

KOSOVO's ENDGAME

SOVEREIGNTY AND STABILITY
IN THE WESTERN BALKANS

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ARISTOTLE TZIAMPIRIS

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ISBN 960 - 8124 - 45 - X

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Desktop Publishing: Maria Michelaki
Cover Page: Kostandia Kalandidou

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LIST OF ABBREVIATIONS

CARDS	Community Assistance for Reconstruction Development and Stabilisation.
CCK	Coordination Center for Kosovo.
CFSP	Common Foreign and Security Policy.
EC	European Community.
ELIAMEP	Hellenic Foundation for European and Foreign Policy.
ESDP	European Security and Defence Policy.
ESI	European Stability Initiative.
ESPIG	Economic Strategy and Project Identification Group.
EU	European Union.
EUFOR	European Union Force.
FRY	Federal Republic of Yugoslavia.
FYROM	Former Yugoslav Republic of Macedonia.
G8	Group of Eight.
GDP	Gross Domestic Product.
GSZ	Ground Safety Zone.
ICG	International Crisis Group.
ICTs	Information and Communication Technologies.
ICTY	International Criminal Tribunal for the Former Yugoslavia.
IDPs	Internally Displaced Persons.
IMF	International Monetary Fund.
KFOR	Kosovo Force.
KLA	Kosovo Liberation Army.
KPS	Kosovo Police Service.
LDK	Kosovo Democratic League.
MAFRD	Ministry of Agriculture, Forestry and Rural Development (Kosovo).

NATO	North Atlantic Treaty Organization.
NGOs	Non-Governmental Organizations.
NLA	National Liberation Army.
NMZ	Non Militarized Zone.
OSCE	Organization for Security and Cooperation in Europe.
PFP	Partnership for Peace.
PISG	Kosovo's Provisional Institutions for Self-Government.
RRM	Rapid Reaction Mechanism.
SAP	Stabilization and Association Process.
SFOR	Stabilization Force.
SOK	Statistical Office of Kosovo.
SRS	Serbian Radical Party.
SRS	Special Representative of the United Nations Secretary General.
UCPMB	Liberation Army of Presevo, Bujanovac and Medvedja.
UN	United Nations.
UNESCO	United Nations Educational, Scientific and Cultural Organization.
UNHCR	United Nations High Commissioner for Refugees.
UNMIK	United Nations Interim Administration Mission in Kosovo.
UNSC	United Nations Security Council.
UNSCR	United Nations Security Council Resolution.

Acknowledgements

I would first and foremost like to thank IAA's President Lt. General (ret) Evangelos Tsirkas, IAA's President of the Scientific Board Professor Ioannis Mazis, the members of the Institute's Board of Directors, Scientific Board and the Institute's Managing Director for their continuing support and encouragement that made the publication of this study possible.

Professors Theodore Couloumbis, Thanos Veremis and Ambassador (ret) Evangelos Kofos have unfailingly supported and encouraged me in various instrumental ways throughout the past few years.

I would also like to thank Professor Elias Kouskouvelis for his constant advice and for having encouraged and challenged me in both theoretical and policy matters; and Professor Elias Mossialos for his continued friendship and mentoring, albeit now from a distance.

I have also benefited considerably from a series of discussions on the future of Kosovo (and international relations in the western Balkans more generally) with Ekavi Athanassopoulou, Dimitrios Triantaphyllou and Alexandros Yannis.

Ruby Gropas has been especially helpful in reading the manuscript and making some useful comments.

I would further like to cite my students at the Department of International and European Studies of the University of Piraeus for being a constant source of encouragement.

This work would have been impossible without the patience, support and inspiration of my wife Niki, to whom it is dedicated.

Of course, I remain solely responsible for the arguments presented in this study.

FOREWORD

by Prof. IOANNIS MAZIS

Developments in the western Balkans tended to dominate international attention in the 1990's as a result of the violent disintegration of Yugoslavia and NATO's Kosovo intervention. Since then the Balkans have been pacified, but a series of serious and interconnected problems remain that have the potential to produce instability and even armed conflict. As the International Commission for the Balkans recently noted:

The region is as close to failure as it is to success ... The region's profile is bleak—a mixture of weak states and international protectorates, where Europe has stationed almost half of its deployable forces. Economic growth in these territories is low or non-existent; unemployment is high; corruption is pervasive; and the public is pessimistic and distrustful towards its nascent democratic institutions.¹

¹ International Commission on the Balkans (2005): *The Balkans in Europe's Future*, Brussels.

The key issue that will affect regional developments is the future of Kosovo. The manner and process in which the province's final status is determined will without any doubt influence the vitality and manifestations of the Albanian factor in the western Balkans, Serbia's democratic and European orientation, the continuation of the union between Serbia and Montenegro, constitutional developments in Bosnia-Herzegovina, (possibly) the very existence of the Former Yugoslav Republic of Macedonia (FYROM), as well as the scope of transatlantic cooperation and international diplomacy at the level of the United Nations Security Council. In other words, Kosovo's future will have both regional and international consequences.

It is precisely in this context that the study of Dr Aristotle Tziampiris is firmly placed. Dr Tziampiris presents in considerable detail developments in Kosovo following NATO's 1999 consequential intervention. He argues persuasively that the 17-18 March 2004 violent riots against Kosovo's Serbian and minority communities constitute a turning point that highlights the dangers associated with the process leading to the province's future status.

Dr Tziampiris then analyses in a paradigmatic manner the parameters that are closely interrelated with the issue of Kosovo. They include regional considerations, Albanian nationalism, the factor of Serbia, United Nations politics and diplomacy, the limited (at least for now) role of the European Union and the crucial issue of timing.

At this point it must be stressed that central to the analysis of Dr Tziampiris is a sophisticated understanding of the concept of sovereignty, emphasizing its complex nature. The concept of sovereignty deserves particular study as regards developments in the western Balkans and interested policy makers and scholars should begin by consulting the work of Jean Bodin,² who is responsible for

² See Jean Bodin (1992): *On Sovereignty*, Cambridge: Cambridge University Press.

the first modern fully-fledged intellectual presentation of sovereignty.

Based on the argument that sovereignty is multifaceted and not unitary, as well as on his analysis of Balkan political and economic trends, Dr Tziampiris outlines a series of theoretical arguments and policy proposals concerning the future of Kosovo. Foremost in his priorities is a settlement that will guarantee regional stability, provide international legal sovereignty for Kosovo and absolute protection for all its minorities, preserve and restore all Serbian cultural monuments, facilitate Euro-Atlantic complementarity, produce cooperation at the United Nations and also, ultimately, a more significant role for the European Union guaranteeing the Euro-Atlantic prospects of all western Balkan states, and particularly that of Serbia.

The decision to publish *Kosovo's Endgame: Sovereignty and Stability in the Western Balkans* was based on a rigorous independent academic assessment undertaken by the Scientific Board of the Defence Analyses Institute (IAA) and endorsed by the Institute's Board of Directors. Dr Aristotle Tziampiris was excluded entirely from this process.

It should be emphasized that the opinions, arguments and analysis contained in this study are solely the author's. They do not necessarily represent IAA's Board of Directors, Scientific Board or any part of Greece's Ministry of Defence. It is hoped though that *Kosovo's Endgame* will make a positive contribution to the wider international debate concerning the process that will determine the province's future status.

*Professor Ioannis Mazis
President of the Scientific Board
of the Defence Analyses Institute*



The International and Regional Significance of Kosovo¹

'I firmly believe that there will be no normalization, no stabilization in the western Balkans unless the issue of Kosovo is resolved. Stability, normality, clarity of status in Kosovo will benefit not only Kosovo and its inhabitants, but the entire region.'

*— Søren Jessen-Petersen,
Special Representative of the United Nations
Secretary-General (SRSG) to Kosovo,
15 August 2004.*

¹ Throughout this study the term Kosovo will be utilized. This approach has the merit of being consistent with the term used in United Nations Security Council Resolution (UNSCR) 1244, and should not in any way be interpreted as containing any bias of any sort or indirect support for any of the sides that are involved in the dispute about Kosovo's future. Albanians refer to the province as Kosova while Serbs usually opt for Kosovo and Metohija.

International Significance

During the previous half century international relations have gradually moved towards the historically unprecedented situation in which direct conflict among Great Powers appears as something rare and improbable.² In the post-9/11 global environment, it is becoming increasingly clear that the most significant security threats are now more likely to be linked with failed, rogue or collapsing states.³ In such instances, the stabilization and democratization of a state, especially following international military intervention, becomes of the utmost importance when viewed from a security perspective.

It is precisely in this context that the future of Kosovo assumes international significance for three reasons. First, the transitional administration of a province that successfully addresses crucial issues of sovereignty and avoids the spreading of instability and terrorism can also provide invaluable lessons. Such lessons and know-how would prove useful in guarding against pitfalls and suggest policies for other places and regions:

Given the earlier start in time, and hence the opportunity to make mistakes that other interventions can learn from, the experiences of the peoples and organizations involved in the intervention in Kosovo have an increasingly practical importance for those working *in Iraq*,

² Though not necessarily entirely impossible. For a more pessimistic assessment that also provides the intellectual grounding of the theory of 'offensive realism' see Mearsheimer, 2001. For an even more aggressive version of the theory see Layne, 2002/3. An excellent study of Great Power rivalry is Thompson, 1999.

³ See Fearon and Laitin, 2004, pp. 6-7. Taliban-ruled Afghanistan that harbored Al Qaeda terrorists directly responsible for the planning and execution of the 9/11 attacks is the most obvious example of this new kind of security threat.

Afghanistan, and other countries involved in democratization and postconflict reconstruction. The origins of the problems may differ, as may the agencies and nations involved, and the situation on the ground may vary in the degree of chaos, but in all of these places, organizations and populations are struggling to coordinate reconstruction and democratization. A close look at the reasons for successes and failures of the inter-organizational and interpopulation efforts in Kosovo yields lessons that may be useful elsewhere.⁴

Second, the resolution of the issue of Kosovo's final status provides an important opportunity for transatlantic cooperation. The diplomatic crisis surrounding the recent war in Iraq amounted to a 'near death experience'⁵ for relations between various European states and the United States of America, not even leaving NATO unscathed.⁶

In Kosovo, however, the interests of both sides of the Atlantic largely coincide. There is clear agreement in favor of avoiding war, bolstering stability, protecting minorities and assisting the entire region's path towards joining Euro-Atlantic institutions.

