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**FOR:** OPEX

**SUBJECT:** THE NORTH OF KOSOVO: INTERNATIONAL MISSIONS AND THE POSITION OF SPAIN

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For many of its supporters, the independence of Kosovo was a way of putting an end to the story, of turning the page on the conflicts of the 1990s in the Balkans. However, the violent incidents in Mitrovica on 17 March demonstrate that independence has not provided a definitive solution to the Kosovan issue and that many loose ends remain. Currently, northern Kosovo is the scene of a virulent power struggle between Belgrade and Pristina. The possible partition of the former province presents a clear challenge to the international missions as they strive to mutate and adapt to the new circumstances. It also poses a challenge to the European and US governments when it comes squaring the circle among their respective positions on independence, rigid or flexible interpretations of UN Security Council resolution 1244, the new mandates of the international missions and the political reality on the ground.

## CONTEXT

The zone to the north of the River Ibar is home to a little over half of the 110,000 Serbs (5 per cent of the two million inhabitants of Kosovo) who still remain in the new state after years of silent, slow yet constant exodus. It is a veiled ethnic cleansing which has followed another, more brutal one carried out by the opposite side and in spite of which the international community continues to entertain the myth of a multiethnic Kosovo. Since 1999, the north has exercised a de facto independence from the rest of the province. However, the administration and the international missions established by or under the umbrella of Resolution 1244 have continued to perform administrative and security functions.

From 2001, UNMIK began to transfer part of its powers to the Kosovan political and administrative bodies, the so-called Provisional Institutions of Self-Government (PISG). However, these have never really been present in the north, except for some common services or those of a more or less representative ethnic composition, such as the Kosovo Police Service (KPS), created and trained by the OSCE. The Serbs have been managing their affairs via local and municipal institutions and a series of parallel structures, including one calling itself the Serbian Assembly of Kosovo and Metohija and a body of government, the Serbian National Council. These are based in Kosovska Mitrovica, the main town in the north of Kosovo, divided - like a reduced version of Berlin or Nicosia - into two communities, Albanian to the south and Serb to the north, and which has been acting as the unofficial capital of the north.

Since the declaration of independence on 17 February, the Serbs of Kosovo, with the support of the Serbian authorities, have been systematically cutting the few ties which still united them to the authorities in Pristina. The boycott of the Kosovan institutions has extended to UNMIK's customs service, the prisons service, the judicial system and the UNMIK railways. The Kosovan Serbs have also tried to eliminate any control along the so-called administrative border line which separates Kosovo from Serbia. Thus, for example, on 19 February small groups of violent demonstrators attacked and destroyed two customs posts managed by UNMIK, a significant incident in that customs duties are one of Pristina's main sources of revenue.

This action, supported by Belgrade, appears to form part of a predetermined scheme of soft or de facto partition since any formal separation would entail Serbia's recognition of Kosovo as an independent state. The new constitution approved by the Kosovo Assembly on 9 April and which will take effect on 15 June establishes a unitary and indivisible state. It contains numerous provisions from the Comprehensive Proposal for the Kosovo Status Settlement or Ahtisaari Plan. On the subject of self-government and territorial organization, only the municipality is recognized as a basic unit of autonomy. It is true that Pristina has passed a law of local self-government which develops the limited constitutional precepts, as well as a law of zones of special protection to safeguard Serb religious and cultural heritage, but it remains to be seen how their application will be ensured in the enclaves where the Serbs are the majority.

Officially, all the members of the EU and NATO, both the majority which has recognized Kosovo and the few who have yet to do so, advocate maintaining its territorial integrity and are opposed to partition, be it de facto, official, soft or hard. It is one of the few things salvaged from the consensus prior to independence. However, in practice, there are many shades of opinion, despite the official rhetoric. Pristina is being effective with its pressure on the EU and NATO to take measures which put into effect its newly-declared independence across the entire Kosovan territory. Pristina boasts of its good conduct, but not without insinuating that there may be a limit to its patience. It also has powerful friends, who demand solid support for the Kosovan cause from their NATO allies and expect more enthusiasm from KFOR when it comes to imposing Pristina's control over the north of Kosovo. Some allies are more cautious and prefer to maintain a delicate balance between guaranteeing Kosovan territorial integrity and the international duty to be impartial. While others would be more inclined to accepting, with pragmatic resignation, the consolidation of a de facto partition if not an official one - a way of appeasing the Serbians and avoiding having to take extreme measures.

