



SÜDOSTEUROPA- GESELLSCHAFT

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Stabilitätspakt für Südosteuropa
Gefördert durch Deutschland
Stability Pact for South Eastern Europe
Sponsored by Germany

International Expert Conference

Kosovo/a **120 Days After the Constitution's Adoption**

Berlin, 10 October 2008

Concluding Summary

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Kosovo's declaration of independence on 17 February 2008 was expected to provide 'closure' for the status question and various related issues such as the internationalists' mandates in Kosovo. 120 days after the adoption of the Kosovo Constitution, however, many questions remain open and 'closure' is an incremental process at best. Current events seem to point in contradictory directions - the UN General Assembly's decision to seek an International Court of Justice (ICJ) ruling; Kosovo's recognition by Portugal, Montenegro and Macedonia as well as the Nobel Peace Prize for Martti Ahtisaari. At the conference, representatives of Kosovo, Serbia and the international community demonstrated full agreement on the need for closure. Substantial differences concerning the direction and roadmap, however, tend to outdo pragmatic policy issues for the time being.

Various speakers identified unresolved issues concerning the threefold system of governance (the Kosovo government, UNMIK and EULEX/International Civilian Office ICO) as major obstacles for functional statehood. With EULEX scheduled to reach 'initial operational capacity' by the end of November 2008, all acknowledged the urgency of concretising the UN Secretary General's 'reconfiguration'. As an uncoordinated reconfiguring is bound not only to result in turf wars and a power vacuum, but also to risk a territorial division of labour along the Ibar River. UN Security Council Resolution 1244 (UNSC 1244) remains the key document legitimising international organisations' mandates in Kosovo. Without a well-defined division of labour, policy priorities and planning horizons, both the performance of the international missions and the reform strategies of Kosovo are in jeopardy.

Both, representatives of the international communities and the parties to the conflict, drew attention to the restraint exercised after Kosovo's unilateral declaration of independence. Violent incidents were few and far between. The general situation in Kosovo has remained relatively stable since. The Serbian government has refrained from economic boycotts and other incendiary reactions. The new Serbian government coalition is expected to optimise the current dual-track strategy – strict rejection of Kosovo's independence in principle combined with pragmatism as far as concrete policy issues are concerned. As long as these issues can be construed in a "status-neutral" manner, a window of opportunity exists, e.g. in the Regional Cooperation Council (RCC) or bilaterally on technical issues. Correspondingly, Serbia's pragmatism cannot go beyond guest status for Kosovo in the SEECP (South-East European

Cooperation Process - as an international organisation of sovereign states).

Serbian representatives, however, insist on the continuation and priority of UNMIK and the chain of command to the UNSC. Despite all legal niceties, the ICO/International Civilian Representative and EULEX are associated with the Ahtisaari Plan. The Serbian voters generally perceive the Ahtisaari Plan as trailblazer of Kosovo independence and thus anything but status-neutral for political leaders in Belgrade and Mitrovica. It was argued that making the most of the “status-neutral” approach is based on two preconditions: a further substantiation of the EU integration perspective and a reduction of international pressure on Serbia and the Serb minority as far as further ICTY cooperation, participation in Kosovo institutions and principled statements on Kosovo are concerned. If given the choice between EU membership and the Kosovo claim, most Serbian voters would opt for the latter and thus limit the room for manoeuvre for pro-European, reform-oriented politicians in Belgrade.

Conversely, Kosovar representatives argued that Belgrade and Prishtina are quite able to block each other’s progress on state-building reforms and European integration. Belgrade has all the leverage to wreck Kosovo’s efforts at state-building and state functionality by working against international recognition and the reconfiguration of the international missions. Kosovo, conversely, is able to forestall Serbia’s European integration.

Despite unbending disagreement in principle, the acute awareness of both parties to the conflict, that a stand-off and mutual obstruction are self-defeating strategies for both, opens a manifest window of opportunity. Several representatives, both from Prishtina and Belgrade, were quite outspoken in their readiness to probe constructive, pragmatic cooperation beyond a bare minimum of “muddling through”.

