

KOSOVO IN INTERNATIONAL AGREEMENTS

INTRODUCTION

Kosovo has declared independence on February 17th, 2008, with the commitment that it will implement the Ahtisaari plan. The Ahtisaari plan says that the Kosovo government is in charge of Kosovo's foreign relations from the date it enters into force. According to the government of Kosovo, the Ahtisaari plan entered into force on February 17th, 2008. Under resolution 1244, the United Nations Mission in Kosovo (UNMIK) has represented Kosovo in all international forums and agreements to date. In that capacity, UNMIK has signed a number of multilateral and bilateral agreements.

The Ahtisaari plan also specifies an internal transition period of 120 days, when responsibilities will be transferred from UNMIK to the Kosovo government. This means that by June 16th, 2008, at the latest, the Kosovo authorities should assume the responsibilities of the international agreements that UNMIK has signed on its behalf. However, in the recent weeks since the declaration of independence, there has been a lot of legal uncertainty surrounding the transition.

The Institute for Advanced Studies GAP recommends that before the end of the 120-day transition period the Kosovo authorities send a letter to all the signatories of these agreements informing them that it is assuming the responsibilities of UNMIK-signed agreements, and that from that day, the representatives of the Kosovo institutions created by the constitution and legislation approved after February 17th, 2008, will represent Kosovo in these agreements.

If the international community believes that there are other options to clarify the situation, they should be discussed and agreed upon as soon as possible to avoid further confusion.

The goal of this discussion paper is to raise issues regarding the representation of Kosovo in bilateral and multilateral agreements and initiatives signed by UNMIK on behalf of Kosovo. It also aims to inform the stakeholders, more specifically the Kosovo government, about the substance of these international agreements, so that they are better prepared, and can make the necessary plans to take over the responsibilities from these agreements.

AGREEMENTS

Kosovo has become signatory to a number of multilateral and bilateral agreements and initiatives over the past years. Annex 1 of this discussion paper lists and briefly

explains the multilateral and bilateral agreements that UNMIK has signed on behalf of Kosovo.

Kosovo's participation in these international agreements in the new environment is important for two reasons. Firstly, the Montevideo Convention on the Rights and Duties of States which has been recognized as an accurate statement of international law states that the "The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) **capacity to enter into relations with the other states.**"¹

Secondly, the bilateral and multilateral treaties listed in Annex 1 are of great importance to the development of Kosovo and the region. Agreements such as CEFTA, SEETO and Energy Community among others are very important for the economic development of Kosovo through the creation of a free trade region, transport network and regional energy market.

The Declaration of Independence and Reactions in Belgrade

The Kosovo Declaration of Independence states that "(Kosovo) hereby undertake(s) the international obligations of Kosovo, including those concluded on (Kosovo's) behalf by the United Nations Interim Administration Mission in Kosovo (UNMIK)"² On the other hand, the government of Serbia does not accept Kosovo's declaration of independence, which means that Serbia will most likely not recognize Kosovo institutions, including the representation of these institutions in agreements signed by UNMIK before February 17th, 2008. The government of Serbia has constantly threatened to block Kosovo from all international organizations, including international agreements and initiatives. The secretary of the Ministry for Kosovo in the government of Serbia, Dušan Proroković, has stated that Serbia will review its position in all agreements it has signed with UNMIK/Kosovo.³ Furthermore, Goran Svilanović, the chair of the I Table of the Stability Pact for South Eastern Europe, said that Serbia will most likely only accept UNMIK representatives in multilateral agreements.⁴

The Ahtisaari Plan started on ...

After the declaration of independence by Kosovo and the approval of an EU-led mission to the country – EULEX⁵, and the International Civilian Representative

¹ The Montevideo Convention was signed at the seventh International Conference of American States, can be accessed at <http://www.yale.edu/lawweb/avalon/intdip/interam/intam03.htm> last accessed on March 27th 2008

² Kosovo declaration of independence.

