

From UNMIK to EULEX: An Outline of the Key Aspects of Governance, Cooperation and Confidence-Building Under the Conditions of International Supervision

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Introduction

The Declaration of Independence of Kosovo on 17 February 2008 gave 27 EU Member States an opportunity to authorise a new European Mission to Kosovo to replace UNMIK in justice and police matters. EULEX, headed by General Yves de Kermabon, a former commander of NATO forces in Kosovo has replaced UNMIK since 15 June 2008. Its force shall be composed of 1 800 members having to supervise and assist Kosovo justice system and the Kosovo Police Service (KPC). Their task shall mainly be to offer an expertise and supervision in justice and police matters in order for Kosovo institutions to be able to fight hard crime and corruption and move towards rule of law and stability.

In addition to EULEX, mandated on 16 February 2008 by EU members, new EU Mission in Kosovo has its another element, ICO or International Civilian Office, headed by Peter Feith as International Civilian Representative (ICR), or European Union Special Representative (EUSR). Its task is to monitor and supervise the implementation of the Ahtisaari Plan for Kosovo. The ICR/EUSR shall have some executive powers in public life of Kosovo in cases when local authorities and institutions fail to comply with the Ahtisaari Plan's letter and spirit.

Following this change in the international mandate, UNMIK seems to have to face a deeper crisis in its legitimacy vis-à-vis local population, at least from 15 June 2008 onwards when its role shall be reduced further

as a result of entering into force of the Kosovo Constitution, a fact recognised clearly by UN Secretary General Ban Ki Moon.

The issue of governance, cooperation and confidence-building under the conditions of international supervision (or presence)¹ is more complicated and delicate than when it has to do with cases of fully sovereign and independent states.

In cases where sovereign and independent states have no supervision in exercising their sovereign rights, governance is entirely based on constitution without foreign interference, except in cases where a state has international duties to execute. In other words, in such cases a state is governed based on constitutional rules. Cooperation between institutions and citizens of a state is also based on constitutional rules so that social and political cohesion is dependent on the ability of state structures to maintain order. Confidence in the institutions and in public order is not at stake in such cases. However, history shows that confidence-building measures are needed in the societies in transition, in cases of weak and new states. These kinds of states have an urgent need to build stable and serious institutions to shape social and political cohesions of their societies. This is so because that social and political cohesion is damaged or destroyed entirely in the near past as a result of malfunctioning or total degeneration of state structures which, in turn, have turned against their own citizens destroying all cooperation, leading to an atmosphere of mistrust and lack of support for state institutions.

The years following the end of the Cold War brought back key concepts on governance, cooperation and confidence-building between sovereign states. In order to make things work, the key role to be played has been given now to international independent institutions (both regional and universal). These international institutions have through their interference been shown as an indispensable element and a tool of peace and

¹ Here we use the term “international presence” or “international supervision” as a common denominator of all sorts of legally-based international presence within sovereign countries or parts of their territory with the aim of exercising some of sovereign rights instead (or on behalf) of original state structures, or supervision of local actors in their exercise of these rights.

security for all. They have in fact filled the vacuum left behind as a result of the collapse of state structures and institutions, sometimes even leading to genocide and massive loss of human life. The mere fact that these international bodies have played a crucial role in these weak and new states (e.g. societies in transition) vis-à-vis local state structures in the field of governance, cooperation and confidence-building shows that we have to deal with the lack of sovereignty on the part of these states. In former times, sovereignty has been exercised forcefully in order to achieve social and political cohesion within states. Nowadays, using brutal force within states is a sign of quite the opposite that is, a sign of weakens of states structures and institutions to produce prosperity, peace and security for their own citizens.²

The increase in role and importance of these international institutions is nowhere more obvious and clear than in the case of Kosovo after 10 June 1999. On that date, a new UN mission was installed, UNMIK (United Nations Interim Administration in Kosovo). This mission was very ambitious aiming to run and administer the whole Kosovo. UNMIK's structure stands for its failure to deliver development and prosperity, security and welfare for all Kosovo citizens, losing its legitimacy considerably by the end of 2007.