⁴ Holohan, 2005, pp. 2-3; emphasis mine. Holohan has produced the most sustained and comprehensive academic effort to draw conclusions from Kosovo that could be applied to Afghanistan, Iraq and elsewhere. Among her many important insights (see in particular *ibid*, pp. 167-178) she stresses the importance of using effectively Information and Communication Technologies (ICTs). For a briefer attempt to deduce lessons from Kosovo see Helena Smith, 'A Bad Model for Iraq', *New Statesman and Society*, 29 March 2004.

⁵ See Pond, 2004.

⁶ Transatlantic disagreements also had a particularly negative effect in western Balkan developments in the early 1990's: 'The peoples of the Balkans are masters at playing the great powers off against each other—the failure of the Europeans and Americans to come to an agreement gave their

Third, Kosovo could provide an example of EU-US complementarity in action. In this manner, it could contribute towards 'a new chapter'⁷ in transatlantic relations, in which:

A new transatlantic bargain [is] based on civil-military complementarity [that] would reflect hardheaded national interests. Europe needs American military might; America needs European civilian power. Each side has reason to value a predictable relationship that will induce moderation, self-restraint, and greater accommodation in advance of military action.⁸

In the case of Kosovo, the US can offer crucial military guarantees and political backing, while the Union gradually assumes a more prominent role in dealing with what is ultimately a European problem.

Regional Significance

Kosovo's regional significance is impossible to underestimate. What happens there will most likely influence the domestic, constitutional and foreign policies of Serbia and Montenegro, the Former Yugoslav Republic of Macedonia (FYROM),⁹ Albania and

determined and malicious political leadership just the opening needed. The Bosnian Muslims and Croats as well as the Albanians cozied up to the Americans, French and Italian officials preferred the Serbs, the Germans felt affinity with the Croats. The result was a hotchpotch of international efforts, alignments and objectives that lacked coherence and effectiveness' (Serwer, 2003, pp. 176-177).⁷ The admonition for such a new chapter belongs to US Secretary of State Condoleezza Rice. See Steven R Weisman, 'In Paris, Rice Asks Europe for a "New Chapter"', *The New York Times*, 8 February 2005.

⁸ Moravcsik, 2003, p. 89.

⁹ In this study the name FYROM is utilized. This approach has the

Bosnia-Herzegovina. At the same time, it has to be kept in mind that

The Balkans [have acted] as Europe's security laboratory. All the major questions of European post-Cold War security have been tested – and sometimes settled in political competition – here.¹⁰

Hence, the future of Kosovo could possibly also have an impact on regional security developments, especially as regards the credibility and role of the United Nations (UN), the European Union (EU) and perhaps even the North Atlantic Treaty Organization (NATO).

Based on the above, it might be apt to characterize Kosovo as a 'hostage issue'

advantage of conforming to the 1993 United Nations Security Council Resolution 813, according to which 'This state [will be] referred to for all purposes within the United Nations "the former Yugoslav Republic of Macedonia" pending settlement of the difference that has arisen over the name of the state.' For the text of the resolution see Internet Site: <http://www.hri.org/docs/fyrom/S.RES.817.html>. However, a series of states (including most recently the United States of America) have recognized FYROM with its constitutional name which is the 'Republic of Macedonia.' See International Crisis Group, (ICG), 25 February 2005, pp. 4-5. Currently, negotiations are taking place at the UN so that a final settlement on the name issue is reached that will replace the interim FYROM. For accounts of the name dispute and relations between Greece and FYROM see Kofos, 1999; Kofos, 2003; Shea, 1997, Tziampiris, 2000; Tziampiris, 2002b and Tziampiris, 2003b. See also International Crisis Group, 10 December 2001. The standard study incorporating outstanding scholarship on the various issues arising from FYROM's declaration of independence in 1991 is Pettifer, 1999. See also the important collection of essays in Roudometof, 2000.

¹⁰ Buzan and Waever, 2003, p. 391. In presenting this analysis the authors directly cite Eide, 1999 thus suggesting that the paragraph quoted amounts to a distillation of Eide's argument.

In the sense that its relevance-and its political complexity-derive from its symbolic value and its interrelation with other regional and even broader international issues ... Kosovo has become a political crossroads for matters of principle as well as for practical security arrangements.¹¹

Alas, the province today resembles a ticking bomb that has the potential to destabilize the western Balkans.¹² The perpetuation of the situation of uncertainty over Kosovo's final status constitutes in itself a destabilizing factor for both the province and the wider region. It makes long-term planning all but impossible, since it creates disincentives for the implementation of crucial but possibly socially painful reforms and it allows nationalists on all sides to maintain maximalistic positions. Although these positions may appear to be unrealistic and untenable, they nonetheless render any meaningful compromise harder to achieve. In addition, avoidance of Kosovo's future status fans feelings of frustration with what amounts to an unsatisfactory situation. Combined with grim economic circumstances, conditions conducive to the incitement of ethnic hatred are being created, the more recent manifestation of which were the events of 17-18 March 2004.

A renewed bout of ethnic hostilities could even elicit Belgrade's military response, perhaps bringing about the province's violent partition. Such a worse-case scenario would undoubtedly cause considerable complications, not least if the Serbian army decides to

¹¹ Dassu, 2001, p. 36.

¹² The western Balkans are taken to include Albania, Bosnia-Herzegovina, Croatia, FYROM, Serbia and Montenegro, and Kosovo. The situation is certainly not aided by the fact that world developments linked to the war against terrorism guarantee that international attention and funds will continue to mostly be focused on other regions and especially the Middle East and Afghanistan.

undertake concurrent operations in Presevo. The point is not to sound alarmist but rather to highlight the possibility of a more consequential future crisis compared with the recent riots. Thus, unless action is undertaken by the international community, the March 2004 events might prove not the culmination of dissatisfaction and enmity but a warning of much worse to come, though it is not suggested that a return to large scale warfare (as in the 1990's) is probable today in the Balkans.¹³

Outline of Study

This study does not aim at presenting yet another comprehensive plan aiming to resolve Kosovo's final status. Such plans have been submitted since at least 2000,¹⁴ but face the almost impossible task of addressing or foreseeing continuous political developments (sometimes dramatic) in Kosovo, as well as in several other western Balkan states. These developments reshape realities 'on the ground' and redefine the options available to the international community and to the actors that have a stake in the province's future.¹⁵

¹³ On the diminished prospects of major warfare in the contemporary Balkans see Couloumbis and Tziampiris, 2002.

¹⁴ For a succinct and useful overview of the more important plans currently in circulation see Bieber, 2004. For the first comprehensive plan following NATO's 1999 intervention see Independent International Commission on Kosovo, 2000, alas 'an example of bad timing' (Veremis, 2001, p. 85 fn 1). This is because it was published after Kosovo's interim status had already been decided.

¹⁵ Consider for example how the 17-18 March 2004 riots affected Kosovo's future and invalidated at least certain assumption and aspects of plans already in circulation that had the ambition of comprehensively addressing Kosovo's constitutional and political conundrum.

This study will be less ambitious but more focused in its goals. The primary aim will be to analyze the issues and parameters that affect and will ultimately determine Kosovo's future status. We will then proceed to make some policy suggestions (not amounting however to a comprehensive plan) that could help minimize the prospects for instability as the province's endgame is played out.

The political and constitutional developments following NATO's 1999 intervention will first be examined. Through the passing of United Nations Security Council Resolution (UNSCR) 1244 and its subsequent actions, the international community made clear its unwillingness to directly address and resolve the issue of Kosovo's final status.¹⁶ It will be detailed how the United Nations assumed the province's administration, slowly delegating powers to local political forces, and eventually adopting a 'Standards Before Status' approach with a review mechanism set to take place in mid-2005. Particular emphasis will also be accorded to the dire economic situation and essential weakness of Kosovo that provides the background to understanding recent developments and trends. On the eve of the violent events of 17-18 March 2004, the province of Kosovo was thus characterized by an unsatisfactory situation of unaccountability, underdevelopment, uncertainty, relative insecurity and impatience.

We will explain that the March riots constitute a turning point in the path towards Kosovo's future status. They clearly demonstrated the inadequacy, unpopularity and dissatisfaction with UNMIK's

¹⁶ It has been argued, with some justification, that the resolution of Kosovo's final status was probably easier in 1999 than on any other subsequent date. See the insightful and persuasive argument in Veremis, 2001, p. 87. Unfortunately it is impossible to conclude with absolute certainty on this point without the risk of entering the realm of a counterfactual discussion.

stewardship. Furthermore, the physical insecurity in which Kosovo's minorities have to live became painfully evident, as well as the considerable (and murderous) hatred that a part of Kosovo's Albanians harbors against them. As a result, Kosovo's Serbs were further alienated from an administrative system that did not prevent attacks against them, nor protected them adequately during their hour of peril. At the same time, Albanians lost the moral high ground that they were occupying for almost two decades as the victims of Serb persecution and tyranny.

The widespread rioting and destruction that took place in Kosovo during those terrible days suggests that the international community's current policy of 'Standards before Status' is unable to address comprehensively and satisfactorily the province's ills and problems. Without any doubt, a new and multifaceted approach that tackles post-1244 Kosovo is also required. However, before arguing in favor of specific policy initiatives and arrangements, the parameters and issues affecting efforts to solve Kosovo's current conundrum will be considered.

We will argue that actions aiming to influence the province's future will have to take into account that Kosovo represents first and foremost a fundamental *regional* challenge. For this reason, opting for partition could potentially produce catastrophic consequences, destabilizing and threatening the territorial integrity of FYROM, Bosnia-Herzegovina and even Serbia.

Furthermore, Kosovo's final status must be decided by the United Nations Security Council (UNSC) and hence will be subject to the political calculations and interests that are operative at that level of international decision-making. For the same reason, the European Union can play a significant role only after the current United Nations administrative structures are replaced.

