

## spotlight europe

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# Kosovo 2009: Uncertain Future

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The status of Kosovo continues to be controversial. Pristina and Belgrade are now even more at loggerheads than they were before the Kosovar Declaration of Independence in February 2008. Diverging interests in the EU and the United Nations have paralyzed the work of the international community. It is clear that the EU needs a new policy with which to create stability and make for clarity. Pristina must show some responsibility if it does not wish to jeopardize the future of Kosovo.

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Only a few months after the Declaration of Independence the young state of Kosovo finds itself bogged down in a fundamental crisis in which the whole issue of the sovereignty of the country is at stake. In contrast to what the proponents of independence had planned, during the past twelve months the international community has not managed to come up with a new legal framework for the missions on the ground. The international actors continue to be bound by Security Resolution 1244 (UN-SCR 1244) from the year 1999. This is repudiated by the young state with its claim to sovereignty and the European states which have recognized Kosovo. The result of all this is a confused state of affairs which hinders the emergence of positive developments and exacerbates conflicts.

### What has happened since the Declaration of Independence?

The Kosovo Declaration of Independence in February 2008 was preceded by lengthy and nerve-racking negotiations. The process was set in motion by the Norwegian diplomat Kai Eide, who in his report to the UN Secretary General in October 2005 indicated that it was imperative to resolve the status question.

The former Finnish president Martti Ahtisaari was entrusted with the task of working out a compromise with Serbian and

THE KOSOVO QUESTION SINCE 1999	
Independent?	<p>9. DEC. '08 <b>EULEX</b> becomes operative</p> <p>26. NOV. '08 The <b>UN Security Council adopts the Ban Report</b>, bringing EULEX under the authority of UNMIK based on Resolution 1244.</p> <p>8. OCT. '08 The <b>UN General Assembly votes in favour</b> of the International Court of Justice in The Hague rendering an advisory opinion on the <b>declaration of independence</b></p> <p>15. JUNE '08 <b>Kosovo's Constitution enters into force</b></p> <p>17. FEB. '08 <b>Declaration of independence</b></p> <p>4. FEB. '08 The <b>EU decides to launch EULEX</b> on the basis of a Joint Action Plan</p>
Troika-Talks	<p>10. DEC. '07 The <b>Troika's report</b> is submitted to the UN Secretary-General</p> <p>NOV. '07 <b>Third general election</b> won by Hashim Thaci with the PDK.</p> <p>AUG. '07 At the initiative of the Contact Group, the UN Secretary-General launches a <b>fresh round of talks</b> led by a troika comprising the EU, the USA and Russia.</p>
Ahtisaari-Initiative	<p>JULY. '07 The <b>Ahtisaari Plan is abandoned</b> after Russia threatens to use its veto in the UN Security Council.</p> <p>MARCH. '07 <b>Ahtisaari submits</b> his proposal in the final report: '<b>supervised independence</b>'. The USA, EU and NATO back the plan, which is supported by Kosovo Albanians, but rejected by the Serbian government.</p> <p>FEB.-SEP. '06 Ten meetings between <b>Serbia and Kosovo</b> chaired by Ahtisaari.</p> <p>OCT. '05 The UN Security Council decides to launch <b>negotiations on Kosovo's status</b></p> <p>OCT. '05 In a <b>report to the UN Secretary-General</b>, Kai Eide recommends clarifying the question of Kosovo's status.</p>
From 1244 to Eide-Report	<p>OCT. '04 <b>Second general election</b></p> <p>MARCH '04 <b>Violent rioting</b> targeting Serbs and other minorities</p> <p>DEC. '03 'Standards before status' policy – <b>Eight objectives</b> to be set before the launch of talks on the status of Kosovo</p> <p>NOV. '01 <b>First election</b> to a provisional parliament</p> <p>APR. '01 <b>Provisional institutions</b> are set up</p> <p>JUNE '99 <b>UN Security Council Resolution 1244</b> deploys the UN administration in Kosovo (UNMIK).</p>

Kosovar representatives. In March 2007 Ahtisaari presented a plan which contains fundamental guarantees for the Serbian minority in Kosovo and envisages conditional independence for Kosovo under international supervision.

Although the Ahtisaari package is the net result of lengthy negotiations and contains detailed compromises with regard to dis-

puted issues, the negotiations and the ensuing endeavours of the troika (EU, Russia, U.S.) ended inconclusively at the end of 2007. Serbia exercised its veto rights against every step which might have led to the resolution of the status question and ultimately to independence. At the same time the political process, once begun, could no longer be stopped. Openly supported by the U.S. and expecting to obtain unanimous approval from the EU, Pristina declared itself independent on 17 February 2008. On 15 June the first constitution of the new state entered into force. Both the Declaration of Independence and the constitution of the Republic of Kosovo refer to the Ahtisaari plan and its implementation.

