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Implementing the Ahtisaari Proposal: The European Union's Future Role in Kosovo

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Summary

After years of debate on the future of Kosovo and significant efforts by the international community to build functioning institutions, the Kosovo status question has returned to the international agenda and may be settled within the year 2007. The so-called Ahtisaari proposal that is currently under discussion in the UN Security Council envisages an internationally supervised sovereign entity that is committed to ensuring minority rights and special protection for all minorities in Kosovo but also allows Kosovo to become a functional state. Apart from providing Kosovo with *de facto* independence, another important aspect of the Ahtisaari proposal is the central role allocated to the European Union within the future setting. What consequences will the EU's prominence have on the quality of the international presence?

Since a new UN Security Council resolution will increase the EU's responsibility to help the new state strengthen its institutions and prepare for EU membership, it will be of utmost importance for the Union and its member states to commit great effort to making Kosovo "fit for Europe" in the years to come. While the Kosovars must make every endeavor to create a secure environment with stable and democratic institutions and an integrated society, the EU must ensure long-lasting political, financial and human resources support in order to make its presence as effective as possible. This applies particularly to assistance in the areas of rule of law and law enforcement as well as in the preparation of legislation that complies with the *acquis communautaire*.

The International Community Representative (ICR) should have sufficient authority to coordinate the activities of all international stakeholders and EU agencies involved in Kosovo. Although the ICR will have significant powers to shape political developments in Kosovo, it should avoid taking on an overly interventionist role. Much depends in this respect on the policymaking style and personality of the ICR.

By effectively conducting the mission in Kosovo and proving that it can contribute added value to international crisis management, the EU can demonstrate its maturity as a capable foreign policy actor.

Introduction

After years of debate on the future of Kosovo and significant efforts by the international community to build functioning institutions, the Kosovo status question has returned to the international agenda and may be settled within the year 2007. In February 2007, UN special envoy Martti Ahtisaari submitted his proposal for a status settlement. This proposal was then presented to the UN Security Council, which will ultimately decide on Kosovo's future status. The so-called Ahtisaari proposal envisages, on the one hand, an internationally supervised sovereign entity that is committed to ensuring minority rights and special protection for all minorities in Kosovo, especially the Serbian population. On the other hand, the proposal allows Kosovo to become a functional state that may, for example, apply for membership in international organizations such as the World Bank. Apart from providing Kosovo with *de facto* independence, another important aspect of the Ahtisaari proposal is the central role allocated to the European Union within the future setting. A new UN Security Council resolution will increase the EU's responsibility to help the new state strengthen its institutions and prepare for EU membership. What consequences will the EU's prominence have on the quality of the international presence?

Assuming that a settlement similar to the Ahtisaari proposal can be reached in the Security Council, this policy analysis focuses on the post-resolution situation in Kosovo and places particular emphasis on the EU's future role there. The analysis is based on two preliminary remarks: First, although the EU should increase its efforts to assist Kosovo in achieving economic growth, it must also admit that Kosovo is unlikely to become economically viable and will almost certainly remain highly dependent on EU funds for the foreseeable future. Second, it is evident that peace and democratic progress can hardly be imposed by external actors but rather must develop from within the country itself. It is the local population and not international personnel who must build up the state. While the international community needs to provide proper assistance, it should ensure that local institutions have sufficient autonomy in order to reduce the risk that Kosovo will become an EU trusteeship for decades to come.

An essential precondition for the success of the Ahtisaari proposal is that the EU, and particularly its member states, must demonstrate a clear commitment to making Kosovo "fit for Europe". The paper thus argues for robust political, financial and human resources support from the EU.

1. UNMIK and the Kosovo Status Debate since 1999

With the end of the Kosovo War in 1999, UN Security Council Resolution 1244 placed the Serbian province of Kosovo under the transitional administration of the United Nations Mission in Kosovo (UNMIK) and authorized the NATO-led Kosovo Force (KFOR) as a peacekeeping mission. With the involvement of other international organizations, UNMIK consists of four pillars: police and justice, civil administration (both operated by the UN), institution-building (led by the OSCE) and economic reconstruction (implemented by the EU).