Particular emphasis will also be paid to Serbian politics and policies towards Kosovo. The country's plan for resolving Kosovo's conundrum will be thoroughly presented. Although comprehensive

and sophisticated, it is ultimately flawed and faces certain rejection by the international community, primarily because the proposals that it contains are based almost solely upon ethnic divisions. This study will stress that Belgrade's acquiescence to any arrangements for Kosovo's future status is essential, not least because of the existence of an imperiled Serbian minority. The challenge is to resolve Kosovo's status, protect all minorities and ensure that Serbia continues her path towards joining Euro-Atlantic institutions, while eschewing manifestations of extreme nationalism.

We will next turn to the concept of sovereignty, demonstrating its particularly complex nature and concentrating on the fact that it is multifaceted and not unitary. As a result, it will become clear that discussions of an independent Kosovo verge on the meaningless, counterproductive or simply confusing without the simultaneous understanding and examination of what Kosovo's future sovereignty will precisely entail. Ultimately, the theoretically coherent possibility of an internationally recognized Kosovo will emerge, consistent with the simultaneous limitation of certain aspects of the new republic's sovereignty.

Next, we will argue that time is working against Kosovo's stability. This realization necessitates the eschewing of delaying tactics by the international community and suggests the need to undertake new initiatives.

In the final section of this study, we will argue that Kosovo's international legal sovereignty should be provided by the United Nations Security Council at an accelerated timetable, thus bestowing upon the newly created republic a host of crucial privileges and opportunities. At the same time, no change in borders ought to take place, the potential perils of partition thus being avoided. It will also be proposed, however, that Kosovo's Westphalian and domestic sovereignty be limited in specific ways that would assist agreement at the UNSC level and also contribute towards regional stability. Kosovo's future government ought to sign a treaty renouncing any

subsequent change of borders and also accept and implement a Non-Militarized Zone (NMZ) within its territory.

Furthermore, we will suggest that the current system of UN neotrusteeship over Kosovo be replaced by interim arrangements, limited to only a small core of key issue areas, in which the European Union will assume responsibility and address the physical protection of minorities and the preservation of Kosovo's invaluable Serbian cultural monuments. The deployment of an adequate EU military force and the creation of a well-endowed preservation fund will be required for the success of these aims. In addition, the Union can contribute substantially to much needed legal reforms through the implementation of a Rule of Law mission. Such developments would probably also help produce Belgrade's acquiescence to Kosovo's final status, facilitate agreement at the level of the UNSC, as well as offer a viable and clear exit strategy for the EU.

In this author's view, there is little doubt that eventually Kosovo will gain its international legal sovereignty, although when, under what conditions and with what consequences for regional stability remain significant questions that can not currently be answered with certainty. This study aims at contributing towards the better understanding of the problems and challenges involved in these issues.

II

Kosovo After the 1999 Conflict

'You, the people now—for the first time in history will be able to decide upon the day-to-day affairs in Kosovo'.

*—Hans Haekkerup,
Special Representative of the United
Nations Secretary-General to Kosovo,
14 May 2001.*

High Hopes: The UN Enters Kosovo

NATO's 1999 Kosovo Conflict¹⁷ ended with high hopes and expectations. A successful (if 'post-heroic war')¹⁸ with an unprecedented zero casualties for the Allied side was pursued,¹⁹ a

¹⁷ From the extensive bibliography on the Kosovo Conflict of particular assistance and interest are Albright, 2003, pp. 378-428; Bieber and Daskalovski, 2003; Byman and Waxman, 2000; Chomsky, 1999; Chomsky, 2000, pp. 94-147; Clark, 2001, Clinton, 2004, pp. 849-851, 854-855, 858-860 and 879; Daalder and O'Hanlon, 2000; Hosmer, 2001; Ignatieff, 2000; Judah, 2000; Lambeth, 2001; Mertus; 2003; Papatotiriou, 2002 and the self-congratulatory but nevertheless important Solana, 1999. For the origins of the conflict see the groundbreaking and prophetic Veremis and Kofos, 1998; Mertus, 1999 and Aristotle Tziampiris, *Journal of South East European and Black Sea Studies*, Vol. 1, No. 2, 2001, pp. 152-158. The history of Kosovo is covered in a balanced and objective manner in Vickers, 1998. See also Malcolm, 1998 in conjunction however with the scathing criticism of Djilas, 1998. Perhaps the best brief overview of Kosovo's history is Kofos, 1998. On the Kosovo Liberation Army (KLA) see Hedges, 1999; Judah, 1999 and Kola, 2003, pp. 314-321 and 340-374.

¹⁸ The phrase was coined by Edward Luttwak in his memorable (and infamous) essay *Give War A Chance*. See Luttwak, 1999.

¹⁹ It should be noted that the total of zero casualties refers to military personnel in action. The Allied side actually suffered a small number of casualties due to various accidents. For example, two American soldiers perished when their Apache helicopter 'crashed in a training exercise ... the only US casualties in the conflict' (Clinton, 2004, p. 854). It should also be stressed that the Kosovo Conflict involved as many as 500 civilian deaths as a result of the Allied bombings. This number derives from a Human Rights Watch report. See Internet Site: <http://www.hrw.org/press/2000/02/nato207.htm>. In addition, the Serbian ethnic cleansing operations probably led to the death of some 10,000 people, although precise estimates are not available. For a discussion of this number see Judah, 2000, p. 310. A BBC study raises the total to 11,000 dead. See Internet Site: <http://news.bbc.co.uk/1/hi/world/europe/517168.stm>. A 1999 study reaches the number of 11,334 dead bodies found in 529 sites. See Allin, 2002, p. 8 and fn. 3.

humanitarian catastrophe was averted and Milosevic's tyrannical regime was fatally (as it turned out) weakened.²⁰ Furthermore, a doctrine of humanitarian intervention seemed to have been enunciated,²¹ holding the promise of swift international action in cases where massive violations of human rights were being threatened and thus superseding the anti-intervention limitations of the Westphalian international system. Characteristically, the United Kingdom's Prime Minister Tony Blair emphasized that

The principle of non-interference must be qualified in important respects. Acts of genocide can never be a purely internal matter. When oppression produces massive flows of refugees which unsettle neighboring countries, then they can properly be described as threats to international peace and security. When regimes are based on minority rule they lose legitimacy.²²

The initiation of the Kosovo military operation was the result of a unilateral NATO decision.²³ Nevertheless, its conclusion rested on

²⁰ The demise of Slobodan Milosevic came in September 2000, following widespread popular demonstrations. The definitive account of this episode is yet to be produced. Former US President Bill Clinton claims to have been certain of this outcome. At the conflict's conclusion he 'felt an enormous sense of relief and satisfaction ... I knew it was just a matter of time before Milosevic was history' (Clinton, 2004, p. 860).

²¹ See Mayal, 2001; Schnabel and Thakur, 2000 and Tziampiris, 2002a.

²² This passage is taken from Tony Blair's speech to the Economic Club of Chicago on 22 April 1999 and is cited in Tziampiris, 2002, p. 98.

²³ See however Kagan, 2004, (especially pp. 74-80) for a scathing critique of European attitudes towards the war in Iraq based on what he considers hypocritical behavior given that no United Nations Security Council Resolution had authorized the Kosovo war, which was nonetheless welcomed in both Bonn and Paris. Of course, NATO is a multilateral international organization not exactly akin to a 'coalition of the willing.' See

diplomacy conducted by the European Union's envoy Martii Ahtisaari and Russia's Foreign Minister Viktor Chernomyrdin,²⁴ an important Group of Eight (G8) declaration²⁵ and, finally, the passing of United Nations Security Council Resolution 1244 that was adopted on 10 June 1999.²⁶ In other words the ending of the Kosovo Conflict received (and required) the widest possible international legitimization and sanctioning.²⁷ UNSC Resolution 1244

Decide[d] on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcome[d] the agreement of the Federal Republic of Yugoslavia to such presences.²⁸

also the brief but balanced and perceptive comments in Nye, 2004, p. 145. On the legality of NATO's Kosovo operation see Glennon, 1999; Guicherd, 1999 and Wheeler, 2001.

²⁴ See Albright, 2003, pp. 416-417 and Judah, 2000, pp. 274-279. For the text of the peace document that was taken to Belgrade by Ahtisaari and Chernomyrdin see Internet Site: <http://news.bbc.co.uk/1/hi/world/europe/360507.stm>.

²⁵ See Judah, 2000, pp. 276-278. For the text of the G8 declaration see Internet Site: <http://news.bbc.co.uk/1/hi/world/europe/336979.stm>.

²⁶ For the text of UNSC Resolution 1244 see Appendix I.

²⁷ This is one of several lessons from the Kosovo Conflict that could perhaps be applied to the more recent conflict in Iraq. Apparently, it is easier to bring down militarily a dictatorial regime than to build a democratic and prosperous society. Post-conflict efforts are without any doubt assisted from the prior existence of widespread international legitimacy for the war operation – a development that subsequently helps guarantee a more concerted and comprehensive international effort.

²⁸ UNSC Resolution 1244, Article 5.

As a result, both the United Nations Interim Administration Mission in Kosovo (UNMIK)²⁹ headed originally by the Special Representative of the United Nations Secretary-General Bernard Kouchner and the NATO-led Kosovo Force (KFOR)³⁰ were established, undertaking respectively the civil administration and provision of security for Kosovo.

²⁹ UNMIK is headed by the SRSG and is comprised by four pillars: Pillar I. Humanitarian, led by the United Nations High Commissioner for Refugees (UNHCR). Pillar II. Civil Administration, led by the UN. Pillar III. Democracy Building, led by the Organization for Security and Cooperation in Europe (OSCE). Pillar IV. Reconstruction, Recovery and Economic Development, led by the EU. See O'Neil, 2002, pp. 37-41. For a useful diagram of UNMIK's administrative structure see Caplan, 2002, p. 25. UNMIK's division of labor among multiple international organizations has contributed to coordination difficulties and ambiguities concerning the precise mandate of the different actors involved in the administration of Kosovo. See Yannis, 2001, pp. 21-24, who however correctly points out that UNMIK's 'structure also perhaps ensured a greater degree of freedom and flexibility' (ibid., p. 24). For assessments of UNMIK's overall performance see Yannis, 2002 and del Re (2003). Considerable thought was required before UNMIK was thus named. Simon Chesterman provides an entertaining but ultimately troubling account of the UN's puzzlement and eventually botched name-giving operation. The relevant passage deserves to be quoted in its entirety: 'A measure of the speed with which the UN Interim Administration Mission in Kosovo was established is the name itself. UN operations typically operate under an acronym, but 'UNIAMIK' was dismissed as too much of a mouthful. 'UNIAK' sounded like a cross between 'eunuch' and 'maniac' – associations judged unlikely to help the mission. 'UNMIK' was the final choice, having the benefits of being short, punchy, and clear: only in English however. Once the operation was on the ground, it was discovered that *anmik*, in the dialect of Albanian spoken in Kosovo, means 'enemy.' No one within the United Nations was aware of the confusion until it was too late, at which point instructions went out to pronounce the acronym "oon-mik" (Chesterman, 2004, p. 236).