³ Mr. Prorokovic outlined his government's position on agreements signed by Serbia and UNMIK/Kosovo in his presentation "What Kosovo Means to Serbia and the Balkans," at the conference "Kosovo and Its Independence," held in Bratislava, January 14 2008.

⁴ In an interview given to the B92 (Serbian national TV station) show Poligraf, Svilanovic stated that the Serb government will in every meeting maintain that an UNMIK representative should represent Kosovo, although there will be attempts by the Kosovo institutions to speak on behalf of Kosovo – see B92 website.

⁵ The European Union Rule of Law Mission in Kosovo.

(ICR)⁶ – there is uncertainty regarding whether the Ahtisaari Proposal has actually entered into force and when the 120-day transition period determined by this Proposal begins. The uncertainty lies mostly with UNMIK, since the UN Security Council did not approve the Ahtisaari Proposal, although the Secretary General and his representative in Kosovo have openly supported the proposal⁷. On the other hand, the Kosovo Declaration of Independence asserts that it is in full accordance with the recommendations of the Ahtisaari Proposal, making the declaration date the day when this proposal entered into force. The International Steering Group (ISG) for Kosovo which appointed the ICR, has stated that the ICR will assume its full responsibilities after the transition period and that it will immediately begin to monitor and facilitate implementation of the Ahtisaari Plan⁸. This also signifies the recognition of the entry into force of this proposal.

Under the assumption that the Ahtisaari Proposal entered into force on February 17th 2008, the 120-days transition period will end on June 16th, 2008. The Ahtisaari Proposal says that UNMIK, in close cooperation with the ICR, shall ensure the orderly transition from the legal framework currently in force to the legal framework established under this Settlement of Final Status. In this regard, the Ahtisaari Proposal also states that Kosovo should be bound, on the basis of reciprocity where appropriate, by all international agreements and other arrangements in the area of international cooperation that were concluded by UNMIK for and on behalf of Kosovo, which were in effect on the date of the entry into force of the Settlement⁹.

The role of UNMIK

Under the UN Security Council Resolution 1244, UNMIK was the legal guardian of Kosovo until February 17th, 2008. As legal guardian, UNMIK represented Kosovo in all international venues. UNMIK has participated, negotiated and entered into agreements and initiatives, both bilateral and multilateral, with other countries in various sectors.

However, the government of Kosovo, has the right to argue that Kosovo should not be obliged to apply as a new member, since UNMIK signed the agreements *on their behalf*. Under the *Vienna Convention on Succession of States in respect of Treaties*¹⁰, Kosovo, as a newly independent state, may, by a notification of succession, establish its status as a party to any multilateral treaty, which at the date of the succession was in force. Although Kosovo already sent letters to all countries notifying them of the declaration of independence and seeking recognition as a new country, the government of Kosovo may need to specifically notify signatory countries of each

⁶ The ICR, appointed by the International Steering Group (ISG), will oversee the implementation of the Ahtisaari Plan.

⁷ Ban Ki-moon has often stated his full support for the Ahtisaari Plan, for example in a letter to the President of the Security Council, 26 March 2007, as has Joachim Rucker, in UNMIK Press Release 1656, 26 March 2007 for example.

⁸ See ISG Press Statement, 28 February 2008, available on the ICO's official website: www.ico-kos.org.

⁹ See Article 15.2.2 in the Comprehensive Proposal for the Kosovo Status Settlement (Ahtisaari Plan).

¹⁰ This is just one of the justifications that can be used for these multilateral agreements

agreement or treaty that it has taken over the obligations and the duties entailed by these agreements or treaties.

RECOMMENDATIONS AND CONCLUSIONS

Kosovo should take over responsibilities under international agreements that were concluded by UNMIK on its behalf, which were in effect on the date of the entry into force of the Ahtisaari Settlement. Although these agreements were signed by UNMIK, the Kosovo Government counterparts were a part of these agreements and were very much involved in implementing them on the ground.

