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The European Union and the Kosovo Challenge

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2007 has been a year of crucial changes for Kosovo, particularly in relation to the ongoing debate over its future status as a sovereign territory. This debate was marked by various diplomatic attempts to bring the two parties – Serbia and Kosovo – to a common position, namely through the Ahtisaari plan and the Troika process. The failure of these initiatives confirmed that whatever the outcome of the status talks, the future of Kosovo continued to depend on international assistance, with the onus increasingly falling on the EU as it identifies the Western Balkans as belonging to its realm of responsibility. As a result, the year 2007 also constitutes a key year in the EU's preparations for yet another new step in its growing role in the region, best exemplified by the preparations to launch the largest civilian European Security and Defence Policy (ESDP) mission to date: the European Union Rule of Law Mission in Kosovo (EULEX Kosovo). This article will analyse the main events that took place in 2007. In particular, these events confirmed that Kosovo will be a notable challenge for a European Union eager to show that its security and defence mechanisms are ready to tackle difficult conflict scenarios.

The Diplomatic Game

The year 2007 witnessed another set of efforts by the international community to bring closer the two opposing views on the future of this territory, with very limited success.

The Ahtisaari Plan

In November 2005 Martti Ahtisaari, former Finnish President, was appointed UN Special Envoy for the future status process for Kosovo. After over a year of direct talks, bilateral negotiations, expert consultations involving the leadership of both Serbia and Kosovo, and the delay caused by parliamentary elections in Serbia, his conclusions were rather bleak. In his March 2007 “Comprehensive Proposal for the Kosovo Status Settlement” (commonly known as the Ahtisaari plan or Settlement proposal), he admitted that the situation is hostage to,

“categorical, diametrically opposed positions: Belgrade demands Kosovo’s autonomy within Serbia, while Pristina will accept nothing short of independence [...] it is my view that the negotiations’ potential to produce any mutually agreeable outcome on Kosovo’s status is exhausted. No amount of additional talks, whatever the format, will overcome this impasse.” (UN 2007b: 2).

The status situation at the time – as outlined in Resolution 1244 – was nevertheless deemed untenable by the Settlement proposal.¹ The status quo was negatively impacting on Kosovo's democratic development, accountability, economic recovery and inter-ethnic reconciliation. The only way out from this impasse was – according to Ahtisaari – to support the conditional independence of Kosovo with international supervision until the territory enjoyed the local capacity to ensure a “viable, sustainable and stable [Kosovo] in which all communities and their members can live in a peaceful and dignified existence” (UN 2007b: 2).

¹ Resolution 1244 respected the territorial integrity of Serbia but introduced the UN Mission in Kosovo (UNMIK) to prepare Kosovo for self-government, pending a political settlement on its future status. This new situation meant that Serbia did not exercise any legislative, executive and judicial authority over the territory of Kosovo. All these powers rested with the transitional administration that UNMIK represented (UN 1999).

The temporary international supervision recommended by the Ahtisaari plan was to be exercised by an International Civilian Representative, double-hatted as European Union Special Representative, acting as the ultimate supervisory authority over the implementation of the Settlement proposal. The mandate of this figure would be complemented by an ESDP mission in the rule of law area; a NATO-led military force to provide a safe and secure environment throughout Kosovo, just as the Kosovo Force (KFOR) had been doing since 1999; and finally, an OSCE mission to assist in the monitoring process of the Plan's implementation. The temporary international presence should be intensively engaged in institutional capacity-building in addition to enjoying strong but focused powers in critical areas such as community rights,² decentralisation,³ the protection of the Serbian Orthodox Church and the rule of law. These powers, which extended as far as the capacity to annul decisions/laws and remove public officials, should be exercised when the Kosovo authorities "contravene the provisions of the Settlement proposals and the spirit in which they were crafted" (UN 2007b: 4). In other words, these powers should be "corrective" rather than prescriptive.

