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THE EU PRESENCE IN A POST-STATUS KOSOVO CHALLENGES AND OPPORTUNITIES

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ABSTRACT

Starting from an overview of the political background of the Kosovo issue, rooted in Serb and Albanian history, the paper then describes the main features of the current situation: "nothing more than autonomy" from one side, "nothing less than independence" for the other. Against this background, the authors then examine the recently formulated vision of EU involvement in Kosovo after the status settlement, as set out in a series of joint reports by High Representative Solana and Commissioner Rehn over the last couple of years.

This is followed by a concise description and critical evaluation of the EU record in Kosovo since 1999 and a brief discussion of the challenges that await the planned EU rule of law mission and other EU actions in Kosovo. Linkages with other EU instruments and policies are also considered in this context, as is the broader context of activities by other actors of the international community involved in the Kosovo issue.

The paper concludes on a number of recommendations regarding future EU activities in Kosovo, as well as their impact on the stability of Kosovo's direct and wider neighbourhood. These address both the EU's material presence in and financial support for Kosovo itself, and the need to clarify membership prospects - and conditions - for the whole region.

Executive summary

Scope of the briefing: the analysis concentrates on the EU's role after the status settlement in Kosovo. We first present the historic and political background of the Kosovo issue and then describe the main features of the current situation. After that, we discuss the recently formulated vision of EU involvement in Kosovo after the status settlement. This is followed by a concise description and a critical evaluation of the EU record in Kosovo since 1999 and a brief discussion of the challenges that await the planned EU rule of law mission and other EU actions in Kosovo. In this context, we also consider linkages with other EU instruments and policies, as well as the broader context of activities of other actors of the international community involved in the Kosovo issue. Finally, we submit recommendations regarding future EU activities in Kosovo. At this point, we also pay special attention to the effects of the EU's effort to transform the Kosovo conflict on the stability of its direct and wider neighbourhood.

Background and current situation: While the majority Albanian population demands the recognition of the province as an independent state, the Serbian minority wants to remain part of the state of Serbia. The government in Belgrade accepts the greatest possible autonomy for Kosovo, but refuses to agree to its secession. Kosovo's Albanian leaders have said they will declare the province independent if the on-going negotiations under the *Troika* (the USA, the EU, and Russia) over the future status do not produce a result acceptable for them by 10 December 2007.

The vision of EU involvement after the status settlement in Kosovo: In the recent years, we can observe an increasing EU activity in the region: regarding the Western Balkans in general – including the European Perspective for Kosovo –, this dates from the Thessaloniki EU Council in 2003. Regarding the future role of the EU in Kosovo, the new start is reflected in a series of joint reports by Javier Solana, EU High Representative for the CFSP, and Olli Rehn, EU Commissioner for Enlargement, based on the February 2005 Mandate from the Council. As a result of the developments of the last two years (and despite sometimes diverging views between member states), a vision of the future EU involvement in Kosovo has been created. It is the third out of the four joint reports that can be considered as a milestone for EU involvement in the post-status Kosovo. According to this joint report, 'the EU intends to become the driving force within the future international presence'. The planned future EU involvement has three main pillars:

- The international civilian presence will be assured by the International Civilian Office (ICO). The Head of the ICO, an International Civilian Representative (ICR) will be an EU citizen; he/she will be double-hatted as EU Special Representative (EUSR). The ICO/EUSR preparatory team has been working since 2006.
- An EU Planning Team (EUPPT) has been working since 2006 in Priština with the purpose of planning a future European Security and Defence Policy (ESDP) mission. The future mission will focus on justice and the police, while financial assistance under the Instrument of Pre-Accession Assistance (IPA) will focus on institutional capacity building.

- EU support for the progress of Kosovo will remain in the framework of the SAP. The functions of the actual EC Liaison Office (ECLO) and of the European Agency for Reconstruction (EAR) will be absorbed by a new office to be established by the European Commission in Priština.

Concerning Kosovo's EU perspective after the status settlement, the joint report states that 'the common objective of the EU and Kosovo is to ensure that Kosovo becomes a reliable partner, progressing towards integration with the EU together with the rest of the region. This will reinforce Kosovo's political and economic viability'.

The EU's record in Kosovo since 1999 and the main challenges for the future: As a participant in the UN administration of Kosovo and through its own actions, the EU has significantly contributed to reconstruction and development in the province since the war in 1999 and has thus alleviated the suffering of many people. Yet, the effort failed to restore and strengthen Kosovo's multi-ethnic character and to lay the groundwork for the self-sustained economic and socio-political development of all communities.

These are some of the main challenges awaiting the future EU presence in Kosovo:

- Kosovo's Albanians see the US as their true ally in the quest for separation from Serbia and some increasingly see the EU countries as "spoilers".
- A clamp-down of the EU rule-of-law mission against corruption and organised crime in Kosovo could provoke violent responses.
- An EU presence in Kosovo without a firm legal UN mandate in combination with a unilateral declaration of independence by the Kosovo Albanian leaders would disrupt EU's ability to foster the democratic transformation of Serbia and other parts of the region.
- The future EU presence in Kosovo appears fragmented and this could diminish the coherence in the activities of the various EU actors on the ground
- Experience with elaborate schemes of power-sharing under external supervision, such as in Bosnia-Herzegovina, indicate that it could prove impossible to implement the Ahtisaari-plan, should it really become the blueprint for the future of Kosovo. This plan is so complex as regards minority rights, self-government, protection of cultural sites etc. that it might simply prove impossible to implement it, notwithstanding far-reaching enforcement powers by the ICR. This would negatively affect EU credibility, sustainability of the agreement, and, in the long run, also EU approximation.
- The uncertainty over the EU's commitment to further enlargement diminishes the EU's ability to stabilise and transform Kosovo and the Western Balkans.