The aim of this paper is to present and analyze key concepts of governance, cooperation and confidence-building, its instruments through which to build a social and political cohesion in Kosovo after 10 June 1999.

² See, for more on this issue, Barry Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era, 2nd Edition*, (Copenhagen: Hemel Hempstead, 1991), pp. 84-65, pp. 70-71; pp. 79-81; and pp. 97-99. Buzan explicitly distinguishes weak powers from weak states. See also Kalevi J. Holsti, *The State, War and the State of War*, (Cambridge: CUP, 1996), Chapter 2; Kalevi J. Holsti, *Taming the Sovereigns: Institutional Change in International Politics*, (Cambridge: Cambridge University Press: 2004). pp. 53-54; and James Gow, *The Validity of States: Sovereignty, International Security and Viable Political Communities* (unpublished paper for Failed States Project, World Peace Foundation, 2003).

In order to achieve this, the paper is divided into two parts. The first part deals with UNMIK as it stood until June 15, 2008, while the second part is devoted to the new EU Mission in Kosovo to replace UNMIK, that is EULEX, following Kosovo's declaration of independence on February 17, 2008 and its recognition as a sovereign and independent state by nearly 50 states of the world (mainly Western countries and their allies).

Instalment of UN Mission, UNMIK, and its Main Challenges

History tells us that territories under trusteeship have been placed most often in cases when there has been conflict over territorial sovereignty (Gdansk, Saar Territory, Trieste, Jerusalem, etc.) or during the state-building of former colonies (e.g. Cyprus or Congo/Zaire).

Trusteeship in all these cases has proved a useful tool to mitigate interstate conflicts. This has been the greatest strength of all in cases of international supervisions of certain territories or countries. However, in some cases that international supervision took the form of an international administration, thus leaving local actors without any say in running their own affairs. Governance was not a concept and practice used by actors involved in international supervision. Such a case was with Congo/Zaire in the 60s, or with the administration of the Saar between two World Wars.³ UNMIK was in this regard very different from past experience, as it sought to administer a part of territory of a sovereign country, that is, Federal Republic of Yugoslavia (Serbia and Montenegro) pending the solution of the status of Kosovo.⁴

Major weak point in all cases of international supervision of territories of foreign countries of the countries itself has been the lack of impartiality by international actors, thus very often leading to savage conflicts and wars of attrition (e. g. Rwanda, Cyprus, India/Pakistan, etc). In a

³ For a brilliant elaboration of this matter, see Meir Ydit, *Internationalized Territories*, (Leyden: A. W. Sythoff, 1961).

⁴ UNSC Resolution 1244 paragraph 11 c) and d).

sense this happened in Kosovo in March 2004, when local Albanians rioted and burned down local Serbs Churches and monasteries, in daylight, with international administration being unable to interpose themselves and stop the violence. This event, however, marked a beginning of two parallel processes, that is, decentralization on behalf of local Serbs and transfer of competences on behalf of local Albanian population who was feeling frustrated by UNMIK's exercise of overwhelming power and competences vis-à-vis local institutions and populations. In the case of Kosovo, as well as in other cases, it again showed that international presence and supervision in its first years provides enough space for dialogue and development but when lasting over too much of a time it usually narrows that space and turns against its original aim.⁵

A lack of clear vision and goal on the side of international presence, with the passing of time strips of legitimacy such a presence and turns the local population against it. The population then becomes frustrated over this presence making inter-ethnic dialogue even harder. In such a case, there is little room for confidence-building and mediation between the local groups. In situations like these, one group may see international presence as siding with the other as that group endorses the international presence as a shield for the realization of its political goals. UNMIK since March 2004 started to be seen in Kosovo exactly in this way by both Albanians and the local Serbs. The later saw it ever since as a guarantor of Serb sovereignty over Kosovo while the former ones as a hindrance to their political goals, e.g. Kosovo's independence.