The Ahtisaari plan was killed by fruitless negotiations with Belgrade, which rejected it, while the Kosovo Albanians fully endorsed it. It was also hostage to irreconcilable differences between the USA and all the members of the EU (some of which had to be coaxed) on the one side and Russia on the other, which explains the UN Security Council's failure to draft a resolution to implement the Settlement proposal. Russia, an ally of Serbia, was worried of the precedent Kosovo could set for other secessionist regions, such as South Ossetia, Abkhazia or Transdnistria. The USA, on the other extreme, even declared at one point Kosovo's right to declare independence unilaterally and immediately.

The Troika Process

At the end of July 2007 a new round of negotiations began. This was the result of the ongoing differences

in the UN Security Council over Kosovo's future status, and agreement among the six-nation Contact Group on the need to move the process out of its stalemate situation.⁴ This new initiative, mediated by a "Troika" of representatives from the EU, Russia and US, was meant to provide one last chance to Belgrade and Pristina to find a common solution.

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The Troika reported back in December 2007 with poor results (UN 2007a). Neither side was still willing to compromise on the status issue. The Troika proposed a fourteen-point assessment – as a basis for evaluating a range of solutions – that outlined a variety of parameters by which common bodies would be established to implement cooperation between Serbia and Kosovo. This would come in exchange for Serbia's commitment not to govern or re-establish a physical presence on Kosovo's territory or to interfere in Kosovo's access to international financial institutions and its path towards EU integration. At the same time Kosovo was meant to commit to full regional integration, particularly on the economic side (ICG 2007: 3). Coined "Ahtisaari-minus" by the Kosovo media, this assessment was not considered seriously by the Kosovo authorities. They were only open to discussing post-independence arrangements with Serbia, had little trust in the negotiation process and were more concerned at the time with their November 2007 general elections.⁵ Serbia was similarly dismissive of the Troika assessment, insisting on Kosovo remaining within Serbia but with substantial autonomy and with no return to the pre-March-1999 situation (ICG 2007: 3-4).

² Non-majority communities in Kosovo were in effect provided with a veto over laws of particular interest to their communities in areas such as language, culture, education and symbols (UN 2007b: 6).

³ The Plan envisaged offering Serb-majority municipalities in Kosovo enhanced municipal competences in areas such as healthcare, higher education, local courts and the selection of the police chief; considerable autonomy over their financial matters, including the capacity to receive funding from Serbia; and the establishment of six new or significantly expanded Kosovo Serb-majority municipalities (UN 2007b: 7).

⁴ The Contact Group is an informal grouping of influential states (France, Germany, Italy, Russia, the UK and the US) interested in the stabilisation of the Balkans.

⁵ These elections gave the victory to Hashim Thaçi, former leader of the Kosovo Liberation Army (KLA), who was determined to make Kosovo independent as soon as possible.

With the Troika reporting back its lack of success in finding a negotiated solution, the conditional or supervised independence proposed by the Ahtisaari Plan was back on the table as the best way forward. In fact, as it became clearer that the Troika process would not yield positive results, the Kosovo authorities began to devise alternative ways of moving towards independence – even without UN Security Council authorisation – in close cooperation with those Western states ready to support them. As summed up by the International Crisis Group, the alternative was not an option:

“Accepting paralysis is not a viable option, however. It would lead to an uncoordinated, unsupervised, possibly violent independence process that could stimulate instability in Kosovo’s neighbour countries. It would also seriously damage both the UN’s prestige and the EU’s development as a major political actor in the global stage” (ICG 2007: i)

EULEX Kosovo

In the conclusions of the outgoing Portuguese Presidency of the European Union, the Council thanked the Troika for its efforts, regretted the failure to find a negotiated solution and concluded that the diplomatic avenue was exhausted. It also endorsed the UN Secretary-General’s statement that the status quo in Kosovo was unsustainable and consequently made it clear that the EU was committed to “assist Kosovo in the path towards sustainable stability, including by an ESDP mission and a contribution to an international civilian office as part of the international presence” (Council of the European Union 2007: para.70). At the same time, the Council advised Serbia to fulfil the requirements to fully integrate into the “family of European nations” (Council of the European Union 2008: para. 71).⁶ The General Affairs and External Relations Council was therefore invited in December 2007 to begin working on the modalities that such a mission should take, while the EU Secretary-General/High-Representative Javier Solana assisted the process by acting as interlocutor between the EU and the responsible authorities in Kosovo and the UN.

