

The role of International Organizations in the statehood of Kosovo

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Abstract

Kosovo's case in the international relations and in the international Law is considered to be a "Sui Generis". Post war, Kosovo was International Protectorate under complete International Administration for almost a decade (June 1999 until February 2008), this administration was based on a UN- Security Council Resolution 1244. Kosovo has declared independence on February 2008.

Resolution 1244 of UNSC is still in place, UNMIK still is operating in Kosovo even though on a very symbolic bases. After Kosovo declared Independence, new international mission has been launched in Kosovo from another International Organization, from European Union (EU), with different role and mandate, with some of the responsibilities inherited from UNMIK but under a very different political environment, now within an Independent Sovereign State internationally recognized from over 110 countries worldwide and member of over 200 international organizations. My main focus in this research will be the role of UNMIK as a United Nation Organization Mission in Kosovo and the role of EULEX as a European Union Rule of Law Mission in Kosovo as part of the European Security and Defense Policy- ESDP. Therefore this paper will study the role of this two different international missions in Kosovo that they have played in the birth of a new state. This two International mission are coming from two different international Organizations, one mission coming from global international organization such as UN and the other one from a Regional International Organization, European Union and the role that this two international Organizations have played in the statehood of Kosovo is irreplaceable.

Keywords: Kosovo, UNMIK, EULEX, UNSC- 1244, SRSG, JIAS, PISG, the Comprehensive Proposal for the Kosovo Status Settlement.

Introduction

After failure of the three UN-SC resolutions; 1160, 1199, 1203, there were other diplomatic efforts to settle the increasing conflict, this efforts were made with the mediation of the so called "Contact Group" in Rambouillet in two rounds of negotiations in February and March of 1999. First round of the talks were from 06 to 23 February 1999 which failed due to lack of consent by the FRY/Serb delegation, there was another round of the talks which took place from 15 to 18 March 1998 which also ended with the same result, Kosovo delegation signed the agreement and the FRY/Serbian side refused it.

After refusal of the agreement by the FRY/Serbia delegation, the NATO air campaign started on 24 March 1999 and ended on 8 June 1999, when the governments of the FRY and the Republic of Serbia accepted a peace plan and signed a Military Technical Agreement with NATO/ KFOR also known as Kumanovo Agreement (Military Technical Agreement, 1999).

The peace plan was drafted on the principles of the Rambouillet Agreements – which

later on were adopted by the Security Council in Resolution 1244 (S/RES/1244, 1999.) Former NATO spokesman Jamie Shea at that time will summarize these alliance goals in one brief sentence: Serbs out, peacekeepers inland and refugees back (Boudouin, 2019, p.211).

The NATO campaign ended on June 10, 1999, after the signing of the Kumanovo Agreement and the adoption of UN Security Council Resolution 1244. In the following pages I will bring more light on the role that international organizations have played in Kosovo, the particular focus will be about the role of UNMIK and EULEX.

Building a society

United Nations Administration in Kosovo (UNMIK) 1999 – 2008

According to Caplan: unique though the international administration of war-torn territories is from a contemporary standpoint, these operations are not entirely without precedent. Throughout the twentieth century, there have been internationally administered territories of various kinds. (Caplan, 2005, p. 39).

In principle, the entire Albanian civilian population was forced to leave their homes and all their properties across the territory of Kosovo, becoming one of the largest humanitarian catastrophes in the end of the 20th century.

The humanitarian situation after the end of the war was dire. Out of a population of 1.7 million, 800,000 persons had taken refuge in neighboring countries and about 500,000 were internally displaced (S/1999/779, 1999, para. 8).

With the adoption of UN-SC 1244 , Kosovo was placed under the international civil administration, which was accompanied by the deployment of military defense structure known as KFOR, reaching a number of around 35 000 soldiers, and the UNMIK civilian structure comprising a staff of around 15 000 officials. UN Security Council Resolution 1244 will change the historical course of Kosovo and create a new political and historical momentum in the Western Balkans.