Although the question of Kosovo's future status was not resolved in 1999, UNMIK – while still maintaining control over certain functions such as foreign relations – has gradually transferred governing competencies to the Provisional Institutions of Self-Government (PISG) in the years since 2001. These institutions include an elec-

Roles of UNMIK and KFOR

Institution-building
process since 2001

ted Kosovo Assembly, the Presidency, a government and courts. UNMIK also oversaw the establishment of a multi-ethnic Kosovo police service. Thus for many years, the international community has supported the establishment of political and economic institutions in Kosovo. This institution-building process has thereby indirectly supported the Kosovar nation-building process.

Controversial subjects of the Ahtisaari proposal

Following the recommendations of the UN-commissioned Eide report of October 2005, status talks between the Serbian government and a delegation of Kosovo Albanian representatives (the so-called Unity Team) commenced in Vienna in February 2006 and were led by UN Special Envoy Martti Ahtisaari. The most controversial subjects included the protection of the Serbian minority (9% of Kosovo's population) and the heritage of the Serbian Orthodox Church in Kosovo; the decentralization of the country; and minority rights. As no agreement could be mediated between the parties, Ahtisaari delivered a draft status settlement proposal to leaders in Belgrade and Pristina in February 2007 that covered a wide range of issues related to Kosovo's future. When another round of negotiations achieved no results, Ahtisaari delivered his proposal to the Security Council on 26 March 2007.

2. The Ahtisaari Proposal and International Reactions

Internationally supervised sovereignty

While it does not specifically use the word "independence", the Ahtisaari proposal envisages an internationally supervised sovereign entity that is committed to ensuring minority rights and special protection for all minorities in Kosovo. At the same time, the proposal would provide Kosovo with the rights to apply for membership in international organizations such as the World Bank and the International Monetary Fund, to create a lightly armed security force, and to adopt national symbols (such as a flag and seal). It would thus allow Kosovo to become a functional state.

Future functions of international actors in Kosovo

The proposal would also establish an International Community Representative (ICR) who would supervise the implementation of the status settlement, possess the power to take "corrective measures" in the political sphere, and serve as the final authority in Kosovo. NATO would remain responsible for peacekeeping tasks. Although the new mission would not be completely in the hands of the EU, the Union would assume numerous responsibilities from the UN. Under the operational management of an ESDP mission, the EU would exercise significant influence over the areas of the rule of law as well as law enforcement. The EU would thus play a central role in Kosovo's political and economic life during the foreseeable future.

Serbian opposition to the proposal

The Serbian government rejects the proposed status settlement and has stuck firm to its position that Kosovo must remain part of Serbia indefinitely. The official representatives of the Serbian minority in Kosovo also oppose the proposal. There is no uniform position on the Kosovo Albanian side: While the government has welcomed the proposal, many Kosovo Albanians are not satisfied with the fact that it does not grant Kosovo a clear form of independence. This dissatisfaction culminated in riots in Pristina in February 2007, in which two people were killed and over 80 persons were injured.

3. Difficult Negotiations over a New Security Council Resolution

Replacing UN Security Council Resolution 1244

Because the decision on future status will not be taken by the two parties affected, but rather by the international community, the coming months will be dominated by complicated negotiations over a new UN Security Council resolution to replace Resolution 1244. A decision will probably not be reached before mid-2007.

In a Council meeting on 12 February 2007, EU foreign ministers expressed their support for Ahtisaari's proposal, arguing that it "creates the basis for Kosovo's sustainable economic and political development and for strengthening the stability of the entire region". The German EU Presidency declared that the proposal represents a fair, well-balanced and forward-looking compromise. Still, some member states are uncomfortable with the proposal: in particular, the governments of Greece, Spain, Cyprus, and Slovakia will seek to delay a decision as long as possible. In contrast, the United States – which has never disguised its support for the Kosovo's claims to independence – has been pressing for a quick decision together with the British government. Because a unified EU position will be of great importance in Security Council negotiations, the German Presidency should use all its diplomatic efforts to win the support of skeptical member states for the Ahtisaari proposal.

Importance of a unified EU position

While China's position on the issue is not yet clear, the Russian government has rejected the proposal and threatened to veto any solution that does not enjoy the support of the Serbian government. However, with some diplomatic effort, it appears not unlikely that a compromise can be forged within the Security Council, for the simple reason that there are more important subjects for Russia on the international agenda. In fact, Russia appears more interested in its re-emergence as an influential actor in global politics than in its traditional alliance with Belgrade. However, despite the endeavors of some politicians to define Kosovo as a case *sui generis*, factual independence may set a precedent for separatist movements in other parts of the world and thus may have immense consequences for international law.