This political climate has left little room for confidence-building among Serbs and Albanians living in Kosovo. The report by Kai Aide has been first serious attempt alarming at the unbearable situation with the status quo created after 10 June 1999. It made clear that UNMIK in the format it used to be from 10 June 1999 was unsustainable and that it should

⁵ In fact, in the case of Kosovo, Resolution 1244 did not give a clear and concrete aim of the new UN mandate over Kosovo and its territory. For this reason, it remains an abstract and undefined text as such. Resolution 1244 clarifies much more the motives for the establishment of UNMIK rather than it gives a clear idea as to its vision for the future.

change.⁶ This Report served as a basis for the commencement of technical dialogue between the parties in Kosovo.⁷ This technical dialogue led to a more substantial dialogue and contact among Priština and Belgrade which eventually culminated with the adoption of the *Ahtisaari Plan for Kosovo*.⁸ The *Ahtisaari Plan* presents without any doubt the institutionalization of a dialogue among the parties in Kosovo and is in essence all about confidence-building. It leaves no room for the status quo opening up new channels of communication between parties and development opportunities of Kosovo as a whole. This was not the case with UNMIK which tried until the very end to preserve its prerogative over the local population, their institutions and perspectives. In other words, the *Ahtisaari Plan* is all about confidence-building since it thoroughly addresses practicalities of living together in Kosovo. Provisions of the Constitution of Kosovo, modelled totally after the *Ahtisaari Plan*, reflect the realities in the ground. It only remains that new EU presence in Kosovo takes them seriously and monitors their implementation.

⁶ On 20 December 2003, UNMIK presented to the Kosovo Provisional Institutions of Self-Government (PISG) an eight point plan “Standards for Kosovo” as a set of targets that Kosovo must meet in order for the talks about the future political status of Kosovo to begin. The PISG achieved a lot of progress (at least on paper) on all the standards but the integration of communities proved very difficult to achieve.

⁷ The author of these lines was a head of Kosovo Working Group on Technical Dialogue with Belgrade that started in Vienna in Autumn 2004.

⁸ The *Comprehensive Proposal for the Kosovo Status Settlement*, known also as *Ahtisaari Plan*, in its 61 pages aims to define the provisions necessary for a future Kosovo that is viable, sustainable and stable. It includes detailed measures to ensure the promotion and protection of the rights of communities and their members, the effective decentralization of government, and the preservation and protection of cultural and religious heritage. In addition, the settlement prescribes constitutional, economic and security provisions, all of which are aimed at contributing to the development of a multi-ethnic, democratic and prosperous Kosovo. An important element of the settlement is the mandate provided for a future international civilian and military presence in Kosovo, to supervise implementation of the settlement and assist the competent Kosovo authorities in ensuring peace and stability throughout Kosovo. The provisions of the settlement will take precedence over all other legal provisions in Kosovo. The *Ahtisaari Plan* was officially forwarded as a text to the UN Security Council on 26 March 2007. See, S/2007/168/Add.1.

European Presence in Kosovo as an Acceptable Solution for Local Institutions of the Country

Our main proposition regarding the new EU mission in Kosovo, due to start its work on 15 June 2008, is that it shall be more legitimate than UNMIK in its geographic and cultural proximity with the region. In fact, new EU Mission in Kosovo is about respecting local wishes and by its nature is less intrusive than UNMIK was. In addition to this, the very presence is based on the invitation of local institutions of Kosovo, as foreseen in the Declaration of Independence of 17 February 2008 and Kosovo Constitution which entered into force on 15 June 2008.⁹

The very mandate of EULEX and the EU Special Representative speak of supervision; not of administration over the territory of Kosovo and its population. This leaves local institutions to work under constant monitoring and with due regard for Western standards of political behaviour. In this sense, there is a huge difference between the former UNMIK administration over the territory of Kosovo and the current role of the EU mission due to begin soon. This fact leaves more room for work on confidence-building among parties, e.g. Serbs and Albanians, since it institutionalizes the dialogue. As opposed to UNMIK, the new EU Mission is more oriented to local ownership over the political process in Kosovo and reflects the wish of the majority Kosovar Albanian population. This means that the status of Kosovo, be it independence or not, is not any

