

# Mapping the UNSCR 1244 Legacy in Post-Independence Kosovo:

## Between Contestation and Recognition



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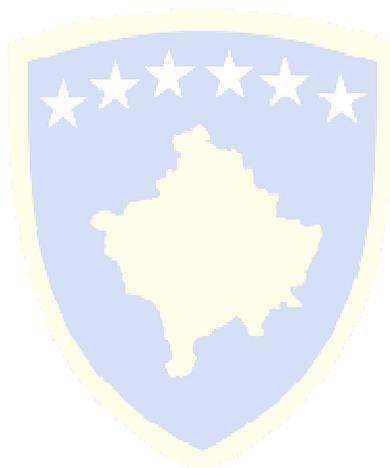
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## Acronyms

<b>CoE</b>	Council of Europe
<b>CSP</b>	Comprehensive Settlement Plan
<b>EU</b>	European Union
<b>EULEX</b>	European Union Rule of Law Mission in Kosovo
<b>ICJ</b>	International Court of Justice
<b>ICO</b>	International Civilian Office
<b>KFOR</b>	NATO-led Kosovo Force
<b>KSF</b>	Kosovo Security Force
<b>KVM</b>	OSCE Kosovo Verification Mission
<b>MFA</b>	Ministry of Foreign Affairs
<b>OMIK</b>	OSCE Mission in Kosovo
<b>OSCE</b>	Organisation for Security and Cooperation in Europe
<b>SSA</b>	Stability Association Agreement
<b>UNMIK</b>	United Nations Interim Administration Mission in Kosovo
<b>UNSC</b>	United Nations Security Council

## Introduction

Since 1999, under the internationally governed framework of the United Nations Interim Administration Mission in Kosovo (UNMIK), a total of around € 2 billion<sup>1</sup> was allocated by European countries<sup>2</sup> for the stabilization and development of Kosovo, making Kosovo the biggest recipient of European Union (EU) aid in the world. However, the lack of consensus at the international level over Kosovo's status severely complicated the state-building efforts of the international community, which are effectively divided between the 'status-positive' and the 'status-neutral'. The United Nations Security Council Resolution (UNSCR) 1244 remains in force nearly 13 years later, unrevised due to a lack of consensus among the five permanent UNSC member states - namely France, United Kingdom, China, USA and Russia. Specifically, Kosovo's unprecedented statehood was specifically pushed for as a result of the two UNSC permanent members rejection, Russia and China, to approve the Comprehensive Proposal for the Kosovo Status Settlement (the "Ahtisaari Plan") by its UN Special Envoy, Martti Ahtisaari<sup>3</sup> in 2007. As a consequence of this, neither Kosovo's (unilaterally) coordinated actions, supported by the major EU states and the United States of America - which led to the Declaration of Independence on 17 February 2008 along with the adoption of the Constitution of Kosovo - nor the affirmative International Court of Justice's (ICJ)<sup>4</sup> conclusions that the adoption of the Declaration of Independence did not violate general international law, appear to be sufficient movements towards resolving the existing stalemate of Kosovo's international subjectivity.

The main argument of the current research is that Kosovo's state institutions have since 2008 proved to have had a very limited influence on the debate whether the considerable international presence based on the legacy of Resolution 1244 is contributing in a coordinated fashion towards creating a predictable future within the international community for Kosovo. Arguably, post-independence Kosovo institutions did not succeed in using the international civilian and military presence in order to join more international organisations, nor was it defined on the basis of which legal framework they should operate, in order to reinvigorate the push forward to a more assertive position on the international stage. As a consequence, the state-building process in Kosovo has experienced a backlash due to the complex legal and political constraints deriving from

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<sup>1</sup> According to King and Mason, "UNMIK is the most ambitious peace operation in UN history: on a per capita basis, the world has invested 25 times as much money and 50 times as many troops as in Afghanistan....if Kosovo is deemed as success it will bolster the UN's claim to be the most credible and effective nation-builder in the World; if it's seen as a failure it will embolden those who argue that nation-building should be done either by powerful individual states or not at all." (King and Mason 2006).

<sup>2</sup> See the European Union Office in Kosovo, available at [http://eeas.europa.eu/delegations/kosovo/eu\\_kosovo/political\\_relations/index\\_en.htm](http://eeas.europa.eu/delegations/kosovo/eu_kosovo/political_relations/index_en.htm)

<sup>3</sup> United Nations Special Envoy for the Future Status of Kosovo, former president of Finland, Marti Ahtisaari, appointed by the UN Secretary-General on 14 November 2005.

<sup>4</sup> International Court of Justice 2010, 44-45 <http://www.icj-cij.org/docket/files/141/15987.pdf>

the unprecedented coexistence of different international mandates, while the prevailing status-quo remains unchanged.

In this context, this research aims to develop a holistic view and uncover the exceptional impact of international civilian and military presence in Kosovo based on the legacy of the 1244 UNSC Resolution within the post-independence context. In this respect, this study will analyze the non-recognizing facet of the international presence towards Kosovo's statehood and the unique relationship of these missions<sup>5</sup> towards Kosovo institutions. The role, policies as well as programmatic objectives will be briefly analysed and only the period of post-independence will be included in this study. In order to contextualize in depth the legacy of the 1244 Resolution, the research team has also analyzed the scope of Diplomatic Liaison Offices, including the Russian, Chinese, Slovak Republic, Romanian and Greek representation in Kosovo.

Finally, while Kosovo's state-building is experiencing a new phase aimed at ending the period of supervised Independence,<sup>6</sup> this research seeks to trigger a public debate concerning the state of "*Modus Vivendi*" between the legacies engendered by the 1244 Resolution, and the new realities introduced by the Constitution of the Republic of Kosovo.

## **Research Approach and Limitations**

The methodology used for the compilation of this policy paper is predominantly qualitative research based on the desk research of legal framework(s), reports, journals and media articles, including semi-structured face to face interviews, questionnaires, as well as non-participatory observations. <sup>7</sup>There are some quantitative analysis conducted to date which reflects the citizen's trust towards these missions but it was exactly one piece of qualitative research lacking. Furthermore, the research team was challenged due to the lack of information and communication by numerous international institutions (KFOR, Liaison Offices, Council of Europe), and the Ministry of Foreign Affairs of Kosovo. In this respect, the research has been oriented towards the secondary data, as a result of reluctance by the institutions mentioned above.

This research has deliberately omitted EULEX (CSDP Rule of Law Mission) that is as well operating under the mandate of UNSCR 1244 and is applying a status neutral policy due to consecutive disunity among the EU member states, particularly Spain, Romania,

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<sup>5</sup> Specifically, UNMIK, OSCE, Council of Europe, NATO-led force KFOR; Russian, Chinese, Greek, Romania and Slovak Liaison Offices.

<sup>6</sup> Note: The process of ending the International Supervision of Independence was initiated during the fourteenth meeting of the ISG, 24 January 2012, Vienna, Additionally, see the Resolution on Ending the International Supervision of Independence by the Assembly of Kosovo, 31 January 2012, [http://www.kuvendikosoves.org/common/docs/Assembly\\_Resolution.pdf](http://www.kuvendikosoves.org/common/docs/Assembly_Resolution.pdf)

<sup>7</sup> Regarding access of electronic sources, please refer to the bibliography for precise date of retrieval.