Since Kosovo declared itself to be a sovereign state, it is only logical to seek its direct representation in the above mentioned international agreements. It is also expected that Serbia, being a part of these agreements as well, will not accept the direct representation of Kosovo by its new institutions in these agreements. On the other hand, UNMIK may also push for its continuing representation in these agreements on behalf of Kosovo, since it regards UNCSR 1244 as still being in force.

With regard to specifics of each international agreement, none of these agreements provide procedures or mechanisms on what steps to follow or how to carry over enforcement in cases of succession of states. Since none of the agreements provide procedures or mechanisms for succession of states, Kosovo has the option of notifying its succession in regards to each treaty, in conformity with the *Vienna Convention on Succession of States in respect of Treaties*. The notification of succession regarding each treaty or agreement may trigger adverse reactions, by UNMIK, by Serbia, or even by some countries that are a party to these agreements that have not yet recognized Kosovo as a state. However, this issue will have to be discussed sooner or later. Therefore, the government of Kosovo may need to assess the importance of each international agreement, as well as its current and prospective foreign relations with each of the signatory countries of these agreements, before it decides to take action regarding its direct representation in these agreements.

The Institute for Advanced Studies GAP recommends that the Kosovo authorities and the international community coordinate their efforts to this end as soon as possible. This issue will be more relevant in June, but the intentions and plans need to be clear now.

The Kosovo authorities should:

- Make all necessary preparations to assume responsibilities of these international agreements before the end of the 120 days transition period, as foreseen in the Ahtisaari plan;
- Before the end of the 120 days period, notify all signatories of these international agreements that it is assuming these responsibilities, including representation by Kosovo authorities in the meetings of these forums. The Kosovo institutions should start with the agreements where there would be no anticipated difficulties in transferring responsibilities from UNMIK.

If the Kosovo authorities and the international community can agree upon another option that does not jeopardize the declaration of independence and Kosovo's sovereignty, as accepted by many countries around the world, such options should be discussed, agreed upon and be made public as soon as possible, to avoid further confusion over the legal jurisdiction of the different missions in Kosovo.

ANNEX I

MULTILATERAL AND BILATERAL AGREEMENTS

MULTILATERAL AGREEMENTS

UNMIK has signed and participated in several multilateral international initiatives and agreements on behalf of Kosovo. Although UNMIK legally signed these agreements on behalf of Kosovo, it is the Kosovo Government counterpart institutions that are actually implementing these agreements on the ground. Table 1 shows the list of multilateral international agreements that Kosovo is already a part of, as well as the respective Kosovo counterpart institutions.

Table 1 Multilateral Agreements and Initiatives signed by UNMIK on behalf of Kosovo

Agreement/Initiative	Abbreviation	Kosovo Counterpart
Energy Community (Athens Process)	EC	Ministry of Energy and Mining
European Common Aviation Area Agreement	ECAA	Ministry of Transport and Communication
South East Europe Transport Observatory	SEETO	Ministry of Transport and Communication
Central European Free Trade Agreement	CEFTA	Ministry of Trade and Industry
European Charter for Small Enterprises	ECSE	Ministry of Trade and Industry
Stability Pact	SP	Stability Pact Coordinator
Electronic Southeast Europe Initiative	eSEE	Ministry of Transport and Communication
Broadband Southeast Europe Initiative	bSEE	Ministry of Transport and Communication
Non-Tariff Barriers Removal Initiative	N/A	Ministry of Trade and Industry