³⁰ On KFOR see O'Neil, 2002, pp. 43-49.

As regards UNMIK, on 25 July 1999

Regulation No 1999/1 ... (known in Kosovo as 'the Mother of all Regulations') stipulated that that 'all legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK, and is exercised by the SRSG.'³¹

The passing of this regulation was consequential. Belgrade officially seized to have any de facto official control over Kosovo, despite the nominal control accorded by Resolution 1244. UNMIK became in effect the new master of Kosovo. The UN thus courageously assumed the risks and responsibilities of the day-to-day administration of the province. Despite impatience on the ground and the unavoidable imperialistic overtones, the well intentioned goal was to succeed following massive interethnic violence and international intervention.

UNSCR 1244 and the Administration of Kosovo

The issue of Kosovo's final status was not addressed by Regulation No 1999/1. Crucially, it was left in abeyance in a manner entirely consistent with the will of the Security Council. Resolution 1244 did not declare Kosovo independent, nor did it provide a specific and clear timetable for deciding the province's future and final status.³² In its preamble it states that it is

Reaffirming the commitment of all member States to the sovereignty and territorial integrity of the Federal Republic

³¹ Yannis, 2001, p. 17.

³² Timothy Garton Ash aptly described this situation as 'virginity and motherhood combined' (cited in Chesterman, 2004, p. 80).

of Yugoslavia and the other states of the region, as set out in the Helsinki Final Act.

However, in its main text, UNSC Resolution 1244 makes several references to the undecided future status of Kosovo, thus leaving no doubt that the option of independence was being left open:

The main responsibilities of the international civil presence will include (a) Promoting the establishment, *pending a final settlement*, of *substantial autonomy and self-government* in Kosovo, taking full account of annex 2 and the Rambouillet accords (S/1999/648) ... (e) Facilitating a political process *designed to determine Kosovo's future status* taking into account the Rambouillet accords (S/1999/648). (f) In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions *established under a political settlement*.³³

UNSCR 1244 was steeped in pragmatism. Without its deliberate obfuscation on Kosovo's final status, it would have almost certainly been vetoed by Russia at the Security Council. Furthermore, Kosovo was clearly not ready for independence. In this traumatized, war-torn society, prudence and patience were required, not least in order to protect the Serb minority that immediately became the target of

³³ Article 11; emphasis mine. The references to the Rambouillet accords (the full and proper title of the document is the 'Interim Agreement for Peace and Self-Government in Kosovo') that were however signed at Rambouillet on 23 February 1999 only by the Kosovo Albanian representatives and not by the Yugoslav side, are of particular significance as will be discussed subsequently. On the Rambouillet accords see Judah, 2000, pp. 197-226 and Weller, 1999a. A complete documentary record can be found in Weller, 1999b, pp. 392-474.

attacks and attempts of reverse ethnic cleansing.³⁴ According to Amnesty International:

Fearing retribution, thousands of Serbs and Roma fled to Serbia or Montenegro or took refuge in mono-ethnic areas in Kosovo as murders, violent attacks, abductions, rapes and attacks on property were perpetrated against Serbs as well as Albanians, Roma and others accused of “collaboration” with the Serb authorities. By the end of August 1999, an estimated 235,000 Serbs and other minorities had left Kosovo; those who remained were concentrated in enclaves and pockets, frequently guarded by KFOR. Although not all the violence was ethnically motivated, minorities – particularly, but not exclusively, Serbs and Roma – were both individually and indiscriminately targeted, on the basis of their identity - and irrespective of their individual responsibility for human rights violations, including war crimes perpetrated by Serbian forces. By 10 December 1999, KFOR had reported the murders of 414 individuals – 150 ethnic Albanians, 140 Serbs and 124 people of unknown ethnicity – since the end of June.³⁵

Estimates vary on the current number of Kosovo Serbs that have the status of internally displaced persons (IDPs)³⁶ in Serbia, the issue being understandably emotive and controversial:

³⁴ For an eloquent and passionate plea directed towards his fellow Kosovo Albanians to immediately stop such attacks, see Surroi, 1999. As a result of this courageous and just act, Kosovo publisher Veton Surroi received ‘by the KLA news agency ... an oblique death threat’ (ICG, 22 April 2004, p. 33).

³⁵ Amnesty International, April 2003, p. 3.

³⁶ On the issue of IDPs see also ICG, 13 December 2002.

Source	Number
Serbian Government registration (2002)	141,396
Kosovo Co-ordination Centre Report (January 2003)	110,287
European Stability Initiative (ESI) estimates (based on 1991 census; Coordination Centre for Kosovo (CCK) population data; primary school enrollments) ³⁷	65,000

The fate of Kosovo's Serb IDPs reinforces Robert Keohane's warning:

In the wake of human rights abuses of the magnitude necessary to generate military intervention, both mutual confidence and willingness to compromise are likely to be close to zero. Handing over full authority to the newly favored group, even if it is a majority, becomes an unattractive strategy for anyone dedicated to humanitarian principles, since such authority is likely to be abused.³⁸

With such perils also in mind, the international society decided in 1999 that Kosovo in effect would become and remain for the foreseeable future a (UN) protectorate: 'An entity which has neither

³⁷ This extremely useful table is taken from, ESI, 7 June 2004, p 18. The number of 235,000 IDPs that is quoted in the Amnesty International report is based on a 1999 assessment. Specifically, it is stated that 'on October 15 1999, the Yugoslav Red Cross and local authorities indicated that some 230,884 IDPs from Kosovo were registered in Serbia and Montenegro, Overview of the Situation of Ethnic Minorities in Kosovo (3 November 1999), UNHCR/OSCE' (Amnesty International, April 2003, p. 3).

³⁸ Keohane, 2003, p. 280. On the perils of the democratic tyranny of an ethnic majority in a post-conflict state, see Ignatieff, 2003, pp. 300-301.

domestic sovereignty nor international independence.’³⁹ Thus, the ‘deep winter of resolution 1244’⁴⁰ came about to the extent that any decisions concerning the issue of Kosovo’s final status were entirely avoided and postponed. Importantly, Great Britain as well as most European states seemed to oppose ‘independence for Kosovo [for] it would mean having a festering sore in the middle of the Balkans.’⁴¹ On the other hand, US attitudes did not preclude independence, a policy option that was apparently seen with greater sympathy within the US Democratic Party’s foreign policy establishment.⁴²

³⁹ Ibid., p. 308.

⁴⁰ Yannis, 2002, p. 175.

⁴¹ Phillips, 2004, p. 9. The quotation belongs to UK Brigadier General Robert Fry.

⁴² See *ibid.*, pp. 9-10. Phillips is correct in pointing out that George W. Bush’s 2000 electoral victory dampened official American sympathies for Kosovo’s speedy independence. During the primary season leading to the 2004 US Presidential election, this author had the opportunity to converse with several top Kosovo Albanian politicians and opinion leaders, all of whom expressed great sympathy for Wesley Clark’s Presidential bid and also for an ultimately victorious Kerry-Edwards campaign. It was made absolutely clear that the reasons for their preference had absolutely nothing to do with the Bush Administration’s domestic policies or the way it had conducted the war against terror (including the campaign in Iraq). Rather, it was exclusively based on the conviction that a Kerry-Edwards Administration would help accelerate the process leading towards Kosovo’s independence, not least because of the influence and positions that prominent Democrats such as Madeleine Albright, Wesley Clark and Richard Holbrooke were expected to enjoy. Indeed, although the Kerry-Edwards campaign website sent a clear message in favor of protecting Kosovo’s Serbian minority and their monuments, it nevertheless supported a decision on the province’s final status on an accelerated basis, condemned partition and hinted at a referendum in which the citizens of Kosovo would be the only participants, the result of which would have been of course an overwhelming pro-independence vote: ‘Kosovo’s future status

At any rate, municipal elections were held in 2000 and 2002 while a general election took place in 2001 with Ibrahim Rugova's Kosovo Democratic League (LDK) triumphing with 58 per cent of the vote.⁴³ According to a somewhat cynical (but alas not entirely

should be decided as *soon as possible*, in accordance [sic] United Nations resolution 1244. The people of Kosovo must be able to determine their own future, including how they want to be governed. Proposals to change the territory of Kosovo or to partition it among ethnic lines do not help build a multi-ethnic society or prepare the region for its future in Europe ... Kosovo's Serbs and other minority communities must be able to live normal lives, wherever they want to live. The magnificent Serbian churches and monuments must be protected and preserved' Internet Site: http://www.johnkerry.com/issues/national_security/balkans.html, emphasis mine. For the positive Albanian reaction to these policy positions, see Internet Site: <http://www.albanian.com/community/modules.php?name=News&file+article&sid+174>. This author can also report conversation with Greek and other Balkan officials who although had a particularly negative view of US President George W. Bush, worried that his electoral demise could bring at the State Department someone like Richard Holbrooke who would pursue a more activist, pro-Albanian Balkan agenda that would not be conducive to the region's stability and current balance of power. It remains to be seen to what an extent President Bush's re-election may bring policy changes for the region of the Balkans. An early indication may perhaps be found in the decision to recognize (only a day after the election was over) FYROM with its constitutional name which is the 'Republic of Macedonia.' See Daniel Howden, 'US Wades into "Macedonia" Row,' *The Independent*, 5 November 2004.