Recommendations for the future EU presence in Kosovo:

- The EU's stance in Kosovo after the status settlement should be firm both towards the political actors in Kosovo and the region.
- The EU should continue streamlining its presence in Kosovo in order to foster coherence and efficiency.

- The EU should also start preparations for taking over responsibility for maintaining military security in Kosovo.
- The EU should offer Kosovo and the whole region unambiguous and credible membership prospects linked to transparent conditionality.
- The IPA should be broadened in scope and bolstered financially.

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1. Introduction

The initial request for this Briefing Paper (EP/EXPO/B/AFET/FWC/2006-10/Lot1/12, Annex II) specifies that ‘The Briefing Paper should analyse the terms of the EU rule of law mission in Kosovo (also in the light of the first implementation stages), how far it corresponds to other EC instruments (Instrument for Stability, Pre-Accession Instrument) and policies (Stabilisation process), its ability to address the challenges arising from the new status and its compatibility with the overall aim of promoting local ownership and developing the capacity of the provisional institutions of self-government in Kosovo. The Briefing Paper should also look at the way in which the ESDP mission and the EC instruments fit into the wider context of the activities of the International Community in Kosovo and, if appropriate, suggest ways of improving coordination among them.’

In this vein, the analysis concentrates on the role the European Union (EU) should play in Kosovo after the status settlement. In order to clarify the context, we first discuss the historical background out of which the present situation evolved. We then present visions formulated by the EU concerning its involvement in Kosovo after the status settlement.

This is followed by a concise description and a critical evaluation of the EU’s rule of law mission and other components of its future presence in Kosovo. The analysis will encompass the linkages with other EC instruments and policies, as well as in the broader context of activities of other actors of the international community in Kosovo. Finally, recommendations are formulated regarding future EU activities in Kosovo and the region. At this point, special attention will be paid to the impact of any action in Kosovo on the stability of its direct and wider neighbourhood.

2. Background and current situation

Understanding the historical and cultural background in the Western Balkans is a precondition to understanding the contemporary popular feelings and political strategies. The multi-ethnic and multicultural nature of the region, in which ethnic and administrative borders were rarely identical, has led to antagonistic aspirations for dominance and independence and thus paved the way to numerous nationalistic conflicts. Out of the six states that replaced the Socialist Federal Republic of Yugoslavia in the course of its violent disintegration in the last decade of the past century, two are now mostly ethnically homogenous – Slovenia and Croatia. The rest have remained substantially multi-ethnic. Within the post-Yugoslav configuration of states in the Western Balkans, the Albanians and Serbs are the two ethnicities that have the most numerous parts of their community living in neighbouring countries. Albanians live in Serbia (in the province of Kosovo and in the south of Serbia), in the Former Yugoslav Republic of Macedonia (one quarter of the population), in Montenegro and, of course, in Albania itself. There are big Albanian diasporas in Italy and Greece as well.

By now, Albanians constitute roughly 90 percent of the population of Kosovo. After the end of NATO’s bombardment of Serbia in 1999, Kosovo was turned into a UN

protectorate but has remained legally part of Serbia. Whereas Kosovo Albanians demand the recognition of the province as an independent state, Serbs in Kosovo want to remain part of the state of Serbia. The government in Belgrade is willing to accept the largest possible degree of autonomy for Kosovo, but refuses to agree to its secession.

2. 1. Historical background

The latent “Albanian issue” that has been suppressed since the creation of the Yugoslav federation after the Second World War, resurfaced with the loosening of the grip of Communist rule. Already in 1968 (soon after the first steps to liberalisation in Yugoslavia), but far more intensively in 1981 after the death of the long-time ruler Josip Broz Tito, Albanians in Kosovo and, to an extent in Macedonia, protested in mass demonstrations against what they considered oppression by Belgrade and demanded self-rule.

In the late 1980s and 1990s the Yugoslav and later Serb administration and police did not refrain from widespread violations of human rights against Kosovo Albanians which lead to growing frustration, mobilisation, and political radicalisation in this ethnic group..

In Serbia, beginning in the summer of 1987, the “struggle for Kosovo” was the fertile ground for the rise of the populist leader Slobodan Milošević. He profited politically from mobilising Serbian nationalism to support his drive to “defend Kosovo” and, later, all Serbs in former Yugoslavia who felt threatened by the co-escalating nationalism of other groups. Yet, in spite of his authoritarian and violent rule, how to retain a territory that was ethnically “lost” proved an unsolvable problem even for Milošević. The Albanian majority in the province continued to increase steadily throughout most of the 20th century. On the 2nd of July 1990, an unofficial Kosovo parliament consisting only of Albanians declared Kosovo independent. However, this move was recognised only by Albania. In return, Serbian authorities abolished the province’s autonomy (that at this stage existed mostly on paper) and intensified the suppression of Albanian nationalism in the province.