Slovakia, Greece and Cyprus. Although foreseen by Ahtisaari's Comprehensive Proposal for the Kosovo Status Settlement,<sup>8</sup> EULEX is the only CSDP Mission which periodically reports to the UN Secretary General – making Kosovo's case a joint responsibility for both the UN and the EU. However, EULEX's presence in Kosovo does not constitute a unit of analysis since the respective research intends to assess only the presence of international missions and organizations that were established before the Declaration of Independence. As a result of this, the International Civilian Office (ICO) is also omitted from this research.

This research is expected to serve as reliable source for the policy-makers, students, researchers, journalists and civil society activists willing to study in depth the issues surrounding the international mission's presence and the complexity of their operation under UN SCR 1244. The data have been gathered in an independent manner and from a non-partisan perspective.

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<sup>8</sup> Comprehensive Proposal for the Kosovo Status Settlement (Art. 13)  
[http://www.unosek.org/docref/Comprehensive\\_proposal-english.pdf](http://www.unosek.org/docref/Comprehensive_proposal-english.pdf)

## 1. The legal and political context

As described above, the three key legal documents, which provide the international and constitutional law foundations of Kosovo are the Ahtisaari Plan dated 26 March 2007, the Declaration of Independence dated 17 February 2008, and the Constitution of the Republic of Kosovo of 15 June 2008. In its Declaration of Independence, the Assembly of Kosovo declared Kosovo to be an independent and sovereign state reflecting the will of Kosovar people and being in full accordance with the recommendations of UN Special Envoy Martti Ahtisaari and his Comprehensive Proposal for the Kosovo Status Settlement.<sup>9</sup> In addition to making explicit reference to the Ahtisaari Plan, Kosovo authorities have invited and welcomed an international civilian presence to supervise the implementation of the Ahtisaari Plan, a European Union-led rule of law mission and the North Atlantic Treaty Organization to retain the leadership role of the international military presence in Kosovo and to implement responsibilities assigned to it under UNSC Resolution 1244 (1999) and the Ahtisaari Plan.<sup>10</sup> While it is not the case in the constitutional provisions, paradoxically, the latter resolution remains explicitly important in the Declaration of Independence, while the Assembly of Kosovo committed itself to comply and “act consistent with principles of international law and resolutions of the Security Council of the United Nations, including 1244 (1999).”<sup>11</sup>

The cost of the large international presence in Kosovo is extremely high- approximately equal to 1/3 of the country’s annual budget. This includes, in general terms, an annual budget of \$47 million for United Nations Mission in Kosovo (UNMIK); a budget of around €140 million for the EU Rule of Law Mission (EULEX); €23 million for the Organization for Security and Cooperation in Europe (OSCE); as well as the combined annual operational costs for NATO and KFOR troops deployed by contributing countries. This brings a total close to half a billion dollars.<sup>12</sup> Despite these facts, Kosovo is neither a full member of the above-mentioned organisations, nor does it have any formalised order of contractual relations with those organizations. Ultimately, on the bases of these considerations, post-independence Kosovo is depicted as having a hybrid international presence without due consideration being paid to the Constitutional provisions of the Republic of Kosovo; UNSC 1244 Resolution gives Kosovo’s stakeholders no ownership over the international presence, both in political, legal, operational or structural terms. Paradoxically, the lack of contractual relationships with these organizations, due to the non-recognition of or status-neutral approach towards Kosovo’s statehood, makes it a country with one of the highest international presences. At the same time, however, it has also become one of the most isolated ones, in terms of not being a full member of regional and international organizations and forums. However, the recently reached agreement on regional cooperation be-

<sup>9</sup>Declaration of Independence available at [http://www.assembly-kosova.org/common/docs/Dek\\_Pav\\_e.pdf](http://www.assembly-kosova.org/common/docs/Dek_Pav_e.pdf) paragraph 1.

<sup>10</sup> Ibidem, paragraph 5.

<sup>11</sup> Ibidem, paragraph 12.

<sup>12</sup> See the speech by the Assistant Secretary-General for Peacekeeping Operations during the UNSC session on 8 February 2012, <http://www.unmikonline.org/Pages/UNSC08022012.aspx>

tween Kosovo and Serbia, facilitated by the EU,<sup>13</sup> provided a new momentum - and perhaps new opportunities - towards closing the gap between Kosovo and other countries that enjoy full membership of regional forums and initiatives. This agreement, for the first time, provided Kosovo with the chance to participate in and sign new agreements on its own and to speak for itself in regional meetings, a role which has mainly been exercised by UNMIK since 1999.<sup>14</sup> In other words, aiming towards the introduction of a feasibility study that will lead to the eventual signing of a contractual agreement, specifically the Stability Association Agreement, with the EU, the Government of Kosovo agreed (24 February 2012) that they would be represented in regional meetings with a footnote that refers to the Security Resolution 1244 and the Conclusions of the ICJ on the Declaration of Independence<sup>15</sup> which was heavily criticized by the opposition and civil society organizations.<sup>16</sup> Nevertheless, Kosovo's participation is not directly linked to its membership in respective organizations or forums, especially to those with decision-making based on consensus. The outcome of the above-mentioned agreement remains to be seen: whether it will further amplify Kosovo's case internationally seems questionable. Apparently, any incentive towards normalizing the relations between Prishtina and Belgrade, including the implementation of the latest agreements, remains 'pending' as a result of the consecutive anarchy and status-quo in the municipalities of North Mitroica, Zvecan, Leposavic and Zubin Potok.

On the other hand, overshadowed by the developments mentioned above, in January 2012 the Resolution on Ending of the Supervised Independence has been adopted by the Assembly of Republic of Kosovo which was welcomed by the International Civilian Representative (ICR) and International Steering Group, stating it to be fully in line with the Comprehensive Settlement Plan (CSP) while supporting the finalization of this process.<sup>17</sup> In concrete terms, the Resolution on Ending the International Supervision of Independence, in accordance with the Constitution of the Republic of Kosovo (art. 65.1 & 6.1) and the Rules of Procedures of the Assembly (art. 38), was approved referring solely to the legal frameworks of the Constitution and legislation of the Republic of Kosovo, including as well the Comprehensive Status Settlement, without mentioning of the UNSCR 1244 nor were other international actors referred to, besides the ICR.<sup>18</sup> Nevertheless, Kosovo's institutions remain powerless in the international arena when it comes to in-

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<sup>13</sup> European Union, Press Statement on EU facilitated dialogue: Agreement on Regional Cooperation and IBM technical protocol, 24 February 2012, [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/128138.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/128138.pdf)

<sup>14</sup> Ibidem

<sup>15</sup> For more information please see article: "Newborn 1244" <http://www.zeri.info/artikulli/1/1/44181/newborn-1244/> and article "Me pavarësi, GJND dhe 1244 në nismat rajonale" <http://www.kohaditore.com/?page=1,13,88546>

<sup>16</sup> For more information please see article "Opozita kundër fusnotes:" <http://www.telegرافي.com/lajme/opozita-kunder-fusnotes-2-20393.html>

<sup>17</sup> For more information please see ICO News Release: "Statement by ICR Pieter Feith on the Assembly of Resolution on Ending Supervised Independence" [http://www.ico-kos.org/data/Image/2012Statement by ICR on Assembly resolution.pdf](http://www.ico-kos.org/data/Image/2012Statement%20by%20ICR%20on%20Assembly%20resolution.pdf)

<sup>18</sup> Resolution on Ending the International Supervision of Independence by the Assembly of Kosovo, 31 January 2012, [http://www.kuvendikosoves.org/common/docs/Assembly\\_Resolution.pdf](http://www.kuvendikosoves.org/common/docs/Assembly_Resolution.pdf)

fluencing the decisions made within the Security Council and this will likely remain the case for an indefinite timeframe.<sup>19</sup> In this respect, there have been few courtesy visits to the UN headquarter, respectively, the latest meeting between the UN Secretary-General Ban Ki-Moon and Kosovo's Prime Minister, Hashim Thaçi.<sup>20</sup> However, besides implicit and highly vocal support by both sides, the research did not evidence any tangible results on Kosovo's institutionalized effort in shaping the international presence related to the UNSCR 1244.

