Research Article

LEGAL FRAMEWORK OF THE IDENTITY POLICY OF THE INTERNATIONAL COMMUNITY IN POSTWAR KOSOVO — A HISTORICAL OVERVIEW

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Summary: 1. Introduction. – 2. Theoretical and conceptual framework. – 3. The historical context of the disintegration of former Yugoslavia and Kosovo as part of it. – 4. UN administration in Kosovo as a basis for statehood. – 5. Constitutional and political framework of Kosovo under the protectorate. – 6. Resolving Kosovo's final status: Ahtisaari Proposal as a legal-political framework of an independent multi-ethnic state. – 7. The crisis of national identity as a factor for religious radicalisation in Kosovo. – 8. Lack of loyalty to the state as an indicator of an identity crisis. – 9. Conclusions.

Keywords: *legal framework of identity policy, UNMIK regulations, Constitutional framework, multi-ethnicity, identity crisis, national identity.*

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ABSTRACT

Background: *This paper aims to elaborate and analyse the legal context of the identity policy of the international community in post-war Kosovo. Through this policy, the nature of Kosovo was determined as an entity under the UN administration until 2008 and as an independent state after that. Given that NATO's military intervention in Kosovo was initiated for humanitarian reasons and, therefore, was not an intervention aimed at resolving the historical conflict between Serbs and Albanians, the UN administration in Kosovo was also established by being neutral towards national interpretations on the "issue of Kosovo". This paper will bring together arguments that the international community, in its approach to the people of Kosovo, has actively tried to establish a new political entity detached from any national projections, thereby preventing it from being perceived as a national victory, especially among the Albanian majority. For this reason, all laws, regulations, governing documents and policies of the UN mission, which delineated Kosovo's political nature and way of governing, were based on the 'principle of multi-ethnicity'. This paper also examines the negotiation process for determining Kosovo's final status, through which independence was conditioned by the commitment to building a state based on the principle of multi-ethnicity.*

Methods: *In this article, qualitative methods have been used since the focus of this paper has been the understanding of some of the concepts of the legal framework used in the process of state building of Kosovo after the war and the role that the international community played in the policies of identity. The authors try to connect the theoretical with the practical aspects to present a broader view of the topic of this article. This scientific article is a single case study research focusing on the state of Kosovo in the post-war period. Data analyses were collected from the official documents of international institutions and the state of Kosovo. The historical method content analysis of the legal documents used in this paper has helped to achieve a deeper understanding of the topic presented in this paper.*

Results and Conclusions: *The authors' findings indicate that in post-war Kosovo, the international community in post-war Kosovo has established a neutral political entity in terms of national identification. This has been achieved through a legal and constitutional framework that prioritises identity by promoting multi-ethnicity and civic identity as the political identity of the people of Kosovo. This discrepancy between state and national identity has given rise to an identity crisis, especially among the Albanian majority population. This has resulted in religious radicalisation in part of the population and a lack of loyalty to the state in other parts of the country.*

1 INTRODUCTION

Kosovo's declaration of independence on February 17, 2008, was prepared in coordination with the Western part of the international community, and it was presented as a sui generis case in the realm of international law. The very process of building the state of Kosovo presents a special case due to the way it was constructed from within and for the distant or neutral relationship it opted for concerning the national representatives of the people of Kosovo. Although the idea of an independent state of Kosovo was an idea that Kosovo Albanians pushed forward, driven by their desire to break free from Serbia and realise their incomplete national self-determination within the context of the dissolution of the former Yugoslavia, the intervention of the international community in Kosovo culminated with the NATO air-strikes in 1999. This intervention led to the establishment of the UN protectorate, entirely motivated by

humanitarian reasons, aiming to prevent the recurrence of the catastrophe that had occurred several years earlier in Bosnia and to avoid the risk of regional escalation of the conflict.[3]

The capitulation of the former Yugoslavia, namely Serbia, after the 78-day NATO bombing, manifested itself as a national liberation by the Kosovar Albanians, who had been waging an armed war against the former Serbian forces since 1998 and political resistance since the suppression of the provinces' autonomy in 1989. However, the international community's approach to the subsequent political processes was completely indifferent to the historical and nationalist implications of this momentum. Even though June 10, 1999, is celebrated in Kosovo as the day of liberation from Serbia[4], in essence, it marks the beginning of a new phase that begins with the adoption of UN Resolution 1244[5], namely the establishment of the UN mission in Kosovo[6], which lasted until the negotiations for the final status and the declaration of independence in 2008.[7] The UN administration used the 'empty shell' approach, which would become a synonym for the policies followed in the case of Kosovo, implying that the post-war country was treated as a *tabula rasa* in terms of history, the past and the political system.[8] Every element of the state had to be invented from scratch, seemingly without considering the social actors and the past that would inevitably influence the country's future.[9]

This new phase in which Kosovo entered under international administration initially aimed to overcome the state of emergency caused by the war and lay the first foundations for democratic self-governance. This period left significant traces in the nature and contours of Kosovo. The declaration of independence and state-building took place under close international scrutiny and followed negotiation talks with Serbia, during which compromises were made on various aspects of Kosovo's future state. Serbia had double participation in the negotiations, appearing as a disputing party to the Albanian demand for independence and as a representative of the interests of Kosovo Serbs within the anticipated state.

The international community involved in Kosovo after 1999 refused to resolve Kosovo's final status in the context of resolving the Serb-Albanian conflict. The proposal put forth by the UN chief negotiator, Martti Ahtisaari, presented a state that would be built more as a result of current circumstances rather than as a solution to a historic dispute where one side 'triumphed' over the other. In this sense, according to the Ahtisaari Proposal, 'Kosovo could no longer be returned to Serbia'[10], just as 'Kosovo could not join any other state'[11], clearly implying the

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3   See, Tonny Brems Knudsen, 'From UNMIK to self-determination?: The puzzle of Kosovo's future status' in Tonny Brems Knudsen and Crasten Bage Laustsen (eds), Kosovo between War and Peace: Nationalism, Peacebuilding and International Trusteeship (Routledge 2006) ch 9, 167, doi:10.4324/9780203969618.

4   Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia (1999) 38(5) International Legal Materials 1217, doi:10.1017/S0020782900020052.

5   UNSC Res 1244 (10 June 1999) UN Doc S/RES/1244 <https://unmik.unmissions.org/united-nations-resolution-1244> accessed 16 August 2023.

6   ibid, para 10.

7   Kosovo Declaration of Independence of 17 February 2008 <https://www.refworld.org/docid/47d685632.html> accessed 16 August 2023.

8   Nicolas Lemai-Hebert, 'The "Empty Shell" Approach: The Setup Process of International Administrations in Timor-Leste and Kosovo, its Consequences and Lessons' (2011) 12(2) International Studies Politics 190, doi:10.1111/j.1528-3585.2011.00427.x.

9   ibid.

10   UNSC 'Report of the Special Envoy of the Secretary-General on Kosovo's future status' (26 March 2007) UN Doc S/2007/168, para 7 <https://digitallibrary.un.org/record/595358?ln=en> accessed 16 August 2023.

11   UNSC 'Comprehensive Proposal for the Kosovo Status Settlement' (26 March 2007) UN Doc S/2007/168/Add.1, art 1, para 1.8 <https://digitallibrary.un.org/record/595359?ln=en> accessed 16 August 2023.

prohibition for union with Albania – a prospect viewed by the Albanian majority as the end of the process of national unification.