Russian support for Serbian opposition

4. The Role of the International Community: Creating a Bosnian Model in Kosovo?

As mentioned above, the status proposal includes many provisions that will create an international presence similar to the one in Bosnia. Like the High Representative (HR) in Bosnia, the International Community Representative (ICR) will play a crucial role in Kosovar politics. The ICR, who will be a European, will take over the role of the UNMIK head and will also become the European Union Special Representative (EUSR) in Kosovo. As the final authority in Kosovo, the ICR will supervise the implementation of the status settlement and will have the power to take corrective measures to remedy any actions taken by Kosovo authorities that are deemed to violate the settlement. These powers include the annulment of laws as well as the dismissal of any public official, and are therefore similar to the powers of the High Representative in Bosnia.

Crucial role of the International Community Representative

To ensure the coherence and effectiveness of the international presence, the ICR will also coordinate the activities of all international actors, including the OSCE mission, which will remain the main actor in the area of democratization. The ICR will chair a committee comprising the KFOR Commander as well as the heads of the ESDP and OSCE missions. The role of KFOR troops will not change significantly: operating under the authority and political control of NATO's North Atlantic Council, the troops will remain responsible for ensuring Kosovo's security against external threats and providing a safe and secure environment until local institutions are capable of assuming responsibility. Like the remnants of the NATO mission in Bosnia, KFOR will also supervise the establishment and training of a future Kosovar army.

Coordinating the activities of the international actors

Although the ICR will also be the EU Special Representative, it will not be the EU but rather the International Steering Group that will appoint the post. Because the United States and Russia are also members of this group, they will retain strong influence over future developments in Kosovo. The United States will also remain an important actor in KFOR.

Kosovo model politically effective?

Although the ICR will resemble the post of the High Representative in Bosnia in many respects, the "Ahtisaari design" will not necessarily install a "Bosnian model" in Kosovo. In contrast to the latter, which is often criticized for not shifting true responsibility to Bosnian authorities, the Kosovar model is more likely to be politically effective. Since ethnic Albanians will have a great majority in Kosovo, Kosovar politicians are more likely than the Bosnians to assume "ownership" of their own affairs. Day-to-day political decision-making is likely to function more smoothly, and the ratification of a constitution that is truly accepted among the Kosovars and that enables the state to function properly may be easier to achieve. Certainly, such a constitution will have to be in accordance with the interests of all minorities. The integration of the Serbian community into the new state will be one of the most challenging tasks.

Veto power of the Serbian minority

In Bosnia, the internationally sponsored Dayton Peace Accords of November 1995, which were actually meant as a peace agreement, have not yet been replaced with a true Bosnian constitution that would likely enhance the federal state's capacity to function more effectively. This failure is largely due to the constituent ethnic groups' fears of losing political veto power – and particularly fears among Bosnian Serbs that their entity might be abolished. The latest efforts to achieve such a constitution failed in 2006. Because the status and the veto power of the Serbian communities in Kosovo will not be comparable to those of the Serbian entity in Bosnia, Kosovo might develop into a functioning system of governance more easily than Bosnia.

Limited interventions of the International Community Representative

In order to establish a political system that differs from both the Dayton and UNMIK models, the interventions of the ICR should be as limited as possible. The role of the ICR should be that of an arbitrator between the political actors in Kosovo rather than that of a proconsul. In addition, the European Stability Initiative's recent recommendation that an ombudsman be established who is empowered to investigate complaints by Kosovars against the ICR and the international mission could serve as an effective tool to strengthen the transparency and accountability of international actors. The EU should consider such an option as it would certainly help to increase the legitimacy of the mission among the Kosovar population.

5. The European Union's Rule of Law Function

Integrated rule of law and police mission

What is particularly new about the proposed settlement is the fact that the EU's responsibilities in the area of reconstruction and economic development will be supplemented by responsibilities in the fields of law enforcement and the rule of law. This will represent a new experience for the EU in two ways: First, while the European Union Police Mission (EUPM) in Bosnia – the EU's largest civilian mission so far – was tasked only with monitoring and mentoring responsibilities, the Kosovo mission will also include executive policing tasks and responsibilities for the maintenance of public order.

