

The Future International Presences in Kosovo

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Introduction

Following NATO bombing in 1999, the United Nations Mission in Kosovo (UNMIK) started administering Kosovo, in cooperation with the European Union and the Organization for Security and Co-operation in Europe (OSCE). UN SC Resolution 1244 (1999) assigned UNMIK a temporary mandate with partial autonomy allocated to the local institutions until a future status settlement was found. After years of international administration, during which a range of competencies had gradually been transferred to the Kosovo Provisional Institutions of Local Self Government (PISG), in November 2005, the former Finnish President Martti Ahtisaari began conducting – on behalf of the UN – intense negotiations with Serbian and PISG representatives aimed at reaching a status agreement. The work of UNOSCE culminated in the Comprehensive Proposal for the Kosovo Status Settlement (CSP), presented to the UN Secretary General for consideration by the UN Security Council on 26 March 2007. The so-called “Ahtisaari Plan” provides for supervised independence and terminates the UN’s mandate in Kosovo, while laying the ground for a set of new international presences in Kosovo. Most prominently, Annex IX introduces the International Civilian Representative (ICR) charged with supervising the implementation of the Comprehensive Settlement Proposal (CSP). With an eye on enhancing Kosovo’s European perspective, the ICR is double-hatted as EU Special Representative (EUSR). Annex X of the CSP introduces the European Security and Defense Policy (ESDP) Mission designed to operate in various areas of rule of law. NATO should meanwhile continue securing a safe and secure environment and the OSCE Mission in Kosovo perform activities to foster democratic institutions.

Notwithstanding this clear-sketched design of post-status international presences in Kosovo, political events overturned the original plans: In June 2007, following the strong pressure by the Russian delegation, the UN SC did not endorse the CSP presented by the former Finnish President through a new SC Resolution, thus leaving Resolution 1244 (1999) in place. The subsequent mediation efforts, spearheaded by a Troika composed by the European Union, the Russian Federation and the United States, did not yield any success in identifying alternative solutions. As no agreement between the parties involved was in sight, the proclamation by the Kosovo authorities of a unilateral declaration of independence became ever more likely. Starting in late 2007, intensive consultations led by the *Quintet*¹ with the Government of Kosovo took place, trying to orchestrate what soon became known as coordinated declaration of independence (CDI).

On 17 February 2007, the General Assembly declared Kosovo as an independent Republic and formally invited the International Civilian Office (ICO) to supervise the initial period of independence² and the European Union to deploy a Rule of Law Mission.

Prior to outlining the current situation on the ground, a brief description of mandate and functions of the new international presences shall be provided for a better understanding of the multiple actors operating in the theatre.

European Perspective for Kosovo

The idea of engaging in the European integration process as soon as Kosovo has achieved independence was repeatedly spelled out by the local leadership and most prominently anchored in the speech of the President

¹ US, UK, France, Germany and Italy.

² “We invite and welcome an international civilian presence to supervise our implementation of the Ahtisaari Plan, and a European-led rule of law mission.” Paragraph 5 of the Declaration of Independence of 17 February 2008.

on the day of declaration of independence of Kosovo³ and in the preamble of the Constitution.⁴ On the other hand, the European Union has frequently reiterated its commitment to supporting overall stability in the Balkan region by mobilizing all its policy instruments and hence, provide Kosovo with a long-term European perspective. In the Council Conclusions on Kosovo one day after the declaration of independence, “the Council reaffirmed its commitment to fully and effectively support the European perspective for the Western Balkans.”⁵ In practical terms this meant the agreement among the 27 member states to 1) deploy a EU Special Representative to Kosovo and 2) stand up the largest ever EU Mission under the Common European Security and Defense Policy (ESDP).⁶ In light of the various European players on the ground, major efforts were made by the offices together with the Government to create the image of a European family operating in Kosovo and inject the idea of a European future for Kosovo.

The European Family

The EU Special Representative – Making the EU Perspective a Reality

The EUSR’s primary role is to coordinate the EU presences in Kosovo and provide political guidance to the local authorities with regard to Eu-

³ Paragraph 4 of the President’s speech on the day of declaration of independence states: “This means that Kosovo will be a democratic and multiethnic state, integrated in the region and in good neighbourly relations with the surrounding states, a state that moves fast towards full membership in the Euro-Atlantic communities. The people of Kosovo are determined and want a European future for their country.”

⁴ Paragraph 6 of the Preamble of the Constitution states “with the intention of having the state of Kosovo fully participating in the processes of Euro-Atlantic integration.”

⁵ Council Conclusions on Kosovo, 2851st External Relations Council Meeting, Brussels, 18 February 2008.