Taking shape amid all this uncertainty is the shadow of a "frozen conflict" at the heart of the Balkans in the style of Transnistria or Abkhazia, or even worse, Cyprus - a deadlocked problem which in the medium term would seriously complicate the EU's enlargement policy and the CFSP in general. In short, in the current political situation of Kosovo there are two superimposed realities which influence the international mandates in different ways. On the one hand, the new dynamic imposed by the declaration of independence, which adopts the Ahtisaari Plan as its own and uses it as the road map for the new state. And on the other, the old order of Resolution 1244 which continues to recognize Belgrade's formal sovereignty over Kosovo and which legitimizes the presence of the UN and NATO, but in which it would be hard to accommodate the new structures of the international community, particularly the new mission of the EU. In this confused scenario the international missions in Kosovo face a complex process of transition and adaptation.

## **SCENARIOS FOR THE INTERNATIONAL MISSIONS IN KOSOVO**

The Ahtisaari Plan had established a transition period lasting 120 days from its taking effect, at the end of which the UN Mission in Kosovo would transfer en bloc its remaining powers to the authorities of the new state. Thus it would bring its mandate to a formal end, nine years after international administration of Kosovo had begun. An International Steering Group (ISG) comprising "interested international parties of key importance" would have to appoint an International

Civilian Representative (ICR), an appointment which must be endorsed by the UN Security Council. They would also take on the mandate of the EU Special Representative. Under their direction would be the new EU mission - EULEX - approved within the framework of the Common Foreign and Security Policy (CFSP), with functions in the field of the rule of law, including the judiciary, the police, border control, customs and the prisons service.

According to the Ahtisaari Plan, the "international military presence" - NATO's KFOR mission - would keep its traditional powers, already contained in Resolution 1244, guarantee Kosovo's security against external threats and create a safe and secure environment in the entire territory. Added to this would be new functions directly related to independence and naturally not established in Resolution 1244, such as supervising and supporting the establishment and training of the Kosovo Security Force (KSF) - the germ of a Kosovan army. It would also be NATO's duty to have general responsibility for preparing and establishing an "organization of the Kosovan government" run by civilians to exercise control over the KSF. To be precise, it would exercise control over the "development of structures and technical means" to ensure the civilian control and management of the KSF, especially relating to the formulation of strategies, planning of forces, management of personnel, planning, programming and budgeting, the planning of the army and procurement - the functions of any Defence Ministry in a sovereign country. Another task for the KFOR would be to facilitate the dissolution of the Kosovo Protection Corps (KPC), a controversial association because of its lack of transparency and possible mafia links, transformed into the refuge of former members of the Kosovo Liberation Army (KLA).

This transition blueprint and the recommendations of the Ahtisaari Plan are being followed almost to the letter by the government in Pristina, with the support of the ISG, the EU and NATO. In the middle of June, a new chapter of international assistance and of Kosovo's functional dependence will thus begin. However, the absence of an explicit mandate from the UNSC, owing to the veto imposed by Russia, and the situation in the north of Kosovo pose serious problems. In addition to that is the pitiful planning of the transition process. It was assumed with arrogant blindness that the only possible scenario for the deployment of EULEX would be that of benign conditions and that Kosovo's Serbs would be fair and charitable. It was taken as read that the status issue would be resolved peacefully and that there would be no major problems once independence was reached, without taking into account either possible negative reactions, or emergencies, or the numerous obstacles to the international deployment.

The current situation poses major challenges to the UN's ability to exercise its administrative authority. UNMIK faces a serious dilemma: on the one hand it represents international law and the increasingly marginal validity of Resolution 1244 - which in principle would make it more acceptable to the Serbs. Sure enough, the government in Belgrade has declared it will continue to cooperate with UNMIK, but it is a faltering support in view of the violence sparked in March. But, in conjunction and with serious limitations, UNMIK can continue operating in the north of Kosovo. On the other hand, the atmosphere between UNMIK and the government in Pristina is tense indeed. The situation will get seriously complicated when the Constitution of Kosovo takes effect on 15 June and the old legality of the UN clashes head-on with the new legal order of the Kosovan state. To withdraw from Kosovo UNMIK needs a UNSC resolution that brings its mandate to a close, which appears difficult given Russia's position. Nor is it clear what will be the stance of the authorities in Pristina, which barely tolerate the presence of UNMIK and

demand its rapid replacement by EULEX and the application of the Ahtisaari Plan. Internally, UNMIK is in a state of extreme weakness, suffering lack of leadership, having no clear course and very few qualified people. Nor does it receive much high-level political attention from the Secretary-General's Office in New York, where Kosovo is not a global priority and is increasingly perceived as a matter which chiefly concerns the EU and NATO. In this respect, UNMIK is an spent mission both politically as it has become devoid of any content on account of independence, and organically, because of lack of resources. One of the most alarming operational consequences of UNMIK's impotence is its inability to maintain law and order via its own civilian police, in support of the Kosovo Police, particularly in the north where the latter has no access. This would put the NATO force in the difficult situation of having to maintain law and order directly, a function it is mandated to perform only as a last resort in the event that the KPS or the UNMIK police were overwhelmed.

