

Kosovo today (January 2009) – perspectives for stability

Presentation at the University of Oxford, St. Antony's College

Check against delivery

Ladies and gentlemen,

thank you for the invitation to speak to you today. It is a pleasure and an honor to speak to such a distinguished and knowledgeable audience and to meet professors like Dr Othon Anasthakis, the director of South East European Studies, and students like Laura Blattner from the Oxford University European Affairs Society.

In the context of the successful deployment and “switch on” for the EU's Rule of law mission EULEX on 9 December 2008, Kosovo has come back into the picture, after being out of the news for some months.

Let me state at the outset that since the end of June 2008 I am not working as UN SRSG any more, so I am an Ex-SRSG, hence I cannot claim to speak for the UN. Likewise, and in spite of my current tenure as the German Ambassador in Stockholm, I do not claim to speak for the German Foreign Ministry on the Kosovo issue. In other words, I speak on my own personal behalf.

Kosovo declared independence on 17 February 2008 and was quickly recognized by the majority of the EU member states, the US and others. On 15 June, Kosovo's new constitution entered into force, which does not foresee a role for UNMIK, so in a way I was not the *last* SRSG in Kosovo, but there was broad agreement that I was the *last traditional* SRSG with broad authority. So I left Kosovo in June, at this natural break in time, making room for a new and considerably smaller UNMIK. I did not use the term “mission accomplished” then, though some did.

Since this is an academic presentation, I thought it would be worthwhile to dwell with diligence on what exactly happened during my tenure as SRSG from September 2006 until June 2008 in political and also legal terms, with a special emphasis on 2008.

From that we will hopefully be able to extrapolate and maybe even draw some conclusions, not only with regard to stability in Kosovo

and the region, but hopefully also with regard to the art – rather than the science - of peacekeeping.

According to SC Resolution 1244, which was the basis for my mandate, the SRSG controls “...the implementation of the international civil presence” in Kosovo. Key responsibilities were

- to administer Kosovo, including maintaining law and order, and at the same time to establish provisional institutions for self government (PISG) and transferring administrative responsibilities to them (*governance role*);
- to support peace-keeping and peace-building activities with all communities (*peace-keeping role*) and
- to facilitate the political status process (*status process role*).

This threefold mandate is quite unique when it comes to UN peacekeeping missions. Let me therefore make a few comments on the governance role of UNMIK and a few comments on the peace-keeping role, before I will turn to the status process role, my main subject.

Governance

While facilitation of the status process was a priority for the mission, I tried to make sure that the so called Standards for Kosovo implementation process with its goals and benchmarks for good governance and in particular for a multiethnic society remained active and dynamic. This was largely achieved as documented in the *quarterly reports to the SC*, although the “political class” and line ministries alike were at times distracted due to the status process. For practical purposes, the Standards implementation process was merged with the so called European Partnership Action Plan in 2007, thus avoiding a duplication of highly focused working groups while enhancing the majority community’s incentives to put real effort into Standards implementation.

I became increasingly convinced that with regard to Standards implementation *UNMIK had largely achieved what was achievable* under the circumstances, while further significant progress depended on a successful conclusion of the status process. This was especially true with regard to the main shortcoming, i.e. returns of Kosovo Serb

IDPs, where the bottom line seemed to be that especially Belgrade was not really interested in a “premature” success story, in spite of all efforts and some modest results.

On a different note, I argued with local and international stakeholders in summer 2007 that also the question of having local and central elections in Kosovo in November 2007 had to be placed in the Standards context. On the one hand, the moment was not really convenient with a view to the status process. On the other hand, the elections were required by law and there was a widely perceived lack of legitimacy at all levels of government, also due to the fact that local elections had already been postponed for a year. Postponing elections once again - and then until when? - would have sent the wrong signal that democracy can be suspended. In the end, the elections were held, deemed free and fair by the international observers, and succeeded in refreshing the legitimacy of Kosovo institutions.

Looking back over the past nine years and with my own personal experience in Kosovo, there can be no doubt that a double structure with an international administration on the one hand and local institutions taking over more and more competencies on the other hand is, by design, not conducive to optimal governance, especially when its duration is unknown, which translates into “no planning horizon”.

A particular point in question, regardless of its “by 1244 design” nature, is the accumulation of legislative, executive and judicial powers with the UNMIK SRSG, the lack of a balance of powers, which was often attacked in the media, including from a Human Rights perspective. With regard to the latter, we have established the Human Rights Advisory Panel which is designed to deal with grievances against UNMIK, and in this way provides an appeals mechanism. In potential future interim administration missions, it might be an idea to explicitly task different international organizations with different balance of power roles, even if there is a UN umbrella structure (which is advisable in view of the BiH experiences).