Energy Community (Athens Process)¹¹

Signed in Athens in 2005, the Energy Community (EC) Treaty is the culmination of a process that started in 2002, when the European Commission formally proposed a strategy to develop a South East Europe (SEE) regional electricity market. SEE countries have all agreed to implement European Union legislation and to create the necessary infrastructure to operate this common market. The members of the treaty are the European Community on one side and Albania, Bulgaria, Bosnia and Herzegovina, Croatia, FYR of Macedonia, Montenegro, Romania, Serbia and UNMIK on Kosovo's behalf on the other. SEE signatory countries see this process as a way to secure a reliable energy supply, while stimulating economic development in the region, through a reasonably priced increase in availability, efficiency and dependability of their energy networks. By developing regional integration in the energy sector, SEE countries hope to create more competition and trade in the region, eventually leading to more economic integration with the European Union. In December 2005, the Ministerial Council of the EC adopted the Electricity Transition Strategy Paper, after consulting with all Athens process stakeholders. Through the

¹¹ Information on the Energy Community was taken from the following official websites: www.energy-community.org; www.seerecon.org/infrastructure/sectors/energy/index.html; <http://www.stabilitypact.org/energy/default.asp>.

adoption of this paper, all parties were able to agree on common challenges and possible solutions they could implement together.

Regarding the validity of this treaty now that Kosovo has declared independence, there does not appear to be any mechanism or procedure included in the treaty itself concerning the change of status of a signatory. However, this treaty states that the Ministerial Council of the Energy Community may agree to the accession of a new member only “by unanimity of its Members”, although this does not apply in the case of Kosovo, since Kosovo is already a part of this treaty through UNMIK.

European Common Aviation Area Agreement¹²

With the goal of opening air transport markets between Europe and the surrounding countries, the ECAA aims to create an international aviation treaty enforcing common standards and regulations throughout the regions in question, possibly as an extension of the Single European Sky initiative. Following the same model as the EU internal market, the ECAA was signed by the European Community on the one hand and Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Iceland, FYR of Macedonia, Norway, Serbia, Montenegro, Romania and UNMIK on behalf of Kosovo on the other.

Balkan countries have already benefited greatly from the ECAA. In addition to increased air traffic between the EU and SEE (121% increase since 2001) the single market for aviation has also provided technical assistance, as well as support and monitoring of training, to the region. Full integration with the European air transport market would only further increase air travel growth (2006 ECAA Press Release).

The ECAA does not have any procedures or mechanisms specifically regarding the succession of states. It only provides for the possibility of changes in legislation, whereby the participating countries should be informed via Joint Committee not later than 1 month when the change has occurred. Serbia, in addition to likely opposing the participation of Kosovo as a new state in the agreement without the presence of an UNMIK representative, may also declare Kosovo as a ‘hostile area’, potentially leading to the increase of prices of air travel insurance for all air travel in and out of Kosovo.

South East Europe Transport Observatory¹³

This Memorandum of Understanding facilitates cooperation in developing the main and auxiliary infrastructure of the multimodal South East Europe Core Regional Transport Network, including policies on its construction, operation, maintenance,

¹² For this and other information on the ECAA, see

http://ec.europa.eu/transport/air_portal/international/pillars/common_aviation_area/ecaa_en.htm.

¹³ This and other information on SEETO can be found on its official website:

<http://www.seetoint.org/site/>.

reconstruction, rehabilitation and upgrading. It also provides the means for harmonization and standardization of regulatory and administrative provisions, as well as technical standards, relating to regional transportation flow. Fostering the most efficient and environmentally friendly transport modes on a regional scale, the Observatory is in complete accordance with EU standards and directives, including, where possible, customs and border control harmonization.

Signatory countries of this memorandum are Albania, Bosnia and Herzegovina, Croatia, FYR of Macedonia, Serbia, Montenegro and UNMIK on behalf of Kosovo.

The SEETO Memorandum of Understanding also provides neither mechanism nor procedure regarding the succession of states or the change of status of a signatory.