Before the Declaration of Independence the EU had given the impression of being united on the issue. As late as 4 February 2008 the 27 EU member states emphasized that they were willing to assume a leading role if Kosovo agreed to implement the Ahtisaari plan. It was unanimously agreed to despatch the EULEX rule of law mission and an EU special representative for Kosovo.

Yet since the Kosovar Declaration of Independence the EU is no longer in agreement on the issue. Whereas 53 UN states, including the neighbouring states of Albania, Croatia, Macedonia and Montenegro, have recognized Kosovo, five EU states have still not done so—Greece, Romania, Slovakia, Spain and Cyprus. They refuse to recognize Kosovo for reasons associated with domestic policy issues and international legal reservations.

The international community also remains divided on the issue. The expected wave of recognition from other regions, including the Islamic and Latin American countries, has hitherto failed to materialize. Russia, which until the middle of 2006 still supported the views of the Balkans Contact Group (Germany, France, the United King-

dom, Italy, U.S., and Russia) on the negotiations under Ahtisaari, is using Kosovo to further its global political ambitions. Despite the fact that it has counteracted its own arguments based on international law by its recognition of South Ossetia and Abkhazia, in the United Nations Security Council Moscow has blocked all attempts to re-order the legal framework for the international presence in Kosovo.

## II

### Status revisited: Belgrade has the upper hand

With the backing of Moscow Belgrade is pursuing a policy aimed at bringing the sluggish recognition process to a complete standstill and once again making the issue of the status of Kosovo the subject of negotiations.

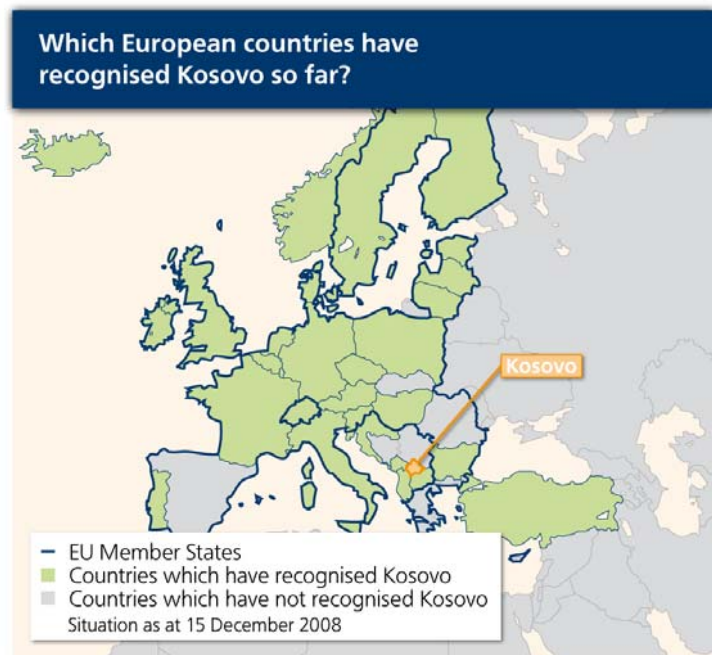
Furthermore, the Serbian government has pulled off a stroke of diplomatic genius. At the UN General Assembly on 8 October 2008 77 states, including Montenegro, supported the Serbian resolution requesting the International Court of Justice at The Hague to assess the legality of Kosovo's Declaration of Independence. Six countries, including the U.S., voted against the resolution, and 74 abstained (including the neighbouring states of Bosnia, Croatia and Macedonia). The EU member states disguised their differences by abstaining. The ruling of the Court is not binding. However, if The Hague were to decide in favour of Belgrade, states which have already recognized Kosovo would be in deep trouble.

Belgrade embarked on another attempt to turn back the clock at the end of November, when President Tadic called into question the Kumanovo Treaty, which for-

bids Serbian troop movements in Kosovo and in the border areas adjoining the former Serbian province.





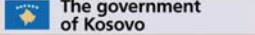
In practice Serbia continues to resist the new realities. It simply refused to cooperate with the European EULEX rule of law mission and the International Civilian Office (ICO), which were set up on the basis of the Ahtisaari plans after the Declaration of Independence. Belgrade recognizes only the United Nations mission in Kosovo (UNMIK), which operates on the basis of UNSCR 1244.