Peace keeping and -building; reaching out to all communities

When it comes to UNMIK's role in trying to avoid interethnic conflict and building the foundations for a multiethnic society in Kosovo, we had some success during my tenure.

Like my predecessors, I tried to reach out in particular to the Kosovo Serbs, trying to listen to their concerns, trying to reassure them, trying to familiarize them with the status process, explaining the Standards for Kosovo process and addressing, with constant operational involvement, shortcomings especially in the area of returns of IDPs. The latter contributed to a *moderate increase in IDP returns*.

It is important to realize that “the Kosovo Serbs” are by no means a homogenous community; on the contrary. The political spectrum ranges from moderates working in and with Kosovo institutions all the way to some real hard-liners (*in this context it should not be overlooked that Kosovo Serb representatives have, after many years of absence, once again joined the Assembly and the government after the 17 November 2007 elections*).

A great number of Kosovo Serbs is financially dependent on Belgrade, i.e. they are on Belgrade payrolls especially in the education and in the health sectors, or receive benefits.

When it comes to the famous “parallel structures”, I found it necessary, and helpful, to differentiate. Our policy was to tolerate parallel structures in the education and health sectors, to reject parallel structures in administration, i.e. Belgrade attempts to govern Kosovo more or less directly, and to strongly reject parallel security structures. (The latter two violated not only Resolution 1244 but also subsequent Belgrade-UNMIK agreements which framed Belgrade's limited acceptable interaction with Kosovo's Serb community.)

On a different note, and in a way almost regardless of the 17 February 2008 events, interethnic relations in Kosovo are not as bad as they are sometimes portrayed outside of Kosovo. This is, first and foremost, true for the relations between the majority Kosovo Albanians and the non-Serbian minorities. But even Kosovo Albanian – Kosovo Serb relations are reasonable in various parts of Kosovo, especially in “mixed municipalities”, and when it comes to doing business together. Even in Mitrovice/Mitrovica I was invited to regular North / South business luncheons.

Nevertheless interethnic relations in Kosovo need continued international community support and focus on political, infrastructure, economic development and civil society projects.

A systematic, long term approach to post-conflict peacebuilding and reconciliation, like the OSCE's work with its High Commissioners on Minorities, is also needed and deserves every support.

It should also be noted that peacekeeping and peacebuilding in Kosovo is not only about the Kosovo Serbs and other minorities, but also about the Kosovo Albanian 90% majority and its different segments. They had been deeply traumatized by the 1990s and became increasingly tired and frustrated with their "in limbo" status since UNMIK's arrival. Against this background, it was a major challenge to constantly call for patience and point to perspectives without going to the very substance of status, which was not UNMIK's mandate.

In this context it should be noted that there were no *interethnic* violence incidents after 17 February 2008 – and if the January 09 incidents in Mitrovice/Mitrovica qualify under this heading is questionable.

Status process

When I started my mandate as SRSG on 1 September 2006, the process to determine Kosovo's final political status under the auspices of the UN Special Envoy - and meanwhile 2008 Nobel Peace Prize laureate - Martti Ahtisaari was in full swing (*I am happy to hear that Martti Ahtisaari will also come to speak to you in just two weeks from now*). It was widely expected that before the end of that year the SE would submit his proposal to the SG, and by extension to the SC, where a resolution would endorse it, paving the way for UNMIK transitioning to a new EU-led international civil presence.

Prudent planning for this post-status future required the immediate creation of a mission-wide project called "Transition Planning and Implementation" (TPI) with an UNMIK-internal, an international and a local dimension including relevant steering groups and working groups. In a short time, TPI produced a very detailed *blueprint* on how exactly UNMIK would phase out and the new

international civilian presence would phase in during the 120-day period foreseen in the Ahtisaari plan. This blueprint is a living document. Since its inception it has been adapted to changing circumstances like the non-endorsement of the Ahtisaari plan by the SC. In this “mutatis mutandis” way it is still the basis for the current reconfiguration and downsizing of the mission which is now near completion.

Obviously TPI was mainly about the “technical side” of the status process role. The political side was an even bigger challenge when it became clear that the SE would not present his proposal until after the Serbian Parliamentary Elections in January 2007.

