

Supervised Independence for Kosovo?

by [Giorgos Kentas](#),

Lecturer of European Studies and International Relations, Research Fellow at the Research Center
- Intercollege

In the last four years, the European Union (EU) has undertaken more than 10 missions within the framework of the European Security and Defense Policy (ESDP). Since April 2005, the EU member states contemplate undertaking a mission impossible: To guarantee the establishment and the survival of an international protectorate in Kosovo. In order to prepare such a mission, the Commission produced six core documents¹. On top of that, the Council has adopted (April 2006), 'a joint action establishing an EU planning team regarding a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo (EUPT Kosovo)'². That Planning Team bore fruit and, after Mr. Athissari, the United Nations Secretary General (UNSG's) special representative for Kosovo, submitted a proposal for Kosovo's future status (March 2007), Mr. Solana, the EU High Representative for the CFSP/ESDP, and Mr. Rehn, the EU Commissioner for Enlargement, issued a joint report on the state of preparations of the future EU and international presence in Kosovo³. That report summarized the possible EU role in Kosovo. Mr. Athissari urges supervised independence for Kosovo as the "only viable option". Furthermore, the Athissari's report provides that Kosovo would be allowed to have its own army, flag and constitution and the possibility of applying to join international institutions. The presence of a large contingent of NATO and EU troops is also envisaged by the report. According to the Solana-Rehn joint report, the EU expects the UN Security Council to authorize the EU to establish "a Rule of Law mission to support the implementation of the settlement and promote the development of the police and justice sectors in Kosovo and to decide that the mission will have executive powers in the judiciary sector (prosecution of major and organized crime, property rights, correctional services), in the police (organized crime, war crimes, inter-ethnic crimes, financial investigations,

anti-corruption, border control, crowd and riot control) and in security-related and customs-compliance issues)." The EU Member states have expressed agreement with this mandate.

Before the EU could undertake that mission, however, there is an array of preconditions that should be met:

- § First, the United Nations Security Council (UNSC) needs to endorse Mr. Athissari's proposal. Having in mind a statement issued by the Russian foreign ministry, which said that "The establishment of an independent state in Kosovo is fraught with serious complications for stability in Europe," it is hard to assess whether the UNSC will accept Mr. Athissari's proposal as it stands.
- § Secondly, neither the government of Serbia nor the leadership of the Kosovo-Albanians seems to endorse Mr. Athissari's proposal. The majority of Serbians consider that proposal as a step before Kosovo's independence and Kosovarians as an initiative to perpetuate international intervention in their internal affairs. More efforts will be needed by both the UN and the EU in order to drum up the necessary public support for the implementation of the proposed Kosovo status plan.
- § Thirdly, the EU needs to assuage the concerns of some of its member states (Cyprus, Spain, Belgium) that deal with secessionist movements. In order to ease concerns that any form of independence for Kosovo would exacerbate other separatist trends, the European Parliament endorsed a report (March 2007) that underlined that "the solution in Kosovo will set no precedent in international law, as Kosovo has been under UN rule since 1999 [...and] is in no way comparable to the situation in other conflict regions which are not under UN administration." Such a statement should be endorsed by the Council as well.
- § Fourthly, the EU and NATO should deal readily with Turkey's intransigence with regard to Cyprus' and Malta's participation in the Kosovo mission. Ankara's position that Cyprus and Malta should not have access to NATO's classified documents –since these countries are not members of the Partnership for Peace– continues to perplex NATO-EU coordination in dealing with conflict management operations.

§ Finally, the EU needs to make sure that, when it assumes the leadership in Kosovo, the sufficient resources, based on appropriate burden sharing by all donors, would be available to facilitate the conditions for a successful intervention.

It goes without saying that the establishment of a supervised state in Kosovo brings international politics back to the future. In the post-WWI era, the system of 'sovereignty of mandates' was practiced by the League of Nations at large. According to, M. Rappard (1921), the director of the mandates section of the Secretariat of the League of Nations, 'The mandatory system formed a kind of compromise between the proposition advanced by the advocates of annexation, and the proposition put forward by those who wished to entrust the colonial territories to an international administration.'⁴ Martin Wright, a critique of that concept, stated that the system of mandates aimed "to establish a better system for the administration of backward areas than has existed under the regime of colonies, protectorates, or spheres of influence better in the sense that it would more effectively secure the liberty, material welfare and opportunity for development of the native inhabitants, and that it would more effectively secure the opportunity of all states of the world to equal participation in the trade and resources of these areas."⁵ In the final analysis, that system compromised the founding principle of international relations, namely national sovereignty and independence. Mr. Athissari's concept of 'supervised independence' may not introduce a new system of mandates but it certainly does two other things: (a) it encourages secessionist movements to pursue 'national independence' and (b) it vindicates the policies of these states which consider military intervention, regime change and protectorate-building as effective tools of statecraft in the post-cold war era. In my view, the EU should not consider undertaking a mission in Kosovo before the conditions outlined above are addressed. In any other case, the principles on which the Union's ESDP is founded ('effective multilateralism', 'commitment to International Law,' 'strengthening of the UN')⁶ will be undermined and, in case of a debacle in Kosovo, the most popular policy of the EU will be tarnished.

¹ Commission Communication "A European Future for Kosovo", approved by the College on 20 April 2005 "A European Future for Kosovo" - IP/05/450; First joint paper presented to the General Affairs and External Relations Council on 14 June 2005 (as requested by the Council in February 2005); The Commission's Progress Report on Kosovo under UNSCR 1244, published on 9 November 2005 "2005 Progress report on Kosovo under UNSCR 1244 - MEMO/05/412; Second joint paper presented to the General Affairs and External Relations Council on 9 December 2005 (as requested by the Council in November 2005); The European Partnership with Serbia and Montenegro including Kosovo as defined by the United Nations Security Council Resolution 1244, January 2006 "European Partnership with Serbia and Montenegro including Kosovo under UNSCR 1244"; Third joint paper presented to the General Affairs and External Relations Council on 17 July 2006 (as requested by the General Affairs and External Relations Council 12 December 2005). MEMO/06/286; The Commission's Progress Report on Kosovo under UNSCR 1244 published on 8 November 2006 "2006 Progress report on Kosovo under UNSCR 1244 - MEMO/06/412".

² "Council establishes planning team for rule of law mission in Kosovo" (General Affairs and External Relations Council meeting - Luxembourg, 10 April 2006)

³ Joint report by Javier Solana, EU High Representative for the CFSP, and Olli Rehn, EU Commissioner for Enlargement, on the state of preparations of the future EU and international presence in Kosovo, Brussels, 29 March 2007 (S113/07)

⁴ League of Nations, Permanent Mandates Commission, Minutes, 1st sees., 1921, p. 4.

⁵ Quincy Wright, "Sovereignty of the Mandates", *The American Journal of International Law*, Vol. 17, No. 4. (Oct., 1923), pp. 691-703

⁶ "A Secure Europe in a Better World: European Security Strategy", Brussels, 12 December 2003