs from northern Kosovo have acquired Kosovo ID cards in order to receive pensions from the Kosovo budget (*KOHAnet* 2010). In spring 2011, Serbia urged local Serbs in the northern part of Kosovo to boycott the first overall census in Kosovo in thirty years that was organised by the Kosovan Statistical Office. In the face of the boycott, Kosovan institutions have postponed the census in that part of the territory. As for the refugees, their numbers remain highly contested and their return politicised.

In sum, Kosovo's citizenship legislation, though very open and inclusive, will take time and enormous efforts to be implemented up to the point where Kosovo will have a clearly defined citizenry. In contrast to many other post-communist countries in the region, Kosovo's legislation is not designed and cannot serve as an instrument of "bureaucratic ethnic cleansing" (Hayden 1992, p. 668) in the process of the constitution of the body of citizens. Although a civic and multicultural conception of citizenship underpins the current legislation, the refusal of Serbs from northern Kosovo to be integrated within the institutional framework of the new state and the

politicisation of the issue of refugees and return have undermined efforts to consolidate Kosovo's citizenry.

b) Citizenship as rights

Citizenship today is about classical civic, political and social rights, as well as about the new generation of rights, namely multicultural recognition. In the case of Kosovo, ethnicity and group rights have been paramount values in UNMIK's ethnicised discourse since 1999. Although the very idea of multicultural liberalism is about additional group rights that would only supplement individual rights, what we see in the case of Kosovo, nonetheless, is an attempt to overemphasise group-differentiated rights. Despite the fact that constitutionally Kosovo is defined as "a state of its citizens" (Article 1.2), meaning civic state, "multi-ethnicity" is the keyword in both the Ahtisaari Plan and the Kosovan Constitution itself. If equality is established *legally* among all citizens, *politically* every citizen is defined as a member of a community. The term community in this case refers to "inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of the Republic of Kosovo" (Article 57.1 of the Constitution). All the constitutionally recognised communities in Kosovo are granted specific group-rights, including reserved seats in the parliament (10 for the Serb community and 10 for the rest), at least two ministerial portfolios in the government, and proportional representation, as well as quotas, at other levels of governance. Moreover, the principle of double-majority is put in place for these pieces of legislation that are of 'vital interest' to minority communities. Indeed, such provisions of ethnic group rights present in the Kosovan legislation are similar to those found in Bosnia and Macedonia (Sarajlić 2010; Spaskovska 2010), and in the main reflect the international community's 'multicultural vision' in shaping post-conflict societies in the Balkans.

The new Kosovan Constitution on the one hand, by refusing to recognise exclusions, loyalties or claims of ancestral rights, defends the universalist values of civic republicanism and individual liberalism, but also speaks out for group rights (communities) and defends their exclusivity and group differentiated rights. Certainly, in the case of Kosovo we have de-ethnicisation of state institutions on the one hand, but on the other a multi-ethnic composition of the society reflected in politics i.e. *ethnicisation* of the political and social status of its citizens. As a result, we have at the same time neutral civic state institutions, and yet the very functioning of the state is based on multi-ethnicity (the neutral state being there to ensure that no group will dominate or be discriminated against). Indeed, elements of multiculturalism and civic republicanism are melted together in the Kosovan legislation.

Citizenship, territory and minorities

In the case of Kosovo and its efforts to create an independent citizenship regime, territory is of exceptional political and geopolitical relevance. The Serb-Albanian dispute over the territory of Kosovo has been central to the conflict and continues to determine relations between the two groups in Kosovo, even in the context of citizenship and minority rights. In an attempt to respond to the post-war ethno-demographic segregation and creation of small Serbian-controlled areas in Kosovo (in particular, the northern part of Kosovo) - which since 1999 functioned like enclaves – the representatives of the international community present in Kosovo decided to create new municipalities (based on the principle of ethno-majoritarianism). The issue of decentralisation, which was initiated years before by UNMIK under the title of 'local self-government reform', has been a burning issue during negotiations for the final status settlement. The final result, the Ahtisaari Plan, offered a broad range of rights to communities, including the decentralisation of

power. Thus the Republic of Kosovo is a unitary state with a decentralised structure (Weller 2009, p. 214).