At that time, expectation management and in particular *calling for patience* was key, at least inside Kosovo. With regard to the International Community, the Contact Group and the UN, however, my key message at that time was a different one. It was “*please keep the momentum in the status process*”.

Expectation management was necessary not only with regard to a widely perceived loss of momentum. It was also necessary with regard to the emerging structure and content of the SE’s proposal with its two parts: the Comprehensive Proposal (CP) on decentralization, cultural heritage, political decision making etc with its minority protection provisions, which became public at the beginning of February 2007, and the Report with the actual status proposal on independence, which became public at the end of March 2007.

We as UNMIK engaged very actively in explaining the potential advantages of the CP by continuously reaching out to all of Kosovo’s communities.

In the majority Kosovo Albanian community, due to communication from the negotiators in the “Team of Unity” (President, President of the Assembly, PM, two opposition leaders), but more so due to an active media scene, its content became increasingly clear even before the SE presented it. It was met with scepticism or even hostility because of “all the concessions to Belgrade”. Anxieties peaked especially on and after 10 February 2007, when violent anti-UN and anti-PISG demonstrations in Pristina led to the death of two demonstrators who were victims of UNMIK-Police rubber bullet use.

In the Kosovo Serb community, and different from other minority communities who were represented in the institutions, there was a general lack of knowledge about the CP (“we do not hear from Belgrade’s negotiators”) and its unprecedented minority protection elements. As a rule, the Kosovo Serbs reacted positively to these elements once they learned about them.

The UN SG fully endorsed Ahtisaari's status proposal when it was presented in the SC at the beginning of April 2007 (“*a fair and balanced proposal*”). After the presentation, the SC decided to visit Kosovo to gather more information and did so swiftly, at the end of April 2007. Subsequently, with ever-increasing local anxieties, the SC tried to agree on a resolution for Kosovo. However, in July 2007, it became clear that this was not possible.

At that point, it became most evident how tired, frustrated and disappointed the vast majority of the people in Kosovo were with the status process (which in their view had started no later than 1999), their leaders and the international community including the UN. Those who had always argued that there would never be a solution were vindicated. Calls for a unilateral declaration of independence were louder than ever before and gained traction not only in the media but also in the “political class”.

This in turn raised anxieties in the Kosovo Serb community.

While I continued to reach out to all communities in Kosovo, trying to address anxieties, calling for restraint and patience and *strongly discouraging unilateral steps*, I also appealed to the international community to avoid the perception of a void, which was quickly spreading, and to *restore the momentum* in the status process (“the people need clarity on status” was one of my key messages).

Subsequently the so-called Troika process was initiated in August, with envoys from the EU, the US and Russia trying to convince the two parties on more time that a direct bilateral agreement was the most advantageous solution. The process terminated in December 2007 without an agreement between the parties. I did not belong to those who thought that this process had lacked any prospect for finding such agreement, in particular when it came to an “agreement to disagree” type, as was the case e.g. with West Germany and East Germany which, on the basis of principled West German non-recognition of East Germany, nevertheless both joined the UN and

had a structured relationship. In this spirit of realistic optimism, I did what I could to encourage the parties, especially the Team of Unity, to be in good faith and constructive. However, there were limits and an apparent lack of incentives on both sides, which was widely attributed in the case of Belgrade to the perceived “silver bullet” of “owning” the Russian veto right in the SC, and in the case of Pristina to the US “enough is enough” promise to bring things to a close one way or another. In any case, the most tangible result of the Troika process was the parties’ continued commitment to non-violence and more generally to a civilized process.

When the Troika efforts failed the six member Contact Group, the key link between the SC and us on the ground, became visibly divided. Russia, like Belgrade, called for more negotiations, and “the Quint”, ie France, Germany, Italy, the UK and the US started to prepare, with Pristina, for a “Coordinated Declaration of Independence” on the basis of the Ahtisaari Plan. NATO and the EU declared their willingness to continue to help Kosovo; the EU stressed its intention to support a (new) international civilian presence (ICO; to be headed by Peter Feith) and to deploy a rule of law mission named EULEX (to be headed by Yves de Kermanbon). It was indicated that the “Coordinated Declaration of Independence” was supposed to happen sometime after (yet) another round of Serbian Parliamentary Elections in January 2008. Then, on 17 February 2008, to nobody’s surprise, the Assembly of Kosovo did indeed declare independence on the basis of the Ahtisaari Plan, which was quickly recognized by the majority of EU member states, the US and others.