⁴³ The LDK was founded on 23 December 1989. See Vickers, 1998, p. 249. All elections were supervised by the OSCE. See Internet Site: <http://www.osce.org/kosovo/elections/>. In the national elections important incentives were given to Kosovo Serbs in order for them to participate in the process. In effect, they were guaranteed representation that would have been greater than their percentage of Kosovo's population. See Chesterton, 2004, pp. 226-230 that also contains a succinct and excellent discussion of electoral politics and their rationale as regards Kosovo.

inaccurate) OSCE representative's prediction at that time: 'Elections will buy us three years of stability.'⁴⁴

Of particular importance for Kosovo's future was the signing on 14 May 2001 of the Constitutional Framework for Provisional Self-Government.⁴⁵ What emerged was a shared decision-making process between UNMIK and Kosovo's Provisional Institutions for Self-Government (PISG), which however were granted only limited responsibilities.⁴⁶

Many Kosovo Albanians were critical of these arrangements, concluding that they fell far short of expectations for a smooth and speedy process towards independence. At the same time, Belgrade's response was even more critical and almost ferocious.⁴⁷ 'Paradoxically, dissatisfaction with the Constitutional Framework expressed by both sides might be a sign of its equitable nature.'⁴⁸

Standards Before Status

As regards Kosovo's final status, a policy of 'benchmarks before status' (more commonly referred to as 'Standards before Status') was enunciated on 24 April 2002 by the then SRSG Michael Steiner. The timing for this new policy was not without significance. Crucially, former US Secretary of State Madeleine Albright has revealed that during the 1999 Rambouillet Conference negotiations she had

⁴⁴ Cited in *ibid.*, p. 226.

⁴⁵ For the full text see Appendix II.

⁴⁶ See Chapter 5 in *ibid.*

⁴⁷ See Dassu, 2001, pp. 48-49. For an excellent analysis of the Constitutional Framework, the negotiations between UNMIK and Kosovo Albanians that preceded it, as well as its immediate political aftermath, see Judah, 2001, pp. 56-60.

⁴⁸ Dassu, 2001, p. 49.

pressured the Kosovo Albanian leader Hashim Thaci into signing, by pointing out that:

*This agreement is for three years. We know Milosevic is the problem. But the situation could look a lot different in three years. This is your chance. Grab it because you may not have another.*⁴⁹

According to a key part of the Rambouillet accords⁵⁰ (that are also referred to and incorporated into UNSC Resolution 1244, undoubtedly contributing to its document's vagueness):

*Three years after the entry into force of this Agreement, an international meeting shall be convened to determine a mechanism for a final settlement for Kosovo, on the basis of the will of the people, opinions of relevant authorities, each Party's efforts regarding the implementation of this Agreement, and the Helsinki Final Act.*⁵¹

Despite the ambiguity that admittedly exists in this passage, especially when contrasted to other parts and statements of UNSC

⁴⁹ Albright, 2003, p. 403; emphasis mine.

⁵⁰ For the complete text of the Interim Agreement for Peace and Self-Government in Kosovo, Rambouillet, 23 February 1999 see Internet Site: http://www.un.org/peace/kosovo/99648_1.pdf.

⁵¹ Ibid., Chapter 8.3; emphasis mine. On this point see the excellent analysis in ICG, 1 March 2002, pp. 4-5. It should be pointed out that Rambouillet is unclear on whether the people of Kosovo or of the Federal Republic of Yugoslavia (FRY) as a whole were supposed to decide the province's future. Nevertheless, in the minds of the overwhelming majority of Kosovo Albanians, it was clear that FRY would have had nothing to do with this issue in case of a referendum. Madeleine Albright almost certainly implied that this would have been the case when she was stressing that Rambouillet would have been a plan with a duration of merely three years.

Resolution 1244, it is understandable that the expectation of Kosovo Albanians was that a referendum on independence expressing the will of the people would have taken place in three years. This is in essence corroborated by former US President Bill Clinton who has stated: 'Our team decided to write the agreement [Rambouillet] in a way that would delay the referendum but not deny it forever.'⁵²

However, by 2001 the international community was not ready to adopt such a course of action – at least not yet. 'Standards before Status' was the rather poor (in comparison with an independence referendum) policy substitute. More specifically, during an address to the UNSC, Michael Steiner declared that

I am embarking on a benchmark process. These benchmarks should be achieved before launching a discussion on status, in accordance with Resolution 1244. The benchmarks are: 1. existence of effective, representative and functioning institutions; 2. enforcement of the rule of law; 3. freedom of movement; 4. respect for the right of all Kosovans to remain and return; 5. development of a sound basis for a market economy; 6. clarity of property title; 7. normalized dialogue with Belgrade; and 8. reduction and transformation of the Kosovo Protection Corps in line with its mandate.⁵³

⁵² Clinton, 2004, p. 850.

⁵³ Appendix III. For an analytical presentation of the standards required to be satisfied see Internet Site: http://www.unmikonline.org/pub/misc/ksip_eng.pdf. As the Security Council makes clear, this decision was the result of a Contact Group initiative announced in Pristina on 5 November 2003 among precisely these lines. See ICG, 22 April 2004, p. 2. Contact Group states are France, Germany, Italy, Russia, the United Kingdom and the United States of America.

A significant development took place on 12 December 2003, when the United Nations Security Council noted that it

Supports the prospect of a comprehensive review of the Provisional Institutions of Self-Government's progress in meeting the standards. The Council notes that, depending on progress made as assessed during the periodical review, a first opportunity for such a comprehensive review should occur *around mid-2005*. Reaffirming the "standards before status" policy, the Council stresses that further advancement towards a process to determine future status of Kosovo in accordance with resolution 1244 (1999) will depend on the positive outcome of this comprehensive review.⁵⁴

This review mechanism did not guarantee or promise independence in mid-2005. However, by offering for the first time a concrete time-frame, it raised the possibility that given substantial progress, independence could then become a real possibility for the province of Kosovo. As a result, expectations were raised among Kosovo Albanians, perhaps to unrealistic levels, leading many to conclude that the goal of independence was literally 'around the corner.' At the same time, Serbs realized that they were facing the real possibility of Kosovo's final and complete loss on an accelerated timetable.

It has to be stressed however that in actuality, and although perfectly reasonable, the process of 'Standards before Status' is ultimately moot on the exact parameters regarding the province's final status. Even assuming that real progress is achieved in all the requisite benchmarks, there is no guarantee on when and how

⁵⁴ Appendix IV; emphasis mine.

precisely final status will be decided, nor is there a clear indication of what precisely it will entail. In theory, all options are being left open. In this sense, the Security Council's review mechanism has contributed to relatively unjustifiable fears and aspirations for both Kosovo Albanians and Serbs.

The Economic Weakness of Kosovo

Kosovo's political conundrum is compounded and exacerbated by what amounts to a considerable failure on the economic front.⁵⁵ Unfortunately, it has to be pointed out that any discussion of Kosovo's economy is partly hampered by the lack of entirely reliable and generally agreed upon data. The existence of various estimates concerning vital aspects of the province's economy is yet another indication of the administrative weakness that bedevils development efforts and makes serious planning an exceedingly difficult enterprise.

Despite progress in certain areas since the 1999 war (especially infrastructure rebuilding),⁵⁶ it can be concluded that the economy is almost in tatters. GDP estimates vary, but for a population of about 1,9 million (according to the Statistical Office of Kosovo – SOK),⁵⁷ UNMIK estimated 1,34 billion euros for 2003⁵⁸ and projected 2,339 billion euros for 2004.⁵⁹ The anticipated increase should be treated with particular caution, since 'official estimates of the level of

⁵⁵ Probably the best single analysis of Kosovo's current economic problems is Economic Strategy and Project Identification Group (ESPIG), August 2004.

⁵⁶ See World Bank, *Kosovo Economic Memorandum*, 22 April 2004, pp. 1-2.

⁵⁷ See Internet Site: <http://www.sok-kosovo.org/main.htm>.

⁵⁸ ESPIG, August 2004, p. 7.

⁵⁹ UNMIK, *Fact Sheet Kosovo*, May 2003.

Kosovo's GDP have continuously [since 2001] been revised downwards.'⁶⁰ In effect, 'Kosovo [has been] the only territory in Europe that has recorded a negative growth rate each year since 2002.'⁶¹

Unemployment is massive: 'According to Riinvest Institute, the rate of unemployment in Kosovo is 49%. According to SOK it is 57,1%.'⁶² Both figures do not take proper account of the underemployment that is associated with subsistence agriculture that concerns many rural households. However,

Even when the figures include the world of subsistence agriculture, together with large grey sectors in construction, trade and services, the total employment figure for Kosovo is only 325,000 where the working age population is around one million.⁶³

A picture of rural underdevelopment also emerges. The 2003 Kosovo Green Book states that the average farm size is merely '2,2 ha (divided into 8 plots)'⁶⁴ and hence too small to be efficient or really productive. The countryside is heavily overpopulated, but because of a variety of mostly EU-related reasons, it is becoming

⁶⁰ ESPIG, August 2004, p. 6. This fact is often overlooked in the presentation of optimistic scenarios concerning future trends and developments in Kosovo's economy. For a persuasive argument concerning the unsustainability of Kosovo's current GDP level, see ICG, 22 April 2004, p. 3.

⁶¹ Misha Glenny 'Kosovo Letter', *The Nation*, 11 April 2005.

⁶² United Nations Development Programme Kosovo, *Factsheet 1: Unemployment*, 2003.

⁶³ ESPIG, August 2004, p. 10.

⁶⁴ Ministry of Agriculture, Forestry and Rural Development (MAFRD), 2003 cited at Internet Site: http://www.esiweb.org/pdf/esi_mitrovica_espig_id_24.pdf.

increasingly difficult for people to emigrate (unlike during the past 50 years).⁶⁵ Remittances from relatives abroad play a crucial role for survival, but recent evidence suggests that they are leveling off and might even soon decrease.⁶⁶ Imports for 2003 were at 970,9 million euros but exports stood at an incredibly low level of only 37,24 million euros.⁶⁷ Furthermore, it has been estimated that

During the next five years almost 200,000 youngsters will cross the borderline of labour force age ... Kosovo lacks the capacity to absorb such a large number of new job market entrants.⁶⁸

⁶⁵ For a presentation of the final country destinations of the more than 400,000 Albanians from the former Yugoslavia that had emigrated to the West until 1993, see Vickers, 1998, p. 272.

⁶⁶ Based on author's interviews and discussions with UNMIK officials and representatives of Non-Governmental Organizations (NGOs) active in Kosovo.