Than General Secretary of the United Nation Organization, Mr. Kofi Annan, had stated that "the task ahead of the international community is to help the people of Kosovo rebuild their lives and heal the wounds of war."

In the Resolution 1244 are two main components 1. The resolution authorizes NATO to deploy an International Security Presence known as: KFOR (S/1999/779, 1999, para. 5, 7. And annex 2, para.4) and 2. The Secretary-General of the UN to establish an International Civil Presence known as: UNMIK (S/1999/779, 1999, para 10).

Establishment of an interim administration for Kosovo has been decided by the Security Council of the United Nations in order to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.

Resolution 1244 gave rise to UNMIK, and called upon it to: perform basic civilian administrative functions, promote the establishment of substantial autonomy and self-government in Kosovo, facilitate a political process to determine Kosovo's future status, coordinate humanitarian and disaster relief of all international agencies, support the reconstruction of key infrastructure, maintain civil law and order, promote human rights and assure the safe and unimpeded return of all refugees and

displaced persons to their home in Kosovo (CASIN, 2003, p. 7).

In his first report to the UN-SC, the Secretary-General outlined the main objectives of this mission, which he stated that there were five objectives that UNMIK should achieve in Kosovo:

- *The demilitarization of Kosovo, a process led by NATO-KFOR, achieved by the withdrawal of Yugoslav military structures, then by the demobilization of the Kosovo Liberation Army (KLA) and its transformation into the Kosovo Protection Corps (KPC);*
- *Refugee return to Kosovo, led by UNCHR;*
- *Reconstruction of Kosovo, the EU-led process;*
- *Building a civil administration, UN-led process;*
- *Democratization of Kosovo society, including institution building and elections, the process was led by the OSCE (S/1999/779, 12 July 1999).*

All these various international organizations in the Kosovo case, lined up under the umbrella of UNMIK and with the common goal of implementing UN Security Council Resolution 1244.

With the installation of the United Nation Interim Administration, in June 1999, the first challenge of UNMIK was to establish itself as a single power in Kosovo and to replace the existing structures, such as parallel structures of Kosovo, a movement organized through parallel peaceful structures largely led by the Democratic League of Kosovo (LDK), from 1990 until 1999, a subject that at that time was more of a popular movement rather than traditional political party, the other player in the ground was the Provisional Government of Kosovo, government that was established after the end of the Kosovo war, mainly led by former KLA leaders and the other most difficult player the parallel structures of Serbia mainly in enclaves where the Serb population was the majority. In principle the UNMIK mission had to start building the entire institutions from the scratch.

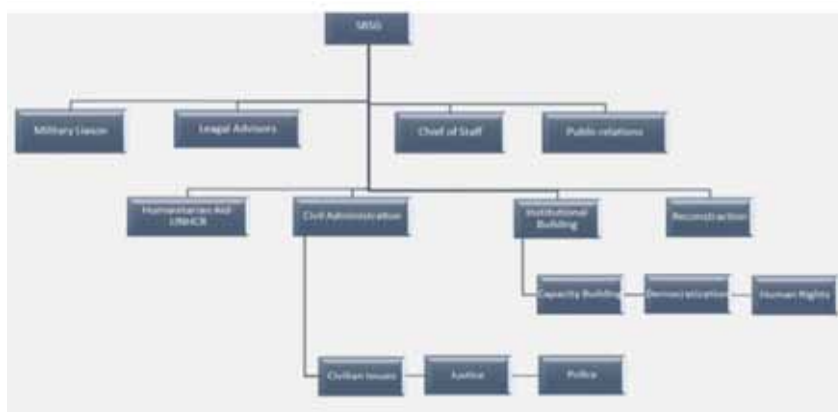


Figure 1 First UNMIK – Organizational chart

UNMIK was built in several phases, first phase which started July 1999 and ended January 2000, more or less was an emergency situation, this phase was excluding any