⁹ The declaration of Independence of 17 February 2008, paragraph 5 states "...We welcome the international community's continued support of our democratic development through international presences established in Kosovo on the basis of UN Security Council Resolution 1244 (1999). We invite and welcome an international civilian presence to supervise our implementation of the *Ahtisaari Plan*, and a European Union-led rule of law mission. We also invite and welcome the North Atlantic Treaty Organization to retain the leadership role of the international military presence in Kosovo and to implement responsibilities assigned to it under UN Security Council resolution 1244 (1999) and the *Ahtisaari Plan*, until such time as Kosovo institutions are capable of assuming these responsibilities. We shall cooperate fully with these presences to ensure Kosovo's future peace, prosperity and stability". The same commitment is enshrined in the Constitution of Kosovo which is due to enter into force on June 15, 2008 (see, Chapter XIV, Art. 146-153 of the Constitution).

longer an issue and cannot be a divisive force among the parties. The status issue is considered closed and parties have to try and build their confidence taking in this context. The only flaw of this position is that one party, that is the Serbs, shall be inclined to see the new EU Mission as pro-Albanian and the other part, e.g. Kosovo Albanians, as a neutral force oriented to state-building of the State of Kosovo. All confidence-building measures foreseen in the Kosovo Constitution and the *Ahtisaari Plan* should be seen not as imposed but as necessary ingredients for building a sustainable democratic and tolerant society.

The mandate of the new EU Mission in Kosovo also means a distant monitoring of the work of local institutions, that is, this mission takes a kind of “behind the scenes” approach, that leaves local legitimacy intact so that in the eyes of the Kosovar population it shall serve as an impartial factor. Despite this positive side of the mission, it cannot however bridge the huge gap and build social and political cohesion in Kosovo since its basic duties are confined to the rule of law and security.

Focusing on the two aspects of rule of law and security offers ample opportunities for Kosovo local institutions to pursue European (Western) standards of life and political rule. International expertise in state-building shall in a long run be very much appreciated by all. Taking into account the weak local political culture, it is very likely that this new EU missions shall last longer than expected, maybe generations. This means that it can dry out financial resources of European taxpayers and make them feel fed up with Kosovo and the Balkans in general. This may in turn have repercussions on European unity and integration/expansion of EU in general.

The year 2008 seems to have been a year of big changes in Kosovo. The solution of the status of Kosovo meaning recognition of its independence by most powerful countries in the world seems to have produced a sense of stability and tranquillity in the country and the Balkan region as well.

Rifts Among Local Partners and Competition at the International Level

The new EU Mission in Kosovo may lack proper legitimacy when it comes to the local Serbs, at least for quite some time. It shall, however, provide an ample opportunity for both Kosovo Communities and others as well, to strengthen their European (Western) appeal, which has been very weak. This appeal cannot be strengthened by itself. It requires hard work by the new EU Mission to prove to the locals in Kosovo that it means business and that it shall not pursue UNMIK policies without any vision for the future of the country.

It should, instead, make very clear that it shall use its executive powers if necessary and in case there is a need to reorient energies of the local leaders, institutions and the whole population towards EU and Western-oriented societies. This should be made clear especially when it comes to the implementation of basic standards on the rule of law, fight against organized crime and corruption within Kosovo society. This is the only way to prevent further ethnic divisions among Kosovo communities.

One other aspect that international community can and should perform better as compared with UNMIK is culture and education and their development. Learning local languages by Kosovo communities reciprocally as it once used to be a practice is not an option. Albanians and Serbs shall not learn any more their respective languages since there is not more incentive for it, as it once used to be in Communist Yugoslavia. In this sense, better way would be to follow global trends in culture and education and encourage both sides to insist in establishing, with international help, internationally-oriented institutions of culture and education, such as for example the opening of an international university in the town of Mitrovica.¹⁰ This step would make changes in the near

¹⁰ The author of these lines had proposed in 2003 to the then Prime Minister Bajram Rexhepi of Kosovo a five-page idea for the establishment of an international and English-speaking University in the town of Mitrovica. At the beginning it was well received internationally but the idea did not see the light due to the political developments that ensued after March 2004 riots and thereafter.

future and create an example of coexistence and open up perspective for the future of all living in Kosovo. Joint economic and business institutions would be another option, too.