⁶⁷ See Ministry of Trade and Industry and UNMIK European Union Pillar, *Trade Policy for Kosovo 2004*, 8 April 2004, p. 7. These figures are based on UNMIK custom's data. ESPIG gives slightly different data for the same years: imports are at 968,5 million euros for 2003 and exports ('primarily mushrooms, timber and scrap metal') only 36,3 million euros. See ESPIG, August 2002, p. 8 and fn. 16. Political reasons also affect the level of Kosovo's exports. For example during a visit to Kosovo, the author noticed (and savored) some very refreshing beer and truly excellent wine. At commenting that such fine products ought to be exported I realized that I was talking to someone who happened to be a major shareholder in the company that produced the wine. He explained that according to UNMIK regulations, the export of his product would have required the stating of the label: 'Product of Serbia and Montenegro.' As this would have amounted to an acknowledgement of Belgrade's nominal rule over Kosovo the decision taken was not to export and hence forfeit all potential economic benefits. This anecdote also constitutes an example of how political considerations can override rational economic self-interest.

52 ⁶⁸ UNMIK European Union Pillar, *Kosovo Outlook 2004*, 25 April 2004. It

Undoubtedly this combination of poverty and unemployment contributes to mass dissatisfaction and thus to protests and violence.

A vicious circle is emerging: Economic stagnation and political uncertainty discourage the international business community from investing in Kosovo. At the same time, Kosovo's unclear constitutional status makes it almost impossible for the International Monetary Fund (IMF) and the World Bank to issue much needed loans, the reason being of course that such institutions deal with states and not with entities.⁶⁹

In effect, Kosovo could be described as a weak state, except that it has not even yet graduated into being a sovereign state:

Whatever the reasons for the existence of weak states, their principal distinguishing feature is their high level of concern with domestically generated threats to the security of the government ... The creation of stronger states is a necessary condition for both individual and national security ... for weak states themselves, the idea of national security borders on nonsense unless they can make the transformation to strong state structures. Weak states simply define the conditions of insecurity for most of its citizens.⁷⁰

should also be taken into consideration that 'from the year 2000 through to the first half of 2004, the number of registered unemployed persons has increased by approximately 89,962 persons or 30,1%. The approximate number of additional registered unemployed persons per year is about 25,000.' Early Warning Report Kosovo, Number 7, May-August 2004, p. 16 at Internet Site: http://www.kosovo.undp.org/publications/ews7/ewr_7engl.pdf.

⁶⁹ Restrictions also apply to 'the myriad club memberships open only to nation states – everything from membership of the SWIFT bank transfer system, the international Green Card car insurance scheme, ownership of a telephone code [and] a generally recognized passport' (ICG, 22 April 2004, p. 3).

⁷⁰ Buzan, 1991, pp. 99 and 106.

These states cannot adequately provide a host of essential public and social services to their citizens in crucial areas such as education, health, pensions, safety, etc. At the same time, the rule of law, democracy and even human rights are undermined by organized crime,⁷¹ while necessary economic reforms are abandoned or substantially delayed. In addition, Kosovo's society is one of those in transition from socialism, which even 'under the best of circumstances ... are likely to face economically hard times for many years to come.'⁷² This situation is causing the loss of legitimacy for Kosovo's governing bodies, which at this point is correctly associated primarily with UNMIK: 'Five years ago ... UNMIK was considered as a liberator, but now it is on its lowest popularity.'⁷³

UNMIK's relative failure is thus becoming clear, but it is an honorable failure. After all, UNMIK faced considerable obstacles, is not a developmental agency, has consistently demonstrated good intentions and, together with KFOR, have managed to retain relative stability and avert the worse for some five years. Nevertheless, it is doubtful that UNMIK (and the international community in general)

⁷¹ For a brief overview and some very interesting data on crime in Kosovo see Internet Site: <http://www.unmikonline.org/civpol/statistics.htm>. For more up to date data see UNMIK Police Press Release, *Major Crime in 2002*, 17 January 2003. For how Kosovo's citizens perceive the challenges and problems associated with crime see Early Warning Report Kosovo, Number 7, May-August 2004, pp. 28-31. During a recent visit to Kosovo's capital, this author noticed that in almost every corner in Pristina's center were illegal cigarette sellers. No sign of policing this ubiquitous illegal activity was in sight.

⁷² Task Force Report, 2000, p. 8. On the problems facing Kosovo transition efforts from a socialist economy, see especially the exemplary presentation and arguments in Lessons Learned and Analysis Unit of the EU Pillar of UNMIK in Kosovo, 2002.

⁷³ This assessment belongs to Kosovo publicist Veton Surroi. See Internet Site <http://see.oneworld.net/article/view/89824/1/>.

are in full control of developments. The 23 October 2004 general elections where at issue was the participation of Kosovo's Serbs population, provide an illustration.

The 2004 General Elections

Serbia's President Boris Tadic strongly advocated that Kosovo Serbs 'take part in these elections,'⁷⁴ a position warmly welcomed by SRSG Søren Jessen-Petersen⁷⁵ who subsequently stressed the need for 'everyone [to] get on board as Kosovo moves forward.'⁷⁶ The EU's High Representative for the Common Foreign and Security Policy (CFSP) Javier Solana 'commended [Tadic] for a very courageous decision'⁷⁷ and the US State Department made similarly supportive statements.⁷⁸ Finally the UN's Secretary-General Kofi Annan 'urge[d] members of the Kosovo Serb community to participate in the election and this way ensure that their interests and concerns are represented and promoted within Kosovo's provisional institutions.'⁷⁹

⁷⁴ See 'Serbian president Urges Kosovo Serbs to Take part in Vote', *Serbia News*, 5 October 2004 at Internet Site: <http://serbia.news.designerz.com/serbian-president-urges-kosovo-serbs-to-take-part-in-vote.html>. Tadic also advocated the transfer of significant powers to local (Serb) authorities within three months after the new government in Kosovo took power.

⁷⁵ See UNMIK/PR/1237, Wednesday 6 October 2004 for Petersen's enthusiastic response to Tadic's statement.

⁷⁶ Søren Jessen-Petersen, 'Kosovo's Serbs should Head to the Polls', *International Herald Tribune*, 23 October 2004.

⁷⁷ Quoted in 'UN, EU, US Welcomes Tadic's Call to Kosovo Serbs', *Southeast European Times*, 7 October 2004.

⁷⁸ See *ibid.*

⁷⁹ 'Statement by Secretary-General Kofi Annan on the Elections for the Assembly in Kosovo', 21 October 2004, at Internet Site; <http://www.unmikonline.org>.

On the other hand, Tadic was denounced in Serbia. Some 104 Members of parliament belonging to Milosevic's Socialist Party of Serbia (SPS) and to Serbia's Radical Party (SRS) headed by the ultra-nationalist Tomislav Nikolic submitted a motion of no confidence against Tadic.⁸⁰ Although it failed, it was indicative of the strong, emotive reactions that Tadic's proposal elicited and of the nationalist mood currently in existence among a part of Serbia's political elite. Furthermore (and in a sense perhaps more importantly), Serbia's Prime Minister Vojislav Kostunica and Serbia's influential Orthodox Church publicly voiced their support for the poll's boycott.⁸¹ On Election Day less than 1 per cent of Kosovo Serbs participated⁸² with an overall turnout of 53 per cent (down from 64 per cent in 2001),⁸³ Rugova's LDK coming again first with 45,65 per cent of the vote.⁸⁴

The subsequent (brief as it turned out) appointment of former KLA leader Ramush Haradinaj as the province's Prime Minister⁸⁵ (Rugova being reinstated as President) did not help bridge confrontational inter-ethnic perceptions, especially since many⁸⁶

⁸⁰ See 'Impeachment Motion Against Serbian President Submitted to Parliament', *Southeast European Times*, 19 October 2004.

⁸¹ See 'Kosovo: Status Quo?', *The Economist*, 16 October 2004.

⁸² The only Serbian political party that participated was a citizen's initiative called 'Return.'

⁸³ See 'Dismay as Serbs Shun Kosovo Poll', *BBC News*, 24 October 2004.

⁸⁴ For the final results of Kosovo's 2004 general elections see Internet Site: <http://www.osce.org/kosovo/elections/results/index.php3>.

⁸⁵ See Nicholas Wood, 'Kosovo Albanians Choose Ex-Guerrilla as Prime Minister', *The New York Times*, 4 December 2004; 'A Bad Leader for Kosovo', *International Herald Tribune*, 20 December 2004 and 'Kosovo's Prime Minister: Young and Wanted', *The Economist*, 1 January 2005.

⁸⁶ Haradinaj was wanted in Serbia on more than a hundred alleged war crime charges against Serbian civilians, a fact that made dialogue between Belgrade and Pristina on a Prime Ministerial level almost impossible.

considered Haradinaj as a potential inductee to the International Criminal Tribunal for the Former Yugoslavia (ICTY).⁸⁷ Haradinaj's political rise seemed to suggest an unfortunate hardening of the Kosovo Albanian's attitude. However, his tenure was characterized by moderation and a willingness to address minority issues.⁸⁸ Haradinaj's indictment to the ICTY and immediate resignation on 8 March 2005 was handled in a civilized and peaceful manner.⁸⁹ Despite fears that violent outbursts would result because of his indictment,⁹⁰ no such events occurred. At any rate, the Serbian boycott of the 2004 general elections was an ominous outcome and a warning concerning the stable and smooth process towards Kosovo's final status. It was also the direct result of the 17-18 March 2004 riots, to which we will turn next, not least because they represent a turning point that ought to shatter the international community's illusions and complacency.

⁸⁷ For an excellent and informative analysis of the ICTY see Kerr, 2004.

⁸⁸ This author has been consistently told by decision-makers at UNMIK's highest levels, as well as by top diplomats from various Balkans states that Haradinaj represented a serious interlocutor with an effective determination to bring about positive change in minority issues. At the very least, his hard-line past bestowed him with the necessary credibility among Kosovo Albanians hardliners. Perhaps a historical analogy would have eventually been permitted with Republican anti-communist former US Presidents Richard Nixon who dealt with communist China and Ronald Reagan who negotiated directly with the Soviet Union's Mikhail Gorbachev, had Haradinaj's tenure not been terminated abruptly by the ICTY.

⁸⁹ See Marlise Simons, 'Kosovo's Leader Resigns Amid War Crimes Charges', *The New York Times*, 8 March 2005.