The new state of Kosovo was envisioned as a state for all its citizens, regardless of their historical and political stances on this aspiration, whether they were Albanians who had fought for it or Serbs who had opposed it. The state of Kosovo was projected as a state of all, but without the sign of national ownership and the symbolic cultural manifestation of any of the peoples of Kosovo, neither the majority Albanians nor other minorities.[12]

It should be specified that, in this paper, by 'international community', we do not refer to a single body or a unique mechanism representing the entire international community. Instead, it encompasses different parts of the international community (organisations, representatives, mechanisms) that have been involved in Kosovo. This involvement was initiated by the UN Mission, known as UNMIK (United Nations Mission in Kosovo), which played a leading role in the governance of Kosovo from 1999 to 2008.[13] The International Community in relation to Kosovo has also been the Contact Group (USA, United Kingdom, Germany, France, Italy and Russia), whose decisions have influenced the developments regarding the status of Kosovo.[14] The Secretary General of the UN and his Special Envoy, Martti Ahtisaari, have represented the international community (the UN) in the negotiation process for the settlement of the final status of Kosovo (2005-2007).[15]

After the declaration of Kosovo's independence and its initial phase of supervising the implementation of the principles and conditions of the Ahtisaari Proposal, the ICR (International Civilian Representative for Kosovo) was chosen by the Council of the European Union.[16] This appointment of the ICR symbolised the presence of the international community in the processes of the state-building policy of Kosovo. Therefore, starting from the phase of the UN protectorate until the determination of Kosovo's independent state status in line with UN envoy Ahtisaari's proposal, the international presence has left its mark on the identity and nature of the state of Kosovo.

The paper seeks to argue that the nature of the state of Kosovo is the result of an identity policy pursued by the international community in Kosovo. This policy aimed to strip the Kosovo-Serbia dispute from its original nationalist context and support building the Kosovo state entity as a new political project with a multiethnic identity. According to scholar Francis Fukuyama, *'national identities can be created by states through their language, religion and education...'*[17] In the case of Kosovo, where the mechanisms of the international community have been the governing power since 1999, it initiated, imposed and implemented this policy of forming a new political identity at all stages.

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12   Constitution of the Republic of Kosovo of 9 April 2008, arts 1.2, 6 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702> accessed 16 August 2023.

13   UNMIK Regulation No 1999/1 'On the Authority of Interim Administration in Kosovo' (25 July 1999) <https://unmik.unmissions.org/sites/default/files/regulations/02english/E1999regs/RE1999_01.htm> accessed 16 August 2023.

14   'The Contact Group' (US Department of State Archive, 20 January 2009) <https://2001-2009.state.gov/p/eur/ci/kv/c13102.htm> accessed 16 August 2023.

15   UNSC 'Letter dated 31 October [2005] from the Secretary-General addressed to the President of the Security Council (10 November 2005) UN Doc S/2005/708 <https://www.securitycouncilreport.org/un-documents/document/kos-s2005-708.php> accessed 16 August 2023.

16   Council Joint Action 2008/123/CFSP 'Appointing a European Union Special Representative in Kosovo' (4 February 2008) OJ L 42 <http://data.europa.eu/eli/joint_action/2008/123/oj> accessed 16 August 2023.

17   Francis Fukuyama, Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy (AIIS 2015) 181.

Such an identity policy developed from the moment the UNMIK mission was established in Kosovo[18] and continued until the incorporation of these principles of a multiethnic state into the provisions of the Constitution of the Republic of Kosovo[19], the modification of which is almost impossible. Another primary objective of this paper is to argue that the creation of such a distant and indifferent state to the national identities of the people of Kosovo, especially to the majority, has produced an identity crisis which has compromised the very process of Kosovo's state-building.

2 THEORETICAL AND CONCEPTUAL FRAMEWORKS

The literature on the issues covered by the research may be divided into two groups: foreign and local authors' writings. Additionally, analyses and reports produced by international and national institutes, think tanks and other organisations addressing Kosovo and identity policies have played a pivotal role. In addition, legal documents such as constitutions, laws, UN documents and UNMIK regulations have been instrumental in facilitating this research. Collectively, these resources have provided valuable guidance for delving deeply into the research and finalising this article, which can serve as a resource to deepen the reader's understanding or as a solid foundation for further academic exploration in this field of study.

This identity policy is also a political experiment developed in a region where states are closely related to national belonging. The main factor of all wars has been the claim for national hegemony of one nation.

So, the concept of a 'civic-political nation' is unknown in this region of Europe, namely, South-Eastern Europe. In this context, all states have historically been built on ethnic nations, leading to the categorisation of these states as ethnic-nation states.[20] The extent of this experiment's success in creating such a state model in Kosovo and the complications it has generated will become more apparent as we delve deeply in the following paper. But essentially, identity policies aim to build identities, in this political case, on certain social groups or society as a whole.[21] Identity policies are usually a mechanism of the state and are used for the massification of a certain identity, namely the national identity, after the establishment of the state.

The importance of state mechanisms, including public education, mass media and social-cultural policies, in constructing national identity, respectively, forging a citizen identity based on a public culture constructed by the power elites, has also been evidenced by the theorist of nationalism, Anthony D. Smith.[22] The international community's involvement in Kosovo raises questions about whether this policy was intended to ease inter-national and inter-ethnic tensions among the people or construct a new shared cultural identity. With recent developments in Kosovo, where ethnic divisions seem to be deepening, identity-building policy may have likely failed. Today, in the ongoing dialogue between Kosovo and Serbia, mediated by the European Union, solutions that have been proposed within the framework of the so-called 'European Plan for the normalisation of Kosovo-Serbia relations'[23] ideas like

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18   UNSC Res 1244 (n 5) para 10.

19   Constitution (n 12) ch 1, art 3.1.

20   Urs Altermatt, Etnonacionalizmi në Europë (Phoenix 2002) 37.

21   Andrew Heywood, Politics (5th edn, Red Globe Press 2019) 325-6.

22   Anthony D Smith, Kombet dhe Nacionalizmi në erën globale (Dudaj 2008) 104.

23   'Belgrade-Pristina Dialogue: EU Proposal – Agreement on the path to normalisation between Kosovo and Serbia' (European Union External Action (EEAS), 27 February 2023) <https://www.eeas.europa.

the one on the Association of Municipalities with Serbian Majority Population (as an agreement reached in earlier Brussels negotiations)[24], seems to contradict the multi-ethnic concept of the state of Kosovo.

Also, it is important to emphasise that this identity policy of the international community in Kosovo has largely been imposed against the local political elites. Practically, the state-building of Kosovo has been conditional on the 'multi-ethnic nature' of the future entity.[25] However, the concept of an independent Kosovo was conceived and championed by Albanian nationalist elites, and within their political and party agendas, there was no intent to create a new national identity through the state of Kosovo. On the contrary, the idea of an independent Kosovo is considered the fulfilment of Albanian national self-determination, especially given the impossibility of uniting all Albanians in a single state. This perspective is vividly reflected in the Constitution of the Republic of Kosovo, approved by the Assembly of Kosovo on September 7, 1990, in Kacanik. In its first article, Kosovo was defined as *'a democratic state of the Albanian nation and members of other nations and national minorities...'.*[26]

So, unlike the constitution with Ahtisaari principles[27], the 1990 constitution recognised the title of the majority Albanian nation and other minority nations without aspiring to cultivate a new national identity.