On the basis of the work completed by the EU Planning Team for Kosovo (EUPT Kosovo) established in April 2006, the activation of the EU mission has since taken place swiftly. On 16th February 2008 the Council of the EU decided to launch EULEX Kosovo, the EU Rule of Law Mission in Kosovo. Headed by Yves de Kermabon, this mission aims to support the Kosovo authorities in building a sustainable and functional Rule of Law system on the basis of an initial two-year mandate which will probably have to be expanded. The mission will include approximately 1,800/1,900 international police officers, judges, prosecutors and custom officers and 1,000 local staff to assist the Kosovo authorities in the maintenance and improvement of the rule of law. For example, EULEX Kosovo is supposed to ensure that serious crimes are properly investigated and prosecuted and the outcomes of that process enforced.

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This EU mission is meant to take over from the UN once Kosovo’s new constitution comes into force on 15th June 2008. However, following the same argumentative line adopted in the transition from the UN to the EU in Bosnia, the Union has made it clear that its mission will not substitute for UNMIK (UN Interim Administration Mission in Kosovo) and thus will not emulate its executive style. Rather, it should be seen as a completely new mission designed on the basis of co-ownership of the process. It will only monitor, mentor and advise on all areas of the rule of law, with specific projects – as already outlined by EUPT Kosovo – designed and implemented in consultation with the appropriate local stakeholders so as to ensure shared views of problems and oppor-

⁶ The European Union signed a Stabilisation and Association Agreement with Serbia at the end of April 2008, as well as offering special changes to the visa regime. The European Commission insists that these concessions are completely separate from Kosovo’s recent independence (17th February 2008).

tunities, while enhancing the transparency of the EU mission. The only exceptions to this ownership rule are the handling of special types of crimes (such as organised crime, war crimes, etc.) and, if needed, riot control where a more executive role by the EU mission might be needed until the local authorities are able to carry out such tasks by themselves.

The year 2007 has been crucial, not only in moving away from the status quo established in Kosovo by Resolution 1244 but also in making Kosovo more of a European issue

The rule of law focus of EULEX Kosovo responds to an international perception of the situation in Kosovo as being characterised, still, by a serious lack of security, the absence of which leads in turn to a lack of development. However, the rule of law mandate of this mission cannot by itself solve some of the other pressing problems that are associated with Kosovo, even if the lack of security is at the basis of many of them. According to a March 2008 report from the European Commission, some of the most serious problems in Kosovo go from strengthening the rule of law (particularly the judiciary) to combating organised crime and corruption, supporting economic development and the creation of jobs, improving conditions for the return of refugees and for minority communities, and enhancing dialogue and reconciliation among communities (European Commission 2008: 7). In the words of Yves de Kermabon:

“Everything in Kosovo is very political, but of course, the police, the justice system and the borders are at the heart of the problem and our mission: to establishing a law-abiding state. Then again, the economy and the schools should not be forgotten. That’s not my mission ... But they represent two more important challenges for Kosovo and on which the success of our mission will depend.” (Europolitics, 2008: 24)