Second, the integrated rule of law and police mission in Kosovo appears to represent a "lesson learned" from Bosnia, where rule of law activities have been carried

out by different international and EU actors, which led to delays in rule of law reforms. Presumably, the mandate of the integrated EU mission in Kosovo will allow its members – comprised of at least 1,000 police officers, rule of law experts, judges, prosecutors – to promote such activities as police investigations.

To avoid inheriting the image of the UN mission, which is not very popular among Kosovars, the new EU mission is likely to exchange certain management personnel. However, the room for maneuver also seems limited for the EU. It is often difficult to recruit specialized and experienced staff for civilian missions. In the area of law enforcement, for example, it is particularly difficult to recruit specialists in organized crime, forensics and police administration. In many member states, it is difficult to find senior experts willing to interrupt their professional careers to participate in EU missions that often do not result in career advancement at home. Therefore, the possibilities and incentives for enlisting qualified personnel to participate in civilian missions need to be improved. Since they are responsible for recruitment efforts, the member states should take the lead in this respect.

Recruitment of
specialized personnel

In several cases, UNMIK was criticized for fielding badly informed employees. Consequently, the EU must ensure that all personnel are sufficiently trained for their tasks. If the EU has the ambition to become a global player specializing in civilian crisis management and peace-building, it must better address the mechanisms for recruiting and training appropriate personnel.

6. Crisis Management Structures in Brussels: Increasing Rivalries?

The European Security Strategy (ESS), adopted by the European Council in December 2003, is implicitly based on the (self-)perception that the EU is better suited to respond to crises and threats than other international actors. The ESS asserts that the EU can apply “the full spectrum of instruments for crisis management and conflict prevention [...] including political, diplomatic, military and civilian, trade and development activities” (p. 15). To do so, the Strategy calls for more active, coherent and effective action in response to crises. The Civilian Headline Goal, adopted by the European Council in December 2004, emphasizes the importance of developing civilian crisis management capacities as an essential component of the Union’s overall external policy.

EU crisis response capacities

The EU has led several peacekeeping missions, the largest being the European Union Force in Bosnia. However, most of its crisis management operations have involved civilian operations, such as police missions. This probably has less to do with the often-debated comparative advantage of the EU in the area of civilian operations than with the simple fact that such operations are easier to organize and operate than military missions. Both military and civilian crisis management operations are conducted under the European Security and Defence Policy, which is part of the Common European Foreign and Security Policy, which is subsumed under the second – and thus intergovernmental – pillar of the European Union. As a consequence, the Council Secretariat, which coordinates the Council’s activities, has acquired numerous foreign and security policy responsibilities which were not previously part of the EU’s remit.

Role of the Council
Secretariat in ESDP missions

Since 1999, many institutions have been set up in the Council Secretariat to support ESDP operations. This has led to a certain level of competition with the European Commission, which itself has been developing various instruments for civilian cri-

No clear dividing line between
Pillar I and Pillar II programs

sis response in recent years. Particularly in the area of peace-building, some member states are wary of granting the Commission too many competencies through its external assistance programs. While the budget of the Council Secretariat is limited, the Commission can more easily provide the financial means for multiple forms of external action. As a result, there is often no clear dividing line between civilian crisis management under Pillar II and Community assistance programs with third countries under Pillar I. For example, the Commission often funds rule of law measures in recipient countries, which may include support for police training and reform. But because some security sector reform activities have a military dimension, there are reasons to argue that this area should be addressed by measures governed by the second pillar.

Addressing inter-pillar
cooperation

With an increasing number of actions being implemented under the rubric of Justice and Home Affairs (Pillar III of the EU), the issue becomes even more complex. The fight against organized crime is a perfect example in which inter-pillar coordination and cooperation is essential. Because the EU still lacks an external action service (which is one of the key innovations set forth in the EU Constitution), the EU must address the need to improve institutional coordination in order to conduct effective crisis prevention and management. The process of reducing frictions between Brussels institutions is already underway, and the Commission and Council conduct joint meetings on issues of common interest and responsibility. Here, the Kosovo mission can serve to stimulate improved institutional coordination, thus strengthening the EU's ability to achieve its stated goal of implementing coherent crisis management policies. In this respect, Kosovo will provide another testing ground for the Union's capacity to conduct complex operations.