Even the various illegal political groups that operated in Kosovo throughout the 20th century, especially from 1968 onwards, never included in their political agendas the aim of forging any new, distinct political identity for Kosovo that would be different from the broader Albanian national identity they considered part of. These groups generally aspired to unite Kosovo with Albania and naturally came out in support of the idea of the Republic of Kosovo, which they considered as a step toward achieving Albanian national unification.[28] Even according to Albanian academic Gazmend Zajmi, a key figure of the juridical-constitutional articulation in articulating the aspirations for the Republic of Kosovo, '*of course the vision of the unification of the Albanian nation in the Balkans through a democratic and peaceful path, simultaneously focused on the integration processes in Europe, remains a natural projection and a constant of the Albanian national program*'.[29] To sum up, no political movement in Kosovo, whether considered illegal by the Yugoslav system or part of the later democratic political movements leading peaceful resistance, viewed the demand for independence as a means to establish a new national identity. Instead, they have considered the state of Kosovo as a right denied to the Albanian nation within the former Yugoslavia and as a completion of national self-determination for Albanians.

eu/eeas/belgrade-pristina-dialogue-eu-proposal-agreement-path-normalisation-between-kosovo-and-serbia_en> accessed 16 August 2023.

24 Balkans Policy Research Group, Brussels Dialogue between Serbia and Kosovo: Achievements and Challenges (BPRG 2020) <https://balkansgroup.org/en/the-brussels-dialogue-between-kosovo-and-serbia-achievements-and-challenges> accessed 16 August 2023. See also: Association/Community of Serb-majority municipalities in Kosovo – general principles/main elements of 25 August 2015 <http://eeas.europa.eu/statements-eeas/docs/150825_02_association-community-of-serb-majority-municipalities-in-kosovo-general-principles-main-elements_en.pdf> accessed 16 August 2023.

25 Florian Bieber, 'Building Impossible States? State-Building Strategies and EU Membership in the Western Balkans' (2011) 63(10) Europe-Asia Studies 1783, doi:10.1080/09668136.2011.618679.

26 Kuvendit të Republikës së Kosovës, Akte të Kuvendit të Republikës së Kosovës, 2 korrik 1990 – 2 maj 1992 (ASHAK 2005) 12.

27 See: Constitution (n 12) ch 1, arts 1.2, 3.1. See also: UNSC 'Comprehensive Proposal for the Kosovo Status Settlement' (n 11) art 1, para 1.1.

28 See, Ethem Çeku (hrsg), Shekulli i ilegales: procesët gjyqësore kundër ilegales në Kosovë (Brezi '81 2004).

29 Gazmend Zajmi, 'Ndrydhja e çështjes shqiptare si faktor i degradimit dhe i zhbërjes së Jugosllavisë' in G Zajmi, Vepra, 1 (Botime të veçanta 27, Seksioni i Shkencave Shoqërore 9, ASHAK 1997) 84.

In this article, we have relied on the concept of researchers and theorists of nationalism who assert that in the modern and contemporary era, 'national identity' is one of the main forms of collective identification of the individual, especially in the Western world. According to researcher Anthony D. Smith, '*a sense of national identity provides a powerful means of defining and locating individual selves in the world, through the prism of the collective personality and its distinctive culture. It is through a shared, unique culture that we are enabled to know 'who we are' in the contemporary world. By rediscovering that culture, we 'rediscover' ourselves, the 'authentic self, or so it has appeared to many divided and disoriented individuals who have had to contend with the vast changes and uncertainties of the modern world.*'[30] Another theorist, Ernest Gellner, suggests that the primary aspiration of a nation is the creation of a sovereign state which identifies with its national culture; that is, it identifies with itself.[31]

The connection we have made to the importance of national identity and its influence on citizens' loyalty to the state draws on the perspective of the political theorist Francis Fukuyama. According to him, '*National identity has been pivotal to the fortunes of modern states. When channeled in the form of an exclusive and intolerant ethnonationalism, it can drive acts of persecution and aggression. Yet national identities can also be built around liberal and democratic political values, and around the shared experiences of diverse communities. Contrary to arguments that the concepts of national identity and state sovereignty have become outmoded, such an inclusive sense of national identity remains critical to maintaining a successful modern political order. National identity not only enhances physical security, but also inspires good governance; facilitates economic development; fosters trust among citizens; engenders support for strong social safety nets; and ultimately makes possible liberal democracy itself.*'[32]

In this sense, since man is inclined towards belonging to a collective community, and in the modern era, these communities often take the form of 'national community', our argument in this article is that the lack of constitutional, institutional and political promotion of national communities in Kosovo, has produced an 'identity crisis'. Consequently, part of the population, especially Albanians, searching for a solid collective identity, is oriented towards religious identification. This has led to the consequences we aim to highlight below: religious radicalism and a lack of loyalty to the state.

The focus of this article on the impact of the international community's identity policy on the Albanian population in Kosovo is not driven by preference or partiality but rather stems from the fact that the Albanian community has predominantly felt this impact. There are several reasons for this:

1. The idea of the state of Kosovo was initially conceived as a project by the Albanians of Kosovo as an attempt to achieve national equality with other nations in Yugoslavia. The demand for full independence came as a response to the disintegration of the former Yugoslavia. In this sense, the construction of the multi-ethnic state presented by Marti Ahtisaari in his proposal represented a departure from the new and different concept of the state that they had envisioned for Albanians. Albanians considered Kosovo as part of their national identity, but the political, constitutional, institutional, and symbolic framework of the state announced in 2008 that it did not reflect and align with this perception.

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30   Anthony D Smith, National Identity (Penguin 1991) 17.

31   See, Ernest Gellner, Nations and Nationalism (2nd edn, Cornell UP 2010).

32   Francis Fukuyama, 'Why National Identity Matters' (2018) 26(4) Journal of Democracy 5, doi:10.1353/jod.2018.0058.

2. Why is this fact not problematic for Kosovo Serbs at present? This is because Kosovo Serbs essentially do not recognise the state of Kosovo, or at least do not identify with it. Most Serbs consider Kosovo to be part of Serbia or associate it with the main elements of the Serbian nation. Kosovo Serbs primarily identify Kosovo with Serbian elements, such as the Serbian Orthodox Church in Kosovo, municipalities where Serbs form the majority, etc. Even the request to establish the Association of Serbian Municipalities serves to distinguish Serbs from any potential identification with the state of Kosovo as a collective political identity rooted in multi-ethnicity.

3. For the Kosovo Serbs, distancing themselves from the state identity of Kosovo is relatively straightforward because they continue to reject the idea of the state of Kosovo. Whereas, for the Albanians, who were the initiators of the Kosovo state, transforming their national project into a multi-ethnic state project with a tendency towards creating a new national identity[33] certainly presents a lot of tension. It is our contention that this transformation has also contributed to the identity crisis experienced by the Albanian community in Kosovo.

3 THE HISTORICAL CONTEXT OF THE DISINTEGRATION OF FORMER YUGOSLAVIA AND KOSOVO AS PART OF IT

Many local and international researchers have already studied the issue of the disintegration of the former Yugoslavia. Without devaluing the influence of external factors, such as the geopolitical changes of the late 20th century, which culminated with the fall of the Berlin Wall and the dissolution of the former Soviet Union, scholars generally consider that there were internal factors that led to violent conflicts and the final dissolution of the Yugoslav state. The main internal factor is considered the rise of nationalism, especially Serbian nationalism, which continued to grow after Tito's death and eventually led to the separation of the federal units that made up the Yugoslav Federation.[34] With the ascent of Milosevic as the head of Serbia and Yugoslavia, Serbian ambitions for bringing the Yugoslav state under control took off, starting with revoking autonomy for autonomous provinces such as Kosovo but extending to territorial and control-related claims against other republics.[35] The subsequent course of events, marked by wars and bloodshed, persisted until 1999, when, following the NATO bombing of the Federal Republic of Yugoslavia, Milosevic finally withdrew from Kosovo. Revoking Kosovo's autonomy in 1989 was Milosevic's first act towards dismantling Yugoslavia, while NATO's entry into Kosovo in 1999 marked the conclusion of almost ten years of violence in the region.