local player from any role in the decision making (see fig. 1.) , second phase started from January 2000 and ended by November 2001, in this phase was the establishment of the Kosovo Provisional Institutions (PISG) which was characterized by local participation in administrative decision-making, third phase started November 2001 and ended by 17 February 2008 which was known as the transition phase , when the transfer of the responsibilities from UNMIK authorities towards two directions, first direction was the transfer of authorities to the local institutions and the other directions was the transfer of competencies and authorities towards EULEX , the fourth phase or the current one after Kosovo Parliament declared Independence is just a presence without any direct role on internal issues of Kosovo, mainly as the reflection of geopolitics in the United Nations , particularly in Security Council.

UNMIK's authorities and powers implemented through the Special Representative of the Secretary-General (SRSG), which was the highest authority in Kosovo, were very wide, including all executive, judiciary and legislative. All UNMIK regulations, administrative directions and decisions had the power of the law, although the adoption of these regulations, guidelines and decisions has not gone through any process prior to their adoption as is the case with the adoption of laws in a free and democratic country.

In its first regulation, UNMIK asserted plenary powers: 'All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General' (Chesterman, 2004, p. 126.). By the end of the emergency phase and by the time Kosovo's independence was declared, UNMIK had already achieved a functional and organizational stability (see fig.2) , thus creating a sustainable organizational structure in response to meeting the administrative requirements for its mission and daily needs to administered territory - Kosovo.

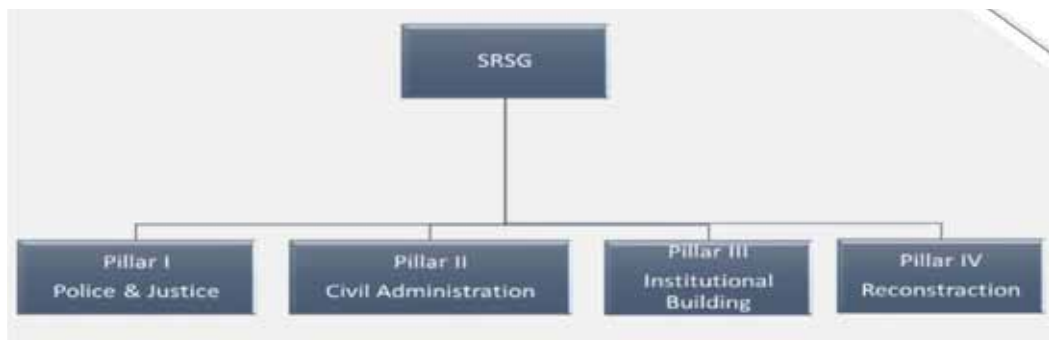


Figure 2 UNMIK – Organisational chart from January 2000-2008

At the beginning of 2000, UNMIK managed to integrate at large parallel structures into the so called Joint Interim Administration Structures (JIAS). JIAS consisted of mixed international / local advisory groups and administrative departments, chaired by international and local co-heads. However, JIAS operated under the full authority of the SRSG (UNMIK/REG/2000/1, sec.1 art.1, para. a).

With the adoption of the Constitutional Framework, dated May 15, 2001, the Provisional

Institutions of Self-Government (PISG) were established (UNMIK/REG/2001/9). These institutions include institutional structures, such as the Assembly of Kosovo, elected by the people of Kosovo, the Government and the Office of the President of Kosovo, while the former JIAS departments were transformed into ministries. Despite the creation of self-governing institutions and the transfer of certain but limited responsibilities, the SRSG was still the supreme authority in Kosovo. Laws, although prepared and approved by the Kosovo Assembly, could only come into force if approved by the SRSG. The same principles apply to international agreements. The powers reserved to the SRSG included the dissolution of the Assembly in the event of a serious violation of Resolution 1244 (1999), of the UN Security Council, the protection of minorities and many other issues of government, such as monetary policies, defense, public order, etc. (UNMIK/REG/2001/9, chapter 8).