7. Coordinating EU Agencies in Kosovo

Agencies acting on
behalf of the EU

In addition to the various international actors on the ground – including international organizations, NGOs, and diplomatic missions – numerous agencies act on behalf of the EU in Kosovo. As mentioned above, in accordance with a UN mandate, the EU has been responsible for reconstruction in Kosovo since 1999. UNMIK's Pillar IV focuses on the modernization of Kosovo's economic framework and promotes the formulation of legislation to foster a sound business environment that upholds European standards. The Euro was also introduced under the auspices of Pillar IV and has served to provide Kosovo with a stable legal tender. In addition, European Agency for Reconstruction (EAR) – which is not part of UNMIK's Pillar IV and is accountable to the Council and the European Parliament – engages in tasks that include democratic stabilization, good governance, institution-building, and economic development. The EAR has also implemented the Community Assistance for Reconstruction, Development and Stabilisation (CARDS) as the main instrument for donor assistance. In January 2007, CARDS was replaced with the Instrument for Pre-Accession Assistance (IPA), which brings all pre-accession support into one single instrument and is coordinated by the European Commission's Directorate-General for Enlargement.

In addition to UNMIK's Pillar IV and EAR, the Commission's Liaison Office promotes Kosovo's approximation to EU standards through the Tracking Mechanisms of the Stabilisation and Association Process. The High Representative for the EU's Common Foreign and Security Policy, Javier Solana, is represented in Kosovo through his Personal Representative, who acts on his behalf in conducting political

dialogue with local authorities. Furthermore, the EU Monitoring Mission monitors political and security developments in the Western Balkans.

Thus there are many agencies in Kosovo that act on behalf of the Commission, the Council, or both, and such a complex system certainly increases the likelihood that some EU programs will overlap. In this respect, much will depend on the abilities (and personal authority) of the EUSR and his staff to coordinate all EU activities in Kosovo. If the overall responsibility of the ICR/EUSR is taken seriously by all actors involved in Kosovo, the complex setting will not necessarily lead to coordination problems.

Coordination function of the International Community Representative

8. The Security Setting

In the realm of security, it is certain that KFOR will remain an influential actor in Kosovo. Should a new Security Council resolution be adopted, a robust KFOR presence will be crucial in order to respond to security risks, including potential violent disturbances by Kosovo Albanians frustrated with conditional independence and the ongoing presence of the international community as well as possible attempts by Kosovo Serbs to separate northern Kosovo from the rest of the territory. Furthermore, the restructuring of the security sector in Kosovo will be a great challenge for both KFOR and the international police forces. Successful security sector reform is critical, because without effective domestic law enforcement capabilities and sustainable police services, international efforts to reduce security risks such as organized crime are much less likely to achieve their objectives.

Future role of KFOR

According to the status proposal, the Kosovo Protection Corps (KPC), the demilitarized Kosovo Liberation Army, which has been responsible for tasks such as emergency management since 1999, is to be dismantled within a year and replaced by a new professional and multiethnic security force of 2500 lightly armed soldiers. How to integrate those former combatants into other functions in Kosovo remains a matter of debate.

The division of tasks between the new ICR and NATO appears to be calibrated correctly. These were the only provisions in the Ahtisaari proposal that were not up for negotiation when the Serbian and Kosovo Albanian delegations met for the last time in Vienna in March 2007. However, because the EU would be responsible for police restructuring and some executive policing tasks and the NATO-led Kosovo Force (KFOR) would be responsible for military security, some potential for friction within the international security presence would remain: as stabilization in Kosovo increases, the focus is gradually shifting toward police tasks such as the fight against organized crime. To illuminate a problem that may arise, the Bosnian experience is instructive.