Given that the Badinter Commission,[36] on behalf of the European-international community, recognised the right of secession for the Yugoslav republics but not for the provinces, the process of building Kosovo as an entity outside of Yugoslavia and Serbia is closely related to the role of the international community after the NATO humanitarian military intervention. Even though the International Court of Justice in 2010 concluded '*that the declaration of*

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33   See, Leandrit I Mehmeti, 'Kosovar Identity: Challenging Albanian National Identity' (2017) 9(1) Australia and New Zealand Journal of European Studies 16, doi:10.30722/anzjes.vol9.iss1.15171.

34   'Yugoslav Successor States' in Sabrina P Ramet and Christine M Hassenstab (eds), Central and Southeast Politics Since 1989 (2nd edn, CUP 2010) ch 4, 249, doi:10.1017/9781108752466.

35   Viktor Meier, Yugoslavia: A History of its Demise (Routledge 2005).

36   The Opinions of the Badinter Arbitration Committee 1991–1992. See, Peter Radan, 'Post-Secession International Borders: A Critical Analysis of the Opinions of the Badinter Arbitration Commission' (2000) 24(1) Melbourne University Law Review 50.

independence of Kosovo did not violate the international law'[37], the construction of the state of Kosovo was done under the mentorship of the international community. The case of Kosovo was presented as a sui generis case rather than a classic case of self-determination.[38] This paper aims to illustrate that the Kosovo case, aside from being treated as a sui generis, represents a unique approach to state-building, where the international community established all parameters framing the nature of the state of Kosovo, including those related to identity. This encompassed the defining clauses of the entity-state up to the visual appearance of symbols, such as the flag, coat of arms and anthem of Kosovo. Various local and international researchers have considered this an 'identity policy' aimed at repairing the inter-ethnic relations destroyed during the conflicts of the 1990s.[39] As authors, we do not have a negative attitude towards this policy. Still, we aim to demonstrate, in an argumentative manner, the impacts and consequences that this policy has had with 'multi-ethnicity' as the identifying feature of the new entity against consolidated national identities, especially among Albanians. The fact that there is a distinct state identity versus national identity, both in symbolic and institutional contexts, sets Kosovo apart from other states created by the breakup of the former Yugoslavia. The historical analysis of this state-building process, its legal basis, and the political instruments employed are central to the article's research goals.

4 UN ADMINISTRATION IN KOSOVO AS A BASIS FOR STATEHOOD

Under a mandate granted by the UN Security Council, the UN Secretary-General established the UN Interim Administration Mission in Kosovo, known as UNMIK. This administrative mission held full governing authority over Kosovo from its establishment until the declaration of Kosovo's independence. Although its mandate has not been officially terminated, it has been limited to observing and reporting to the Security Council. Nonetheless, from 1999 to 2008, UNMIK was the bearer of all governing powers[40] in Kosovo, including formulating the Self-Government Framework to be exercised by the Provisional Institutions of Self-Government in Kosovo.[41]

Furthermore, the legal and political basis of governance and self-government in Kosovo was established through UNMIK regulations, through which every sphere of life was regulated in Kosovo.[42] Given that the purpose of this paper is not to analyse the wide range of governing competencies of UNMIK, it focuses on identifying the principles and governance policies of this mission that have reflected the tendency to build a multi-ethnic social and institutional organisation. Our analysis will delve into the aspects of documents and policies that have framed and sanctioned Kosovo as a multi-ethnic political entity. From the definition of the people of Kosovo to how self-governing power is organised and shared, these documents and policies reflect the international mission's aspiration to build a model different from the

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37   Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion) [2010] ICJ Rep 403 <https://www.icj-cij.org/case/141> accessed 16 August 2023.

38   James Ker-Lindsay, 'Preventing the Emergence of Self-Determination as a Norm of Secession: An Assessment of the Kosovo "Unique Case" Argument' (2013) 65(5) Europe-Asia Studies 837, doi:10.1080/09668136.2013.805962.

39   See, Bekim Baliqi, 'Politics of Identity and Ethnic Relations in Kosovo' (SSRN, 18 September 2014) <https://ssrn.com/abstract=2734338> accessed 16 August 2023.

40   UNMIK Regulation No 1999/1 (n 13).

41   See, Marc Weller, Shtetësia e kontestuar: Administrimi ndërkombëtar i luftës së Kosovës për pavarësi (Koha 2011) 199-308.

42   United Nations Mission in Kosovo (UNMIK) <https://unmik.unmissions.org> accessed 16 August 2023.

political, state and governance models that previously existed in Kosovo or from the models of the political systems of the neighbouring states that existed around Kosovo.[43]

Thus, the freedom of Kosovo, despite being rooted in the aspirations of the Kosovo Albanian people, who had the status of a national minority under the former Yugoslavia and fought for the advancement and equalisation of this status with other Yugoslav nations, did not materialise as a process of Albanian national consolidation or sovereignty under the UN temporary mission.[44] So, regardless of the final solution to Kosovo's status, building institutional capacity for self-government (pre-state) was done following the principle of 'civic equality' and aimed at constructing a multi-ethnic entity rather than a purely national entity.[45] As we will see, this perspective is reflected in all relevant documents that defined the framework of Kosovo's political development during this period.

5 CONSTITUTIONAL AND POLITICAL FRAMEWORK OF KOSOVO UNDER PROTECTORATE

Kosovo's Constitutional Framework, which was adopted in 2001 by UNMIK in the form of a regulation, defined all aspects of Kosovo as an entity under provisional UN administration. It defined the political nature of this entity, the status and definition of the peoples that inhabited it, and the institutional organisation and competencies of each power, confirming that the final instance of decision-making remains the international administration.[46] Thus, in the first chapter of this framework, where the nature of the entity is defined by basic provisions, in Article 1.1, Kosovo is defined as '*an entity under temporary international administration, which, with its people, has unique historical, legal attributes, cultural and linguistic.*'[47]

This initial defining article of Kosovo, in addition to showing Kosovo as an entity under international administration, presents the people of Kosovo as a unique entity without specifying its national composition without identifying the majority nation and national minorities within the population of Kosovo. Given that the Kosovo war arose from the distorted relations between the Serb minority in a position of political power and the Albanians as the oppressed majority seeking national identity and sovereignty for Kosovo, even within the former Yugoslavia, this broad characterisation of the people of Kosovo in the Constitutional Framework established by UNMIK[48] indicates the intention of international politics that future political developments, starting from the establishment of self-government to the resolution of the final status settlement do not take place under the national background of any of the national communities of Kosovo.[49]

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43 See, Adem Beha, 'Constitution-making and statebuilding in Kosovo: we (you) the people' [2023] Peacebuilding, doi:10.1080/21647259.2023.2217575.

44 UNMIK Regulation No 2001/9 'Constitutional Framework for Provisional Self-Government in Kosovo' (15 May 2001) <https://unmik.unmissions.org/sites/default/files/regulations/02english/E2001regs/RE2001_09.pdf> accessed 16 August 2023.