Since June 2008 UN Secretary General Ban has been trying to find a way out of this impasse. He attempted to obtain Belgrade's support for the reconfiguration of UNMIK and the deployment of EULEX, and put forward six points on which Belgrade should in future continue to have a say.



The proposals suggested that in the Serbian enclaves and in the north of Kosovo matters relating to customs, police, justice, transport, telecommunications, and religious and cultural heritage would continue to be dealt with under the aegis of UNSCR 1244, whereas EULEX would operate under the umbrella of the United Nations, that is, of UNMIK.

Pristina did not participate in the negotiations between Belgrade, New York and Brussels. It was easy to understand why the Kosovar leadership should have rejected the results with which it was confronted. Kosovo was in a quandary. Acceptance of the six-point plan would have been tantamount to undermining its sovereignty. Its internationally supervised independence, which is based on the Ahtisaari package and enshrined in the constitution, would have seemed totally absurd. However, if it rejects the six-point plan, the deployment of EULEX will be endangered and relations to the EU and the United Nations strained to the limits.

The Kosovo question since 1999			
 <b>UNMIK</b> <ul style="list-style-type: none"> <li>established in <b>June 1999</b></li> <li>headed by Special Representative of the Secretary-General (SRSG) Lamberto Zannier (since June 2008)</li> <li><b>mandate of the UN Security Council:</b> Resolution 1244, complemented by the six-point plan dating from October 2008</li> <li>funded by the <b>United Nations</b></li> </ul>	 <b>OSCE-Mission im Kosovo</b> <ul style="list-style-type: none"> <li>established in <b>July 1999</b></li> <li>headed by Werner Altmayer (since October 2008)</li> <li><b>mandate of the Permanent Council of the OSCE</b> with reference to Resolution 1244</li> <li>funded by the OSCE Member States</li> </ul>	 <b>EULEX</b> <ul style="list-style-type: none"> <li>established in <b>February 2008</b></li> <li>headed by Yves de Kermabon (since February 2008)</li> <li><b>mandate of the Council of the European Union</b> with reference to Resolution 1244</li> <li>funded by the <b>EU Member States</b> and the <b>European Commission</b></li> </ul>	
 <b>ICO</b> <ul style="list-style-type: none"> <li>established in <b>February 2008</b></li> <li>controlled by the <b>International Steering Group (ISG)</b>, led by the <b>International Civilian Representative (ICR)</b> and <b>European Union Special Representative (EUSR)</b> Pieter Feith (since February 2008)</li> <li>mandated by 25 recognised states on the basis of the <b>"Comprehensive Proposal for the Kosovo Status Settlement"</b> (Ahtisaari Plan)</li> <li>funded by <b>25 countries</b> (the EU Member States that recognise Kosovo + Croatia, Switzerland, the USA and Turkey)</li> </ul>		 <b>The government of Kosovo</b> <ul style="list-style-type: none"> <li>established in <b>1999</b> under Resolution 1244</li> <li>headed by Hashim Thaci (since January 2008)</li> <li>legal basis: <b>Kosovo Constitution adopted in June 2008</b> with reference to the Ahtisaari Plan</li> </ul>	

the Security Council gave its assent to the deployment of EULEX within the framework of UNSCR 1244 and under the um-

### III

## Status Neutral: OSCE and UNMIK

The UN administration found itself in a difficult position after the Declaration of Independence, and especially after the entry into force of the constitution. The dilemma was due to the fact that UNSCR 1244, on which the mandate of UNMIK is based, continued to be in existence, whereas there is no mention of UNMIK in the Kosovar constitution. The intention had been that UNMIK would operate in Kosovo only until EULEX had become fully operative.

Yet things were about to turn out differently. On 26 November 2008, after Belgrade, Brussels and Ban Ki-Moon had reached agreement on the six-point plan,

umbrella of UNMIK, which thus continues in existence. The transfer of the full mandate to EULEX and the withdrawal of UNMIK are now dependent on Belgrade.

The police in areas mainly inhabited by Serbs will continue to be under the supervision of UNMIK structures and is thus beyond the control of Pristina. The same is true of customs. Here again UNMIK will supervise the border crossings between northern Kosovo and Serbia, and not the government of Kosovo. In northern Mitrovica the judiciary will remain in the hands of UNMIK for up to 60 days until local judges and state prosecutors working on the basis of UNSCR 1244, which remains in force, and not the Kosovar constitution, will start their work.