Accordingly, immediately after independence, the Kosovan authorities initiated the creation of new municipalities with a Serb majority, in compliance with the Ahtisaari Plan. In the local elections of 15 November 2009, the first ones to take place in an independent Kosovo, representatives of the Serb community successfully gained power in four municipalities (including three newly created ones), boycotted the elections in three municipalities in northern Kosovo, lost in one municipality, and were successful in a further new municipality in elections organised in June 2010 (KIPRED 2009). Undoubtedly, the creation of new municipalities fostering a substantial rate of participation amongst the Serb community in the elections was a major challenge overcome by Kosovo in the aftermath of its independence. These new arrangements suggest that Kosovo is moving towards ethnic minority autonomy through strong decentralization within a unitary state, which allows territorially concentrated minorities to control local administration (similar to those applied in Macedonia after 2001).

c) Citizenship as identity

There has been a huge level of external involvement in Kosovo since 1999. Its legal foundations are a product of attempts by Kosovo's sponsors and supervisors (the EU and the US) to decouple "notions of nationality and citizenship" (Allcock 1996, p. 74) and to reshape ethnic identities in the Balkans by way of institutional engineering. In this context, Kosovo is a "post-national state" where state membership and identity are, using Joppke's (2007, p. 44) terminology, "structurally decoupled," with the state being unable to impose a certain identity on its citizens. Certainly, this affects other essential issues such as state cohesion, because a state that provides for liberalised

citizenship and extensive minority rights often faces problems of unity and integration (ibid). In a situation where recognition of group rights seems to perpetuate group differences, the state of Kosovo lacks the necessary integrative ideology.

Returning to the issue of citizenship as identity, according to Joppke (2007, p. 44), it encompasses both the views held by ordinary people and official views propagated by the state. As far as ordinary people in Kosovo are concerned, they seem to be divided based on ethno-national belonging and pledge loyalty to their ethnic nations or their kin-states. In reality, many Kosovan Albanians do not consider Kosovo (including its legal framework and state iconography) to reflect its overwhelming Albanian majority, whereas most of the Serbs consider it to be 'an Albanian state'. This is why both Albanians and Serbs continue to prefer their respective national symbols (Albania's and Serbia's respective iconography) over the new Kosovan ones. Kosovan Albanians are divided between a minority who promote the idea of a Kosovan nation and those who think that Kosovan Albanians are simultaneously an indivisible part of the Albanian nation in the Balkans and Kosovan citizens. Likewise, many Kosovan Serbs, including those who are already working under Kosovo's legal framework, still remain reluctant to identify with the new state (the growing number of Serbs with Kosovan identity cards and passports does not necessary mean that they identify with the new state) precisely because they see it as an 'Albanian creation'.

On the other hand, as far as the second view of citizenship as identity – namely, the official view propagated by the state – is concerned, the new Kosovan state does not have a consistent view related to citizenship and identity. To begin with, the present institutional elite of Kosovo is entrusted with the building of a type of polity (an ethnically neutral state where citizenship enshrines rights for ethnic communities) that is far less than their initial ambition (a full-blown Kosovo Albanian nation-state). Many Kosovan politicians, both among the majority

and minority communities, are not proponents of civic conceptions of nationhood. A case in point is a political organisation called 'Self-Determination Movement' (*Lëvizja Vetëvendosje!*) that entered the Kosovan Parliament in 2011 (becoming the third biggest party), whose campaign was based on an anti-Ahtisaari and unification with Albania platform.

The state's current 'ideological vacuum' leaves local people with no choice but to stick to their notions of ethno-national belonging and to continue to show symbolic and emotional loyalty to their respective nations. Both its volatile and tragic past and its present constitutional design prevent Kosovo from achieving a higher level of internal cohesion among its citizens. Given its situation of a "deinstitutionalized nation" (Pula 2008, p. 81) and institutionalised communities, Kosovo's only integrative ideology might be what Habermas (1996, p. 289) refers to as "constitutional patriotism."