After 1991 and the establishment of the Kosovo Albanian shadow-state, almost any contact and lines of cooperation between the Serb and the Albanian communities and their political elites ceased to exist. A minority of politicians and intellectuals on both sides resisted the nationalist mainstream in their respective communities and tried to start an inter-ethnic dialogue. In this situation of political deadlock, there was growing frustration among the Kosovo Albanians over the lack of visible progress from their political strategy of non-violence. Many Albanians felt the international community had “forgotten” this sensitive issue and that only a strategy of violence could turn international attention to the Kosovo problem.

It would have been irrational to assume that a state would surrender a part of its territory without any struggle or compensation – there is no country in the world that would do this. Moreover, Serbia’s historical and cultural identity is tied to Kosovo. Kosovo is where the early Serbian states were located before the invasion of the

Ottomans in the 14th century. Kosovo is further the site of a great number of Serbian medieval churches and monasteries (several are on the UNESCO world heritage list) including the seat of the Patriarch in Peć. Throughout Ottoman times and up to the present day, Serbia's cultural elites constructed the nation's identity around the "Kosovo myth": the indivisibility of Kosovo and "Serbian-hood". But there was also always a "blind spot" in the Serbian perception of Kosovo: the presence of Kosovo Albanians and their equally strong nationalist claims to the territory.

Since 1990, amid the turmoil of ethnic conflicts and the wars in former Yugoslavia and confronted with severe repression by the Serbian state, perhaps as many as 350-400 thousand Albanians left Kosovo to look for jobs in Europe and the USA. Those who stayed boycotted everything that was Serbian – including elections - and built up their own rudimentary educational and health care institutions. Throughout this period, the economic life of Kosovo's Albanians relied heavily on the grey economy and money transfers by migrant workers.

Serbian authorities accepted the existence of the parallel Albanian state. This situation lasted until 1998. Three years after the end of the war in Bosnia and Herzegovina, it became clear to many Albanians that non-violent opposition to the Serbian state, as advocated by their most prominent leader Ibrahim Rugova and his followers, was not leading to independence. As a result, the influence of the underground Kosovo Liberation Army (KLA) and other extremist groups increased.

2. 2. Violent conflict

Since 1997, political violence in Kosovo increased significantly. The influx of small weapons into Kosovo following violent social unrest in Albania combined with a complete break-down of law and order helped the emergence of the KLA, a secret guerrilla force that followed a strategy of attacks on police stations and assassinations of Serbian officials, police officers and Albanian collaborators with the Serbian regime. The Serbian authorities reacted with police raids and political trials. But apparently, the KLA managed to bring some "liberated territories" under their control, such as the Drenica region. When, in February 1998, the Serbian security forces prepared a military offensive against the KLA aiming at their complete extermination, the conflict escalated into a major war.

As a result, huge numbers of Albanian civilians in Kosovo were displaced causing international concerns that a humanitarian catastrophe was looming. The USA led the Western intervention, first politically by threatening Serbia with air strikes because of what the West regarded as Belgrade's random and disproportionate use of violence against the insurgency. On the 12th of October 1998, after threats of NATO air strikes, an agreement was signed by the US diplomat Richard Holbrooke and Serbia's strongman Milošević. Belgrade agreed to withdraw most of its special police and army units that were sent to Kosovo and accepted OSCE monitors. Yet, KLA groups soon re-entered the areas vacated by the Serbian forces. Thus another outbreak of fighting became imminent. By this time, the UNHCR estimated that there were about 200,000 refugees.

On the 6th of February 1999, a conference that brought together Serb and Albanian delegates as well as representatives from the International Contact Group on Kosovo (France, Italy, UK, Germany, USA and Russia), started in Rambouillet, close to Paris. It failed to produce an agreement between the Albanians, who were demanding independence, and Serbia's government that was prepared to accept only limited autonomy for the province. A humanitarian disaster appeared imminent as clashes between the insurgents and Serbian forces were about to start again. Led by the USA, the West decided to start air attacks on Serbia without UN Security Council approval. In the following weeks, the greater part of the Albanian population of Kosovo was evicted or fled the province.

On 24 March 1999, NATO started the air campaign against the Federal Republic of Yugoslavia with the aim of forcing the Serbian side to accept the Rambouillet agreement and preventing an imminent humanitarian catastrophe. The general expectation was that it would take only a few days to make the Belgrade government step back. Instead, the military operation continued for 11 weeks before the war came to an end. Serbian military and para-military forces reacted with extreme violence against KLA fighters and the civilian population. Altogether, more than 800,000 people were displaced and thousands killed.

After three months of bombing, Milošević agreed to a peace plan by the G-8, the group of leading Western industrial states and Russia. UN Security Council resolution 1244 of the 10th of June 1999 established the United Nations Mission in Kosovo (UNMIK). Resolution 1244 reaffirms the Federal Republic of Yugoslavia's territorial integrity and provides for "substantial autonomy" for Kosovo, yet it also calls for observance of the stipulations of the Rambouillet agreement (though not accepted by Serbia). In essence, the resolution put Kosovo under a UN protectorate. The province was fully removed from Serbian rule.