The OSCE will also remain. In Ban's report to the Security Council it is in fact assigned a key role. Its members—and in this they resemble the EU—do not agree with regard to the status question. Yet the OSCE has only a political and consultative mandate, and not an internationally bind-

ing one. Furthermore, the organization has to defer to its member states Russia and Serbia—and is thus status-neutral. If the Ahtisaari plan were in force, the OSCE would support the work of the International Civilian Office (ICO). However, cooperation with the ICO is officially impossible.

## IV

### Difficult Status: International Civilian Office

The November report of the Secretary General of the United Nations to the Security Council describes the OSCE as a “central element” of UNMIK, and emphasizes its key role in the establishment and supervision of Kosovar institutions. However, the ICO is mentioned not once in the whole document.

Dutch diplomat Pieter Feith in his role as International Civilian Representative (ICR) will find it very difficult to move to Kosovo in order to perform the consultative and interventionist functions stipulated in the Ahtisaari plan. Although the plans had envisaged that the UN Security Council would give its assent to the appointment of the ICR, UNSCR 1244 continues to remain in force. Feith’s mandate thus derives only from those states which have recognized Kosovo and their International Steering Group (ISG), over which he presides.

The steering group has commissioned the ICR to supervise the implementation of the Ahtisaari package. As the recently published [ICO implementation matrix](#) demonstrates, Peter Feith has done a great deal of consultative work for the Kosovar institutions since the Declaration of Independence. However, the bomb attack on the ICO building on 14 November shows that the ICO is working in a difficult political environment.

Only specialists make a distinction between ICO and EULEX, and the status of ICO and ICR are unclear to both the international actors and the population of Kosovo. Since the UN Security Council has again given UNMIK the task of spearheading the international supervisory process, ICO lacks a robust mandate and the question thus arises of the extent to which the Kosovar institutions are willing to follow advice emanating from ICR.

The European Council has decided to dispatch an EU special representative (EUSR) in conjunction with EULEX. The ICR Pieter Feith, as stipulated in the Ahtisaari plan, is also the EUSR. This dual function is beginning increasingly to cause difficulties. Whereas the ICR is supposed to supervise the government of the Republic of Kosovo, opinions differ with regard to the function of the EUSR in the 22 pro-recognition and 5 anti-recognition states.

### “Dual function causes difficulties”

Basically conceived as no more than a way of coordinating EU activities in Kosovo, the EUSR function is becoming more and more important, and makes it necessary to walk a never-ending tightrope. It is supposed to promote the consistency of EU activities and as to advise and support the political process. However, some openly aired disagreements between ICR/EUSR Pieter Feith and Pierre Mirel of the European Commission concerning the leadership and steering function of EULEX shed a revealing light on the imperfection of the coordinating processes within the EU, and make the tensions implicit in the confused and impenetrable system plain for all to see.

According to the Ahtisaari plan the task of coordinating the international actors in Kosovo should have been assigned to a committee headed by Pieter Feith. However, since in accordance with its mandate the ICO must be pro-status, it cannot perform this function. Exchange and coordi-

nation can perhaps take place on an informal basis. International civil involvement thus runs the risk of not acting jointly, at best of duplicating itself, and in a worst-case scenario of getting caught up in grotesque quarrels about who is responsible for what.

## V

### Confused Status: EULEX

The EU rule of law mission had taken some knocks as a result of discussions about the legality of its actions, the extent of its mandate, and the time and place of its operations before it began work on 9 December. The credibility of the hitherto largest ESDP mission is already being queried and this calls into question the efficiency of the Common Foreign and Security Policy.

The UN Security Council unanimously gave the go-ahead for EULEX on 26 November 2008. The basis for its work is now Ban Ki-moon's report, which places EULEX under UNMIK. Thus EULEX will act as a technical mission and be status-neutral. But what does the status-neutrality actually signify for EULEX? Can the establishment of the rule of law be neutral and disregard the fact of statehood? What significance will the Kosovar constitution have if there are two simultaneous jurisdictions, that of UNMIK in the Serbian enclaves and that of the Kosovar constitution?

The fact that the U.S. representative in the Security Council ascribes a "complementary" role to the Kosovar government and that the UN report talks of a "provisional solution" is not particularly helpful. Apart from the immense damage to the reputations of the international organizations in Kosovo on account of months of squabbling, the Security Council decision establishes an action programme which can hardly attain its goal. Those who believe that the Kosovar population and government will be satisfied with the fact that a

statement outlining Pristina's reasoned rejection of the arrangement is appended to the UN report will be deceiving himself. Kosovo has agreed to EULEX primarily because it opens the prospect of integration into NATO and the EU.