Potential frictions within the international security presence

In Bosnia, the EUPM's mandate includes support for the Bosnian police in combating organized crime. With a large number of troops and a mandate that allowed it to provide operational support to Bosnian authorities, EUFOR and its first commander David Leakey took actions to disrupt organized crime networks, for example through border checkpoints. However, overcoming organized crime typically requires police and legal experts rather than peacekeeping troops. Disagreements over authority on this issue were finally settled through an agreement granting EUPM the right to review and decide whether an involvement on the part of EUFOR in this area is necessary. The High Representative has the primary respon-

Addressing organized crime

sibility for coordination. In order to prevent coordination problems in Kosovo between the various international stakeholders that, in contrast to Bosnia, are mostly not part of the "EU branch", the EU must ensure that the division of responsibilities and methods of cooperation between KFOR and EU police are clear from the beginning.

If the security situation stabilizes quickly, it is most likely just a question of time until an EU force takes over KFOR's peacekeeping tasks. As EUFOR troops in Bosnia are reduced, more European troops are likely to become available for Kosovo. The U.S. government would certainly welcome any reduction of its troops. However, such a decision should be in accordance with the needs and interests of Kosovo authorities.

Testing ground for European
Gendarmerie Forces?

After all, it can be argued that the need for traditional peacekeeping troops in operational situations like today's Bosnia and a future Kosovo is becoming increasingly limited. Both places are therefore likely to become a testing ground for the European Gendarmerie Forces. These police forces with military status were declared to be fully operational in June 2006. As situations involving military combat are unlikely in Bosnia today, gendarmerie forces that specialize in performing public order tasks such as riot control would appear to be more appropriate than peacekeeping troops.

In Kosovo, the necessity of such forces became apparent in the March 2004 riots in Kosovo, in which 19 people were killed and hundreds injured. On 10 February 2007, two protesters that were part of a Kosovo Albanian protest against the Ahtisaari proposal died as a result of injuries caused by rubber bullets fired by UNMIK police troops. Of the 80 injured protesters, many were also hit by bullets. Taking political responsibility for the use of excessive force by the Kosovar and international police forces, UN police commissioner Stephen Curtis and Kosovo Interior Minister Fatmir Rexhepi resigned from their posts.

Importance of effective
police forces

This incident demonstrated that, even after nearly eight years, the international police apparently remain inadequately prepared for specific forms of unrest. This aspect is all the more important as effective police forces will be of critical importance in the months to come. If similar problems were to occur early on under EU stewardship, it would provide an inauspicious beginning that would undermine the EU mission's legitimacy from the outset.

Conclusion

Due to the EU's position as one of the main international actors in Kosovo, it will be of utmost importance for the Union and its member states to commit great effort to making Kosovo "fit for Europe" in the years to come. While the Kosovars must make every endeavor to create a secure environment with stable and democratic institutions and an integrated society, the EU must ensure long-lasting political, financial and human resources support in order to make its presence as effective as possible and thus to legitimize its strong position in Kosovo. Only under these conditions can the Ahtisaari proposal succeed.

Although the international community – especially the EU and its representative, the ICR – will have significant powers to shape political developments in Kosovo, it should avoid taking on an overly interventionist role. Therefore, the "Ahtisaari

design" should differ from both the Dayton and UNMIK models. Much depends in this respect on the policymaking style and personality of the ICR. In fact, all the EU can provide in the long run is assistance, particularly in the areas of rule of law and law enforcement as well as in the preparation of legislation that complies with the *acquis communautaire*. However, the EU and Kosovo should not regard the accession process as a panacea.

Regarding the practical side of the EU presence, the Union should ensure that it is able to deploy sufficient and well-trained staff. Nothing de-legitimizes peacekeeping and peace-building efforts more than untransparent structures and ignorant or even corrupt personnel. The EU should also ensure that the new ICR/EUSR has sufficient authority to coordinate the activities of all EU agencies involved in Kosovo. To avoid overlapping areas of responsibilities, the mandates of the international stakeholders in Kosovo must be clear. And to help prevent a repetition of the March 2004 incident, smooth cooperation between KFOR, EU police and local police authorities is particularly important in the initial period following the adoption of a new Security Council resolution.

Finally, to ensure integrated EU responses in the future – in Kosovo or elsewhere – the Union should increase the coherence of the various policy instruments it applies. This refers particularly to the adjustment of policies carried out by the Commission and by ESDP institutions. By effectively conducting the mission in Kosovo and proving that it can contribute added value to international crisis management, the EU can demonstrate its maturity as a capable foreign policy actor.

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