In summary, the ongoing state-building process in Kosovo is characterised by a tension between the ethno-cultural and political aspects of nationhood, statehood and citizenship. Kosovo's Constitution and basic statehood laws have strong civic underpinnings (most notably manifested in the preamble of the constitution and the declaration of independence), but when it comes to various political rights, individuals can exercise them through their membership in a community (defined on ethnic basis). This tension is visible in the flag and symbols of the new state, designed also by the international community: the geographical shape of Kosovo suggests its territorial and civic nature and 6 stars above it, the equality of 6 constitutive communities (ethnic groups). Likewise, the lack of wider legitimacy of the new state's institutions, and of a higher sense of identification with the state (a form of 'we feeling'), which derive from the persistence of competing Serb-Albanian ethno-national loyalties, is detrimental to the new state's legitimacy.

4. Contested territory and statehood, overlapping jurisdictions

From the origin of the modern state, the idea of citizenship has been closely related to territory. Membership of a polity meant access to a certain part of territory that belonged to a state. Thus, most theories assume that citizenship is "a relationship between individuals and political authorities *inside* an *undifferentiated* state territory" (Bauböck and Guiraudon 2009, p. 440). Yet in the age of plural membership and multi-level governance, individuals can be connected to a more complex web of legal and political rights beyond the borders of a single polity. Therein, Bauböck and Guiraudon argue that "territorial borders of states generally do not coincide with the boundaries of citizenship" (ibid.). This is determined by at least three factors: first, citizenship rights can be carried and exercised from abroad (external citizenship); second, states might be divided into different jurisdictions (ibid.); and third, the case of "unsettled states, disputed lands" (Lustick 1993).

In the case of Kosovo, due to the complex and unique interplay of all these three factors, the borders of the polity do not coincide with the boundaries of citizenship. As regards the issue of external citizenship – understood as "a generic concept that refers to the status, rights and duties of all those who are temporarily or permanently outside the territory of a polity that recognizes them as members" (Bauböck 2009, p. 478) – by allowing dual and multiple citizenship, Kosovo thus includes in its citizenry many citizens with long term residence abroad. In addition, it also includes other people who at the same time hold citizenship of another state in the region (Albania, Macedonia, Montenegro, Serbia etc). On the other hand, when it comes to the issue of the subdivisions within the territory, according to the Ahtisaari Plan and the Kosovan

Constitution, Kosovo is a unitary state, although with a decentralised structure of local self-government that in practice means the creation of territories with strong ethnic majorities.

At present, Kosovo remains both a contested territory and an unsettled state. Its statehood is contested both internally and externally. As regards the international aspect, Serbia, Russia, Spain and other members of the international community have fiercely opposed Kosovo's declaration of independence in February 2008. This opposition and the declaration of independence without an approval from either Serbia or the Security Council of the UN have resulted in a limited number of recognitions of Kosovo's sovereignty and independence thus far. Up to August 2011, Kosovo has succeeded in becoming a member of the World Bank and of the International Monetary Fund, but UN (as well as OSCE and Council of Europe) membership is still not in sight. The 2010 International Court of Justice (ICJ) opinion[11], which found that Kosovo's declaration of independence did not violate general international law, contrary to initial expectations[12], did not trigger a new wave of recognitions (which are essential in strengthening Kosovo's international subjectivity).

Internally, Kosovo's Serbs, backed by the Serbian state, have opposed the new state. Consequently, Kosovo's sovereignty is limited in some areas of the country, especially in northern Kosovo, which is *de facto* under the control of Serbia.[13] The end result is a situation of (informal) overlapping sovereignties and jurisdictions. As far as the issue of sovereignty is concerned, the challenge to Kosovo's assertion of sovereignty is twofold. First, Serbia still treats Kosovo and its citizens as part of its territory and citizenry. In what is considered a clear attempt to undermine Kosovo's sovereignty, Serbia has maintained parallel structures in many parts of Kosovo and most notably in the northern part of the country since 1999. Although most of the Serb parallel structures in other parts of Kosovo have been shut down or replaced by Kosovan ones, northern Kosovo remains largely out of Pristina's control .