These events put UNMIK and myself into a difficult position, especially since in legal terms both groups of UN member states, i.e. Russia, Serbia etc. on the one hand, and EU, US etc. on the other hand, based their approaches on Resolution 1244, albeit different interpretations thereof. The former group argued that the declaration of independence, lacking agreement from Belgrade, was null and void, hence Kosovo would remain a part of Serbia. The latter group argued that 1244 was silent on how the “final settlement” was generated, hence by declaring independence on the basis of the UN SE plan, and by being recognized on that basis, Kosovo had entered into the *final phase* as per Article 11 f) of Resolution 1244, while *interim phase* provisions of 1244, including those related to FRY sovereignty and territorial integrity, were abrogated.

In any case, I duly reported to the SG on all developments and asked for instructions how to implement my mandate under changing circumstances. The SG did not instruct me to invalidate the declaration of independence. He did instruct, however, that UNMIK implement its mandate in a “status neutral” way, which meant on the one hand a degree of firmness, because there still *was* a mandate to implement, and on the other hand a degree of caution and, especially, constant dialogue with all local actors, and to the degree possible also with Belgrade.

In this context is important to understand that both groups of UN member states concurred that for the time being UNMIK’s, and KFOR’s, competencies under Resolution 1244, *and* the Constitutional Framework (CF), were still valid. Unfortunately, this view was not entirely shared by local actors, who however expressed their rejection in divergent ways with critical implications for the Mission's responses to them.

With regard to Pristina’s authorities, while dialogue was quite regular, firmness was called for in making it clear to all that not only Resolution 1244, but also the CF was still in place, that the SRSG continued to sign or reject laws, that UNMIK was still administering Kosovo, that especially in the rule of law sector UNMIK continued to have ultimate control etc. This led to tensions which were, however, defused without incident since *in principle* the Pristina authorities were respecting my primacy and that of Resolution 1244 and the CF in the quasi-“Transition Period” called for under the Ahtisaari Plan that they and their recognizers considered began with the declaration of independence and was to conclude with entry into force of the Kosovo Constitution.

With regard to the Kosovo Serbs, and the government in Belgrade, dialogue was also frequent as required, but firmness was called for especially when a violent mob destroyed two UNMIK Customs Service points on 19 February, and again when protesters forcefully seized the UNMIK courthouse in northern Mitrovica on 14 March. After UNMIK Police, supported by KFOR, had retaken control of the courthouse on 17 March, a violent mob attacked UNMIK Police and KFOR with automatic weapons and molotov cocktails, resulting in the death of one Ukrainian police officer and injuries to others.

No further violence occurred after that event.

The 17 March events elicited a variety of international reactions, both supportive and critical.

Critical reactions seemed to be receptive to one of the key arguments used by certain Kosovo Serbs and certain GOS members to justify violence, regardless of the post-Troika commitments, against specific UNMIK rule of law institutions like customs and courts. The argument was that UNMIK had “illegally” transferred its responsibilities to the PISG and, therefore, was not in control of these institutions any more. This was incorrect on both accounts. The progressive transfer of more and more responsibilities to the PISG was not illegal but a core requirement under Resolution 1244 and UNMIK (see above) had made it very clear to *all* sides that it was in ultimate control of the institutions in question.

During all this time, it was of course clear that it is necessary, but not sufficient to point to, implement and defend a mandate based on Resolution 1244 *and* the CF, i.e. a largely *unchanged* mandate.

After all, things had changed and a *medium term UN-strategy* was called for in order to reconcile, to the extent possible, the diverging agendas of two groups of UN member states and “their” local actors. The four basic elements of this strategy were identified in spring 2008:

- 1. The SG would report to the SC and, in the absence of guidance from the SC, take the initiative to “reconfigure” UNMIK, adjusting to the profoundly changed realities on the ground like the entry into force of the Kosovo constitution on 15 June, by which the Kosovo authorities intended to, with their recognizers' backing, take over the SRSG's prerogatives under the CF. In this context, the EU's rule of law mission EULEX would come under a “UN umbrella”, something that Russia and Serbia had requested as a precondition for acceptance of EULEX. In this final phase of UNMIK's lifecycle, it would also make sense to appoint a new SRSG.**
- 2. The SG would signal to Serbia the UN's readiness to address, in talks on “practical arrangements”, as opposed to talks on “status”, concerns in six areas where UNMIK's mandate had been challenged: customs and courts, as mentioned above, and**

also issues like policing, transport, boundaries and religious heritage. The SG would write to President Tadic about this.