⁹⁰ See Crisis Watch No. 17, 1 January 2005, p. 8.

III

Turning Point: The Riots of 17-18 March 2004

'Nato's greatest nightmare is that Kosovar Albanians will come to see KFOR as an occupying force, and organize another guerilla resistance.'

—Dana H. Allin, 2001

Prelude to Violence

In a significant article that should have served as a warning to the international community (but was apparently ignored by the relevant decision-makers), *Guardian* correspondent Helena Smith reported on a demonstration in Pristina that took place on 14 October 2003.⁹¹ The targets were the UN and UNMIK, the crowds chanting slogans such as 'Out With the UN' and 'Go Home.'⁹² Kosovo Prime Minister Bajram Rexhepi was quoted commenting that 'being ruled 5,000 miles away from New York is simply not working ... with no road maps or political deadlines, or sense of resolving their unclear international status as a non-state entity, Kosovars are fast losing hope.'⁹³

By that point, incidents of sporadic interethnic violence or even attacks against KFOR forces were not uncommon.⁹⁴ However, in mid-March 2004 a series of events would spark widespread rioting. More specifically, on 15 March the shooting of a Serb teenager produced a blockade of a road leading to Pristina. The following day, Kosovo's news media reported that Serbs chased with a dog four young Albanian children, three of whom drowned in a frozen river while running for their lives.

The problem with this piece of reporting was that it blatantly distorted reality. Apparently, the Albanian boy never stated that his friends drowned as a result of an attack by the Serbs.⁹⁵ An

⁹¹ Helena Smith, 'Angry Kosovars Call on "Colonial" UN Occupying Force to Leave', *The Observer*, 19 October 2003.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ For a detailed account see ICG, 22 April 2004, pp. 10-13.

⁹⁵ See OSCE, 2004 that includes an impartial, well documented and conclusive analysis of the media's role in the March 2004 riots in Kosovo. The broadcasted distortion of the young Albanian boy's statements is exposed and proven beyond any reasonable doubt.

international prosecutor subsequently found no credible evidence to corroborate the story that Serbs were directly involved in this incident.⁹⁶ Nevertheless, continuous 'breaking news' bulletins interrupting and eventually dominating regular programming created an atmosphere of tension, apprehension and frustration, not necessarily conducive to rational thinking and reactions. Kosovo's media (and especially its television stations) exploited and hinted at the worse possible stereotypes concerning Serbs. Their lamentable coverage (only partially and inadequately ameliorated afterwards by some of the more serious newspapers), must thus be considered as one of the causes that led to the rioting. However, it would probably constitute a reductionist exaggeration to simply or exclusively blame the riots on Kosovo's media.

The Riots

During the next two days, 33 major riots took place in Kosovo, probably involving some 51,000 Albanians.⁹⁷ As Serbian monasteries and churches were razed to the ground, both Kosovo Serbs and KFOR forces were murderously attacked.⁹⁸ The international community was taken by surprise and it soon became evident that military reinforcements would be required. NATO immediately redeployed troops from Bosnia to Kosovo.⁹⁹ Some

⁹⁶ Fisnik Abrashi, 'Prosecutor Clears Serbs in Drownings', *Associated Press*, 28 April 2004.

⁹⁷ See ICG, 22 April 2004, p. 15. For an excellent analysis of the March riots see Pettifer, 2004. For a comprehensive chronology of events and developments during those fateful days, see ICG, 22 April 2004, pp. 44-54.

⁹⁸ See for example Nicholas Wood, 'Kosovo Torn by Widest Violence Since UN Took Control in '99', *The New York Times*, 18 March 2004.

⁹⁹ See 'NATO Sends More Troops to Kosovo', *BBC News*, 18 March 2004.

1,000 soldiers (including 600 British) joined KFOR,¹⁰⁰ to which an additional one thousand were eventually added.¹⁰¹

At that point it even seemed that Kosovo could perhaps be effectively destabilized, a development with potentially detrimental consequences for the western Balkans.¹⁰² The riots ended however after two days, although their significance will almost certainly be more long-lasting.

As a consequence of the onslaught led ... against Serb, Roma and Ashkali communities, 19 persons died and 954 persons were injured. In addition, 65 international police officers, 58 Kosovo Police Service (KPS) officers and 61 personnel of the Kosovo Force (KFOR) suffered injuries. Approximately 730 houses belonging to minorities were damaged or destroyed, as were 36 Orthodox churches, monasteries and other religious and cultural sites.¹⁰³

The question reasonably arises of whether the riots were centrally orchestrated and planned or represented a spontaneous violent outburst of dissatisfaction and hatred. In a sense the answer is irrelevant, to the extent that it does not and can not negate the death and destruction of March 2004. At any rate, it seems that in early March Kosovo's society was mobilizing towards mass demonstrations. This was partly the case because March is the month during which the events leading to NATO's 1999 intervention are

¹⁰⁰ See Ian Traynor, 'NATO Acts on Kosovo Terror', *The Guardian*, 19 March 2004.

¹⁰¹ 'NATO Troops Tackle Kosovo Discord', *BBC News*, 20 March 2004.

¹⁰² See for example Jeta Xharra, 'Burning Churches, Ruined Homes and Ethnic Hatred. Are the Balkans Set to explode Again?', *The Independent*, 19 March 2004.

¹⁰³ Press Release SC/8090, 11/05/2004.

commemorated. However, in at least the case of one of Kosovo's major cities, the mayor informed this author (on condition of strict anonymity) that planning for violent demonstrations had begun as early as September. Furthermore, 'one Western intelligence service has suggested that some organized crime syndicates with political aspirations did mobilize a network of rioters'.¹⁰⁴ It thus seems likely that at least for a certain militant segment of the Albanian population, intentions for March 2004 were more murderous than festive. At the same time, and regardless of any militant orchestrators, it also seems fair to conclude that the riots took advantage of at least some spontaneous and genuine popular feelings of frustration. According to one assessment

The two days of violence were not centrally organized, but were a vortex which different radical, extremist, and criminal structures poured in and out of, an impromptu market place of violence to which each brought their wares and found their niche.¹⁰⁵

Consequences

One of the first casualties in the aftermath of the riots was SRSG and former Prime Minister of Finland Harri Holkeri. On 25 May 2004 he announced his intention to resign, ostensibly for medical reasons.¹⁰⁶ Whatever the true cause of his resignation may be, the fact remains that with virtually no credibility left, his tenure ended in

¹⁰⁴ Glenny, 2004, p. 87.

¹⁰⁵ ICG, 22 April 2004, p. 17.

¹⁰⁶ See UNMIK/Press Release/1187, Tuesday, 25 May 2004. Holkeri was at that point 67 years old.

failure following the worst episode of inter-ethnic violence in five years. Of course, it would be unfair to solely or primarily blame Holkeri for the riots during those terrible 48 hours. Nevertheless, he failed to predict or adequately prepare for such an occurrence.¹⁰⁷ Furthermore, his statements on the crisis were contradictory¹⁰⁸ and apparently at one point Holkeri even failed to grasp the significance of what had transpired: While talking to US Public Radio on 21 March 2004 he denied that ethnic cleansing had taken place and explained (in a blatantly false or inexcusably misinformed manner) that only 'a couple of churches' had been destroyed.¹⁰⁹

Under Holkeri's leadership, UNMIK did not only briefly lose control of events on the ground. More importantly, it also lost touch with reality and with the people it governed. Holkeri's resignation and his replacement with by Søren Jessen-Petersen gave the opportunity for a 'fresh' start, albeit one on the basis of a much deteriorated situation.¹¹⁰ However, the significance of the March

¹⁰⁷ Former US Ambassador to the United Nations Richard Holbrooke claims that he had warned Holkeri in October 2004 that violence was a distinct probability and that 'we could have a West Bank retaliatory cycle [in Kosovo]. Unfortunately Holkeri did not take action to accelerate the status talks because he did not seem to realize that time was not on his side ... Holkeri did not understand the situation' (Evelyn Leopold, 'Holbrooke Says Violence in Kosovo was Inevitable', *Reuters*, 23 March 2004 at Internet Site: <http://209.157.64.200/focus/f-news/1103971/posts>).

¹⁰⁸ See ICG, 22 April 2004, p. 28.

¹⁰⁹ See Internet Site <http://www.balkanchurches.net/bcnews7.htm>.

¹¹⁰ Jessen-Petersen's tenure has been impressive. Perhaps his most significant and far-sighted decision was to prioritize the implementation of 60 of the more than 400 standards. Almost 90 per cent of the newly prioritized standards dealt with minority-related issues. In doing so, Jessen-Petersen acknowledged indirectly the oft repeated and not unjustified criticism that implementation of all the standards would essentially require of Kosovo a level of functioning that is not found in dozen of sovereign

riots goes beyond the demise of Holkeri's career as an international civil servant. These events constitute a turning point in the path towards Kosovo's final status, complicating efforts to resolve ethnic differences and at the same time delineating new parameters to this explosive issue.

The riots should be viewed as a turning point for a series of reasons. One of their first consequences was that the Albanian majority population lost the moral high ground that it was occupying since the 1980's. Oppressed for years by the Milosevic regime, they were delivered on the eve of an epic ethnic cleansing operation by an almost unprecedented international military intervention. Alas, their subsequent behavior towards the remaining Serbs in Kosovo was less than exemplary and in 1999 quite murderous. But that behavior could have been (and probably was – unjustifiably) explained away as a momentary outburst of retribution following years of tyranny. However, by 2004 Albanians constituted the overwhelming majority in PSIG institutions and were en route towards a final status that under no circumstances (as was well understood by all) could have entailed a return to direct rule by Belgrade. By turning against the numerically small and mostly defenseless minorities, Kosovo Albanians exhibited ruthlessness, hatred and barbarism – in effect all the traits that had led the international community to condemn the Serbs and empathize with the Albanians prior to NATO's 1999 intervention. It is of course necessary to stress that only a fraction of Kosovo's population

states many of which are located in Europe. It should also be added that the emphasis on minority issues demonstrates the significance that the new SRSG places on the protection of Kosovo's Serbian minority. Such an emphasis facilitates (the admittedly difficult) goal of securing Belgrade's involvement and acquiescence in the process that will lead to Kosovo's final status.

actively participated in the riots, and that there is no evidence to suggest that widespread popular support existed for such heinous practices.¹¹¹ Nevertheless, historical processes are often ‘hijacked’ by small but determined groups. The point is that even if most citizens disagree with violent acts, their disagreement (often passive) can not reverse what has happened.