The main challenge for the EU mission is how to deploy across the whole of Kosovan territory, including the north. Both the Kosovo Serbs and Belgrade deny EULEX all legitimacy as they consider its goal is to help the national construction of the new state and that its functions are not provided for in Resolution 1244. The EU has an extremely flexible understanding of this resolution and stretches to the limit the elasticity of Paragraph 10, which authorizes the UN secretary-general to "establish, with the assistance of the competent international organizations, an international presence in Kosovo so that Kosovo can have a provisional administration", a provision which along with the following one laid the foundations of the original UNMIK mandate. The EU also cites Paragraph 17, which refers to the task of the EU in the context of Kosovo in 1999, as the legal basis. Irrespective of the legal debate, in which there are a whole range of opinions, the fact is that EULEX does not have an explicit mandate from the Security Council nor has it received an express invitation from the UN secretary-general. This is a first for the ESDP, an unfortunate coincidence of crisis scenarios and, give or take some obvious differences, a worrying reference to the lack of a NATO mandate in 1999.

At an operational level, the problem for EULEX is not so much one of international legality or legitimacy rather one of impartiality and acceptability. In the event that UNMIK withdraws from Kosovo, be it because of a formal decision of the UN or on account of its own exhaustion, EULEX will find itself in a situation in which it cannot perform its functions in the entire territory, precisely one of the mission's strategic goals. In this scenario, there would be no international presence in the north of Kosovo, for which reason the consolidation of parallel structures, particularly those of security to tackle possible outbreaks of violence, could not be prevented - a situation, therefore, which could be interpreted as tacit acceptance of a de facto partition.

## OPTIONS

A) Redefine the role of the UN: the situation on the ground and the impasse at an international level make the continued presence of the UN almost indispensable. This organization is virtually the sole channel for relations between Pristina and the international bodies right now and any more official relationship or involvement could be vetoed. It is also the only meeting point between Pristina and the Kosovo Serbs, as well as between them and the international community. The UN could bring EULEX and the OSCE under the umbrella of Resolution 1244, which would remain entirely in force. At the same time, it would retain some residual, essentially

representative, functions via UNMIK, while it could outsource or delegate the rest of the tasks to EULEX. In this way, any authority would emanate from the UN and not from the EU, which would only exercise delegated powers, something which in principle is more acceptable to the Kosovo Serbs. The International Steering Group would become what it actually is - a group of friends of Kosovo, but not a source of international legitimacy. For this option to be viable, a more flexible attitude on the part of Moscow and Belgrade would be required, without that meaning they have to give way on fundamental issues. The promising results of the Serbian elections, which have given a clear yet insufficient majority to President Boris Tadić's Democratic Party, open the door to possible negotiations with the democratic and pro-European Serbia. While it is unlikely that Belgrade will accept Kosovo's independence, it could indeed have a less belligerent attitude towards EULEX. A change of attitude would also be necessary from Pristina, which for some time has been openly disregarding the UN to negotiate directly with the EU and NATO. Finally, it would require a revitalization of UNMIK, whose ability to intervene, mediate and influence are in serious decline. There are signs that this option could be considered by the UN since lately UNMIK is appealing to the concept of restructuring as against the previous plan of transferring authority on 15 June.

B) Geographical division of functions: there could be a distribution of functions between UNMIK and EULEX according to geography, as against the concept of a single international mission across the whole of Kosovo. The UN would delegate almost all its powers to the EU but would continue to be responsible for maintaining law and order and other similar functions in the zones where the Serbs are the majority. It would be an interim arrangement while more lasting solutions are found. One of the difficulties of this option would be how to alter the situation on the ground once the new distribution had been consolidated.

C) Plan for the decentralization of northern Kosovo: in the longer term, once the Kosovo Serbs come to the realization that independence is irreversible, Pristina could negotiate with them, within the framework of the UN, a plan for advanced autonomy which goes beyond the current provisions of the Ahtisaari Plan, but avoiding formal secession. For Belgrade, Kosovo would become a disputed territory and the UN would not have to recognize it either, but, however, it would mean that the Kosovo Serbs were not left defenceless and hostages to a struggle which may last many years.