Northern Kosovo - which comprises the northern part of the city of Mitrovica, as well as three other small municipalities and is about 1,000 square kilometres and 3 per cent of the overall population (some 65,000 Serbs and 10,000 Albanians and Bosniacs, see ICG 2011, p. 1) – embodies the core of the dispute between Serbia and Kosovo. Serb and Kosovan institutions "intersect and overlap in the North without formal boundaries or rules" (ICG 2011, p. i). Members of the Serb and Albanian community living there are tied to different (Serb or Kosovo funded) social, political and security structures, including banks, schools, health centres. Nonetheless, as a recent report by the International Crisis Group (ICG) suggests, people there have "developed pragmatic ways of navigating between these parallel systems where cooperation is unavoidable" (2011, p. 1). Courts are largely dysfunctional, and despite the presence of Kosovan and international police, intimidation and harassment "target the small Northern political, economic and social elite: opposition politicians, NGO activists, business rivals and anyone publicly associated with Kosovo institutions" (ICG 2011: p. 14). Consequently, whereas northern Kosovo remains outside Pristina's sovereignty, its Serb population resists integration within Kosovo's citizenry, thus rendering Kosovo one of those cases where boundaries of citizenship are smaller than the state's territorial borders.

Kosovo's assertion of sovereignty is also challenged by the fact that its independence is supervised internationally and this creates various sovereignty-related limitations. The Ahtisaari Plan foresaw a smooth transfer of power from the UN to the EU. This meant the termination of UNMIK's mandate and an increased role for the EU Rule of Law Mission (EULEX) mission and ICO (International Civilian Office) to strengthen its institutions, monitor their performance and the implementation of the Ahtisaari Plan. After declaring independence, Kosovo invited the EU to deploy a rule of law mission in Kosovo, but because of the lack of consensus at the UN and the EU (Spain, Greece, Cyprus, Romania and Slovakia refuse to recognise Kosovo's independence),

EULEX was deployed in Kosovo "under the general framework of United Nations Security Resolution 1244,"[14] which requires it to adopt a 'status neutral' approach. This slowed down the process of transition from the UN to the EU and created confusion amongst the UN, EU, and EULEX officials. The end result is that at least four different sets of institutions operate in Kosovo (Kosovo's, UNMIK's, EULEX's and Serbia's) creating a highly complex net of institutions, legal norms and jurisdictions that often overlap. This way, Kosovo residents are tied to at least two polities (Kosovo and Serbia) and even more political authorities determine their legal rights.

5. Disentangling Kosovan citizenship: heading towards a form of condominium?

Ultimately, citizenship is about membership in a political community. This is an essential precondition for individual autonomy and well-being (Bauböck 2009, p. 478). Although it is widely recognised that everyone should be entitled to the right of membership in a political community, according to Bauböck (2009), "we need to know which communities have a claim to self-government and which individuals have a claim to citizenship in a particular self-governing community" (p. 478). Undoubtedly, the first question lies at the heart of the ongoing political, legal and territorial dispute in the case of Kosovo. As I have shown, various obstacles, mostly related to the issue of Kosovo's challenged legal and international status, hinder the significant progress made in the context of consolidation of Kosovo's independent citizenship regime. Hence, the overall progress in the process of state-building in Kosovo is inherently linked to the consolidation and functionality of the citizenship regime.

Citizenship, understood as status, rights and identity, has been central to the negotiation process and the overall political and constitutional settlement in Kosovo and the state-building

process since 2008. But effective citizenship requires a legitimate polity and political institutions that can enforce laws. In the case of Kosovo, the new polity is not seen as fully legitimate by a part of its population (Serbs), as well as by the Serbia and other members of the international community. In the same vein, Kosovo's institutions still have limited capacities to enforce laws throughout the territorial borders of the new state. This has resulted in a situation of overlapping citizenship regimes, sovereignties and jurisdictions between Kosovo and Serbia.