⁶ Council of the European Union Joint Actions of 4 February 2008 on the Establishment of the EU Special Representative and on the Rule of Law Mission.

ropean Affairs. Four support staff, deployed in Prishtina and Brussels work closely with the Government, the EULEX Mission and the Office of the European Commission. On 4 February 2008,⁷ the Dutch diplomat Pieter Feith was appointed as the EUSR.

ESDP Mission “EULEX” – Supporting Kosovo in the Rule of Law Area⁸

The largest ever Mission under the ESDP is expected to deploy approximately 1 900 international judges, prosecutors as well as police and customs officers to Kosovo. Supported by additional 1 100 local experts, they will help fostering the rule of law and the core functions of society. For this purpose EULEX personnel will monitor, mentor and advise the local institutions in the areas policing, justice, correctional service and customs. In serious cases of corruption, property cases or inter-ethnic organized crime, the investigators, judges and prosecutors can make use of executive powers. EULEX personnel will be co-located with their local counterparts throughout the territory. Planning efforts started in 2006 with the EU Planning Team (EUPT), which transitioned to EULEX on 15 June 2008. The Mission led by the French General Yves de Kermabon is expected to build up to full strength and be fully operational by the end of October 2008.⁹

The European Commission – Helping Kosovo realize its EU-Perspective¹⁰

Similar to other candidate countries, the European Commission (EC) Office in Kosovo is tasked to drive reforms mainly through economic development and project funding. For this purpose, the EC has allocated 500 million Euros until 2010 to improve standards – amongst others – in education, environment, energy, public administration and civil society.

⁷ Council of the European Union Joint Action of 4 February 2008.

⁸ Council of the European Union Joint Action of 4 February 2008.

⁹ See also www.eulex-kosovo.eu.

¹⁰ See also www.delprn.ec.europa.eu.

To facilitate reforms, the Commission Office engages in close policy dialogue with the Kosovo authorities at technical and political levels. The office led by the Italian Renzo Daviddi also supports Kosovo in realizing its participation in regional and Europe-wide initiatives including the Central European Free Trade Agreement (CEFTA), the Energy Community Treaty or the European Common Aviation Areas. Taking over some functions previously covered by Pillar IV of UNMIK (EU Pillar) and the European Agency of Reconstruction (EAR), which ceases to exist on 30 June 2008, the European Commission Office in Prishtina will be staffed with approximately 80 people by the end of the year.

The International Civilian Office (ICO) and the Comprehensive Settlement Proposal (CSP)

The ICO – Supervisory Body for Kosovo’s Independence

The ICO distinguishes itself as an institution *sui-generis*. Headed by the International Civilian Representative (ICR) Pieter Feith (also EUSR), the ICO was invited by the Kosovo Government¹¹ to supervise the implementation of the CSP provisions. The powers of the ICR – who was appointed on 28 February 2008 by the International Steering Group (ISG) – were consolidated in the new Constitution.¹² The ISG is a growing group of states that recognized independent Kosovo and includes the *Quintet*, about two thirds of the EU member states, NATO, the Council of the European Union and the European Commission.¹³ The ICR is supported by an office of 340 personnel, including international and local staff, and presences in all major towns of Kosovo. He shall have a fairly limited and short-term mandate, which consists in the supervision of the implementation of the CSP through active support and advise for

¹¹ Speech of the President on the day of the declaration of independence, “Therefore Kosovo welcomes the establishment of the international civilian presence which will support continued democratic development of our country, but will also supervise the implementation of Ahtisaari’s plan.”

¹² Chapter XIV Transitional Provisions, Article 146 and 147.

¹³ For a full list of ISG members consult www.ico-kos.org/en/isg.html.

the institutions, a regular assessment of the progress achieved and overall, the promotion of good governance, multi-ethnicity and the rule of law. Special attention is attributed to the rights of the communities,¹⁴ religious and cultural heritage¹⁵ and decentralization¹⁶ provisions in order to ensure long-term sustainability of all communities in Kosovo.

The Constitution of Kosovo reserves the ICR the right to interpret the CSP-deriving provisions and to take corrective measures in cases of violations. Such executive powers shall however be used as last resort only, while the primary responsibility of implementing the CSP provisions rests with the Kosovo authorities. This point has been stressed by the ICR since his appointment and with a view of making a clear cut with the UNMIK Administration previously in charge. All relevant provisions relating to the rights of communities were included into the Kosovo Constitution in order for the ICR to certify it on 2 April 2008 and the Assembly of Kosovo to adopt it a week later. Simultaneously, 41 laws¹⁷ regulating a variety of areas including community rights, the security sector and economic matters were approved by the Assembly of Kosovo,

¹⁴ Annex II assigns all communities the rights to express and maintain their ethnic and cultural identity, receive education in and use their own language freely, have their own media, symbols, names and freedom of association. Furthermore, all communities shall enjoy guaranteed representation in the Assembly, the Government and the Judiciary as well as equitable employment in the public bodies. In order to ensure continued commitment to communities at highest institutional level, the establishment of the Community Consultative Council is foreseen in the new Constitution. At local level, in those municipalities with over 10% minority communities, they will be represented by a Deputy-Mayor for Communities as well as Vice President for Communities of the Municipal Assembly.