D) International absence in the north of Kosovo: perhaps the easiest option, but not necessarily the most desirable, is for the current trend to prevail and for there to be no international civil presence in the north of Kosovo. This would be the closest thing to a "frozen conflict" as it would mimic situations similar to those which currently exist in Abkhazia or Transnistria, with the possible exception that NATO could continue to have a presence in the entire territory, given its greater acceptance by all sides.

E) Impose civil deployment in the north of Kosovo: an option cherished by the most belligerent supporters of independence would be to impose the civil presence of the EU in the north of Kosovo. It would possibly require the use of force - civil, initially, and military if it proves insufficient - to tackle possible reactions against it or outbreaks of violence. It is obvious that the use of force to achieve political goals, no matter how legitimate, is unlikely to be accepted by many members of the EU and NATO. On the other hand, it would undoubtedly trigger a wave of violence which could end in episodes of ethnic cleansing. Finally, it would involve a very substantial reinforcement of EULEX and KFOR, which does not appear likely given the scarcity of available resources.

F) "Functional administrative separation": the Serbian minister in charge of Kosovan affairs, Slobodan Samardžić recently proposed that Belgrade should administer the territories of Kosovo with a Serb majority and the establishment of a system of "functional separation" of Serbs and Albanians. The Serbs would take control of the police, the courts and local administration, under UNMIK's leadership and with the "help" of Belgrade. The proposal, made on the ninth anniversary of the commencement of the NATO bombing against Serbia in 1999, overcomes the ambiguity of implicit recognition of independence by extending beyond the north to take in the Serb enclaves in the centre and south of Kosovo. However, the initiative has been met with apprehension on the part of the UN as it considers that its goal would be partition and it is flatly rejected by Pristina and a large part of the international community.

Naturally, these options do not exhaust the possibilities. In any case, the most extreme, such as the formal partition of Kosovo, and other simply impractical alternatives such as the return to the previous status quo, are excluded.

## **IMPLICATIONS FOR SPAIN**

Without wishing to judge the Spanish decision not to recognize its independence, it is clear that this stance poses problems when it comes to taking part in the international missions deployed in Kosovo. Spain must seek a careful balance between a logical policy that is consistent with the decision taken, its duty to show solidarity with its partners and allies and the preservation of the unity of action of the EU and NATO, as well as achieving the two priority goals of stability and security across the entire Kosovo territory and ensuring the protection of the minorities. The difficulties for the Spanish stance are twofold: difficulties of international legitimacy and of political content. In the case of EULEX, the main stumbling block for Spain would be that of legitimacy, with regard to both the flimsy legal basis of the EU mission and its level of acceptance among the Serbs. While in the case of NATO, there is no doubt about its legal basis but there are certainly difficulties in view of the new direction of KFOR.

As regards international legitimacy, the new institutional framework of the civil presence - the deployment of EULEX to be precise - is built on a legal basis which is not clear at all. In that respect, it is understandable that Spain has decided not to send police officers, judges or officials to EULEX until a "legal transfer of responsibility" from the current UN administration in Kosovo takes place, although it is not clear how, or when the legal transfer from UNMIK to EULEX will take place, or what its form will be or whether this will be acceptable to Spain.

However, this does not solve the contradiction of officially supporting the EULEX deployment in the European Council and contributing to its financing, in that the EU mission helps towards the national construction of a state which Spain does not recognize. Politically, the Spanish stance complicates the EU's action with regard to Serbia and Kosovo, as is demonstrated by the recent controversy over whether the future Stabilization and Association Agreement with Serbia is applicable to Kosovo or whether it is neutral as regards final status. It may also lead to a certain marginalization of Spain with regard to European policy on the Balkans as it cannot openly participate in the new structures or in the informal steering agencies such as the ISG. It is worth recalling that one of Spain's traditional demands, in recognition of more than 10 years' contribution to peace and stability in the Balkans, was involvement in the Contact Group for the Balkans.

In the case of NATO, things are apparently simpler. The question of international legality does not pose major problems, in that Resolution 1244, which covers the current KFOR mandate, remains fully in force. In addition, the functions of KFOR are less complex than those of UNMIK or the EU and nor is there a transfer of authority or of powers from one international mission to another, rather basically the continuation of the operation, glossing over the subject of status so as not to aggravate internal divisions. On the other hand, NATO is undoubtedly the international organization with the greatest degree of acceptance among the population of Kosovo as a whole, irrespective of ethnic divisions. For the Albanians, for obvious historical reasons and on account of NATO's veiled but undeniable sympathy with the cause of Kosovan independence. For the Serbs, because it constitutes its main and almost sole guarantee of security. The Serbian defence minister himself sent a letter to the NATO secretary-general which indirectly invited NATO to remain in Kosovo, asking it to help ensure the security of the Serb population. From an official point of view, one problem which could indeed arise is that of the technical relationship between EULEX and KFOR within the framework of Resolution 1244 - in other words, what international duties does KFOR have compared to EULEX.