2. 3. Negotiations over the future of Kosovo

In November 2005, then UN Secretary General Kofi Annan appointed Martti Ahtisaari as Special Envoy for the future status of Kosovo process. Before this, a UN commissioned evaluation of the situation on the ground delivered a bleak picture of life in Kosovo and warned of the potential for renewed mass violence, such as occurred in March 2004, if the deadlock over the future status continued. Simultaneously the Contact Group countries released a set of "Guiding Principles" for the resolution of Kosovo's status.

These principles notably included the requirement that there is no return to the situation prior to 1999, that there is no change in Kosovo's borders (i.e., no partition of Kosovo) and no union of Kosovo with any neighbouring state. The same statement includes a call for all parties to refrain from unilateral steps and to reject any form of violence. The Contact Group affirmed that the final decision on the status of Kosovo should be endorsed by the UN Security Council.

The talks began in February 2006. While progress was made on technical matters, both parties remained diametrically opposed on the question of status itself. On the 3rd of April 2007, Ahtisaari presented his final proposals for Kosovo to the UN Security

Council. In a separate letter he recommended that Kosovo should become independent after a period of international supervision. The Ahtisaari package was endorsed by the European Union who also expressed the readiness of the EU to play a “driving role” in Kosovo after its new status was resolved. However, Russia, one of five permanent members holding a veto right in the Security Council, had stated that it would not support any resolution which is not acceptable to both Belgrade and Kosovo Albanians. Although in a much more subdued form than Russia, China also rejected the notion of an imposed solution for Kosovo against Belgrade’s will. At the same time, the USA declared their support for the Kosovo’s independence. In June, President George Bush was enthusiastically received in Tirana where he reiterated US support for Kosovo’s secession from Serbia.

After many weeks of diplomatic discussions at the UN, the G-8 summit in Germany and other international platforms, the United States and the EU, following a German proposal, decided in July 2007 to launch another attempt to find a negotiated solution for the future status of Kosovo. It had become evident that Russia would not give ground on this issue which at the same time proved to be divisive for the EU. A number of EU countries expressed objections to the notion that a solution based on Kosovo’s independence was actually going to bring stability to this part of southeast Europe. Some EU member states themselves suffer from ethno-territorial disputes. Evidently they recognised that the Kosovo issue might have implications for their own situation.

Since July 2007 a *Troika* consisting of representatives of the EU, the USA and Russia is in charge of the new attempt to find a negotiated solution. On the 27th of September, Serb and Albanian leaders met each other face-to-face together with the *Troika* in New York during the UN General Assembly Session. There was however little movement in the positions. New negotiations are scheduled for October in Brussels. The UN Secretary General has asked for a report by the 10th of December 2007 about the outcome of the negotiations. Albanian leaders have said they will declare the independence of Kosovo immediately after the end of the on-going negotiations if the outcome does not fulfil their expectations

Throughout the first half of 2007 Javier Solana reiterated on several occasions that the EU could start its future mission in Kosovo only on the basis of a new UN Security Council resolution invoking Article 7 of the UN Charter. The European Parliament has also endorsed this position⁽¹⁾. As time passed, it became clear that there is little common ground between Russia and the USA regarding a new UN resolution on Kosovo. In the autumn of 2007, Western diplomats started discussing alternative ways to enable an EU presence in the province even without the firm legal groundwork that was originally demanded by Brussels. On the 3rd of October 2007, Javier Solana told the European Parliament’s Foreign Affairs Committee that the legal basis of the EDSP mission is not yet exactly known and that this issue has to be discussed further with the UN Secretary General. Doubtless, a disputed legal framework for the future EU mission in Kosovo would impair its political legitimacy in the eyes of the conflict parties. It is also questionable whether all EU countries would be ready to endorse such a precarious basis for a future EU presence in Kosovo.

¹ See: Report on the future of Kosovo and the role of the EU (2006/2267(INI), (Lagendijk report) , p.5/7, Adopted by the European Parliament on 29 March 2007.

3. The vision of a future EU involvement in Kosovo

In June 1999, two years after its announced Regional Approach, the EU concretised its policy towards the Western Balkans. The launch of the Stabilisation and Association Process (SAP) was a milestone in EU-Western Balkans relations. Regarding Kosovo, however, it was in the same month of June 1999 that it became clear that the role of the EU in the settlement of the conflict remains limited. UNSCR 1244 and the following institutional setup in Kosovo clearly reflect this.

Despite EU efforts in different areas, the situation is basically unchanged. Nevertheless, the EU is clearly becoming increasingly active on this issue: regarding the Western Balkans in general – including the European Perspective for Kosovo – this dates from the Thessaloniki EU Council in 2003. Regarding the future role of the EU in Kosovo, the new start is reflected in a series of joint reports by Javier Solana, EU High Representative for the CFSP, and Olli Rehn, EU Commissioner for Enlargement, based on the February 2005 Mandate from the Council ⁽²⁾.