This security-development logic explains the multifaceted approach the Union has envisaged for Kosovo, of

which the ESDP mission is simply one element in a wider policy shaped by the Stabilisation and Association Process or, in other words, the EU’s strategic framework for the Western Balkans region. The enhanced EU presence in Kosovo is composed of three arms that together utilise the Union’s full array of political, economic and security instruments. EULEX Kosovo represents the operational arm with political guidance provided by the International Civilian Office/European Union Special Representative Office (ICO/EUSR) that under the leadership of Peter Feith is meant to represent the international community under European guidance. This office is also meant to oversee the transfer of responsibilities from UNMIK to the local authorities, and to the new international authority, as well as the implementation of the Settlement proposal outlined by Martti Ahtisaari in his March 2007 document. The third and last arm is that of the European Commission’s long-term efforts in the areas of economic development, regional integration and the EU perspective for Kosovo. The latter is to take place through the European partnership, political and technical dialogue under the Stabilisation and Association Process Tracking Mechanism and related Community assistance programmes.⁷ The EU presence will be further complemented by some of the proposals outlined in the Ahtisaari plan, including an international military presence (provided by NATO), assistance from an OSCE mission with extensive field presence, and capacity-building efforts by a variety of partners, including the UN Development Programme, the World Bank and the Council of Europe.

Concluding Remarks: Kosovo in the EU Era

The year 2007 has been crucial, not only in moving away from the status quo established in Kosovo by Resolution 1244 but also in making Kosovo more of a European issue. While the EU should be praised for its determination to acquire a more prominent role in this conflict, its decisions carry a level of resilience that is already being put to the test. Indeed, at the time of writing, only a few months into the year 2008, the Union is confronted with two main challenges. At the international level, Russia’s use of its weight in the Security Council to avoid the revocation of Resolution

⁷ As part of its supervision of Pillar IV of UNMIK (on Reconstruction and Economic Development), since 1999 the EU has been active in the area of macroeconomic reforms. Its actions have also been influenced since 2002 by the decision not to integrate Kosovo into Serbia’s Stability and Association Process (SAP), leading to regular meetings between the Commission, UNMIK and Kosovo’s provisional authorities on the territory’s progress in complying with the Copenhagen criteria and the SAP. In the period since 1999 the EU had channelled over € 2 billion through its various instruments (Sebastián 2007: 4).

1244 is posing serious problems in the handover of responsibilities from the UN to the EU as well as inhibiting Kosovo's integration into the full range of UN institutions. Some have begun to talk of a "readjustment" of the transition plans (between the UN and EU) and others of "the international community in confusion" (John 2008). The underlying fear is that the outcome could be a *de facto* "soft partition" between "UNMIKland" in Serb-populated areas in the north and "EULEXland" in the rest of Kosovo, mainly populated by ethnic Albanians (John 2008). This fear is influenced by local events that have reinforced the claims of those critics questioning EULEX's capacity to implement its mandate.

On 17th February 2008 Kosovo declared itself independent against the wishes of Serbia and Russia.⁸ Protests, violence in areas where Kosovo Serbs live and at the border with Serbia, and the boycott by ethnic Serbs of key institutions built during the UN period (such as the police) to show their refusal to recognise the new Kosovo authorities, are clear illustrations of the tense situation that has rapidly developed on the ground. In fact, the Serb-held enclaves (and the north of Kosovo) operate as part of Serbia (Judah 2008). This situation is certainly not expected to improve in the near future as illustrated by Serbia's decision to hold its 11th May local and parliamentary elections in those areas. If uncontrolled, these tensions could turn Kosovo into a frozen conflict. Faced with a total absence of Serb interlocutors (both in Kosovo and in Serbia itself), and with the inability to establish itself in the north,⁹ it remains to be seen how EULEX, and the EU more generally, will be able to assist in the implementation of the Ahtisaari Plan, particularly the decentralisation clauses that pertain to Serb-populated areas. The stakes are indeed very high. Tackling appropriately the challenges that have developed since the end of 2007 is crucial not only for the future of Kosovo, but also for that of the EU as an effective international actor in the resolution of conflicts.

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⁸ Not all EU member states have recognised Kosovo's independence at the time of writing.

⁹ NATO has been described by some commentators as unwilling to take the necessary forceful measures to assist the EU in this regard.