45 Vjosa Musliu, 'Multi-Ethnic Democracy as an Autoimmune Practice: The Case of International Missions in Kosovo' (2016) 19(1) The British Journal of Politics and International Relations 188, doi:10.1177/1369148116672211.

46 UNMIK Regulation No 2001/9 (n 44).

47 ibid, ch 1, art 1.1.

48 ibid.

49 See, Sébastien Gricourt et Gilles Pernet (dir), Kosovo: Récits sur la construction d'un État (Non Lieu 2014).

It must be said that the Kosovo issue has a strong national background. Kosovo Albanians brought it to the forefront as a crisis because they felt discriminated against, excluded and denied equal national status within the former Yugoslavia, especially when their autonomy was revoked in 1989.[50] The Albanian demand for a Republic within the former Yugoslavia aimed to achieve national equality. Albanians demanded that other nations have political unity in the form of the highest organisation within the former Yugoslav Federation, such as the Republic. They sought to give their national identity and existence a political status akin to a state entity, with the Republic of Kosovo representing the Albanian nation in Kosovo, one of the largest ethnic groups living in the former Yugoslavia, along with Serbs and Croats. This perspective is also reflected in the Constitution of the Republic of Kosovo, adopted on September 7, 1990, where Kosovo was declared a state of the Albanian nation majority and other national minorities.[51]

This shift in the constitutional categorisation of the political nature of the Kosovo population, moving from a population with well-defined national identities, with the majority being Albanians and others being minorities, to a people without national specifics by definition, is the first initial phase to build a new political collective identity in Kosovo. This emerging identity aimed to be more related to the political equality of all residents of Kosovo, regardless of which *national community* they belonged to, concerning Kosovo as a political entity. As we will see later, the same rationale was employed in the proposal presented by the UN Secretary General's special envoy on the final status of Kosovo. Despite the fact that his proposal was closer to the aspiration of Albanians for independence at that time, it did not recommend that the state of Kosovo would be the fulfilment of national aspiration. Instead, it portrayed it as a factual reality for a population who could never return to Serbia.[52]

According to this logic of removing nationality from the categorisation of the various communities that make up the people of Kosovo, Chapter 4 of the Constitutional Framework, which pertains to 'the rights of communities and their members', classifies communities in Kosovo solely in terms of their *ethnic, religious, linguistic characteristics,* and as such ensures the preservation and cultivation of their identity in those aspects. Meanwhile, the term 'nation', the main characteristic of modern people and communities, is not mentioned at all in this important constitutional clause of Kosovo under the UN protectorate.[53]

Moreover, to the basic provisions of the Constitutional Framework of Kosovo, which defined Kosovo as a non-national political entity, the multiethnic character of Kosovo's political and institutional organisation was defined through a set of political and institutional organisation principles. These principles were put into practice by the Provisional Institutions of Self-Government implemented during their operation under UNMIK from 2001 to 2008.[54] It should be noted that the definition of Kosovo as a 'multiethnic society' by the International Community and UNMIK was more of a *political definition* than a demographic reality of the ethnic composition of the population of Kosovo.

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50   See, Noel Malcolm, Kosova: nje histori e shkurter (Koha & Shtepia e Librit Tirane 2001) 348-72.

51   Kuvendit të Republikës së Kosovës (n 26) 12.

52   UNSC 'Report of the Special Envoy (n 10).

53   UNMIK Regulation No 2001/9 (n 44) ch 4.

54   Marcus Brand, The Development of Kosovo Institutions and the Transition of Authority from UNMIK to Local Self-Government (CASIN 2003) <https://reliefweb.int/report/serbia/development-kosovo-institutions-and-transition-authority-unmik-local-self-government> accessed 16 August 2023.

According to an estimate by the Statistical Office of Kosovo published in 2008, Kosovo in 2006 had 2.1 million inhabitants, of which 92% were Albanians, 5.3% Serbs, 1.1% Roma, 0.4% Turks and 1.2% others.[55] These demographic trends have not changed, even following the most recent population census in 2012 at the municipal level organised by the Kosovo Statistics Agency, which revealed that about 90% of Kosovo's population is ethnically Albanian, while the rest consists of minority communities.[56]

Despite this homogeneous composition of Kosovo's population, the structure and functioning of its institutions and governance were built on the so-called *principle of positive discrimination,* where minorities would be over-represented politically and institutionally to "feel equal" in Kosovo's new government. This asymmetric equality, favouring minority representation over the majority, started with the establishment of linguistic equality between the Albanian language, spoken by 90% of the population, and the Serbian language, used by 5% of the population. The Constitutional Framework equally defined Albanian and Serbian as the working languages of Kosovos's governmental bodies, thus sanctioning the production of any official document, from laws to identification documents in both languages[57](besides English as the official language) of International Administration in Kosovo.

This approach extended to political representation in the institutions of the three branches of government: the legislature, the executive, and the judiciary. The Assembly of Kosovo consists of 120 seats, of which ten are reserved for the Serb minority and ten seats for other non-Serb minorities.[58] These reserved twenty seats for minorities do not exclude minority communities from the opportunity to compete with Albanian parties for the remaining 100 seats in the electoral race. Consequently, this makes them have a political presence in parliament much more than if subjected to a real electoral race. Reserved representation also included working bodies of the assembly, such as the presidency and parliamentary committees.[59]

In addition to the legislature, the reserved participation of minorities was also enabled in the Kosovo government, i.e. in the executive, where at least one minister had to be from the Serb community and another from other non-Albanian communities as if the government had more than twelve ministers, then every third minister would be from minority communities.[60] These reservations about the political participation of minorities in government had a conditional effect, as the government could not be constitutionally formed if it did not include minority ministers. Following Kosovo's independence, especially at a time when Serbian political formations came under the direct influence of Serbia, these constitutional clauses led to political blackmail, with the Serb minority refusing to participate in the government, endangering the possibility of establishing democratic institutions in the post-election period.

An illustrative example is the political blockage caused by the Serbian representative party in the Kosovo Assembly, influenced by Serbia, which did not recognise Kosovo's independence. This party obstructed Kosovo's efforts to transform its Kosovo Security Force into a regular army as part of a planned transition. According to the constitutional provisions, any amendment required the consent of two-thirds of the minority communities, including the Serbs, making it challenging to achieve any constitutional changes.

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55   Statistical Office of Kosovo, Demographic Changes of the Population of Kosovo 1948–2006 (Series 4: Population Statistics, SOK 2008) 7.

56   Kosovo Agency of Statistics, Estimation of Kosovo Population 2012 (ASK 2013).

57   UNMIK Regulation No 2001/9 (n 44) para 9.1.49–9.1.51, 9.3.17–9.3.18.

58   ibid, para 9.1.3.

59   ibid.

60   ibid, para 9.3.5.