As per 30 June 2015 which was the last review of the mission, UNMIK is composed of 388 total personnel including: 116 Civilian personnel, 229 local staff, 27 UN Volunteers ,16 total uniformed personnel including 8 military liaison officers and 8 police officers.

The uniformed police officers serve as liaison officers for Interpol as Kosovo is still not a member of Interpol yet.

Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections, (S/RES/1244, para.8, c.) ; Such a transfer process was also foreseen in the context of the document that preceded Kosovo's declaration of independence which was also integrated part of the Ahtisaari proposal for Kosovo status settlement (Report of the Special Envoy of the Secretary-General on Kosovo's future status, and his conclusion remarks).

Constitutional Framework for PISG created a new separation and sharing of power between the PISG and UNMIK (Regulation NO. 2001/9). However, as mentioned certain powers were 'reserved' and remained with the SRSG. These special powers in the economic sphere included the administration and regulation of all publicly and socially owned enterprises, monetary policy and the final authority to set the financial and policy parameters for the Kosovo Consolidated Budget and its final approval (Regulation No. 2001/9, chapter 12).

The whole role and responsibility of UNMIK ended in February 2008, where the institutions known as PISG built by the UNMIK mission itself , declared the independence of Kosovo, by which radically changing the role and mandate of the mission itself.

EULEX and the rule of law

Going through international negotiations for the final political status of Kosovo, in 2006 already EU began preparations for a new mission in Kosovo which would replace UNMIK and take over some of the UN responsibilities in Kosovo. Responsibilities that UNMIK did not hand over to Kosovo Institutions. It was clear by then that UNMIK should be reconfigured and adopt to the new situation, as mentioned previously in the text EU was only running Pillar IV within the UNMIK 4 pillar system. According

to the international plans, after the declaration of independence UNMIK was to be succeeded by an international mission undertaken by the EU, as detailed in the Ahtisaari proposal for status settlement. The European Union Planning Team Kosovo (EUPT), established in April 2006, assumed the task of making preparations for the next European mission which would later be known as EULEX (Council Joint Action 2006/304/CFSP).

The European Union hereby establishes a European Union Planning Team (EUPT Kosovo) regarding a possible EU crisis management operation in Kosovo.*

So from 2006 and especially from February 2008 and onwards the European Union was not any more responsible for Pillar IV of UNMIK, which was the basis for the functioning of this Regional Organization under UN-SC-R 1244, but would assume a number of UNMIK First Pillar (Police and Justice) responsibilities in particular in the field of law enforcement in justice and police or sad differently all those responsibilities which UNMIK had not transferred to the Kosovo authorities following the declaration of independence in 2008 would now be transferred to the European Union's rule of law mission known as EULEX.

EULEX is believed to be the EU's biggest ever civilian foreign mission and is intended to support Kosovan institutions in the area of the rule of law, and in particular in strengthening capacities in police, judiciary and the customs service .

We already mentioned that the mandate of EULEX as set out in the Joint Action of the EU Council, is almost identical with the provisions of the Ahtisaari Plan on the ESDP Rule of Law Mission. EULEX's task was to monitor, mentor and advise Kosovo institutions in all areas related to rule of law and to investigate, prosecute, adjudicate and enforce certain categories of serious crimes (Council Joint Action 2008/124/CFSP, Art. 3 (a) and (d)).

Referring to the mandate of the EULEX they also tended to have a political role in the relations between Belgrade and Pristina, by assisting the implementation of the remaining dialogue agreements in the sphere of rule of law. We have to note that also the UNMIK Mission still have the mandate to facilitate the dialog between Kosovo and Serbia as one of their priorities but in reality this is not seen at all.

In the current mandate of EULEX Kosovo the main core of this mission is to play the Monitoring Mentoring and Advising role as requested in the letter sent from the President of Kosovo to the HR-EU, FASP on June 2018.