3. The SG would also write to President Sejdiu.
4. The SG would instruct UNMIK to reconfigure, including a significant downsizing, and he would allow UNMIK to transfer premises and assets to EULEX.

One of my main tasks in this spring 2008 was to *work with all stakeholders* helping to prepare the ground for the SG's initiative and explain the logic of the four elements not as "pick and choose" but as parts of a balanced package, while at the same time, as per element 4, providing our HQ with a detailed reconfiguration plan and making sure the mission was ready to implement it if and when the instructions would come.

On 12 June 2008, the SG submitted his report to the SC, attaching the letters to Presidents Tadic and Sejdiu. Eight days later, on 20 June, the report was discussed in the SC and *broad support was given to the SG's initiative*. On the same day, I handed over my mandate to my successor Lamberto Zannier.

Developments since my departure

Subsequently my successor received instructions on the reconfiguration of UNMIK, on handing over equipment and buildings to EULEX and, at the same time, on facilitating talks between Pristina and Belgrade on the famous six points.

Things went reasonably well with UNMIK getting smaller, with EULEX deploying technically and with the International Civilian Office under the International Civilian Representative Pieter Feith, who is also the EUSR, playing an ever increasing role in helping the Kosovars to consolidate their state, step by step.

Some credit for this largely stable development belongs to the new Serbian government, who has a more realistic approach to the Kosovo issue and is committed to working with the EU and looking forward and not backward, at least in principle. Whether in this context it was a good idea to refer the legal issue of Kosovo's statehood to the International Court is another question.

A critical point was reached around 27 November 2008, when the SC discussed a report from the SG that included information on a UN / Belgrade agreement on how to proceed *further* with regard to the six points.

Such an agreement was deemed necessary in Res 1244 terms in order to get Russia and Serbia to finally agree to the full deployment and legal “switch on” of EULEX in all parts of Kosovo.

The leadership in Pristina rejected the agreement. The key argument was that Kosovo had embraced the Ahtisaari plan with its unprecedented minority protection mechanisms in all relevant areas and it can not depart from that by adopting yet another set of rules for the Kosovo Serbs. Also, the deployment of EULEX was foreseen in Kosovo's constitution, there was no need to “UN umbrellarize” it and thus double track its legitimacy.

“Internationals”, or so I understand, were arguing with Pristina that the provisional and often procedural UN / Belgrade agreements on the six points would *not* represent a departure from the material provisions in the Ahtisaari plan.

In the end things calmed down. There was a presidential statement in the SC on 27 November which, in Res 1244 terms, paved the way for EULEX' full deployment and legal “switch on” in all parts of Kosovo. And on 9 December 2008, this led to the actual launch of EULEX in every respect, which in turn did much to improve perceptions in Kosovo and was welcomed by Pristina's leadership.

Meanwhile the Kosovo Security Force has been created as foreseen in the Ahtisaari Plan, which was yet another step in the direction of getting on with the hard work of creating a functioning state.

In this respect, much has been achieved since 1999. The foundations for a functioning democracy, a functioning rule of law sector and a functioning market economy are in place.

Outlook

Much remains to be done, but it is my firm belief that Kosovo can come on a sustainable track in all these respects.

In this context, we must acknowledge the incentive of eventual EU membership, the EU's Thessaloniki promise. In my view this incentive is strong enough to discipline all actors including the Kosovo Serbs and the leaderships in Belgrade and Pristina. This would at first include an understanding on how to proceed *further* with the contentious six points. Then it would hopefully include an eventual structured relationship between Serbia and Kosovo, because the EU cannot accept new members with “territorial issues”.

Of course, the EU has to use its leverage but I have no doubt it will.

As a an added conclusion, let me share with you some of my final remarks from the time when I left Kosovo:

It has been an honor and a privilege to work for the SG as his SR and head of UNMIK during a very critical period.

It was my aim to implement a unique threefold mandate in good faith with all parties and, in this way, to contribute to a peace and security, to stability and progress in Kosovo and in the region. I am grateful to all of UNMIK’s international partners, including the Contact Group, KFOR, the EU, the OSCE and the UN agencies, funds and programmes, who helped to achieve this aim against considerable odds.

I am also very grateful for the constructive relationship, based on respect and trust, with my local partners, with Kosovo's leaders, with all segments of Kosovo's society.

Most importantly I have full trust that the people of Kosovo, who have now taken the lead in determining their future, as well as their neighbors, can overcome today's challenges and, in a few years, can be part of the European Union family.

Thank you for your attention!