¹⁵ Annex V establishes 45 Special Protective Zones around overwhelmingly Serbian Orthodox sites, which shall be protected and preserved. The Serbian Orthodox Church will also benefit from tax privileges in order to ensure its sustainable well-being.

¹⁶ Annex III promotes the idea of decentralization at two levels 1) the devolution of additional competencies from central to municipal level and 2) the creation of five plus one Serb-majority municipalities including: North Mitrovica, Gračanica/Gračanice, Ranilug/Ranillug, Partes, Klokot-Vrbovac/Klokot-Vërboc, Novobrd/ Novo bërdë.

¹⁷ For the list of 41 laws see www.assembly-kosova.org.

laying the ground for their subsequent implementation and oversight by the ICR.

Change of Course – UNMIK’s role in Kosovo after 15 June 2008

Original plans which were driven by the Contact Group¹⁸ were based on the Ahtisaari Plan and drawn upon the assumption that there would be a) a UN SC Resolution backing the plan and b) a subsequent gradual phase-out of UNMIK and transfer of specific competencies to the new international presences. Russia however started sliding away from supporting the Ahtisaari plan in early 2007 resulting in the lack of a new UN SC Resolution in June 2007 endorsing the CSP. The Troika negotiations were the last joint attempt by the Contact Group, including the Russian party, to reach an agreement. Subsequent political steps taken in late 2007 and early 2008 were driven without the consent of Russia, hence resulting in solely *Quintet*-driven actions. The Joint Actions for the establishment of the EUSR and the EULEX Mission were adopted by the Council of the European Union on 4 February 2008, i.e. prior to the orchestrated declaration of independence, so to ensure the support of all 27 EU members states. Given the lack of a new UN SC Resolution and the opposition of the Russian and Serbian delegation to back the Ahtisaari plan at UN level, it was clear that UNMIK would continue playing a role in Kosovo also after the entry into force of the Constitution on 15 June.

Transition Period 1 – 17 February to 15 June 2008

The CSP establishes a 120 days transition period at the end of which, the EULEX Mission would deploy and replace UNMIK in the areas of rule of law. However, in the absence of a UN SC Resolution, the UN showed no signs to leave the battleground to the EU Missions while the timelines to deploy almost 2 000 international EULEX staff became increasingly

¹⁸ The Contact Group includes the *Quintet* member states and the Russian Federation.

tighter. Furthermore, the deployment of the EULEX personnel depended on the planned transfer of premises and equipment from UNMIK to the EULEX Mission, which for obvious reasons was not forthcoming.

During spring 2008, EU-representatives held numerous high-level meetings with the Department of Peacekeeping of the UN (DPKO) to find ways forward and unlock the *impasse*, attempts that were opposed by regular demarches of the Russian delegation to the UN. A variety of scenarios for the deployment of the EULEX Mission in Kosovo were contemplated, including placing the rule of law mission under the 1244 umbrella and dividing up the territory between UNMIK and EULEX according to ethnic lines. The latter option was considered not least because of the strong opposition of the Serbian Government, and hence the Kosovo Serb community, against the deployment of the EULEX Mission in Kosovo.

With time passing and the forthcoming entry into force of the Constitution on 15 June, the UN Secretary General came increasingly under pressure to move forward taking into account the changed circumstances on the ground and the loss of internal legitimacy of his SRSG. The local authorities also made clear in several instances that they would not tolerate the SRSG's authority deriving from the UN SC Resolution 1244 after 15 June, which they considered overruled by the new Constitution. The situation on the ground was *de facto* stalled and full of uncertainties, with UNMIK still in place but unwilling to hand over neither responsibilities nor any of its equipment, and hence, EULEX being unable to deploy. Only the legislative work – driven by the ICO – continued and kept the Assembly of Kosovo occupied while recognitions were slowly trickling in.

The UN-EULEX Umbrella Arrangement

On 12 June 2008, Ban Ki-Moon finally made the long-awaited step, sending a letter¹⁹ to the Serbian President and to the President of Kosovo

¹⁹ Letter of BAN Ki-Moon to Mr. Boris Tadić of 12 June 2008 and Letter of Ban Ki-Moon to Mr. Fatmir Sejdiu of 12 June 2008.

respectively announcing his intention to “reconfigure the international civilian presence” in Kosovo and allowing the European Union to take over an increased operational role in specific areas. The letter was broadly considered a major step forward in light of the pressure exerted by Russia and Serbia on the UN SG. It indeed launched the re-organization of the international presence in Kosovo following an arrangement, which places the EULEX Mission under the UN SC Resolution 1244, with UNMIK and EULEX personnel operating under the same umbrella. At this point in time, questions of chain of command and reporting requirements between UNMIK and EULEX officials still need to be defined.