6 RESOLVING KOSOVO'S FINAL STATUS: AHTISAARI PROPOSAL AS A LEGAL-POLITICAL FRAMEWORK OF AN INDEPENDENT MULTIETHNIC STATE

As the UN administration in Kosovo extended beyond the scope of the Rambouillet Agreement, which incorporated principles for resolving Kosovo's future political status into UN Security Council Resolution 1244,[61] impatience and tensions in Kosovo increased, especially during 2004. In response, UN Secretary-General Kofi Annan appointed a special envoy to assess the overall situation in Kosovo and its progress in implementing the Plan of the Standards, set in March 2004, as a condition for initiating the political process to determine the final status. In June 2005, Secretary Annan's Special Envoy, Norwegian Kai Aide, sent a comprehensive report on the situation in Kosovo, according to which, despite not fully meeting the standards, Aide recommended that it was time to continue the implementation of the standards and open the process of determining the final status of Kosovo.[62]

Thus, after rapid consultations with members of the Security Council, the UN Secretary-General, in October 2005, appointed former Finnish President Martti Ahtisaari as the special envoy to lead the process of determining Kosovo's future status.[63] It is essential to note that from the very beginning of this process, the international community, namely the Contact Group, which included France, Germany, Italy, the United Kingdom, the United States of America and Russia, assigned the Secretary-General of the United Nations and his envoy the *principles that would guide the process of resolving Kosovo's political status.*[64] These guiding principles formed the basis on which the solution to Kosovo's status would be built. Among the ten principles established by the Contact Group, it was explicitly stated that the political solution to Kosovo's status would involve the construction of a multiethnic political entity.[65] This multi-ethnicity would be manifested as a political identity reflected in the functional and organisational structure of governing institutions.

Another important aspect outlined in these principles was the insistence on Kosovo remaining a separate entity without the possibility of unification with any other state.[66] This stance aimed to separate Kosovo from the perspective of unification with Albania, fulfilling the nationalist aspirations of Kosovo Albanians.

In essence, right from the outset, the international community, particularly the Contact Group, defined the future political identity of Kosovo as an entity built politically and culturally on multi-ethnicity, as a collective identity based on diversity, detached from any historical-national context of the Kosovo issue. The alienation from the characteristic elements of a political community leads to the disconnection of the feeling of belonging, a very important element in fostering trust — a fundamental requirement for the sustainable development of a democratic state.[67]

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61   S/RES/1244 (1999) (n 5).

62   UNSC 'A Comprehensive Review of Situation in Kosovo' (7 October 2005) UN Doc S/2005/635 <https://digitallibrary.un.org/record/559052?ln=en> accessed 16 August 2023.

63   UNSC 'Letter dated 31 October [2005] (n 15).

64   UNSC 'Guiding Principles of the Contact Group for a Settlement of the Status of Kosovo' (10 November 2005) UN Doc S/2005/709 <https://digitallibrary.un.org/record/560544?ln=en> accessed 16 August 2023.

65   ibid, para 3.

66   ibid, para 6.

67   Robert Nisbet, The Quest for Community (ISI Books 2010).

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Under the mandate given by the UN Secretary-General and guided by the principles of the Contact Group, Special Envoy Martti Ahtisaari conducted intense negotiations between Kosovo and Serbia for a year, aimed at reaching an agreement regarding Kosovo's status. Given that the negotiations failed to reach an agreement accepted by both parties and since securing such an agreement of both parties was neither a prerequisite nor a determining condition in the proposed solution, Ahtisaari, after a period of intensive and exhausting negotiations between Kosovo and Serbia, submitted a Report on the Future Status of Kosovo to the UN Secretary-General. This comprehensive report, presented to the Security Council in March 2007,[68] proposed *Kosovo's independence as a solution overseen* by the international community. The supervision corresponds precisely to the type of state that Kosovo must build to legitimise its independence. This report, which is also known as *the Comprehensive Proposal for the settlement of the status of Kosovo,* contained concrete constitutional, political and legal principles which should be included in the constitution of Kosovo and, depending on the success of the implementation of these principles in state-building, international supervision of Kosovo's independence would also be terminated. So, in a way, the statehood of Kosovo was conditioned by these principles, which were primarily related to the construction of multi-ethnicity as the political identity of the state of Kosovo.[69]

The *Proposal's first general provision defined the* nature of the state of Kosovo, specifying that '*Kosovo will be a multiethnic society ...*'.[70] *This formulation ruled out* the possibility of defining Kosovo as a nation-state, in this case, as a state exclusively for Kosovo Albanians. Another aspect of identity defined in the general provisions of the *Proposal* was the linguistic equality established between the Albanian language as the language of most of the population and the Serbian language as the language of the Serbian minority (about 5%). Both languages were recognised as official languages in the country.[71] Also, these defining provisions of the nature of the state extended to the state symbols of Kosovo, categorised as *national symbols,* including the flag, coat of arms and anthem. These symbols were expected to reflect the multiethnic character of Kosovo.[72] Consequently, the constitutional definition of the state and its symbolic manifestation was meant to underscore the principle of multiethnicity as *a political principle (read also: national)* of the Republic of Kosovo. Since national symbols are very important constructions created by nation-building elites, they carry significant cultural and historical weight, bearing ties to a nation's culture, history, ethnicity and tradition,[73] especially in Southeast Europe. Therefore, the imposition of these principles up*on Kosovo's national symbols* of Kosovo through this *Proposal* clearly represents an *identity policy* designed to cultivate a collective Kosovar identity based on the principle of *multi-ethnicity* and *statehood* as shapers of the new Kosovar national identity.[74]

Like the Constitutional Framework during the UNMIK era, the Ahtisaari *Proposal* outlines the principles of organisation and functioning of Kosovo's governing institutions while guaranteeing the substantial participation of minority communities in both central and local institutions. In many cases, this participation was made conditional, as in the case of the government vote, which could not be constituted without its composition and members of

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68   UNSC 'Report of the Special Envoy (n 10).

69   ibid, annex III Implementation.

70   UNSC 'Comprehensive Proposal for the Kosovo Status Settlement' (n 11) art 1, para 1.1

71   ibid, para 1.6.

72   ibid, para 1.7.

73   See, Eric Hobsbawm and Terence Ranger (eds), The Invention of Tradition (CUP 2012) doi:10.1017/CBO9781107295636.

74   UNSC 'Comprehensive Proposal for the Kosovo Status Settlement' (n 11) art 1, para 1.7.

the cabinet representing the political entities of ethnic minorities.[75] Moreover, a significant part of the legislation, which was considered to affect the vital interests of any minority communities, including the constitution, could not be adopted or amended without the consent of the votes from two-thirds of the minority representatives in the Assembly of Kosovo.[76] So, through these conditional or blocking mechanisms, *the Proposal* aimed to build a democracy in Kosovo with a consociational or consensual nature, where fundamental aspects of the state's nature, particularly in its multiethnic character, couldn't be affected by the absolute majority consisting of the Albanian community.[77]

Through Annex III of the *Proposal* related to the decentralisation of governing power, it was guaranteed that in addition to the establishment of new Serb municipalities and other minorities, these municipalities would have a higher degree of self-government. This recognition included functions that, in the case of Albanian municipalities, fell under the jurisdiction of the central government.[78] Such decentralisation sought to prevent the central government from wielding power over areas and aspects that could affect the identity, cultural and educational life of these minority communities. So, in addition to prohibiting any constitutional clause of a national nature dictated by the majority in framing and regulating the functioning of the state, the Ahtisaari *Proposal*[79] aimed to prevent the actual exercise of power by the central institutions, which were expected to be dominated by Albanians, through these instruments of autonomous nature of the minority municipal units.[80]

Despite most of the annexes in the Ahtisaari *Proposal* resulting from negotiations and compromises between the parties during the dialogue in Vienna, primarily compromises made by the Albanian side regarding the internal settlement of Kosovo, in the end, it ultimately failed to secure an agreement that would garner support from both parties. Although Special Envoy Ahtisaari had the discretion, according to his mandate from the Secretary-General, to issue his proposal even without both parties' consent, it couldn't be given mandatory status through a new Security Council resolution. This was due to the veto imposed by Russia, which did not endorse a resolution on Kosovo's status without Serbia's consent for the proposed solution.[81]

In the end, although the Ahtisaari Proposal did not culminate in a Security Council resolution, the path to Kosovo's independence and statehood seemed unstoppable. The Western International Community, which included most of the Contact Group countries except Russia, which had defined the principles of how Kosovo's status should be resolved, decided to support Kosovo's independence. However, this support was on the condition that the state of Kosovo would be built according to the clauses, principles and conditionality set out in the Ahtisaari Proposal.[82] Consequently, the International Policy towards Kosovo failed to be

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75   ibid, annex 1, art 3.