3.1. 2005: Basic principles – the first and second joint reports

The first joint report (Commission of the EU, 2005a) has fixed ‘the Council’s approach to the Status process [...] based on the following key guiding principles:

- Kosovo must not return to the situation before March 1999 and Belgrade and Priština should move towards Euro-Atlantic integration;
- Kosovo’s Status must be based on multi-ethnicity; the protection of minorities; the protection of cultural and religious heritage; and effective mechanisms for fighting organised crime and terrorism;
- The solution of Kosovo’s Status must strengthen regional security and stability;
- Accordingly, there must be no change in the current territory of Kosovo (i.e. no partition of Kosovo and no union of Kosovo with any country or part of any country after the resolution of Kosovo’s status);
- Any solution must be fully compatible with European values and standards and contribute to realising the European Perspective of Kosovo and of the region;
- Kosovo will continue to need international civilian and military presences.’

Regarding the EU’s role in the post-status Kosovo, the report emphasised the need for 1. the continuation of the SAP, 2. further strengthening and streamlining of the EU’s presence, and 3. EU participation (but not exclusively EU action) in the future international civilian presence. The report identified the protection of minorities and the rule of law as core issues; the military presence was also considered important, however, it was thought it should continue to be conducted by NATO.

² Due to confidentiality, the full reports are available neither to the public, nor to the authors of the present briefing. For this reason, we rely on summaries of these reports.

The second joint report (Commission of the EU, 2005b) confirmed most of the points listed above. In line with the first joint report, it emphasised the need for a continued international (and not only EU) presence. It explicitly linked the EU's responsibilities in a post-status Kosovo with the outcome of the status negotiations and urged contingency planning for a possible European Security and Defence Policy (ESDP) mission on police and rule of law.

Regarding the European Perspective on Kosovo, the report considered the new European Partnership as a benchmark document and urged the use of all available instruments under the SAP. It also explicitly stated that 'it is to be expected that substantive financing will be required to ensure the viability and sustainability of the status settlement'. This is one reason why Kosovo's access to international financial institutions is of high importance.

3.2. 2006: Defining the future EU contribution – the third joint report

The third joint report (Commission of the EU, 2006) stated that it is crucial 'to ensure that the outcome of the status process will respect the European perspective of Kosovo and provide the conditions for a functioning and viable Kosovo fully integrated in the region'.

With respect to EU engagement in the post-status Kosovo, this joint report can be considered a milestone, as it constituted the starting point for the establishment of the EU mission in Kosovo. The report argues that after the phasing out of the UNMIK, Kosovo's own institutions must be able to manage affairs. The main role of future international engagement should be to support and monitor the main regulations of the status settlement (the implementation of the status settlement, the rule of law, economic and fiscal issues). In order to ensure the implementation of the status settlement, the limited intervention powers of an international presence are required.

For the long-term political, economic and social viability of the post-status Kosovo, the proper functioning of its institutions is crucial. Among the efforts of the international community, the EU, notably the European Commission will assume a leading role in institution building assistance.

According to the joint report, 'the EU intends to become the driving force within the future international presence'. The planned future EU involvement has three main pillars:

- The international civilian presence will be assured by the International Civilian Office (ICO). The Head of the ICO, an International Civilian Representative (ICR) will be an EU citizen; s/he will wear the second hat of EU Special Representative (EUSR). The ICO/EUSR preparatory team has been working since 2006.
- An EU Planning Team (EUPPT) has been working since 2006 in Priština with the purpose of planning a future ESDP mission. The future mission will focus on justice and the police, while financial assistance under the Pre-Accession Instrument (IPA) will focus on institutional capacity building.

- EU support for the progress of Kosovo will remain under the framework of the SAP. The functions of the actual EC Liaison Office (ECLO) and of the European Agency for Reconstruction (EAR) will be absorbed by a new office to be established by the European Commission in Priština.

Concerning Kosovo's EU perspective after the status settlement, the joint report states that 'the common objective of the EU and Kosovo is to ensure that Kosovo becomes a reliable partner, progressing towards integration with the EU together with the rest of the region. This will reinforce Kosovo's political and economic viability'.

3.3. 2007: details regarding the settlement proposal – the fourth joint report

The fourth joint report (Commission of the EU, 2007) confirms the plans laid down in the previous joint report, with regard to the Ahtisaari Status Settlement Proposal. Regarding the ICO, the report underlines that it will 'include and be supported by other partners, including the United States'. The report specifies the tasks of the future ESDP mission as follows:

'The ESDP Rule-of-Law mission will support the implementation of the Kosovo status settlement and assist Kosovo judicial authorities and law-enforcement agencies in their progress towards sustainability and accountability. These tasks will be carried out in full co-operation and coherence with the Commission. In accordance with the Status settlement proposal, the UN Security Council is expected to authorise the EU to establish a Rule of Law mission to support the implementation of the settlement and promote the development of the police and justice sectors in Kosovo and to decide that the mission will have executive powers in the judiciary sector (prosecution of major and organised crime, property rights, correctional services), in the police (organised crime, war crimes, inter-ethnic crimes, financial investigations, anti-corruption, border control, crowd and riot control) and in security-related and customs-compliance issues). Member states have expressed agreement with this mandate.'