Central European Free Trade Agreement¹⁴

Initially an attempt by original signatories, Poland, Hungary and Czech and Slovak republics, to integrate with Western European institutions, CEFTA first went into effect in 1994. Motivated by the idea of eventually joining European political, economic, security and legal systems, these signatory countries hoped to consolidate democracy and free-market economics on a regional level. Other countries followed suit and joined CEFTA shortly thereafter: Slovenia in 1996, Romania in 1997, Bulgaria in 1998, Croatia in 2003 and the FYR of Macedonia in 2006. Since its inception, all of the original parties have left CEFTA in favor of joining the EU. For this reason, and the fact that there was already a complete matrix of bilateral free trade agreements built into the Stability Pact of SEE, CEFTA was extended to cover the rest of the Balkan states. Albania, Bosnia and Herzegovina, Serbia, Montenegro, Moldova and UNMIK on behalf of Kosovo became signatories to CEFTA in 2006. Entering into effect in 2007, the agreement aspires to establish a regional free trade zone by the end of 2010.

Because the EU recommends that candidate countries establish free trade areas, and based on the accession of former CEFTA members to the EU, CEFTA appears to be a stepping stone to full EU membership. In addition to this, the fact that a significant portion of CEFTA foreign trade is with various EU countries supports accession aspirations of the Balkan states.

There is no provision for procedures to follow in the case of succession or change of legal status of a state in the CEFTA charter or in the amendments that followed (1995, 2003). Although there is no need for Kosovo to reapply, it is worth mentioning that in order for a new state to be admitted to CEFTA, an Accession Agreement must have the consent of all Parties involved in CEFTA.

¹⁴ This and other information on CEFTA is available at <http://www.stabilitypact.org/wt2/TradeCEFTA.asp>.

European Charter for Small Enterprises¹⁵

First approved by EU leaders in 2000, Albania, Bosnia and Herzegovina, Croatia, the FYR of Macedonia, Serbia and Montenegro, and UNMIK on behalf of Kosovo joined the Charter in 2003, at the Thessaloniki Summit. After the first phase ended, the EU approved the request to extend the process another 3 years, and political and economic cooperation between the EU and the Western Balkans became stronger as a result.

To create a business-friendly environment for small and medium-sized enterprises (SMEs), the Charter covers ten areas, including better legislation and faster start-ups, which ensures the equal cooperation of the participating countries, and strengthens regional identity and economic links, free of all political influence.

The European Charter for Small Enterprises includes application procedures for countries that would like to join the Charter; however it does not outline procedures that would apply to succession of states, as is the case of Kosovo.

Stability Pact¹⁶

With the goal of fostering peace, democracy, respect for human rights and economic prosperity in South East Europe, the Stability Pact, which was launched in 1999, is broken down into 3 Working Tables: Table I deals with democratization and human rights, Table II with economic reconstruction, development and cooperation, and Table III with security and defense, and justice and home affairs. Regional partners in the Pact are Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Moldova, Montenegro, Romania, Serbia, the FYR of Macedonia and UNMIK on behalf of Kosovo. Other members include all EU member states, the European Commission, Canada, Japan, Norway, Russia, Switzerland, Turkey and the USA, as well as international bodies like the UN, OSCE, NATO, the World Bank and IMF, and initiatives like the South East Europe Cooperation Process and the Central European Initiative, among others.

As well as encouraging cooperation between SEE countries, the Pact also augments regional parties' political, economic and security integration with Europe. The Pact does not itself implement projects, but instead acts, through various initiatives, as a tool to coordinate and accelerate the projects of its partners.

Electronic South East Europe Initiative (eSEE)

In order to better integrate SEE countries into the global knowledge-based economy, the eSEE supports Information Society development (including benchmarking, best

¹⁵ For this and other information on the European Charter for Small Enterprises, see http://ec.europa.eu/enterprise/enterprise_policy/charter/index_en.htm.

¹⁶ This and other information on the Stability Pact can be found at its official website, <http://www.stabilitypact.org/>.

practices and the transfer of knowledge) in countries in the region. In line with EU policies, the eSEE coordinates and facilitates the creation of Information and Communications Technology (ICT) projects in fields like business, governance, health and education, and promotes a suitable institutional environment for the development of Information Society, accessible to all.