76   ibid, para 3.7.

77   ibid, art 10.

78   ibid, annex 3.

79   ibid, annex 3, art 4.

80   Bekim Baliqi, 'Promoting Multi-Ethnicity or Maintaining a Divided Society: Dilemmas of Power-Sharing in Kosovo' (2018) 17(1) Journal on Ethnopolitics and Minority Issues in Europe 49.

81   Andrew Rettman, 'Russia confirms veto on Kosovo Independence' EUobserver (Brussels, 27 April 2007) <https://euobserver.com/world/23933> accessed 16 August 2023.

82   There is no joint statement of the Contact Group, especially after the withdrawal of Russia from the support of this plan, which expresses the condition that the declaration of independence depends on the acceptance of the Ahtisaari Proposal by Kosovo. But, in the Declaration of Independence of Kosovo, Kosovo undertakes the construction of an independent state according to the provisions of the Ahtisaari Proposal. American, British and European experts assisted in drafting this statement.

formalised in the Security Council; the West decided to persist with this policy[83] to build the state of Kosovo on the principles of multi-ethnicity, democracy and citizenship.

This commitment was also reflected in the *Declaration of Independence of Kosovo* adopted on February 17, 2008, by elected representatives of the Kosovo people. In this declaration, which affirmed Kosovo's sovereignty and independence, the second point explicitly stated that *'we declare Kosovo a democratic, secular and multi-ethnic republic'*.[84] Furthermore, the third point of the declaration acknowledged all the obligations foreseen in the Ahtisaari Proposal and committed to implementing its principles in state-building, the constitution and legislation, despite that this proposal did not gain legal force through the UN Security Council. This voluntary acceptance of the Ahtisaari Proposal was a condition for the Western international community to support and recognise Kosovo's independence. Over the 120-day transition period from the UN protectorate to a sovereign state, the Assembly of Kosovo adopted all priority legislation related to guaranteeing the rights of minority communities, decentralisation and increasing self-government competencies for municipalities inhabited by minorities. Additionally, it established protected zones to preserve Serbian cultural and religious heritage sites, among other measures.[85]

7 THE CRISIS OF NATIONAL IDENTITY AS A FACTOR FOR RELIGIOUS RADICALISATION IN KOSOVO

The recognition of Kosovo's independence by the Western part of the international community was made on the condition that the state of Kosovo be built as a civic state, reflecting a multiethnic society rather than fulfilling the national aspirations of Kosovo Albanians. This situation sparked discussions about the 'birth of a new national identity'.[86] While the independence of Kosovo was primarily the result of the aspirations of the Albanian majority, the state of Kosovo was not intended to be a national state of Albanian. Instead, it was designed to neutrally represent all national and ethnic communities within Kosovo. This neutrality was manifested not only in the framework of the organisation of the political system but also in the state symbols, creating a gap between the national and state identities among the Kosovo Albanians.

Given that the sovereign state is the most accomplished form of political self-determination of a nation,[87] the non-identification of this state with the nation that fought for it presented a situation of confusion and paradox. National identity was depoliticised, leading to an *identity crisis* in which Kosovar society did not align with the national identity of the majority population.

This identity crisis, which is practically a *crisis of national culture*, is a result of the exclusion of the national identity of Albanians from the state-institutional framework and has made a part of society in search of a more solid collective identity. The suspension of state mechanisms promoting *national culture,* such as public education, created spaces for various cultural agen-

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83   See: Gezim Visoka and Grace Bolton, 'The Complex Nature and Implications of International Engagement after Kosovo's Independence' (2011) 13(2) Civil Wars 189, doi:10.1080/13698249.2011.57 6158.

84   Kosovo Declaration of Independence (n 7) para 2.

85   UNSC 'Comprehensive Proposal for the Kosovo Status Settlement' (n 11) annex 12.

86   Donik Sallova, 'The Issue of Kosovar Identity' (2015) 4(1) Thesis 93.

87   David Miller, Mbi kombësinë (Cuneus 2022) 97.

cies, including religious organisations from the Middle East, to fill the identity and cultural gap. Many young people have found this identity in religion, namely in extremist Islamic movements which radically manifest the collectivity of their identity.[88]

According to a report by the Kosovo Center for Security Studies, supported by the American Embassy in Pristina, until the beginning of 2015, Kosovo, with a total of 232 cases, was ranked 8th out of 22 countries from which citizens had joined militant groups in Syria and Iraq. In terms of the number of foreign fighters per capita, Kosovo ranks first in the world among this group of countries, with 127 fighters per capita in one million inhabitants.[89] In an attempt to identify the external and internal factors that have influenced the increase in religious radicalism in Kosovo, the report states that one of the main causes was the decline in identification with the national or state cause, especially among young people.[90]

The growing need to publicly manifest religious identity is indicative of the priority of this identity among people in building a distinctive or unifying relationship with others. For Albanians in Kosovo and the broader Albanian nation, religious identity has never been primary in relation to others. Instead, in the hierarchy of identities for Albanians, the foremost distinguishing element, setting them apart from other neighbouring peoples, has been their Albanian identity, encompassing aspects of nationality, culture, ethnicity, and linguistic affiliation. Since Albanians belong to the three major religions — Catholic, Orthodox and Islam — religious affiliation has never served as the main distinguishing element with others because they had this religious plurality within their culture and nation. Therefore, religion has never been the main identity building and has taken precedence for Albanians.[91]

In the context of this paper, Kosovo's struggle for liberation from Serbia stemmed from the denial of Albanians' demand to promote their national identity rather than due to any impediments placed by Serbia (and the former Yugoslavia) on the cultivation of their religious identity. Thus, for Kosovo Albanians, the demand for the Republic of Kosovo, as a sovereign and equal state, initially within the former Yugoslavia, was based on the motive and the need to promote their national affiliation at the highest political level. Establishing the state of independence was a fundamental feature of any sovereign nation. Additionally, in the context of Yugoslavia's disintegration, the resistance and fight for independence were fundamentally driven by the conviction in the right to national self-determination as Albanians. So, the main catalyst for rebellion and resistance against Serbia was the Albanian national identity that was being discriminated against.[92]

So, after achieving freedom, independence, and state-building in Kosovo, there was a need for collective manifestations of religious identity, namely the emergence of extreme religious streams that prioritise religious identity as the primary facet of Albanian society in Kosovo. Although several studies have been conducted by local and international institutes and organisations on the causes of religious extremism and radicalism, with the emphasis often placed on the indoctrination of people from various religious organisations in the Middle

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88   Adrian Shtuni, 'Dynamics of Radicalization and Extremism in Kosovo' (United State Institute of Peace, 19 December 2016) 397 Special Report <https://www.usip.org/publications/2016/12/dynamics-radicalization-and-violent-extremism-kosovo> accessed 16 August 2023.

89   Shpend Kursani, Report inquiring into the causes and consequences of Kosovo citizens' involvement as foreign fighters in Syria and Iraq (KCSS 2015) 25.

90   ibid 63.