Further on, the report confirms earlier statements about Kosovo's European Perspective, underlying the importance of conditionality. Special attention is dedicated to the specific financial needs of the post-status Kosovo, assuming that the EU (*inter alia*) will contribute to the financing of these needs. The clear division of responsibilities between the ICO, ESDP and the Commission, as well as their cooperation is also stressed.

As a result of the developments of the last two years (and despite sometimes diverging views between member states), a vision of the future EU involvement in Kosovo has been created. Other documents (such as the Lagendijk report to the European Parliament in March 2007) also support this general vision.

4. The EU's record in Kosovo since 1999 and the main challenges for the future

After the end of NATO's bombardment of Serbia and the establishment of the UN administration in Kosovo in 1999, the EU became a key actor in the governance of the province. The EU is simultaneously involved in reconstruction and development efforts, economic and financial administration, institution-building and the preparations of the entity to join the EU.

For this purpose, the European Commission will have spent 1.8 billion Euros by mid-2007, making it the single largest donor providing assistance to Kosovo. At the same time, EU member states contribute the bulk of the resources to the UN administration, the NATO-led KFOR peace keeping troops and the OSCE mission in Kosovo. Numerous non-governmental organisations from the EU countries – frequently enjoying funding from government sources - are active in a variety of areas in Kosovo.

4.1. The fabric of the EU presence in Kosovo

From February 2000 until 2007, the EAR has managed the main EU reconstruction and development programmes in Kosovo. The main support instrument was the Community Assistance for Reconstruction, Development and Stabilisation (CARDS) Programme. Initially, the focus was on repairing houses, infrastructure and public utilities destroyed or damaged during the war in 1999. In the meantime, the scope of assistance has widened to business development, agriculture, the improvement of healthcare services, good governance and institution building as well as the advancement of the economy and the strengthening of civil society. In the beginning of 2007, the EU established the IPA, which replaced all previous support programmes for the Western Balkans and Turkey. The EAR's task of managing the assistance programmes will gradually be taken over by the EC delegations in the Western Balkans, including the representation in Priština. Between 2008 and 2010 Kosovo should receive 261 Million Euros from the IPA budget. These funds are dedicated to technical assistance and institution building as well as regional cross-border cooperation. According to the EC, under the IPA no part of the Western Balkans will receive less than the average under CARDS - which amounted to an annual 23 euros per capita. Though a significant amount, this is much less than Bulgaria or Romania received in the last years before they joined the EU.

Reconstruction and development is also the core task of the so-called Fourth Pillar of the UN administration in Kosovo run by the EU (³). The agenda of this sector of the UNMIK is vast, including macroeconomic reform and policy, regulating and supervising the Central Bank, establishing and enforcing the fiscal and taxation system and the privatisation of enterprises. The other three UNMIK pillars for which the EU is not bearing direct responsibility have numerous staff members coming from

³ The others are: Pillar I (police and justice), Pillar II (civil administration) [both under direct control of the UN and as a rule supervised by a US official] and Pillar III (democratisation and institution building, under the leadership of the OSCE).

EU countries. Almost one out of every ten euros in Kosovo's GDP is spent on salaries, goods and services provided by the UNMIK⁴).

As the EU's first action in the province after the end of the armed conflict, the European Union Monitoring Mission (EUMM) was established in Priština in 2000. Its objective is to inform the EU services in Brussels on political and security developments in Kosovo, including inter-ethnic relations and the return of refugees. In the aftermath of the Albanian mass riots in March 2004, the High Representative of the Common Foreign and Security Policy (HR CFSP), Javier Solana, appointed a Personal Representative in Kosovo and a new CFSP office was opened in Priština. The task of the European Commission Liaison Office to Kosovo is to maintain close contacts with UNMIK and the Kosovo government (www.delprn.ec.europa.eu). The office is in charge of supporting Kosovo's approximation to the EU within the framework of the Stabilisation and Association Process (SAP) that the EC has set up for the Western Balkans. On the one hand, this is done through the SAP tracking mechanism (STM) that consists of periodic meetings between the EC, UNMIK and the Kosovo government. This is the place where progress in the approximation is jointly assessed. The last meeting of this kind was in July 2006. On the other hand, the EU also evaluates the state of affairs through the SAP Annual Progress Report. In August 2006, UNMIK and the government in Priština adopted Kosovo's Action Plan for the Implementation of the European Partnership. A contractual relationship between the EU and Kosovo can be established once the future status of the province has been determined.

Other EU assistance instruments for Kosovo include the Customs and Fiscal Assistance Office (CAFAO), the TEMPUS Programme (the Trans-European mobility scheme for university studies), the Technical Assistance Information Exchange Instrument (TAIEX) and the various so-called twinning programmes⁵.

4.2. The EU's achievements and failures in Kosovo

The EU's record in Kosovo since 1999 cannot be evaluated separately from the work of the international administration as a whole. International efforts to assist the victims of violence, rebuild destroyed homes and infrastructure and to develop institutions and administrative capacity in Kosovo have evidently produced results, especially for the majority ethnic community. Yet, UNMIK plainly failed to achieve its basic self-declared goals: the restoration and strengthening of Kosovo's multi-ethnic character and the advancement of economic and socio-political development for all communities toward democracy and the rule of law. Furthermore, in spite of the presence of almost 17,000 KFOR troops, the security situation in the province remains precarious.