It has been argued that Kosovo should be able to proceed with pursuing further memberships in international organizations (esp. UN, OSCE, EU), it needs to sign further agreements with Serbia which might eventually influence China and Russia's standpoint in the Security Council, otherwise "they will make use of their veto".<sup>21</sup> However, the normalization of relationships with Serbia is a two-way approach and a 'gentleman's agreement' seems less likely to be offered, but whether Kosovo should apply – employing the wait and see policy - or proceed further with interim solutions on the global and EU context is highly questionable. Therefore, normalization of Prishtina-Belgrade relation remains to be the pre-requisite for moving forward in the process of developments!

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Kosovo does not apply any visa policy towards foreign visitors despite the requests of the EU to impose a visa regime regardless of obligations deriving from the Law on Foreigners.<sup>23</sup> In addition to this, international staffers (especially those from the third countries and the non-recognizing states) are not registered or provided residence/working permits for Kosovo. This complicates the internal affairs of Kosovo and it compromises the efforts to exercise control over border related issues and it might have further implications for the security of Kosovo. Kosovo authorities cannot conduct any type of vetting of the international staffers nor are they provided with the information on their personal or professional backgrounds.<sup>24</sup>

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<sup>19</sup> Interview with Kosovo Civil Society representative , 30 March 2012 - Prishtina

<sup>20</sup> See the press statement by the Government of Kosovo, "Prime Minister Hashim Tachi is received in New York by the United Nations General Secretary, Ban Ki Moon" available at: <http://www.kryeministri-ks.net/?page=2,9,2784>

<sup>21</sup> Interview with International Crisis Group, 23 April 2012

<sup>22</sup> Ibidem.

<sup>23</sup> Progress Report 2011, p. 52

<sup>24</sup> For more information regarding the vetting instruments in Kosovo, see the KCSS article "Qeverisja e Agjencisë së Inteligjencës në Kosovë", available at: <http://qkss.org/new/images/content/PDF/QEVERISJA%20E%20AGJENCIS%C3%8B%20S%C3%8B%20INTELIJENC%C3%8B%20N%C3%8B%20KOSOV%C3%8B.pdf>

## 1.1. UN SCR 1244

As previously mentioned, upon the cessation of hostilities, the United Nations Security Council adopted Resolution 1244, which recognizes Kosovo as part of Federal Republic of Yugoslavia (FRY), but does not attribute it to Serbia;<sup>25</sup> It also established an international civil presence—namely the United Nations Interim Administration Mission in Kosovo (UNMIK) and a security presence in Kosovo under the United Nations authority, the NATO-led Kosovo Force (KFOR).<sup>26</sup> UNMIK had the responsibilities for essential administrative functions over an *indefinite time period*, this open-ended framework is considered to be the ‘*mandate’s fundamental ambiguity*’.<sup>27</sup> UNMIK also supported the development of the Provisional Institutions for Self-Government (PISG) by organizing elections, reconstruction of infrastructure and the economy, the establishment of local police and the maintenance of law and order. The UN administration consists of four pillars: civil administration under UN responsibility; institution building managed by OSCE; economic reconstruction led by the EU; and humanitarian affairs headed by UNHCR. In the course of time as responsibilities were transferred to the Kosovar institutions and upon the latter’s consolidation, Kosovo declared its Independence on 17 February 2008 in line with the Ahtisaari Plan, enshrined in the Constitution of the Republic of Kosovo. To date, Kosovo has been recognized by 90 states<sup>28</sup>; despite this the legality of the Declaration of Independence has been questioned at the International Court of Justice (ICJ) with the conclusions that: “*the adoption of the declaration of independence of 17 February 2008 did not violate general international law, Security Council Resolution 1244 (1999) or the Constitutional Framework. Consequently the adoption of that declaration did not violate any applicable rule of international law*”.

Despite these developments, one can easily see that a large number of international actors remain in Kosovo, even after the Declaration of Independence, working under the protection of UNSCR 1244. UNMIK’s authority, in particular, is considered to be rather nominal, lacking recognition by other international organizations and having no contractual relationship with Kosovo Government officials.<sup>29</sup> However, the UN asserted that despite Kosovo’s declaration of Independence, Resolution 1244 remained in force unless repealed by the Security Council.<sup>30</sup> This means that the UNMIK Special Representative of the Secretary General retained the exclusive executive and legislative authority in Kos-

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<sup>25</sup> For more information please see Policy Brief #6: “*Kosovo the unprecedented State*” [http://www.kipred.net/web/upload/Kosovo\\_The\\_Unprecedented\\_State.pdf](http://www.kipred.net/web/upload/Kosovo_The_Unprecedented_State.pdf)

<sup>26</sup> For more information please see UN SC Resolution 1244 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>

<sup>27</sup> For more information please see the Book: “*Security Council Resolutions under Chapter VII*” [http://www.fride.org/uploads/Cap5\\_Kosovo\\_ENG\\_oct9.pdf](http://www.fride.org/uploads/Cap5_Kosovo_ENG_oct9.pdf)

<sup>28</sup> For more information please see website of the Ministry of Foreign Affairs (MFA) <http://www.mfa-ks.net/?page=1.33>

<sup>29</sup> For more information please see the Book: “*Security Council Resolutions under Chapter VII*” [http://www.fride.org/uploads/Cap5\\_Kosovo\\_ENG\\_oct9.pdf](http://www.fride.org/uploads/Cap5_Kosovo_ENG_oct9.pdf)

<sup>30</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo of 12 June 2008 (S/2008/354), para. 4. [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2012/72](http://www.un.org/ga/search/view_doc.asp?symbol=S/2012/72)

ovo under Resolution 1244 with changing circumstances on the ground due to Kosovo's declaration of independence merely limiting UNMIK's operational but not legal capacity. This would mean that any upcoming EU engagement in Kosovo would need the consent of the UN under Resolution 1244. Consecutively, Kosovo's international presence (both civilian and military), with the exception of the ICO, remains highly dependent on any development regarding any Security Council decision over Resolution 1244. Except for a few sporadic statements by political leaders, the research team did not discover any policy endorsed by post-independence institutions in Kosovo that favors replacement or revision of Resolution 1244 via the backing of a powerful UNSC permanent member state, in order to shift away from the ongoing status-quo.

## 1.2. Constitution of the Republic of Kosovo

Entering into force on 15 June 2008, the Constitution foresaw no role for UNMIK in post-independence Kosovo as UNMIK officials claim that the Government and ICO deliberately excluded the former.<sup>31</sup> Therefore, UNMIK abides solely by Resolution 1244. Aside from this, the continuation of the military presence's mandate is specifically mentioned in the Constitution stating (art.153): "*Notwithstanding any provision of this Constitution, the International Military Presence has the mandate and powers set forth under the relevant international instruments including United Nations Security Council Resolution 1244 and the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007.*" Despite this, KFOR's policy towards Kosovo's remains status-neutral.