It needs to be remembered that the EU decided on the rule of law mission unanimously. However, its interpretation reveals a rift between two camps as soon as it is a matter of the status-related definition of its deployment and mandate. The EU states which have recognized Kosovo interpret the decision on EULEX (Joint Action Plan, 4 February 2008) to mean that EULEX will work together with the Kosovar institutions and authorities. The opposite point of view rests on the notion that the Joint Action Plan was only accepted on the basis that EULEX did not prejudice the status issue and was thus consonant with UNSCR 1244.

### "Credibility of ESDP mission is already being queried."

These attempts to square the circle become rather grotesque as soon as it is a question of determining EULEX's place in the "chain of command." According to the Joint Action Plan the head of EULEX, Yves de Kermabon, receives orders from the EU's PSC (Committee for Policy and Security) and Javier Solana. As Belgrade and the UN Secretary General see it (status-neutrality, UNSCR 1244, no implementation of the Ahtisaari plan), EULEX, like the OSCE, will operate under the UN mandate or, as is sometimes said, under the "UN umbrella."

According to the Action Plan the EUSR is to provide the head of EULEX with "political leadership on the ground" in all areas of executive responsibility. But what steering function is Pieter Feith supposed to perform if within the EU itself it is impossible to discern a clear-cut policy line?

## VI

## Challenges

EU Commissioner Oli Rehn has declared 2009 to be the year of the Western Balkans. The forthcoming EU presidencies of the Czech Republic and of Sweden will have to demonstrate whether or not this signifies the development of a more positive state of affairs, especially in Kosovo. The EU must make clear-cut decisions if it does not wish to harm the development of Kosovo and thus of the whole of south-east Europe for years to come. The actors in Brussels and Pristina must bear five points in mind.

1) Despite its internal lack of unanimity, the EU must create a coherent framework for its policies. The success of EULEX stands or falls with the backing which the ESDP mission has in the EU. The EU can only exert pressure on the governments in Pristina and Belgrade if it whole-heartedly supports the medium-term deployment of EULEX throughout Kosovo and ties in Belgrade and above all Pristina.

United action is absolutely necessary in view of the fact that the EU's own reputation is at stake. The U.S. is a staunch supporter of Kosovar independence and is taking part in a European mission for the very first time. It needs an EU which is a reliable partner no longer bogged down in complex decision-making processes.

2) The EU member states represented in the ISG must insist on the implementation of the Ahtisaari package and on strengthening the ICO. In addition to this it is also imperative to pre-empt any attempt to drive a wedge between the member states of the EU in technical and execution provisions. A pragmatic willingness to compromise, as is being demonstrated by Slovakia and Greece, two non-recognition states, with regard to the recognition of Kosovo passports, opens up further room for manoeuvre.

3) Kosovo must also convince the doubters within the EU. This will only be possible if it implements European standards in a consistent and comprehensive manner. Greece, which assumes the OSCE presidency in 2009, Romania, which has seconded policemen to EULEX could thus be persuaded to move towards recognition. The Kosovar elite must demonstrate that it understands its responsibilities and act accordingly.

4) The state-building process in the youngest state in the world has only just begun. For the Kosovar government institutions the UN report and the deployment of EULEX under a UN mandate constitute a great burden. But Pristina must continue to adhere to the Ahtisaari plan—despite and perhaps on account of the difficult circumstances. The disunity of the international community should not lead to a situation which makes it impossible to proceed with the democratization of Kosovo. Pristina's government institutions are no longer "provisional." They serve their country and their people. There can be no doubt about the fact that for the future the country needs a great deal of help in the areas of justice and public administration, and that here EULEX will perform essential tasks. The government cannot longer afford unprofessional and offensive behaviour as in the case of the arrest recently of members of the German intelligence service BND. It needs to gain confidence internally and externally.

5) Special attention must be paid to the relationship between Kosovo Albanians and Kosovo Serbs. The politicians in Pristina have hitherto failed to build a common future based on a specific set of measures. The difficult living conditions and the lack of economic prospects are a great source of anxiety for the population as a whole and the Serbs in particular. Pristina needs to make pro-active overtures to the Serbs in the country and develop a vision for a joint state. Specific and sustainable support for local economic areas in the enclaves must be a top priority.

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**For Further Reading:**

Kosovar Institute for Policy Research and Development: Looking beyond Mitrovica Bridge: An "Ahtisaari Plus" Package Proposal; Policy Brief Series, Paper 9, October 2008.

International Crisis Group: "Kosovo's Fragile Transition". Europe Report No 196 – 25 September 2008.

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