Mass poverty and mass unemployment (especially among the young generation), a widespread grey economy and rampant corruption and organised crime are undeniably basic characteristics of Kosovo's socio-economic situation. Every year,

⁴ UNMIK, *UNMIK's Impact on the Kosovo economy: Spending Effects 1999-2006 and Potential Effects on Downsizing*, Priština, July 2006, p.74f.

⁵ Twinning consists of sending civil servants from an old EU member state for a period up to two years to work in the administration of the candidate country and help implement the "acquis communautaire" (the body of EU laws and rules).

between 25,000 and 35,000 young people enter the labour market with little chances of finding a regular job. The lack of long-term economic opportunities produces dependence on extended family structures, including clans, for material support.

External intelligence reports point out that “multifunctional persons” in Kosovo are a common occurrence: individuals who are at the same time clan leaders in their ethnic communities, chiefs of serious crime groups and political leaders, even public officials. Although their true background is known to the international administration, the international authorities have seldom prosecuted these individuals. The apparent motive: to avoid upsetting the precarious relationship of parts of the population under the influence of these “multifunctional persons”.

The political and cultural separation between Albanians and Serbs in Kosovo is pervasive. According to data provided by UNMIK, only some 16,000 Serbs, Roma and other non-Albanians have returned to the province since 1999. The OSCE reported in July 2007 that up to that point in time thousands of people – almost all of them members of Kosovo’s minority communities - continued to live in “unacceptable conditions of displacement” and that many of them had not seen any resolution of the violations of their housing and property rights. More than 10,000 residential properties belonging to these persons remain destroyed. In addition, over 10,000 unresolved property related cases are still pending in the courts. A growing number of violent incidents result from property disputes. Surveys report more than 400,000 illegal guns in Kosovo. Even a very benevolent evaluation of the international administration in Kosovo since 1999 must at least come to sceptical results.

In April 2006, the European Union started preparations to launch its greatest peace operation in the history of the EU in Kosovo. The prerequisite: a status settlement and a clear mandate from the Security Council ⁽⁶⁾. The plans relate to three components of future EU activities in Kosovo: the ICO (www.ico-kos.org), an EU crisis management operation on the rule of law under the ESDP (www.eupt-kosovo.eu), as well as an enhanced EC presence. The ICO would have 70 international staff, the ESDP mission approximately 1,800 international police, judges, prosecutors and custom officials and the EC office around 80 staff members. The ICO would be lead by an ICR who, at the same time, would be the EU Special Representative .

The ICR would enjoy sweeping executive powers such as the ability to annul decisions made and laws passed by the government or by assemblies and to be able to remove democratically elected political representatives whom s/he judge to be acting in a manner intended to prevent the implementation of the settlement. However, the UNMIK already enjoyed such prerogatives. In spite the overwhelming powers the international administration possessed from the first day, the basic precondition for democracy – the rule of law – has not been enforced in Kosovo. The ESDP mission is geared to concentrating exactly on this crucial weakness. Yet it is difficult to detect what the decisive difference between the past and future efforts would be. As the EU has inherently been a part of the UNMIK since 1999, there is little reason to expect a

⁶ The ‘UNMIK remains fully in charge until UNSCR 1244 is replaced by another UNSCR, which should provide a clear mandate for the future international presence. A viable settlement requires a UN Security Council Resolution’, From: Summary of remarks by Javier SOLANA, EU High Representative for Common Foreign and Security Policy at the informal meeting of EU defence ministers Wiesbaden, Germany, 1 March 2007, European Commission, S078/07.

sudden improvement in Kosovo's governance should a future status agreement foresee an EU-led mission that would replace the UNMIK.

4. 3. The challenges

Thus, the EU will be confronted with several immense challenges in Kosovo:

- Kosovo's Albanian majority population and its political elite see the US as their true ally in the quest for secession from Serbia. Increasingly, some EU countries are viewed by the Kosovo Albanians as "spoilers" preventing the fast achievement of independence. Thus it will be difficult to convince the population to accept a future EU-led international authority as the supreme ruler in Kosovo. This might even become impossible if the economic situation continues to deteriorate.
- The EU has been planning for a demanding and complex rule-of-law mission. It remains to be seen whether member states will indeed be able to provide for the personnel needed.
- A clamp-down of the EU rule-of-law mission on corruption and organised crime in Kosovo will necessarily have to concentrate on the elimination of "multifunctional persons" from public life. This could provoke violent responses directed at EU personnel.
- Without the legal empowerment that would result from a new UN Security Council resolution, both the legal basis and the political legitimacy of the EU presence in Kosovo will remain contested. On which grounds would "enforcement rights" be granted? This will have negative implications for the EU's credibility in Kosovo and the region – as well as beyond.
- An EU presence in Kosovo without the strong legal footing provided a UN mandate in combination with a unilateral declaration of independence by the Kosovo Albanian leaders would disrupt the EU's capability to foster the further democratic transformation of Serbia. It can be assumed that the current overwhelming support in Serbia for joining the EU would disappear and that critical segments of the political class would look for alternatives to EU membership – such as forging an alliance with Russia.
- Similarly, an EU presence in Kosovo that is not mandated by the UN and that leaves the impression of favouring the Albanian side, would provoke negative reactions by the Serb ethnic communities in Bosnia and Herzegovina, Croatia and Montenegro. This would be detrimental to regional stability.
- The EU presence is intended to consist of several components (ICO, ESDP mission, EC office,) that will have to interface with other international institutions on the ground such as NATO and the OSCE. There is no such thing as a unified approach by the EU to Kosovo; instead, the configuration of the future EU presence in Kosovo is fragmented. Further, the relationship between the ICR and the ESDP mission still needs to be defined. As it stands now, the ICR would provide "political guidance" only. Is it realistic to assume that it will, in this shape, ensure coherence in the activities of the various EU actors on the ground?