Considering recent events in the Caucasus, the conference also touched upon the so-called “Kosovo precedent.” Some argued that Kosovo should not be compared to Abkhazia and South Ossetia as the declaration of independence had been motivated by a long history of repression, preceded by extended but futile bilateral negotiations, accompanied by extensive minority rights, and followed by almost eight years of international protectorate. Others argued that Kosovo’s declaration certainly had not triggered the Georgian conflict, but that

parallels should not be discarded. After all, several EU member states had opted not to recognise Kosovo out of fear for domestic separatism. As much as Western acceptance of Kosovo independence was detrimental to its political stance on Caucasian separatism, Russia's strategy in Georgia similarly contradicted its position on Kosovo.

Panel Discussions

The experts meeting discussed the following issues in more detail: international presence in Kosovo; Kosovo in international and regional forums; state building; economy.

All *international organisations active in Kosovo* agree that Kosovo's independence has changed the situation and share the objective to contribute to stability and prosperity in Kosovo and in the region. The various international missions however differ in their stage of deployment and their take on Kosovo's status.

UNSC 1244 continues to provide the civil administration mandate and prescribes UN neutrality on status. The process of "reconfiguration" initiated by the UNSG is ongoing and requires a further reduction of UNMIK (already down from 10,000 in 200/2001 to 5,000). Nevertheless, UNSC 1244 leaves room for an intelligent interpretation, especially as chances for a new UN Security Council Resolution are slim. Kosovo and UNMIK are both in a transitional phase since the Constitution of Kosovo came into force 15 June 2008 on the basis of the Ahtisaari plan (Comprehensive Settlement Plan CSP). Responsibility for domestic and international affairs now lies with the Kosovo authorities and the SRSB no longer has the power to promulgate legislation.

In his report to the UNSC the UNSG valued the EU's offer to play a larger role and to share responsibilities, especially in the field of the rule of law. Deployment of EULEX under the UNMIK umbrella, however, still needs to be worked out – thus far the ICO's footprint is barely visible in Kosovo. Serbia's acceptance of EULEX deployment in all of Kosovo should be in the interest of the Kosovo Serb community too, and any territorialized UN/EU duality in Kosovo must be prevented. The International Civilian Representative (ICR) has substantial powers, focused on the CSP. For the time being, the international presences should work

together on an informal basis to ensure continuity and coherence. Other recommendations from panellists included the need for closure on the status issue; a more credible European perspective for Serbia; and Prishtina's readiness to open a "status-neutral" dialogue with Belgrade on practical issues.

Discussing Kosovo's independence as an international precedent, opinions varied from the unicity of the Kosovo case to the unacceptability of usurpation of authority by the West and the exclusion of Serbia from the decision-making process. Kosovo might be unique in details but common in principle. Kosovo may have had an impact on trust in international law, but did not trigger other separatist action by itself. As eventually only Europe can provide stability in Kosovo, Russia does not oppose EU involvement, but objects to EULEX deployment without a say for Belgrade and Moscow.

Next to the set of domestic local problems and challenges the second most important challenge is the *international position of Kosovo*. Both Serbia and Kosovo are no doubt members of the European family. Currently, however, Serbia is determined to prevent membership of Kosovo in any international or regional organisation. Several participants expressed the hope that Kosovo and Serbia both proceed on their paths into the Euro-Atlantic community: Serbia becoming an EU candidate country and Kosovo, a normal participant of the Stabilisation and Association Process (SAP). The overall waning of political tension, mainly due to Brussels as an anchor of stability, is remarkable, and has led to the restructuring of the Stability Pact into the Regional Cooperation Council (RCC), shifting of the responsibility for resolving pending issues to the region. Serbia too recognizes the necessity that Kosovo cooperates in regional fora – at least in the RCC dealing with practical issues of cooperation, whereas SEECP raises status issues. Kosovar representatives acknowledge the need for a pragmatic dialogue instead of having Serbia's EU aspirations thwarted by the Kosovo issue and Kosovo's reforms by the problems of international representation.

The major issues of *state building* discussed concerned rule of law, decentralisation and the situation of the Kosovo Serb community. People in Kosovo expect from their government stability, good governance and predictability. At present the Kosovo government is very much engaged with the Ahtisaari Package; the Kosovo Assembly has passed 41 laws and adopted

the Constitution.