Thus, Ban Ki-Moon’s letter opened a second transition period of additional 120 days, during which the re-configuration of UNMIK as per instructions provided by New York and including a substantial downsizing of UNMIK personnel would take place. Although initially received with distrust, in his response to the UN SG’s letter the President of Kosovo accepted the continuation of UNMIK and the SRSG’s reserved powers in six key areas, while requesting that dialogue with Belgrade to be conducted in a transparent manner.²⁰

Re-configuration or Re-confusion?

Expectedly, Russia and Serbia protested against the UN SG’s action, arguing that only the Security Council could decide over the re-configuration of the international civilian presence in Kosovo. Based on the Resolution in place though, the UN SG possesses authority to establish and – if need be – reconfigure the international civilian presence without putting into doubt the validity of the resolution as such. The newly appointed SRSG has been charged with setting up a dialogue with Belgrade in the following six areas: police, courts, customs, transportation and infrastructure, boundaries and the Serbian patrimony. By including the areas of police, justice and customs under the SRSG’s authority and, most importantly, under the UN SC Resolution 1244, the UN SG was

²⁰ Letter of Fatmir Sejdiu of 16 June 2008.

able to kill two birds with one stone: a) to gradually engage EULEX personnel in its core operational areas while seizing down UNMIK personnel and b) to keep the door to Belgrade and the Kosovo Serb community open, which otherwise would refuse cooperating with EULEX. In addition, the “umbrella arrangement” also accommodated those EU member states that – although supportive of the ESDP Mission – do not intend to recognize Kosovo’s independence. Ban Ki-Moon’s letter specifies also that the dialogue conducted with Belgrade should be transparent to other stakeholders, including the authorities in Priština. Similarly, the SRSG made clear in public statements that this dialogue did not mean re-opening any negotiations.

The instructions for reconfiguration received from New York on 25 June, anticipate a sharp cut of UNMIK personnel over the next months, with a gradual take-over by EULEX judges and prosecutors, police and customs officers in the areas inhabited by Kosovo Albanians. In Serbian villages and in the North of Kosovo, UNMIK personnel will continue to be in charge until political circumstances allow otherwise. Nonetheless, the UN will retain certain residual functions described in the Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo (UNMIK), including 1) monitoring and reporting, 2) engagement in international agreements and 3) facilitation of the dialogue between Priština and Belgrade on practical issues.²¹

Conclusion and Challenges Ahead

The installation of a triple EU presence in Kosovo, covering the political, rule of law and economic development spheres, is proving more cumbersome than anticipated. For the foreseeable future, the UN will remain stationed in Kosovo fulfilling certain residual functions and conducting a dialogue with Belgrade.

The new transition period will be characterized by *co-habitation* between the SRSG, legitimized by the UN SC and equipped with certain

²¹ Report of the SG to the UNMIK (S/2008/354).

executive powers and the ICR, locally mandated by the Kosovo authorities. Meanwhile, two legislative frameworks will be in place, including the one adopted earlier under the UN SC Resolution 1244 as well as the one approved by the Assembly of Kosovo during the first 120 transition period and applicable since 15 June 2008. Whereas UNMIK will continue to adhere to the former, the ICO/EUSR will – together with the Government – govern based on the Constitution and the recently adopted CSP laws. Operationally speaking, a hybrid situation will be in place, with UNMIK personnel operating in certain geographical areas, including the North, and EULEX personnel dispatched to the remaining territory of Kosovo.

Lastly, the difficulty of the various international presences in Kosovo currently also consists in the existence of two fronts, i.e. the status-neutral vis-à-vis the pro-independence one, the ICO being the latter's expression. By moving EULEX under UN SC Resolution 1244, the ESDP Mission has joined the club of status-neutral bodies, comprised of UNMIK, the OSCE Mission in Kosovo and the North Atlantic Treaty Organization (NATO). Cooperation and coordination between the players on the ground will prove extremely fragile and must be based on informal rather than formal contacts. In this conundrum of international players, the status-neutral EUSR may be playing a key role to bridge the gap and possibly become the direct link between UNMIK/EULEX and the ICO. Whilst a temporary solution was found by placing EULEX under the UN SC Resolution 1244 and by reconfiguring UNMIK, further challenges to the set-up and functioning of the international presences in Kosovo can be expected for the foreseeable future.