Disentangling the perplexing issue of citizenship in Kosovo requires solving the issue of statehood, both internally and externally. The present deadlock acts to the detriment of Kosovo's efforts to establish an independent citizenship regime suitable for a state defined in civic terms, as well as to ensure the necessary compliance with the international norms through membership in international organisations. The ongoing dialogue between Kosovo and Serbia that began in March 2011 and is facilitated by the EU, may help in solving some troublesome issues, but it is unlikely that it will solve the issue of Kosovo's sovereignty.[15] In addition to this, the EU's inability to speak with a single voice in the case of Kosovo has lowered expectations and created many practical problems.

Kosovo's present unfavourable *status quo* and the vicious circle imposed as a result of Kosovo's legal obscurity represent a *de facto* condominium-like citizenship constellation. The present situation in Kosovo contains elements of both territorial condominium and strongly overlapping citizenship regimes. On the one hand, Serbia actively exercises control in the northern part of Kosovo, thus turning the latter into a *de facto* Serb-Kosovan sovereignty. On the other hand, Serbia claims and legally maintains state jurisdiction over the residents of Kosovo (although the treatment of ethnic Albanians is clearly different), a territory it generally claims to be part of Serbia together with all Kosovo citizens. As a result, many Kosovo Serbs and

Albanians remain legally tied (albeit symbolically through personal documents) to both Kosovo and Serbia.

If there is no breakthrough in Kosovo's consolidation of statehood as envisaged in the Ahtisaari Plan, condominium may come to the fore in two scenarios.[16] In the first scenario, Kosovo might be left with no option but to grant territorial autonomy to northern Kosovo. If this solution, often referred to as 'Ahtisaari Plus', allows for any sort of jurisdiction of Serbia over that part of territory, it would turn northern Kosovo into a condominium under a shared Kosovan-Serb sovereignty and jurisdiction. But if it does not allow for any Serbian jurisdiction, then instead of a condominium we would have a form of autonomy that adds a stronger territorial dimension to the multi-ethnic dimension of the Kosovan legal structure.

In the second scenario, if the present stalemate continues, the whole territory of Kosovo might become a 'soft condominium' in which Kosovo residents would be legally tied to two different states, namely Serbia and Albania, in addition to their link to Kosovo. The first step towards the realisation of this scenario is dual citizenship. Serbs of Kosovo are already included in the citizenry of Serbia and hold Serb passports (which secures them visa-free travel to the EU). On the other hand, the majority of people in Kosovo (mainly Kosovan Albanians, who in fact hold Kosovan passports alone), remain the only passport holders in the Western Balkans that still need visas to travel to the Schengen Zone countries. Their unfavourable position pushes them to look for other options. In this context, Albanian passports are seen as very desirable in Kosovo, not only for pragmatic travel-related reasons (many Kosovan Albanians see Albania as their kin state and have a symbolic attachment to it). This scenario of large-scale (Serb-Albanian) overlapping of citizenship regimes in Kosovo would render the latter's passports unworthy and seriously undermine Kosovan citizenship, and deepen its internal divisions.

Even if a large number of Kosovo Albanians were to acquire Albanian citizenship, without an enhanced role of Albania in Kosovo, that situation still would contain more features of strongly overlapping citizenship constellations rather than territorial condominium. So far Albania has not claimed any jurisdiction in Kosovo or a protective role in Kosovo and is not very likely to do so in the near future. However, when it comes to the role of Albania, it might become part of the Kosovo puzzle in an *in extremis* situation, such as with the division of Kosovo. Several politicians in Serbia (including the President and Deputy Prime Minister) have recently spoken about such a scenario, where the Serb inhabited regions in Kosovo would join Serbia and the rest of the territory would go to Albania. The realisation of such scenario would certainly have implications in other countries in the region (i.e. Bosnia and Macedonia) and most importantly, would mean the certain death of the Kosovan citizenship and statehood.