According to the new organizational structure EULEX's scope of work is now limited to two key pillars: monitoring and operations, Monitoring Pillar works on three main objectives: 1) monitoring selected cases and trials (this is a pre-condition for the progress of Kosovo on Visa liberalization and EU Integrations processes, 2) monitoring, mentoring and advising the correctional service and 3) providing support for the implementation of EU-facilitated dialogue agreements between Kosovo and Serbia.

In the current mandate the mission has some executive authority, it maintains a witness protection program and fosters contacts with the police authorities in the region and beyond, including EUROPOL and INTERPOL as Kosovo is still not member of this International Police Organizations.

Most likely because of the Covid-19 situation, EULEX will be extended for another year with the current mandate.

Conclusions

Since the ending of the emergency phase and the introduction of UNMIK's 4-pillar system, this mission has consistently made efforts to strengthen control, extend governance and build local capacity from scratch, which was not similar practice to other states emerging from the breakup of Yugoslavia, all of which had a continuation of institutions, whereas in Kosovo every institution had to be made from the beginning because of pre- and post-war political complications.

Despite the current unnoticed role in Kosovo's political and institutional life, UNMIK continues its presence in the form and manner outlined above, UNMIK also maintains regular reporting to the UN Security Council on the work and activities of the mission in Kosovo.

As we have mentioned above, one of the stages of implementation of UNMIK's mission which was also meant to be the last phase of this mission was the process of transition or transfer of competencies from UNMIK to the institutions that would be the outcome after defining Kosovo final political status. UNMIK is considered that has fulfilled the mission after Kosovo declared Independence and the transfer of authorities has been in line with final phase foreseen by resolution 1244.

With Declaration of Independence on 17 February 2008, Kosovo authorities have taken legal control and responsibility for direct civil administration previously performed by UNMIK, although Resolution 1244 remains in force. The SRSG is no longer the final authority in Kosovo and has no longer the power to promulgate legislation or even to ensure that such legislation is in line with resolution 1244.

We have to note that after the independence of Kosovo, UNMIK has failed to implement the outcome of the Ahtisaari plan due to differences among the 5 permanent members of security council of UN.

EULEX has mainly been focused on providing support to Kosovo's institutions at the strategic level, but was also directly involved in important and sensitive cases, especially those related to organized crime, offences that involved high profile officials, and also for the war crimes.

EULEX judges and prosecutors have been embedded in Kosovo institutions and serve in accordance with Kosovo law. This law regulates the integration and jurisdiction of the EULEX judges and prosecutors in the judicial and prosecutorial system of the Republic of Kosovo (See Law; 03/L-053, art. 1).

The mandate of this mission has been marked by changes over the years, the current EULEX mission will continue until 14/06/2020 and there will likely be a continuation of this mission again with current mandate for at least another year. After consolidating the authority of the international mission in Kosovo and completing the elections and the building of the Provisional Institutions of Self-Government and the transfer of responsibilities to these institutions from UNMIK, UN-SCR 1244/99 foresees the creation of a political process that would lead rightly resolving Kosovo's final political status. "Creating a political process that will lead to the determination of the future status of Kosovo, taking into account the Rambouillet Agreement (S / 1999/648)" "(e) Facilitating a political process designed to determine Kosovo's future status, taking

into account the Rambouillet accords (S/1999/648)" (S/RES/1244 (1999), p.4). With regard to Yugoslavia/ Serbia and the connection to SC-R;1244, the situation only gets further complicated , Yugoslavia as a Federal Republic, since enter in force of the resolution, has changed both the name and form of organization from Socialist Federal Republic of Yugoslavia to the Serbia and Montenegro Union and later this union did not last long and Montenegro declared its independence in 2006, and thus the resolution of the SC no longer had the meaning and function for which it was adopted in this UN-SC.

Recommendations

United Nation Mission in Kosovo, respectively SC-Resolution 1244 is "out of date " and therefore should be replaced with the new one , recognizing the new situation that has been created in Kosovo as there are tremendous contradictions between the UN-SC Resolution 1244/1999 and present political situation in Kosovo after the Independence and this needs to be addressed .

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