- The experience in Bosnia-Herzegovina indicates that it could prove very difficult, perhaps even impossible, to implement the Ahtisaari-plan. This design appears as excessively complex in many regards (for instance the implementation of minority rights, provisions for self-government, protection of cultural sites). Far-reaching enforcement powers by the ICR, as required by the Ahtisaari-proposal would lead to a Bosnia-like situation, in which political stalemate, lack of ownership and slow implementation of standards would hamper EU approximation. The current deadlock in Bosnia shows the fragility of such attempts to regulate ethnic-conflicts by elaborate schemes of power-sharing under external supervision.
- Bosnia's example should also serve as a warning regarding the complicated division of competences between the external supervisory bodies and the local parliament and government.
- Kosovo's foggy prospects for joining the EU will limit EU leverage for imposing conditionality as the key instrument for enforcing compliance by the local power elites.
- Similarly, uncertainty over the EU commitment to commence a new enlargement round means that there is no clear EU prospect for Serbia, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia and Albania and that Croatia may still wait for a while before this country can become a member. This continues to diminish the EU's ability to stabilise and transform the entire region.

5. Recommendations for an EU future presence in Kosovo

Whatever the outcome of the Kosovo status process, this part of Europe will remain dependent on substantial external political guidance and on the provision of military security and financial aid for a long time. The EU intends, as stated by Javier Solana and Olli Rehn, to become the driving force within the future international presence. This will entail substantial political and financial investments on the part of the EU.

In all probability, the financial commitment to Kosovo must be kept on a high or even higher level than up to now. Beyond quantitative changes, since the USA, Russia and the international community as a whole consider the EU as the key player in the region, a further shift toward the EU as the origin of resource transfers can be expected.

Brussels has to remain attentive to its role as the main stability provider for the region. However, the efficient and timely utilisation of the EU's political capital and financial funds should be based on fewer bureaucratic rules, less administration and greater manoeuvring room for the would-be beneficiary states to influence decisions on priority projects. In addition, the importance of cohesion policy should be more emphasised; this could increase motivation for adaptation of local and regional administrations, which in most cases are not adequately developed to be able to make use of the structural funds.

The current practice of rewarding progress made in the adjustment agenda and with increases in the volume of financial resources allocated has to be reconsidered. According to the current logic, countries in the Western Balkans that make more progress will receive higher amounts of money, while countries lagging behind will be punished by receiving much less. As a result, a vicious circle is created. Therefore, financial support to those Western Balkan countries (and entities) that are at or near the „bottom line of the institutional pyramid” should be substantially increased.

Adjustment to EU requirements is ultimately a process of member-state building. Since building efficient and democratic governance is generally a process of several decades and not without domestic and external (regional) tensions, and Western Balkan political dynamism is much quicker, Brussels hardly has any alternative to supporting membership-building as the instrument to fostering regional stability. This requires a much clearer road map for EU membership, not only for Kosovo but for the entire Western Balkan region.

Our recommendations regarding the future EU role in Kosovo are as follows:

- The EU’s presence in Kosovo after the status settlement should be assertive both “inwards” (towards the political actors in Kosovo) and “outwards” (towards the regional and other international partners). If the status is not negotiated, but comes as a result of unilateral action, the need for a forceful EU presence is even more urging.
- The EU should continue to streamline the interaction between its various representatives and instruments in Kosovo in order to foster policy coherence and increase the efficiency of the allocated resources.
- The EU’s persistently expressed ambition to take on a leading role in Kosovo should, in the future, also be reflected in an enlarged military role. The EU should also start preparations for taking over the responsibility for maintaining security in the province in ways similar to those of the European Union Forces in Bosnia and Herzegovina (EUFOR).
- The EU’s future involvement in Kosovo has an impact on the Western Balkans as a whole (and even on the entire South-East European region). Stability and the creation of a foundation for future understanding and co-operation are of key importance. The EU should offer Kosovo and the whole region unambiguous and credible membership prospects linked to transparent conditionality.
- All EU involvement should serve the interest of creating a politically, socially and economically viable Kosovo embedded in a prosperous region. Efforts should be concentrated on actions that have a real chance of having near-term effects (because of the urgent need for development), and at the same time long-run success. A dedicated contribution of the EU to the development of human capital *and* of local businesses through an enhanced IPA is of key importance.

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