In addition to this, the continuity of International Agreements and Applicable Legislation (art. 145) is enshrined in the Constitution which states that international agreements will continue to be respected: "*until such agreements or acts are renegotiated or withdrawn from in accordance with their terms or until they are superseded by new international agreements or acts covering the same subject areas and adopted pursuant to this Constitution,*" thus enabling the continuation and applicability of UN SCR 1244. However, it adds that the applicable legislation "*shall continue to apply to the extent it is in conformity with this Constitution until repealed, superseded or amended in accordance with this Constitution*"<sup>32</sup> hence placing boundaries on its applicability. Nevertheless, from the legal stand point, it can be argued that domestic law and international law do not necessarily have to be in accordance with each other and one would not refer to this as a collision, per se, due to the complexity of the dimension and diversity of explanatory approaches or theories.<sup>33</sup> Moreover, UN SCR 1244, referring to the above-mentioned, as long as not

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<sup>31</sup> Interview with UNMIK officials, 7 March 2012 - Prishtina

<sup>32</sup> For more information please see the Constitution (Art. 145) <http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>

<sup>33</sup> Interview with Legal Expert, Group for Legal and Political Studies, 27 April 2012 in Prishtina

substituted by a new 'agreement' will continue to be in force and thus (partially) respected by Kosovar institutions. Despite this fact, the Supremacy of Legal Act, regulated under Art. 16 underline the following: *"the Constitution is the highest legal act of the Republic of Kosovo. Laws and other legal acts shall be in accordance with this Constitution [...] every person and entity in the Republic of Kosovo is subject to the provisions of the Constitution."* Nevertheless, this research has discovered that not all entities present in Kosovo are subject to Constitutional provisions.

Finally, it is worth stressing that the Constitution of the Republic of Kosovo is entering into the last phase of Supervised Independence, through amendments passed by the Assembly of Kosovo, which will eventually lead to the closure of the International Civilian Office. However, paradoxically, this legislative process will presumably not further clarify the dilemmas raised as above, but it will only shutdown an international presence, which in this case does recognize the Independence of Kosovo, such as the ICO.

## 2. The International Presence as a Legacy of 1244

### 2.1. UNMIK

UNMIK's mandate under Resolution 1244 is not compatible with Kosovo's new circumstances as an independent state. As a matter of fact, Kosovo's declaration of independence states that Kosovo welcomes the international community's continued support of its democratic development through its international presences established in Kosovo on the basis of Resolution 1244. After 2008, UNMIK's mandate continued to be implemented as stated above responding to these developments, despite being in conflict with and excluded by the constitutional provisions. In this complex situation, one may state that there is a direct conflict between the right of Kosovo to exercise legislative and executive authority in Kosovo, and the presence of UNMIK, despite being excluded by constitutional provisions.<sup>34</sup>

Reconfiguration and hand-over of responsibilities to EULEX were initiated soon after the Declaration of Independence.<sup>35</sup> According to the Security Council Presidential Statement of 26 November 2008, the UN Secretary General, Ban Ki-Moon, reconfigurations were to affect areas such as: the police; courts; customs; transport and infrastructure; boundaries; and Serbian patrimony.<sup>36</sup> However, Kosovo public opinion immediately opposed the proposal – known as Six Point Plan – especially as it was driven from top-down. Additionally, they disliked the fact that it did not take into consideration any of the Ahtisaari plan's provisions. This declaration marked a significant step towards UNMIK's exit

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<sup>34</sup> The UN Secretary-General admitted in his report dated 24 November 2008 (S/2008/692), para. 21, that there is a "conflict between resolution 1244 (1999) and the Kosovo Constitution, which does take UNMIK into account." He added that "the Kosovo authorities frequently question the authority of UNMIK in a Kosovo now governed under the new Constitution".

<sup>35</sup> For more information please see KCCS Report: *"Re-Establishment and Reform of the Justice System in Kosovo (1999-2011)"*  
<http://qkss.org/new/index.php?section=news&cmd=details&newsid=216&teaserId=11>

<sup>36</sup> For more information please see General Secretary's Statement (SC 9366)  
<http://www.un.org/News/Press/docs/2008/sc9366.doc.htm>; Additionally, according to the key elements of these points, Police was supposed to experience a formation of additional sub-stations in non-Albanian areas; UNMIK to appoint a senior Kosovo Serb officer; all policing in Kosovo to remain under international monitoring; for Customs – Kosovo to continue functioning as a single customs area; international customs officers to be appointed in accordance with Security Council, Resolution 1244 (1999) to be reinstated at gates 1 and 31 (administrative line with central Serbia); customs revenues collected at gates 1 and 31 to benefit the development of local communities; for Justice –applying UNMIK law only and staffed by UNMIK personnel for a period of up to 60 days from the opening of the courthouse; during subsequent phases, local judges and prosecutors to be appointed in accordance with Security Council Resolution 1244 (1999); for Boundaries: KFOR to continue fulfil its security mandate throughout Kosovo, including with respect to the boundaries, in conjunction with other international organizations; for Serbian patrimony: international protection of the Serbian Orthodox Church in Kosovo must continue, the agenda would include the implementation of protective arrangements around major Serbian Orthodox Church sites, activities related to the welfare of the monks and nuns, such as exempting the Serbian Orthodox Church from value-added tax, excise tax and customs duties, modalities of reconstruction of the sites by the Serbian Orthodox Church and the issue of return of archaeological artefacts, available at <http://www.kosovocompromise.com/cms/item/topic/en.html?view=story&id=1571>

strategy which was linked to the 'Standards before Status Policy.' EULEX was supposed to substitute UNMIK regarding police and justice functions with a presence that was limited to representative and monitoring functions.<sup>37</sup> UNMIK will continue to work under the 1244 legal framework until the Security Council decides otherwise. Nevertheless, the civil mission was rendered 'unwelcome' in post-independence Kosovo since neither the Constitution nor Ahtisaari's plan had foreseen a role for the former administration.<sup>38</sup> At present, the mission structure consists of the headquarters in Prishtina, supported by field offices in Mitrovica and Peja, including an office in Skopje and an UN Office in Belgrade. As of 31 December 2010, UNMIK employs 403 staff members to fulfil its mandate: "[...] to help ensure conditions for a peaceful and normal life for all inhabitants of Kosovo and advance regional stability in the western Balkans" and this is achieved through activities such as assisting communities in Kosovo with an increased focus on political reporting, facilitating Kosovo's participation at regional multilateral forums. In northern part of Kosovo UNMIK has served as a mediator between northern Kosovo communities and Prishtina.<sup>39</sup> UNMIK claims to have 'top level contacts' for facilitating communication for KFOR, EULEX and OSCE with Kosovo Serb leaders in the north through a coordination forum, significantly contributing to the freedom of movement for KFOR.<sup>40</sup> UNMIK, in its 2012 Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, declares to have brokered 'a compromise arrangement,'<sup>41</sup> facilitating EULEX's freedom of movement in the north.