Rifts within Europe shall for sure encourage local Serbs to believe that Kosovo has no European future as a separate State and radicalize local Albanians regarding their Serb neighbours. The biggest mistake of Serb governments in the past has been and still remains their insistence to leave local Serbs the role of guardians of Serb sovereignty over Kosovo.

On the other hand, rifts between Europe and USA on one side and Russia on the other may prove too damaging for proper functioning of local institutions in the basic fields, e.g. the rule of law and fight against organized crime and corruption since Russian resistance to new EU mission might slow down the establishment of new monitoring mechanisms that are supposed to orient Kosovo towards West and Europe in all aspects. In this sense, it is very important that EU-USA partnership is clearer as to the limits and the role of Russian power vis-à-vis Kosovo and its future.

It needs to be made very clear to Russia that Kosovo is a European affair and that the money Europe and USA intend to invest in Kosovo is for the benefit of all and the very future of Kosovo. A continuous Russian resistance to the new EU Mission and its unlimited support and insistence on UNMIK may exacerbate and tension Kosovo Albanians who may take a very hostile attitude towards UNMIK and its activities in Kosovo in the future.

Conclusion

The March 2004 and February 2007 riots, when human lives were lost, provide the most obvious examples of UNMIK's failure to deliver to its initial promise and mandate as foreseen by UN Security Resolution 1244 of 10 June 1999. The basic problem that UNMIK faced in Kosovo was the lack of independent mechanisms for police control and the lack of clear lines of responsibility towards those with whom it was supposed to

deal with. This proved to be very damaging for the image and authority of UN peacekeeping missions in the world in the future. The next big failure of UNMIK was its lack of control over Kosovo territory and its population which led to unchallenged existence of Belgrade-controlled parallel institutions in the north. These two factors have been a result of huge executive powers that UNMIK had at its hand and used them extensively, at least until March 2004 riots.

As for Serbs, UNMIK lost its legitimacy to a larger extent due to its failure to provide for more security for them and their property. However, after 17 February 2008, UNMIK regained some of its legitimacy as opposed to the EU Mission when it comes to the Kosovo Serb community. They now see UNMIK as a kind of “saviour” and the last resort to preserve their “acquired rights” (parallel life and parallel institutions). With UNMIK, the Kosovo Serbs seem to feel better off as they consider it to a substitute for a Serb State and its sovereignty over Kosovo. This means that EULEX might face many difficulties, as UNMIK did. First and foremost, EULEX will be resisted by the Kosovo Serb community in the North. Serbs living in the north of Kosovo most likely will regard it as an instrument of consolidation of independence and sovereignty of Kosovo due to the fact that it lacks the mandate of the UN Security Council. This will produce a stalemate and a new status quo in much the same way UNMIK expended its energy in futile political matters leaving aside development and prosperity of Kosovo and its citizens.

EULEX shall have executive powers not only in the field of the law and order, appointing and removing from offices persons deemed an obstacle to the implementation of Ahtisaari’s Plan, but it shall as well react against those persons going against post-status requirements of peace and stability in Kosovo.

This executive power can at the same time be the weakness of the new EU Kosovo Mission since it offers room for new rifts and conflicts among international and local population. This is more so taking into account that Kosovo declared its independence and was recognised as such by many important countries of the world, despite the fact that they

agreed to impose some restrictions on themselves through the Ahtisaari Plan.

Another possible complication is the fact that UNMIK will continue its existence in Kosovo as long as UN Security Council Resolution 1244 remains in force. This on the other hand very much depends on the way the UNMIK mandate is interpreted in the future by the UN DPKO (Department for Peacekeeping Operations). This interpretation can have negative impact on the work and success of the new EU Mission in Kosovo.

In order to become a success story for all, for the new EU Mission there is a need to work hard on improving and encouraging the establishment of proper educational and cultural institutions of Kosovo modelled upon Western standards. This is the only way to produce stability and long-lasting peace in Kosovo. It is only with investments in these two aspects of Kosovo life that one can see a solid space for dialogue and confidence-building among Kosovo communities.