Serbia will not recognize independent Kosovo for the foreseeable future. Electoral results in Serbia underline that the pro-European ticket tipped the balance, but the pro-European parties may lose ground just as quickly, if European integration aspirations do not produce tangible results. If people in Serbia were to choose between Kosovo and the EU, they would clearly opt for the first. Several participants underlined that the new democratic Serbia defends principles of international law by referring the issue of Kosovo independence to the ICJ. Acceptance the Ahtisaari Plan and the deployment of EULEX would imply recognition. Therefore, EULEX should remain under the UNMIK umbrella, as Serbian voters do not distinguish between ELEX and ICO. EULEX started its deployment by mid September and intends to be fully operational with some 1,900 internationals and 1,100 locals by December 1, 2008, with clear technical tasks and autonomous with an own chain of command. Parts of the Ahtisaari Package and the objectives of EULEX concerning the strengthening of the rule of law and the judiciary could also be supported by Belgrade. Conversely, Prishtina might accept that Belgrade considers offering small loans to Serbian farmers in Kosovo. Any consolidation of the socio-economic conditions of the remaining Serbs in Kosovo should also be in the interest of Prishtina and trust building. Thus, prospects for gradually increasing constructive relations in a status-neutral framework do exist.

All panellists agreed that the successful *economic development*, with sustainable growth and related employment creation, is a key precondition for state building and Kosovo's integration into the EU and regional structures. Much has been achieved over the last eight years in what used to be the poorest part of the former Yugoslavia, paving the way for Kosovo's integration into regional cooperation programs and Europe, thanks to the Stability Pact, the RCC as well as the tracking of the SAP. Achievements of the Kosovo government and the EU pillar IV in UNMIK include:

- support for privatization and the transformation of "social" ownership into private ownership
- introduction of market economy principles and structures
- introduction of the Deutsche Mark and subsequently the Euro which has contributed to

low inflation

- adoption of the Medium Term Economic Framework (MTEF) and the incorporation of important economic policies
- introduction of a new tax regime and modern custom services
- creation of a sound banking and insurance sector
- introduction of modern market regulation
- rehabilitation of key infrastructure and modernisation of public utilities

The outlook for Kosovo is improving as it begins to make better use of its assets but more is needed to reap the benefits of statehood. Attracting more foreign direct investment is key and requires increasing confidence by investors in Kosovo's political leadership. In this respect, membership in the IMF and the World Bank might help to restore the confidence of investors and businesses. Although Kosovo is not yet a member, the World Bank has provided a series of grants in order to promote: economic reform and institution building; private sector development; education, health and social protection; energy and mining sectors and associated environmental projects; and basic infrastructure and community development. Kosovo's IMF and World Bank membership is currently under review, a process that normally takes 6-9 months. Kosovo has obtained important donor support, notably during the July 2008 donor conference, hosted by the European Commission, when Euro 1.2 billion were pledged. This support should provide a solid base for future economic development, provided Kosovo successfully implements the METF in a sustainable fashion. This requires further institution-building efforts and proves of good governance and rule of law behaviour. As regards donor coordination, the government recently set up a "Centre for Development" to ensure smooth and transparent implementation of donor funded development programs.

While Kosovo has made much progress in a number of areas, there are still major structural challenges ahead: Firstly, the power sector both in terms of its impact on the business climate (because of an unreliable supply of electricity) and the serious drain it represents on fiscal and donor resources. One of the key challenges is the timely beginning of the development of a new lignite mine before existing lignite resources run out by about 2010 as well as improving

revenue collection by KEK, the electricity provider. The Kosovo “C” (the proposed new lignite power plant) steering committee expects construction to start in 2009/2010. Four foreign bidders have been shortlisted. Secondly, the high unemployment rate (estimated at 55%) is one of the key constraints to sound economic development and social peace as is labour participation, Kosovo’s being one of the lowest in the region. Thirdly, high inflation rates producing wage demands in the public sector. Thirdly, external imbalances, which are already wide at 25% of GDP, might widen further. Fourthly, Kosovo’s agricultural potential (including exports) requires substantial investment after heavy war damages and years of neglect and an answer tot the problem of rural-urban migration.