There have reportedly been claims that the Kosovar Government, supported by ICO and the US, is planning the closure of UNMIK office in the North of Mitrovica by the end of March 2012, transferring responsibilities to a so-called "Interim Administrative Office of North Mitrovica" which then would operate under the authority of the ICO.<sup>42</sup> However, this was denied by UNMIK<sup>43</sup> and recent developments have demonstrated that UNMIK has indeed closed its office by merely dislocating itself from the building it used to work in for the past 13 years.<sup>44</sup>

Despite the claims of the Kosovar Government to end the financial support of the UNMIK Administration in Mitrovica (UAM), UNMIK maintains its presence in the northern part

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<sup>37</sup> For more information please see the Book: "Security Council Resolutions under Chapter VII" [http://www.fride.org/uploads/Cap5\\_Kosovo\\_ENG\\_oct9.pdf](http://www.fride.org/uploads/Cap5_Kosovo_ENG_oct9.pdf)

<sup>38</sup> For more information please see the Book: "Civil Wars. The Complex Nature of and Implications of International Engagement after Kosovo's Independence" [http://dcu.academia.edu/GezimVisoka/Papers/542131/The\\_Complex\\_Nature\\_and\\_Implications\\_of\\_International\\_Engagement\\_after\\_Kosovos\\_Independence](http://dcu.academia.edu/GezimVisoka/Papers/542131/The_Complex_Nature_and_Implications_of_International_Engagement_after_Kosovos_Independence)

<sup>39</sup> For more information please see UNMIK's website: <http://www.unmikonline.org/Pages/about.aspx>

<sup>40</sup> For more information please see Report of the Secretary-General on UNMIK (31 Jan. 2012) [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2012/72](http://www.un.org/ga/search/view_doc.asp?symbol=S/2012/72)

<sup>41</sup> For more information please see Report of the Secretary-General on UNMIK (31 Jan. 2012): [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2012/72](http://www.un.org/ga/search/view_doc.asp?symbol=S/2012/72)

<sup>42</sup> For more information please see article: "Qeveria e ICO-ja me plan për mbylljen e UNMIK-ut në Mitrovicë" <http://www.koha.net/?page=1.13.87316>

<sup>43</sup> For more information please see article: "UNMIK-u s'e ka në plan mbyllje e zyrës në veri" <http://www.indeksonline.net/?FaqeID=2&LajmID=15006>

<sup>44</sup> For more information please see article: "Pas 13 vjetësh, UNMIK dorëzon selinë në Mitrovicë" <http://www.lajmeshqip.com/kombetare/pas-13-vjetesh-unmik-dorezon-seline-ne-mitrovice>

of Kosovo, receiving €4 million per year (2011/2012), allocated by the Government, that has given no explanation regarding the financial extension.<sup>45</sup> Allegedly, as reported by local media, the staff of UAM is engaged in parallel structures, thus hampering the expansion of constitutional applicability aimed at by the Kosovar Government. UAM is employing 163 staff members, for whom 80% of their salaries are paid by the Kosovar Government; they also receive a second salary from the parallel structures.<sup>46</sup> In line with this, it may be concluded that the Kosovar institutions are exclusively cooperating with UNMIK regarding the north of Kosovo due to their own restriction of operation. However, 13 years after its establishment, UNMIK opposed a recent request from Serbian institutions to reprise their role in organizing local elections in Kosovo. In his reply to the Serbian authorities, the Special Representative of the Secretary General (SRSG), Farid Zarif, informed them that it would not be possible for UNMIK to organize local elections because of circumstances prevailing in Kosovo.<sup>47</sup> As such, one may state that UNMIK *de facto* recognizes the current developments in Kosovo, while simultaneously being aware of its revised role vis-à-vis the post-independence legal and political framework.

## 2.2. OSCE Mission in Kosovo

Upon the dissolution of the OSCE Kosovo Verification Mission (KVM) and the Task Force for Kosovo (cf. under Chapter V. Closed Missions), the OSCE Mission in Kosovo (OMIK) was established (PC.DEC/305). Within the framework of UN Security Council Resolution 1244, the role of the OSCE which did not include executive powers, has been related to institution- and democracy-building, human rights and rule of law: to support democratic institutions and good governance, promote human and community rights and improve security and public safety via proactive monitoring of policy through activities such as analyzing, reporting and giving recommendation in case of shortcomings, as well as including the provisions of training and advice to the Kosovar institutions in order to ensure the latter's development and adherence to human rights and good governance best practices.<sup>48</sup> Structured with 3 departments: Human Rights and Communities; Democratization; Security and Public Safety, the OSCE is status neutral, and has, since January 2008, required its mandate to be automatically extended on a monthly basis, unless decided otherwise by its 56 participant states (36 of which have recognized Kosovo).<sup>49</sup> The OSCE mission is currently operating in 5 zones (Mitrovica, Pejë, Prizren, Gjilan, Prishtinë) with a total number of 670 staff members, with allocated funds of €22,606,300 at

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<sup>45</sup> For more information please see article: "*Qeveria, parat tona për strukturat paralele*" <http://www.indeksonline.net/?FaqeID=2&LajmID=16499>

<sup>46</sup> For more information please see article: "*Zyrtarë e UNMIK-ut punojnë edhe në strukturat paralele*" <http://www.telegrafi.com/lajme/zyrtare-e-unmik-ut-punojne-edhe-ne-strukturat-paralele-2-20269.html>

<sup>47</sup> Transcript of SRSG interview with Associated Press, Friday 23 March 2012, available at: [http://www.unmikonline.org/Pages/srsgitw\\_ap23032012.aspx](http://www.unmikonline.org/Pages/srsgitw_ap23032012.aspx)

<sup>48</sup> For more information please see OSCE's website: 'Overview' <http://www.osce.org/kosovo/43378>

<sup>49</sup> For more details please see website: Who recognized Kosova as an Independent State? <http://www.kosovothankyou.com/statistics/>

its disposal.<sup>50</sup> Compared to its previous composition, the OSCE has downsized by 44.33 %, with staff levels dropping from 1,123 to 670 staff (a reduction 453 staff members) accordingly, the budget was reduced by 35% - from €33,602,600 to 21,862,400 ( a reduction of 11,740,200€).<sup>51</sup>

It has been stated that the OSCE mandate has not been affected by the political changes that occurred in 2008 since its mandate has no political implications. The OSCE's role in post-independent Kosovo has not been questioned by the local institutions; the latter continue to address requests to the OSCE regarding their issues of concern. The modification of OSCE's operations has been shifting from an institution-building role to an advisory one; to include the addressing of recommendations. The organization of elections in Kosovo used to be a major focus of the OSCE from 2000 to 2008, considering its decisive role in the Central Election Commission in particular. However, despite its status-neutral policy, since 2008 the OSCE has retained a non-executive advisory role in the electoral management bodies.<sup>52</sup>

Referring to OSCE's reports, there is still a need for further development, particularly with regard to Kosovo's judiciary. OSCE has no intention of terminating its mandate and therefore there is no exit strategy which refers to. Concerning the dual legality in Kosovo, OSCE, in line with its status neutral approach, declared that their aim is to ensure the proper implementation of international Human Rights standards and international conventions. This is in congruence with both Resolution 1244 and the Constitution of Republic of Kosovo. Despite its downsizing and budget cuts, the OSCE is taking over the tasks of the UNHCR that is gradually withdrawing from Kosovo. Regarding other actors of the International Community in Kosovo, the OSCE claims to cooperate and coordinate on thematic issues, however, without specifically defining the time-reference.<sup>53</sup>

Recently, the OSCE has facilitated parliamentary, presidential and local elections in Serbia that took place on 6<sup>th</sup> May, by facilitated the polling in Kosovo for those members of the Serbian community with dual-nationality. However, the legal bases on which those elections took place remained highly uncertain/unclear,<sup>54</sup> except the reference made to the 'decision based on European principles and values'.<sup>55</sup> Prior to the trilateral agreement reached on 30 April 2012, there was no formal request made to the Presidency of

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<sup>50</sup> For more information please see: "Survey of the OSCE Field Operations" <http://www.osce.org/node/74783>

<sup>51</sup> Correspondence with OSCE's Spokesperson, 12 March 2012, Prishtinë

<sup>52</sup> For more information about the OSCE's role in organizing the local and parliamentary elections until 2007, see the data in the website of OSCE Mission in Kosovo, available at <http://www.osce.org/kosovo/43390>

<sup>53</sup> Interview with OSCE official, 12 March 2012 Prishtina

<sup>54</sup> According to the statement by the Government of Kosovo, the bases for "this decision by the OSCE is based on European principles and values" without specifying which are those principles and values, applicable in the constitutional provisions of Kosovo. For more information about the press release, see <http://www.kryeministri-ks.net/?page=2,9,2826>

<sup>55</sup> Ibidem.