The problem in relation to KFOR is rather one of a functional nature. NATO is preparing the ground for the review of KFOR Operations Plan 1051 to adapt it to the aforementioned new functions of training the future Kosovan army (KSF) and the future civil institution for managing it. In the case of the EU mission, it would be possible to argue that the political goal is not to contribute to the viability of an independent Kosovo, rather to post-conflict reconstruction, in the sense of providing a society - not a state - with a legal framework. Indeed, any society, whether it is an internationally sovereign entity or not, needs a minimum institutional structure which organizes and governs essential aspects of its coexistence, particularly in the field of justice and law and order - and those would be functions of EULEX. However, in the case of NATO the goal is the creation of military or self-defence forces and a defence ministry or whatever other euphemism - that is to say, the fundamental elements of state sovereignty, something which would stand in clear contradiction to the Spanish position of not recognizing independence. It could also affect the current integrity and solidity of NATO's legal mandate as it is not clear how those new functions would mesh with Resolution 1244. Naturally, a flexible reading of said resolution would be possible, but the fact is that KFOR's international legitimacy would be debilitated. On the other hand, one of KFOR's best qualities is the blessing it has from Serbs and Albanians alike. If KFOR opts for the construction of sovereign institutions, particularly of a future army, with all the symbolic and historical charge that implies, and the links which will inevitably be forged with the former combatants of the KLA, its impartiality will be seriously affected - which will also have consequences for the security of the NATO troops.

## RECOMMENDATIONS

Currently, the Spanish position on this matter is on a knife edge, for which reason it is not easy to make recommendations. However, there are some principles or red lines which should be respected:

1. Avoid any action which means the partition of Kosovo, be it de facto or official. That would mean categorically sanctioning the idea of an ethnically pure state. On the other hand, it would bring even greater suffering to the Serb population. The leader of the Serbs of Kosovo, Milan Ivanović, has declared himself against partition, saying that more than 60,000 Serbs, around half the Serb population of Kosovo, live south of the River Ibar, where nearly all the Serb cultural and religious heritage is to be found too.
2. Seek the greatest legal clarity for the EU in Kosovo and the maximum degree of international legitimacy - not only to make the EULEX mandate easier, but also to avoid setting precedents of EU missions of dubious international legitimacy. A strategic goal of Spain, above and beyond the success of the EU in Kosovo, must be the reinforcement of the international legal framework and the central role of the UN, which has already been weakened enough. This would require actively seeking a more flexible attitude on the part of Russia which would allow a specific UN mandate for EULEX or least an invitation from the UN secretary-general.
3. As regards NATO, Spain is under heavy pressure from its allies to support the new KFOR tasks. The debate is focused on the concept of impartiality and neutrality. In the opinion of some allies, a too passive interpretation of impartiality would nullify KFOR's aim. Last December, NATO approved political directives which, at the request of Spain, stressed the need to avoid any indication of recognition of the new state and focused KFOR's role on the maintenance of stability and ensuring freedom of movement<sup>1</sup>. But the fact is that the process of review of the Operations Plan goes much further than the classic functions of KFOR. An acceptable option for Spain and which would preserve NATO's impartiality would be for the task of training the new Kosovan army to be done via bilateral programmes and not within the multilateral framework. On 19 March, the USA approved a memorandum by which Kosovo was authorized to receive US military aid. This could be the basis of a future programme of aid on the part of a group of countries, within the framework of the ISG and in the spirit of the Ahtisaari Plan, without the need to involve NATO in said aid, something which could give rise to more internal divisions.

## Conclusion

For Spain, the non-recognition of Kosovo's independence does not have to mean the defence of Serbian sovereignty over its former province. Indeed, Spanish objections basically arise from the fact that the process has been incorrect and contrary to international law. What is being defended is the validity of Resolution 1244 not the return to the previous status quo. However, for Spain, maintaining this position and at the same time supporting, financing or taking part in international missions whose ultimate aim - though not always declared - is to help Kosovan national construction will prove increasingly complicated. As Albert

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<sup>1</sup> See El País, 30/04/2008, "España pide a la OTAN que se mantenga neutral en Kosovo".

Branchadell has said recently, Spain has little to fear and much to contribute in this new phase of Kosovo's dependence, not independence. Greater flexibility would save Spanish foreign policy from needlessly entering a blind alley whose only way out will be the tardy and irrelevant recognition of a new state, and without the emotional and historical weight that the late recognition of Israel carried.

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