To sum up the argument, Kosovo's nascent citizenship regime represents the seventh independent citizenship regime to emerge (so far) in the territory of the former Yugoslavia. It differs from the others in that it represents a 'new-state' ('zero option') model resulting from a process of institutional and constitutional engineering led by international actors. In the context of the nature of the polity, due to the presence of elements of both civic republicanism and multiculturalism, Kosovo can be defined as a state with institutionalised multi-ethnicity hidden behind a mantel of civicness. However, notwithstanding its 'Europeanised' institutional and legal infrastructure, at present, Kosovo remains a disputed territory, where Serb and Kosovan jurisdictions and sovereignties overlap, most notably in the northern part of Kosovo. These blurred boundaries and overlapping jurisdictions make both Serbia and Kosovo unfinished and unconsolidated states with no clear territorial boundaries. Certainly, this context is not the most favourable one in which a new citizenship regime can be born in and mature.

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[2] I borrow the term 'constellations' from Rainer Bauböck. According to him, 'citizenship constellations' represent "structures in which individuals are simultaneously linked to several such political entities, so that their legal rights and duties are determined not only by one political authority, but by several" (Bauböck 2010, p. 848).

[3] See *UN General Assembly Resolution 50/190 (A/RES/50/190),* 22 December 1995.

[4] Between 1999 and 2007, Serbian authorities claim to have issued 200,000 passports for Kosovo residents (AFP 2007).

[5] In the midst of negotiations, in autumn 2006, Serbia adopted a new constitution, which confirmed Kosovo as an integral part of Serbia, offering it autonomy within the framework of the Serbian sovereignty. Serbia organised a referendum on new constitution but ethnic Albanians from Kosovo were ineligible to vote (Weller 2009, pp. 208-209).

[6] See *Kosovo Declaration of Independence, 17 February 2008*, available at: http://www.assembly-kosova.org/common/docs/Dek_Pav_e.pdf [last accessed: 01.06.2010].

[7] Law on Citizenship of Kosova. *Official Gazette of the Republic of Kosovo*, No. 26/2008.

[8] For a more detailed analysis of the new Kosovan citizenship law, including modes of acquisition and loss of citizenship, as well as procedures, see Krasniqi (2010).

[9] Brubaker distinguishes between the 'new-state' model - where the task of the new state is to define an initial body of citizens, usually done in a territorially inclusive fashion; the 'restored state' model - in which the state confirms an already existing citizenry and restores citizenship and statehood; and a third compromise model that combines features of the first two (1992, p. 279).

[10] Personal interview with a member of the Kosovan Parliament and former member of the Kosovo's negotiating team on final status settlement, Prishtina, 11.05.2010.

[11] ICJ, *Advisory Opinion of 22 July 2010, 'Accordance with international law of the unilateral declaration of independence in respect of Kosovo'*.

[12] For more on political and scholarly debates about the ICJ's decision see Gëzim Krasniqi, *What it did not say: Secession after the ICJ's opinion on Kosovo,* 11 May 2011, available at: http://www.citsee.eu/citsee-story/what-it-did-not-say-secession-after-icjs-opinion-kosovo [last accessed: 15.05.2011].

[13] Under the Serbian constitution, Kosovo is *de jure* part of Serbia. However, the UNSC Resolution 1244 (1999), which is still in force, has suspended Serbia's sovereignty over Kosovo. So, even according to Resolution 1244, which Serbia has as a reference point in its battle to keep Kosovo within its sovereignty, Serbia is not permitted to exercise any control over or maintain institutions in Kosovo.

[14] See EULEX's Mission Statement, available at: http://www.eulex-kosovo.eu/en/info/whatisEulex.php [last accessed: 14.06.2010].

[15] On 2 July 2011 Serbia and Kosovo came to an agreement on licence plates, identity cards and university diplomas. However, the two countries failed to agree on the issue of Kosovo customs stamps, which Serbia does not recognise as of 2008. As a result, the Kosovo government recently imposed an import ban on goods from Serbia and ordered the Kosovo Special Police Units to seize control of the border crossings with Serbia in the north in order to enforce the ban. The EU rule-of-law mission, EULEX, has controlled these two border crossings since February 2008 (when they were attacked and destroyed by Serbs as a reaction to Kosovo's declaration of independence). In response, roads were blocked by local Serbs (who demolished and burned infrastructure there) and KFOR had to deploy (*The Economist*, 5th August 2011).

[16] On the issue of future scenarios for Kosovo see also Economides et al (2010) and ICG (2011).