Kosovo<sup>56</sup> – deliberately avoiding any request with post-independent institutions which ultimately could have caused dissatisfactions among contributing member states of the OSCE. From this perspective, as the Central Election Commission of Kosovo, a constitutional body under the President of the Republic of Kosovo is the only authority mandated to organize the elections in Kosovo, Serbia would need to formally address any correspondence to the President of the Republic of Kosovo. On the other hand, Serbia's Constitution considers the entire Kosovar population to be among its citizens.<sup>57</sup> Amidst these diverging perspectives, it has been reported that the OSCE has finally achieved a 'gentlemen's agreement' with the Serbian institutions with the official consent of Prishtina, which has been confirmed by the Government of Kosovo.<sup>58</sup>

However, the abovementioned implemented electoral process could produce unpredictable consequences; it certainly could serve as a precedent allowing future elections of Serbia to be held in Kosovo without taking into consideration domestic central or electoral institutions. The huge risk posed by such rapidly made decision, without taking into consideration any legal bases or formal invitations by the Presidency of the Republic of Kosovo, might further violate the constitutional order of Kosovo.

### 2.3. Council of Europe

Following the Declaration of Kosovo's Independence, the reactions of the Council of Europe Parliamentary Assembly (PACE) indicated that the body felt that whatever the status of Kosovo might be, it should be an area where instruments of the Council of Europe (CoE) were applied.<sup>59</sup> The Council of Europe refers to Kosovo "*whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo,*" declaring that it is applying '*a policy of status-neutrality.*' Furthermore, the CoE Assembly refers to the Kosovo Constitution noting that it contains the main international human rights instruments, as well attention to all further significant Conventions, including the Kosovo Government Strategy and Action Plan on Human Rights.<sup>60</sup> Despite, its status neutrality, CoE de facto recognizes Kosovo's institutions and their authority as it states: "*it cannot be disputed that the Kosovo institutions have de facto authority over the territory of Kosovo (and also legal authority according to the majority of Council of Europe member states)*"

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<sup>56</sup> See article on the daily newspaper Koha Ditore, "Zgjedhjet e Serbise, pa baze ligjore" available at: <http://www.koha.net/?page=1,13,97821>

<sup>57</sup> For more information please see article: "S'ka ligj për organizimin e zgjedhjeve serbe nga OSBE" <http://www.koha.net/?page=1,13,97123>

<sup>58</sup> See the Press Statement by the Government of Kosovo, 30 April 2012, available at: <http://www.kryeministri-ks.net/?page=1,9,2826>

<sup>59</sup> For more information please see: Statement of PACE President (17 Feb. 2012) <http://www.assembly.coe.int/ASP/Press/StopPressView.asp?ID=2011>

<sup>60</sup> For more information please see Report: "*The situation in Kosovo and the role of the Council of Europe*" (Doc. 12281) <http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12281.pdf>

and that they cannot be excluded from the circle of Council of Europe interlocutors if the Council of Europe wants to have any impact. Under the Directorate General of Democracy and Political Affairs, present in Kosovo since 1999, the CoE is currently operating in Prishtina, while its office consists of four international staff members and two local teams that implement projects in the field of education and the protection of cultural heritage (point 129). Additionally, it is contributing to the organization of elections, aside from those held in 2010, since: *"The CoE does not recognize Kosovo as an independent state"*, and therefore did not agree to monitor the elections announced by the institutions of the state of Kosovo.<sup>61</sup> Despite the fact that there is no consensus among CoE members, the Council of Europe is nonetheless interested in the development of Kosovo, specifically focusing on rule of law.<sup>62</sup> Furthermore, Kosovo is a beneficiary of the CoE as well as several EU Joint Programmes concerning cultural and archaeological heritage, social security co-ordination and fighting cybercrime.

Despite the lack of membership, the Constitution of Kosovo was unilaterally adopted under the direct applicability of International Agreements and Instruments, the Framework Convention for the Protection of National Minorities (Art. 22.4). Additionally, it is responsible for promoting a spirit of tolerance and dialogue and supports reconciliation among communities and respect for the standards set forth in the Council of Europe Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages (Art. 58.).

Despite the facts mentioned above, to date 34 of 47 CoE member states have recognized Kosovo's sovereignty and independence.<sup>63</sup> In relation to this, the Director General (at that time) of Democracy and Political Affairs at the Council of Europe EMNI, Jean-Louis Laurens, stated that *"Kosovo has already been recognized bilaterally by 2/3 of the Council of Europe members, thus, logically the votes for admission in this organization in fact are not an issue at all because there is no consensus vote rule."*<sup>64</sup> In line with this, Kosovo's chances of becoming a member of CoE are sufficiently favorable, aiming membership in significant institutions, however Kosovo still needs to fulfill preconditions regarding the rule of law and human rights implementation.<sup>65</sup> Nevertheless, Kosovo institutions were permanently reminded by Serbian Foreign Minister Vuk Jeremic, that "Serbia would

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<sup>61</sup>Please see the following links: [http://www.fes-prishtina.org/wb/media/Publications/2011/Kosovs%20membership%20EUenglisht-web%20\(3\).pdf](http://www.fes-prishtina.org/wb/media/Publications/2011/Kosovs%20membership%20EUenglisht-web%20(3).pdf) and <http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12281.pdf>

<sup>62</sup> Regardless of the several attempts to communicate with CoE office in Prishtina (CoE Deputy Head Office in Prishtina, 06 March 2012) and Strasbourg (CoE Media Officer for Kosovo, 12 March 2012 Strasbourg), there was no information revealed by the both CoE offices with the explanation that due to the political sensitivity their involvement in this research was not considered to be appropriate.

<sup>63</sup> For more details please see website: Who recognized Kosova as an Independent State? <http://www.kosovothankyou.com/statistics/>

<sup>64</sup>For more information please see article: "Kosovo to join the Council of Europe" <http://www.newkosovareport.com/200906051826/Politics/kosovo-to-join-council-of-europe.html>

<sup>65</sup> Please refer to the following link for more details on the report *"Kosovo's membership into the Council of Europe"*: [http://www.fes-prishtina.org/wb/media/Publications/2011/Kosovs%20membership%20EUenglisht-web%20\(3\).pdf](http://www.fes-prishtina.org/wb/media/Publications/2011/Kosovs%20membership%20EUenglisht-web%20(3).pdf)

never allow Kosovo to become a member of this and other international organizations”<sup>66</sup> Internal developments became even more difficult when in January 2011, the CoE adopted the report by the Swiss Senator, Dick Marty, accusing the senior political leadership of Kosovo of allegedly being involved in organized crime and war crimes. The report, which was submitted in December 2010,<sup>67</sup> has attracted considerable public attention around the globe, and Kosovo’s image was significantly tarnished as a result. The CoE called for investigative bodies to make inquiries into these charges outlined in the report. Kosovo’s perspective towards membership has been significantly affected by the developments mentioned above and presumably this will continue until the investigation process has finished.