Broadband South East Europe Initiative (bSEE)

Following the model of similar multilateral initiatives in the region, the bSEE facilitates cooperation between partners, including information sharing regarding broadband developments, trends and strategies in the region and regarding policies and programmes of SEE member agencies and organizations.

Non-Tariff Barriers Removal Initiative

Kosovo also participates in the Non-Tariff Barrier Removal Initiative under the auspices of the Stability Pact. This initiative will soon be integrated into the CEFTA.

Neither the Stability Pact for South Eastern Europe nor any of its initiatives provide any specific mechanisms or procedures within their official documents concerning the change of status of a signatory.

BILATERAL AGREEMENTS

The majority of bilateral initiatives and agreements signed by UNMIK/Kosovo are with Albania, as well as Turkey and the US, and international organizations such as the European Investment Bank (EIB) and European Bank for Reconstruction and Development (EBRD). Although the current political status of Kosovo has been resolved outside the auspices of the UNSC, Kosovo will not have any problems taking over these initiatives and agreements from UNMIK, since all of these countries and institutions have already recognised the statehood of Kosovo.

UNMIK has also signed, on behalf of Kosovo, a number of projects with different donors. Legal responsibilities should be transferred to the Kosovo authorities as soon as possible to avoid any potential delays in the implementation of those projects.

Apart from the above agreements, there are also several bilateral initiatives that were initiated but not completed - most of them with Macedonia, as well as with Turkey, Slovenia, Bulgaria and Austria. As Austria, Slovenia, Turkey and Bulgaria have already recognised Kosovo's independence, and Macedonia is openly in favour of the Ahtisaari Proposal, completion and ratification of these initiatives will most likely not represent a serious problem either.

Table 2 Bilateral Agreements and Initiatives (signed and initiated)

Agreements/Initiatives	Kosovo PISG Counterpart
Framework Agreement European Investment Bank	Ministry of Finance and Economy
MoU with EBRD	Ministry of Finance and Economy
Agreement with the Government of the US on Investment Support for Projects in Kosovo	Ministry of Trade and Industry
Agreement with Albania on the Avoidance of Double Taxation	Ministry of Finance and Economy
MoU with Albania in the fields of Standardization and Accreditation	Ministry of Trade and Industry
Agreement with Albania on cooperation in the field of Tourism	Ministry of Trade and Industry
Agreement with Albania on the reciprocal promotion and protection of investments	Ministry of Trade and Industry
Agreement with Turkey on the reciprocal promotion and protection of investments	Ministry of Trade and Industry
Agreement and accompanying MoU with Albania on Cooperation in the field of energy	Ministry of Energy and Mining
Agreement with Albania on cooperation of the Public Veterinary Services	Ministry of Agriculture, Food, and Rural Development
Agreement with Albania on cooperation in the field of Plant Protection	Ministry of Agriculture, Food, and Rural Development
Agreements/Initiatives (initiated, but not completed)	
MoU with Macedonia in the fields of Standardization and Accreditation.	Ministry of Trade and Industry
Agreement with Macedonia on cooperation in the field of Tourism	Ministry of Trade and Industry
Agreement with Turkey on cooperation in the field of Tourism	Ministry of Trade and Industry
Agreement with Macedonia on the reciprocal promotion and protection of investments.	Ministry of Trade and Industry
Agreement with Slovenia on the reciprocal promotion and protection of investments	Ministry of Trade and Industry
Agreement with Austria on the reciprocal promotion and protection of investments	Ministry of Trade and Industry
Agreement with Macedonia on cooperation in the field of Transport	Ministry of Transport and Communications
Agreement with Macedonia on cooperation of the Public Veterinary Services	Ministry of Agriculture, Food, and Rural Development
Agreement with Macedonia on cooperation in the field of Plant Protection	Ministry of Agriculture, Food, and Rural Development
MoU with Bulgaria on Cooperation in the field of energy	Ministry of Energy and Mining