91   Ismail Hasani, Vetëdija fetare dhe kombëtare tek shqiptarët (Universiteti i Prishtinës 2001) 129-37.

92   Oliver Jens Schmitt, Kosovo: A Short History of a Central Balkan Territory (Koha 2012) 231-3.

East or the dire economic situation,[93] one influential factor among other causes, but that not much is emphasised in these reports, is that *this radical prioritisation of religious identity in Kosovo has come as a result of weakening the sense of Albanian national belonging.*[94]

This weakening of the Albanian national identity is *a consequence of the identity policy of the international community, which aimed to construct a multi-ethnic political identity*. However, it appears that this policy failed to fill the gap created by suspending pre-existing national identities in Kosovo. By devaluing the Albanian national identity of the majority Albanian people of Kosovo through the denationalising identity policy, the international community has inadvertently infringed on one of the basic aspects of the coexistence among the Albanian people in Kosovo: the trait of religious tolerance, which has traditionally been one of the core features of Albanian national identity.

8 LACK OF LOYALTY TO THE STATE AS AN INDICATOR OF AN IDENTITY CRISIS

The identity crisis in Kosovo has resulted in another significant consequence: an increase in indifference and a lack of loyalty to the state, namely indifference concerning how the political elites have governed the nation. According to the researcher Kalevi J. Holsti, ensuring horizontal legitimacy is very important in building strong or successful states, and it is contingent on the type of community over which governance is exercised. Therefore, according to him, *'the lack of horizontal legitimacy within society can lead to the erosion or loss of loyalty to the state and its institutions'.*[95] Thus, when people do not perceive the state as an integral part of their national community identity due to the exclusion of the national culture from institutional and state manifestation or when the state is not identified with the nation (or nations) that sacrificed historically to establish the state as a realisation of national self-determination, most people *do not feel a sense of sovereignty. In other words,* they do not view the state as representing the community and its interests.

This lack of experiencing the representativeness of interests, as a result of the non-representation of the identity of the national community by the state, has resulted in people failing to develop a sense of patriotism. In modernity, patriotism is manifested as 'citizen' or 'active citizen'. It corresponds with the creation of a *public ethic or a national ethic* from the prism of which governance and powers are also judged. The ethics of nationality represents one of the fundamental aspects of the collective feeling of nationality among people.[96] The severance of the link between the national community, i.e. the ethics of nationality, and the state and state affiliation, has led many people involved in politics, as well as those who vote for them, to perceive governance more as an opportunity for personal gain rather than as a service to the public interest according to national ethics.

The importance of the relationship between the state and the nation, respectively, the role that has the solidity of national identity in building a modern and successful state, is also emphasised by the scholar Francis Fukuyama. According to him, 'success in building the state

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93 See, Burim Ramadani and Rifat Marmullaku, Influential Factors in Radicalization and Violent Extremism: Lessons from Peja, Mitrovica, Gjilan, Ferizaj and Kaçanik (SPRC 2017) 19-21.

94 See, Agon Demjaha and Lulzim Peci, What Happened to Kosovo Albanians: The Impact of Religion on the Ethnic Identity in the State Building-Period (KIPRED 2016).

95 Kalevi J Holsti, Shteti, lufta dhe gjendja e luftës (AIIS 2008) 92.

96 Miller (n 87) 63.

depends on success in building the nation'.[97] In the case of Kosovo, since the liberation and independence from Serbia were interfered with by the international community through *the identity policy of multiethnicity*, the state-building process was not reflected as a process of national consolidation of Albanians. Consequently, the state-building process deviated from the ethics of nationality, and governance was not burdened with national political ideals. Since the citizens did not feel nationally represented by the state, the state did not formally represent the ideals of their national identity. As a consequence, many citizens cultivated a sense of not actively seeking democratic accountability from their rulers in terms of their governance.

This citizens' indifference towards the government has led to the degradation of state-building, the poor efficiency of governance, and the stagnation of the Europeanization reforms that would lead the state of Kosovo towards the European Union as a modern consolidated state. The contrary has happened. Kosovo's government and public institutions have been influenced by the interests of political parties through clientelism and political partisanship. This is best reflected by the high perception that the citizens of Kosovo have of the level of corruption in public institutions. In the measurements of this perception by Transparency International through the annual report *Corruption Perception Index*, which estimates the degree of perception of corruption from 0 points for highly corrupt countries to 100 points for countries free from corruption, from 2012 to 2021, Kosovo is estimated at an average of 35.6 points.[98]

9 CONCLUSIONS

The purpose of this article was to describe and analyse the legal framework underpinning the identity policy of the international community in Kosovo through a historical perspective. This has corresponded with the evidence of all the legal norms through which the international community has managed to sanction the nature of the political system of Kosovo, transitioning from a political entity under the UN protectorate to an independent state over a period of several years of international supervision. The primary focus was not to delve into the entire state-building process of Kosovo through the assistance of the international (Western) community. Instead, our objective has been focused on highlighting the legal normative aspects, political principles, and governing instruments through which the international community has sought to develop a political entity (state) different from the models of the states formed as a result of the dissolution of the former Yugoslavia. It was not our intention to judge whether this state model promoted by the international community is more suitable than existing models of nation-states in the Western Balkans region but rather to highlight that the primary goal of the international community has been the construction of long-term peace, community reconciliation, and the "imposition" of a state model founded on citizenship and multi-ethnicity as unifying values. Some other conclusions from the above-extended analysis are as follows:

The international community has considered Kosovo's military and administrative intervention a humanitarian endeavour to prevent the escalation of the war in the Balkan region without taking sides in the historic Albanian-Serbian dispute.

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97   Fukuyama, Political Order (n 17) 181.

98   'Corruption Perception Index: Kosovo' (Transparency International, 2021) <https://www.transparency.org/en/cpi/2021/index/ksv> accessed 16 August 2023.

The period of international administration of Kosovo from 1999 to 2008 aimed to establish a democratic and multiethnic political entity without national overtones and detached from the issue of national self-determination for Kosovo Albanians.

The international community, represented by UNMIK and other mechanisms, has implemented an identity policy in Kosovo based on the principles of multi-ethnicity and has aimed to produce a political entity, whether independent or not, that would not be headed by any nationality.

The international community in Kosovo, namely the Western part, as a supporter of the statehood and sovereignty of Kosovo, conditioned Kosovo's right to independence with state-building as a multiethnic political entity identified with equal citizenship for all national, ethnic, and languages of Kosovo, as equal arms of the state.

The removal of Kosovo state-building from the context of resolving the national issue of Kosovo Albanians has created a gap between national identity and state identity among Kosovo Albanians.

Failing to perceive national identity as politically, institutionally and symbolically represented within the Kosovo state framework led to an identity crisis among Kosovo Albanians.

The identity crisis among the Albanian majority in Kosovo, whose national identity felt devalued in the legal-political-state context, has led a part of the population to seek a more solid identity, often in religion.

The lack of state mechanisms in promoting national identity, as is common in modern nation-states, has filled this gap of action with non-state and non-national mechanisms, such as religious organisations originating mainly from the Middle East, which has led to the religious radicalisation of a large number of Kosovo Albanians.

The discrepancy between state identity and national identity has made the citizens of Kosovo, in this case around 90% of whom are Albanians, not perceive the state as an embodiment of their identity. Consequently, this has led to an increased indifference to the state's governance.

The disconnection between state identity and elements of the national glory of the population, in this case, the Albanian majority, has meant that citizens did not exhibit loyalty to the inviolability of the state, both by external factors and internal misgovernance.

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