## 2.4. NATO-led force KFOR

In Kosovo, the initial responsibilities of KFOR,<sup>68</sup> consisting of 50,000 troops, were the prevention of conflict, maintenance of the ceasefire, the creation of a safe environment in order to enable the coexistence of people, the facilitation of operation of the international civil presence by ensuring their freedom of movement, the delivery of humanitarian aid as well as other tasks that could be assigned as and when the security situation dictated these kind of interventions. According to UNSCR 1244, KFOR was given the responsibility “to ensure public safety and order until the international civil presence can take responsibility for this task;” thus it was the first UN case where public security was to be managed by a military power with policing authority. Besides SCR 1244, KFOR’s mandate derives from the Military-Technical Agreement (MTA) between NATO and the Federal Republic of Yugoslavia and Serbia. After 2008, KFOR has taken up additional tasks such as the standing-down of Kosovo Protection Corps (KPC) which was completed in 2009; and, in parallel to this, the standing-to of the Kosovo Security Force (KSF), which is foreseen to achieve full operational ability by 2012-2013. In addition to this KFOR was also responsible for the establishment of a civilian-led body for the supervision of KSF.<sup>69</sup> It is worth mentioning that, despite its status-neutral stance, KFOR offered training and advice programmes. Romania and Greece, two non-recognizing states, have both supported the efforts for the consolidation of KSF while maintaining their presence either through the deployment of a military contingent (Greece), or through the provision of trainers and advisors (Romania).<sup>70</sup>

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<sup>66</sup> See the statement by the Serbian Ministry of Foreign Affairs, available at [http://www.mfa.gov.rs/Policy/Minister/190208\\_3\\_e.html](http://www.mfa.gov.rs/Policy/Minister/190208_3_e.html)

<sup>67</sup> Council of Europe, AS/Jur (2010) 46, available at <http://assembly.coe.int/ASP/APFeaturesManager/defaultArtSiteView.asp?ID=964>

<sup>68</sup> Regardless of the several attempts to communicate with KFOR Headquarter in Prishtina throughout March and April, regrettably there was no information revealed by KFOR

<sup>69</sup> For more details please see NATO website: [http://www.nato.int/cps/en/SID-706BBCF0-8C0DDB10/natolive/topics\\_48818.htm](http://www.nato.int/cps/en/SID-706BBCF0-8C0DDB10/natolive/topics_48818.htm)

<sup>70</sup> For more details about the KFOR’s role in Kosovo, see the KCSS article “Kosovo’s Path Towards the NATO Partnership for Peace Programme” available at: <http://qkss.org/new/images/content/PDF/Policy%20Paper%20>

Regardless of contextual changes and developments on the ground, KFOR will continue its presence in Kosovo without a final withdrawal date, operating under UNSCR 1244, unless a new resolution comes into force. In compliance with the changes of the situation on the ground, KFOR has reviewed its size and tasks. Immediately after the Declaration of Independence, the stance taken by the North Atlantic Council remained unchanged: "Following Kosovo's declaration of independence yesterday, NATO reaffirms that KFOR shall remain in Kosovo on the basis of UNSCR 1244, as agreed by Foreign Ministers in December 2007, unless the UN Security Council decides otherwise."<sup>71</sup> Until now, 24 out of 28 NATO members have recognized the Independence of Kosovo.<sup>72</sup> There are currently 6,226 KFOR troops deployed for the maintenance of safety and security within Kosovo. One task is, for example, guaranteeing the freedom of movement for the citizens of Kosovo.

KFOR carries the main public security burden of the northern part of Kosovo due to the limited presence of the Kosovo Police and EULEX. While it is comprised of military personnel, it is "forced" to exercise policing tasks in that part of Kosovo. While its role is prominent in the North, the role of KFOR in other parts of Kosovo is almost non-existent. KFOR troops still provide protection for the two main orthodox churches: The Patriarch of Peja and the Monastery in Deçan – despite the repeated requests of the Kosovo Police to take over the guarding of the two religious sites. Furthermore, KFOR troops have relinquished jurisdiction over the green line borders with Albania, Macedonia and Montenegro and transferred it to the Kosovo Police, but the border with Serbia is expected to be transferred to the police in the future.

KFOR's performance is hampered by the political orders of Brussels and the respective governing capitals of the constituent contingents due to its subordination to democratic civilian control. The KFOR commander retains a key role among the political discourse in Kosovo and in the past the commander even served as mediator, which goes beyond the remit of the office.<sup>73</sup>

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%20KCSS%20-

%20%20Kosovo%27s%20Path%20towards%20the%20NATO%20Partnership%20for%20Peace%20Programme .PDF

<sup>71</sup> Statement by the North Atlantic Council after Kosovo's declaration of independence, NATO, 18 February 2008, available at: <http://www.nato.int/docu/pr/2008/p08-025e.html> <http://www.nato.int/docu/pr/2008/p08-025e.html>

<sup>72</sup> For more details please see website: Who recognized Kosova as an Independent State? <http://www.kosovothanksyou.com/statistics/>

<sup>73</sup> See the B92 article, "KFOR commander: Withdrawal no easy decision" available at: [http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=07&dd=29&nav\\_id=75683](http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=07&dd=29&nav_id=75683)

## 2.5. Liaison Offices

Despite the present international civilian and military actors, Kosovo experiences another category of so-called “quasi diplomatic representation” mainly referring to those countries that maintain their representation through Liaison Offices,<sup>74</sup> while refusing to recognize the independence of Kosovo. Even after 2008, Russia, China, Greece, Slovakia and Romania continue their operation in the capital Prishtina, within the UNMIK framework, specifically protected by the UNMIK Regulation on the Establishment and Functioning of Liaison Offices in Kosovo. This regulation states that: *“Liaison Offices and their personnel shall enjoy privileges and immunities as are provided for in this Regulation.”* However, even at that time it explicitly stated, under the Section of Respect for Local Laws and Regulations, that: *“Personnel and locally-recruited personnel shall respect the laws applicable in Kosovo”*<sup>75</sup> Nevertheless, in the current context, ‘the respect for the laws applicable in Kosovo’ necessarily result in the respect for the post-independent, effectual domestic laws, which in this case remain suspended due to UNSCR 1244 and the associated UNMIK regulations.

On the other hand, referring to the Ministry of Foreign Affairs (MFA),<sup>76</sup> the Law on the Status, Immunities and Privileges of Diplomatic and Consular Missions and Personnel in Republic of Kosova and of the International Military Presence and its Personnel (Nr. 03/L-033),<sup>77</sup> under Transitional Provisions, declares that *“Liaison Missions established in Republic of Kosova under UNMIK Regulation 2000/42 and relevant personnel shall enjoy the status, privileges, and immunities set out in this Law, even in the absence of accreditation to the State and Government of Republic of Kosova,”* thus granting the right of presence and immunity to certain missions, even in cases where no contractual relationship is likely to exist until this transitional period expires. An expiry date of this transitional arrangement has not been defined and no information was available regarding the (non-) accreditation of liaison offices, and there was perceptible end date to this transition period. Therefore, one may conclude that Kosovo grants immunity to ‘Diplomatic Missions’ who have not recognized its statehood and have no official relationship with the new state. Furthermore, the lack of explicit deadlines regarding the transitional provisions, as mentioned on the Law Nr. 03/L-033, might be interpreted as a continuation of Modus Vivendi between the legal framework deriving from the Constitution of Kosovo, and the UNMIK Regulation applied since 2000.

