

**STATEMENT BY THE UNDER-SECRETARY-GENERAL FOR LEGAL  
AFFAIRS AND UNITED NATIONS LEGAL COUNSEL,  
Mr. MIGUEL DE SERPA SOARES,  
TO THE SECURITY COUNCIL**

**New York, 10 June 2019**

**Mr. President,**

**Distinguished Members of the Council,**

1. I would like to start this briefing by providing a short outline of the legal regime of immunity for UN staff members in Kosovo, since this is an important element for the appreciation of the overall response to the events of 28 May and their follow up.

*Immunity of UN personnel in Kosovo*

2. The regime of immunity applicable to the UNMIK and its personnel in Kosovo is spelled out in UNMIK Regulation No. 2000/47 of 18 August 2000, on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo. The pertinent provisions are Sections 3.3 and 3.4, as read with Section 5.

3. Pursuant to Section 3.3 of UNMIK Regulation 2000/47, UNMIK personnel, including locally recruited personnel, shall be immune from legal process in respect of words spoken and all acts performed by them in their official capacity in Kosovo. This is what is often termed functional immunity. Pursuant to Section 5 of the same UNMIK regulation, this specific immunity continues after the

expiration of the Mission's mandate or after the personnel are no longer employed by UNMIK.

4. Section 3.4 of UNMIK Regulation 2000/47 further provides that UNMIK personnel shall be immune from any form of arrest or detention, and that, if they are erroneously detained, they shall be immediately turned over to UNMIK authorities.

5. Allow me to highlight that the immunity from legal process enjoyed by UNMIK personnel in Kosovo is held in the interests of UNMIK and not for the benefit of the individuals themselves. Importantly, it is the Secretary-General that has the right, and the duty, to waive the immunity of UNMIK personnel in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of UNMIK. This is all clearly stated in Section 6.1 of UNMIK Regulation 2000/47.

6. As will readily be appreciated, in order for the immunity and the procedure that I have just outlined to be effective, the local authorities, before they take any legal action against UNMIK personnel, should first inform the Secretary-General — here, his Special Representative, Mr. Tanin — of the facts and circumstances of the acts of the personnel concerned and do so with a degree of specificity sufficient for a determination to be made on the applicability of immunity to those acts. Mr. Tanin would then inform the authorities whether immunity applied and, if it did not, the legal action against the UNMIK personnel could go ahead.

#### *UNSCR 1244 (1999) and the status of Kosovo*

7. Security Council resolution 1244 (1999), pursuant to which UNMIK was established, remains in force and the legal framework established by UNMIK pursuant to the powers assigned to it under resolution 1244 continues to apply, albeit under very different circumstances today. This includes UNMIK regulation 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo.

8. Following the adoption of a declaration of independence by the Assembly of Kosovo on 17 February 2008, the Secretary-General reported to the Security Council on this development and stated that "...pending guidance from the Council, the United Nations would continue to operate on the understanding that [Security Council] resolution 1244 (1999) remained in force and that UNMIK would continue to implement its mandate in the light of the evolving circumstances." [S/2008/354] Since this development, the Secretary-General has maintained a position of "status neutrality". This refers to the continued operation of UNMIK in the light of the prevailing circumstances and to the constructive engagement with the Kosovo authorities in a manner that does not imply recognition of any statehood. This approach continues to be followed.

*The situation of the two UNMIK staff members*

9. As SRSG Tanin has noted, two UNMIK staff members were arrested and detained on 28 May during a police operation in northern Kosovo. They were later released from detention. The internationally-recruited staff member, Mr. Mikhail Krasnoshchekov, who is the team leader of the UNMIK office in Zubin Potok and a Russian national, was released on 28 May. Mr. Dejan Dimovic, a Kosovo Serb and a Programme Assistant in the UNMIK Office in Zubin Potok, was released on 29 May. The arrest and detention of Mr. Krasnoshchekov and Mr. Dimovic were not consistent with their privileges and immunities as UNMIK personnel as set forth in UNMIK Regulation No. 2000/47.

10. It is our understanding from the facts as we know them so far, that both Mr. Krasnoshchekov and Mr. Dimovic were on official assignment to monitor the police operations in northern Kosovo at the time of their arrest.

11. Of serious concern, as Mr. Tanin noted -- and I must say here, that we share his alarm -- is that both staff members were apparently beaten and mistreated upon their arrest. Both required medical attention upon their release. Mr. Krasnoshchekov was transferred to a hospital in Belgrade on 30 May, where he remains admitted. Mr. Dimovic, for his part, was hospitalized in Kosovo on 30 May and released from hospital on 3 June.

12. As is required in all such incidents, the UN Department of Safety and Security (UNDSS) has undertaken an internal investigation to gather all available information regarding the circumstances surrounding the arrests and detention of Mr. Krasnoshchekov and Mr. Dimovic and to look into the allegations by the Kosovo authorities regarding their conduct.

13. It is our understanding that both staff members are still facing the possibility of criminal legal process in Kosovo. Regarding Mr. Krasnoshchekov, UNMIK is in receipt of a request from the Chief Prosecutor in the municipality of Mitrovicë/Mitrovica for a waiver of immunity which, although the name is not correctly stated on the document, we believe concerns him. The request is made in respect of charges of co-perpetration in “obstructing official persons in performing official duties” and in “participating in a crowd committing a criminal offence and hooliganism”. This request is being consulted with my Office.

14. As for Mr. Dimovic, UNMIK has not received a request for waiver of his immunities. What we know is that he was arraigned on charges of “obstructing official persons in performance of official duties” and that he appeared with five co-accuseds before the Basic Court of Mitrovica, Zubin Potok Branch, on 29 May. The hearing was to consider a request from the Prosecutor for his continued detention, as well as for the detention of the other five persons arraigned with him. UNMIK has obtained and forwarded to UN Headquarters a summary translation of these proceedings. On the basis of this document, we understand that Mr. Dimovic’s release, and that of his five co-arraigned, on 29 May, was decided on the basis of lack of evidence sufficient to confirm a reasonable suspicion of the alleged criminal offence. Mr. Dimovic was represented by private counsel in the hearing and accompanied by an UNMIK staff member. The decision to release the co-accused is still, as we understand it, subject to an appeal by the Prosecution. This appeal is scheduled to be heard during the week of 10 June.

15. The results of a thorough internal UN investigation will help establish a better understanding of the relevant facts, that will aid the Organization in considering the next steps, including under UNMIK regulation 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo.

16. Before I conclude, I would recall that SRSG Tanin has noted UNMIK's receipt of a formal notification on 31 May, declaring Mr. Krasnoshchekov "persona non grata" in Kosovo. As SRSG Tanin has noted in a very clear statement to the Kosovo authorities, and as the Deputy Spokesperson has also noted at his noon briefing of 31 May, the doctrine of "persona non grata" is not applicable to United Nations personnel and is not contemplated under UNMIK regulation 2000/47. Any concerns regarding a member of UNMIK personnel should be addressed to SRSG Tanin so that UNMIK can address the matter in line with its status, privileges and immunities. In this regard, I wish to emphasize that allegations of misconduct by UN personnel throughout the Organization are taken very seriously by the Organization and prompt action is taken where it is warranted.

17. The fullest measure of cooperation by the Kosovo authorities will continue to be required to facilitate the UN investigation, so as to allow the Secretary-General to determine the next steps under the legal framework that I have outlined.

18. **Mr. President**, I would like to thank the Council and its Members for the opportunity of this briefing.

Thank you.