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<sup>74</sup> Note: the aim of this chapter was mainly oriented to analyze the legal bases of the Liaison Offices, deliberately omitting the political attitude of each country towards the Independence of Kosovo.

<sup>75</sup> For more details please see UNMIK Regulation (No. 2000/42 Provision 2,1) which entered into force on 10 July 2000 [http://www.unmikonline.org/regulations/unmikgazette/02english/E2000regs/RE2000\\_42.htm](http://www.unmikonline.org/regulations/unmikgazette/02english/E2000regs/RE2000_42.htm)

<sup>76</sup> Regardless of the several attempts to communicate with the MFA officials, no response was given regarding the interpretation on the coexistence between the UNMIK Regulation and the Nr. 03/L-033.

<sup>77</sup> For more details please see article 11.1 of the Ministry of Foreign Affairs Law (No. 03/L-033) [http://www.mfa-ks.net/repository/docs/2008\\_03-L033\\_en1.pdf](http://www.mfa-ks.net/repository/docs/2008_03-L033_en1.pdf)

Regardless of informal communication between Kosovo institutions and Liaison Offices, this research has not discovered 'a hosting role' by the Kosovo MFA in the sense of determining the set of circumstances that lead to the establishment or continuation of Liaison Office's operability in post-independence Kosovo. However, it needs to be emphasized that the above-mentioned Liaison Offices differ in levels of operation- some provide consular services (Greece and Slovakia) on a daily basis for Kosovo's citizens and actively participate in public events, while others remain reluctant towards any interaction with local stakeholders in Kosovo.<sup>78</sup>

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<sup>78</sup> Regardless of several attempts to contact the abovementioned Offices through electronic mail, none of them responded to the inquiry made by the research team throughout March and April 2012.

### 3. Conclusions

Four years have passed since Kosovo's institutions have declared independence and they are externally striving for international recognition, by continuously abiding to seclusion and restriction of movement. However, internally Kosovo remains characterized by the hybrid presence of international actors that are either directly endorsed by the United Nations (KFOR, UNMIK and OSCE) through the UNSCR 1244 or who operate under this legal framework by applying a status-neutral stance. The existence of a consecutive dual governing authority – local and international – has created a unique political and social context of contested statehood, as its international subjectivity to rely on the major political mechanisms within the UN and the EU. Even after its independence, Kosovo's institutions are not the sole governing structure of the state, so that the legal superiority seems enshrined in the constitutional framework itself.

This is likely to be subjected to political interference and will affect internal affairs of Kosovo, as well as shaping the external image of Kosovo's statehood. Unless the global players, i.e. the permanent members of the UN Security Council, decide otherwise, the current stalemate will persist, jeopardizing all disputed agreements between Kosovo and Serbia, including their respective progress towards Euro-Atlantic accession and Kosovo's membership of international organizations.

Kosovo institutions should utilize the international presence, both civilian and military, in terms of harmonizing their annual programmatic goals and objectives towards the strategic outcome –contractual relationships in accordance with their post-independence context. In this context, it would be wise for the Government of Kosovo to aim at establishing contractual relationships with the above-mentioned actors and work towards their realistic phasing out together. In addition to this, Kosovo might come to the end of the transitory period that exists in the application of its law- vis-à-vis liaison offices- and attain a position from which to suggest the establishment of formal (contractual) relationships with other states.

From the international community's perspective, an eventual stance on the issue of Kosovo and the achievement of consensus among their respective member states might facilitate the revision of UNSCR 1244 which would be in compliance with the contemporary circumstances in Kosovo. This would ultimately help Kosovo to establish contractual relationships and accelerate Kosovo's membership in the respective institutions. On the contrary, every short-term attempt to justify their presence in the spirit of preserving the *status-quo* as a legacy of UNSCR 1244 could harm the long-term functionality of the Republic.



## Annex I: “Mapping the International Presence based on the UNSCR 1244 legacy”

International Actor	Function & Mandate	Staff 2011/2012	Budget 2011/2012	Cooperation with Kosovo institutions	Exit strategy
UNMIK	<p>The mandate was established by the Security Council in its Resolution 1244 (1999). The Mission was mandated to help ensure conditions for a peaceful and normal life for all inhabitants of Kosovo and advance regional stability in the Western Balkans. The Mission is headed by the Special Representative of the Secretary-General, who enjoys civilian executive power as vested in him by the Security Council in resolution 1244 (1999).</p>	403 staff	\$44,914,800.00	<ul style="list-style-type: none"> <li>- lacks recognition by Kosovo institutions</li> <li>- no contractual relationship</li> <li>- cooperation in the North UAM</li> </ul>	Subject to the decisions by the Permanent Members of the Security Council

<p><b>KFOR</b></p>	<p><i>The legal bases on the Military Technical Agreement (Kumanova Agreement) between the International Force (KFOR) and the Governments of the Federal Republic of Yugoslavia and the public of Serbia., as well as the Security Council Resolution 1244 (1999). Additionally, according to the Article V of the Kumanova Agreement, "KFOR commander is the final authority regarding interpretation of this agreement and the security aspects of the peace settlement it supports,. His nations are binding on all parties and persons". KFOR has been leading a peace support mission in Kosovo since June 1999 in support of wider international efforts to build peace and</i></p>	<p>6, 626 troops</p>	<p>Not available</p>	<p>Mainly with the Ministry of Kosovo Security Force, and the Ministry of Internal Affairs, however now contractual relationship has been evidenced.</p>	<p>Subject to the decisions by the Permanent Members of the Security Council and the North-Atlantic Council. "Following Kosovo's Declaration of Independence, NATO reaffirms that KFOR shall remain in Kosovo on the bases of UNSCR1244, as agreed by Foreign Ministers in December 2007m unless the UN Security Council decides oth-</p>
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	<p>stability in the area. day, some 6,300 troops from the NATO-led Force (KFOR), oved by 31 countries (23 NATO and 8 non-NATO), are still played in Kosovo to help maintain a safe and cure environment and freedom of movement for all citizens, tive of their ethnic origin.</p>		<p>€22,606,300.00</p>	<p>Role tioned, tained good relations with the local ners, mainly the Assembly of Kosovo, electoral ies and multi-ethnic nicipalities; however no contractual</p>	<p>Depends on the Participating Members decision.</p>
<p><b>OSCE</b></p>	<p>The Mission mandate was set out by OSCE Permanent Council cision No. 305 of 1 July 1999 and was extended annually. On 21 ber 2007, the nent Council decided to extend the mandate until 31 January 2008. Since then, the mandate has been extended at the end of every month for a one-month period.</p>	<p>670 staff</p>			



	<p>international security presence, and with rim institutions as tablished by the national civil presence in order to contribute to the fulfillment of the mandate given to the international civil and security presences under the resolution;</p> <p>(b) Protecting in Kosovo the interests of the Government concerned and of its nationals, including corporate entities, within the limits permitted by international law, without any other functions entrusted to the Liaison Office by the Government concerned which are not prohibited by the applicable law in Kosovo and to which no objection is taken by the relevant authorities in Kosovo.</p>				
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<b>Liaison Office of Russian</b>	<i>see as above</i>	Not available	Not available	Not available	Not applicable
<b>Liaison Office of Slovak Republic</b>	<i>see as above</i>	Not available	Not available	Not available	Not applicable
<b>Liaison Office of Greece</b>	<i>see as above</i>	Not available	Not available	Not available	Not applicable
<b>Liaison Office of Romania</b>	<i>see as above</i>	Not available	Not available	Not available	Not applicable

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