The riots were not only deadly but also politically shortsighted. Possibly, they aimed at pressuring the international community to accept independence in mid-2005 or face considerable costs, despite only relative progress on ‘Standards before Status.’ If this was indeed the case, it entailed a risky calculation concerning the will and workings of the international community. It is doubtful that the UNSC will retreat. A retreat may be perceived by many as the result of a successful ‘blackmail’ on an issue for which considerable energy, funds and military resources have been invested. Riots constitute arguments for the continuation of UNMIK’s and KFOR’s presence. A repeat of the March 2004 violence would actually strengthen arguments for the province’s *de jure* or *de facto* partition. ‘Riots before Status’¹¹² is an unacceptable policy that can not yield independence.

The March 2004 events also demonstrated the level of dissatisfaction with UNMIK. Its representatives are not viewed as the friendly liberators of only half a decade past. As of May-August 2004,

¹¹¹ A similar argument could perhaps be made on behalf of most Serbs residing in Kosovo during the period when Kosovo Albanians were victimized. The outcome unfortunately remained the same:

¹¹² The author first encountered the phrase Riots before Status in a brief ‘newsbyte’ by the United States Institute of Peace titled ‘Kosovo: Status with Standards’ published on 15 April 2004. See Internet Site: http://www.usip.org/newsmedia/releases/2004/0426_nbkosovo.html. It was written by Daniel Serwer who has consistently remained one of the most knowledgeable and constructive American voices on Balkan affairs.

satisfaction with UNMIK stood at 20,7 per cent.¹¹³ Furthermore 74,8 percent of Kosovo Albanians and 62,1 per cent of Kosovo Serbs consider UNMIK as responsible for the province's depressing economic situation.¹¹⁴ UNMIK must reconnect with the people in Kosovo that it governs—and soon for otherwise the perils of future violent occurrences will multiply.

At the same time, the riots also do not reflect well on the PSIG and especially Kosovo's assembly, to the extent that the latter seems to have lost considerable credibility with the population, its decreasing rate of satisfaction standing at 59,1 per cent.¹¹⁵ That it has only limited powers constitutes a partial excuse for the fact that it has often failed to seize initiatives. As many Kosovo politicians and UNMIK officials will assert (off the record), local politicians too often and too readily welcome a situation in which necessary but tough and politically costly decisions are gladly left for UNMIK to make. Thus, they remain completely sheltered from any negative political repercussions and fallout.

The riots had a considerable effect on perceptions regarding the province's security. According to a subsequent poll

About 63% of K[osovo] Albanians respondents, 99,5% of K[osovo] Serb respondents and 77% of respondents of non-Serb minorities share the opinion that the March violent protests had a negative impact on the security situation.¹¹⁶

¹¹³ See Early Warning Report Kosovo, Number 7, May-August 2004, Selected Indicators. KFOR fares much better with an 81 per cent satisfaction rate. See *ibid.*

¹¹⁴ See *ibid.*, Table A.2.3, p. 28.

¹¹⁵ See *ibid.*, Selected Indicators.

¹¹⁶ *ibid.*, p. 2.

As regards the remaining Serbs in Kosovo, their relative physical insecurity was made plainly evident, as was the hatred that exists against them by many Albanians. After the violence, it was reasonable for Kosovo Serbs to feel alienated and apprehensive.¹¹⁷ As of July 2004, 0,0 per cent of Kosovo Serbs supported an independent Kosovo within its current borders,¹¹⁸ 49,7 percent considered public and personal security the province's biggest problem¹¹⁹ and 90,5 percent favored the creation of an autonomous province for them within Serbia.¹²⁰ In this author's view, their decision to almost catholically boycott the 21 October 2004 general election is integrally linked to the riots. It seems almost certain that they preferred not to legitimize with their vote an administrative system that had failed to adequately protect them. Their distrust and disappointment was of such a magnitude that they successfully resisted the pressure to participate in the elections that was emanating from the UN, the EU, the US and even Serbia's President Boris Tadic.

After March 2004 it has become impossible for the international community to ignore Kosovo or to pretend that the current policy of 'Standards before Status' constitutes a panacea. Kosovo's conundrum has now been exposed: A restless majority population

¹¹⁷ Unfortunately, this remains the case despite the commendable decision by Kosovo's government immediately after the riots to finance the reconstruction of destroyed homes and monuments. Total allocated funds have now reached 16,6 million euros. See ICG, 22 April 2004, pp. 27 and 31.

¹¹⁸ Early Warning Report Kosovo, Number 7, May August 2004, Table A.3.3, p. 29.

¹¹⁹ Ibid., Table A.1.1, p. 27. In addition, 55,5 per cent of Kosovo Serbs felt very unsafe in the streets and 39 per cent somewhat unsafe. See *ibid.*, Table A.4.2, p. 31.

¹²⁰ Ibid., Table A.3.3, p. 29.

yearning for independence and willing (at least a part of it) to resort to violence in order to achieve its goals; a largely defenseless Serbian minority feeling increasingly alienated and insecure; a dysfunctional economy that churns out annually a small army of unemployed; an international presence still ruling the province, meaning the best but constantly losing legitimacy and credibility; and, finally, a region anxiously awaiting to see how Kosovo's endgame plays out, knowing that it might have much wider effects and repercussions.

Clearly, there is no easy or apparent solution to Kosovo's conundrum. But before offering recommendations in favor of particular arrangements, the principles and parameters determining the issue of Kosovo's future status will be presented and analyzed next.

IV

Issues and Parameters Affecting Kosovo's Final Status

"[None] of the available options for confronting Kosovo's future status [is] appealing. If an obvious and satisfactory solution existed, it would already be known; all one can therefore usefully do is to examine each option's implications and suggest the most viable for the future."

—Jacques Rupnik, 2001.¹²¹

¹²¹ Cited in Allin, 2001, p. 11.

Principles for Kosovo's Final Status

Attempts to resolve the issue of Kosovo's final status have to aim at satisfying a series of principles and goals. An eventual agreement has to be durable and not just an *ad hoc* 'patch up' of a situation until the inevitable subsequent crisis. It also has to be legal, conforming to internationally accepted norms and practices. Furthermore, it ought to be realistic and acceptable to all the parties involved, even if their maximum demands are not satisfied. Kosovo's minorities must be provided with absolute physical security. Regional stability should be enhanced and Kosovo transformed into a democratic, prosperous multiethnic society *en route* to joining Euro-Atlantic structures. Without any doubt, this represents an ideal and perhaps not entirely attainable situation, though it is important to set worthy goals and principles that can serve as a guidepost for the actions of those having a stake in Kosovo's future.

Crucially, efforts to address Kosovo's conundrum must first take into consideration a series of key issues and parameters. Their presentation and analysis is deemed both critical and necessary, for without their proper consideration any policy recommendations or comprehensive plans aiming to succeed in resolving Kosovo's status will inevitably prove inadequate and perhaps even counterproductive.

A Regional Problem

Seen in isolation, the issue of Kosovo seems less complex, less intractable and more easily solvable. The logic of partition becomes attractive if not seductive: a territorial settlement in which a part of Kosovo joins Serbia, the rest becoming a sovereign state. In Serbia there would be elation for 'saving' even a small part of Kosovo.¹²² Kosovo Albanians would certainly complain about the loss of some territory, but the fact remains that they would gain independence unencumbered by a serious minority issue with the potential of turning deadly as the March 2004 riots proved beyond any doubt. Thus, the resettlement of some people and much political posturing aside, an agreement on the basis of partition would appear the best of all possible options.

However, if (as will be argued), Kosovo's future is integrally interconnected with developments in the entire western Balkans, any plan to partition the province would be akin to opening Pandora's Box. It would probably produce regional instability and amount to a serious setback for regional efforts aiming at democracy, economic development and the eventual joining of Euro-Atlantic structures.

A partitioned Kosovo would almost certainly influence the future of FYROM in a negative way. Relations between the province and the young republic have been closely interrelated since the late 1990's. For example, the 1999 Kosovo Conflict produced:

¹²² In discussions with Serbian politicians and academics, as well as with numerous Balkan experts, the consensus view is that if any Serbian politician accomplishes to incorporate into Serbia some part of Kosovo, the status of 'national hero' would almost automatically be bestowed upon him or her.

The [temporary] influx [of more than 400,000] refugees; the disruption to international trade in goods and services; closing of transportation routes through the Federal Republic of Yugoslavia; damage to consumer and investor confidence; reduction in access to international capital markets; and setbacks to the process of structural reform and development, including weakened government.¹²³

The Kosovo-related cost to FYROM's economy was eventually estimated at \$1,5 billion.¹²⁴

More insidiously though, the Kosovo Conflict played a role in the radicalization of FYROM's sizable Albanian ethnic minority (officially 25% of the population).¹²⁵ This contributed greatly to the violent outbreak of hostilities in the summer of 2001 that imperiled the very existence of the young republic.¹²⁶ Thus,

As long as the future of Kosovo remains undecided
Macedonia continues to be vulnerable to the risk of further

¹²³ International Monetary Fund, *The Economic Consequences of the Kosovo Crisis: An Updated Assessment*. The report was issued on 25 May 1999 and can be found at Internet Site: <http://www.imf.org/external/pubs/ft/kosovo/052599.htm>

¹²⁴ See Pierre J. Andrew, *De-Balkanizing the Balkans: Security and Stability in Southeastern Europe*, 20 September 1999 at Internet Site: <http://www.usip.org/pubs/specialreports/sr990920.html>. See also 'Economic Crisis for Macedonia' *BBC News*, 6 May 1999.

¹²⁵ See CIA, *The World Factbook 2004: The Former Yugoslav Republic of Macedonia* at Internet Site: <http://www.cia.gov/cia/publications/factbook/geos/mk.html>. According to the same source Slav-Macedonians constitute 68 per cent of the population, Turks 3 per cent, Roma 2,2 per cent, Serbo-Croatians 2 per cent and others 2 per cent.

¹²⁶ For accounts and analyses of the ethnic conflict in FYROM see Balalovska et al, 2002; Tziampiris, 2003a, pp. 113-130; Phillips, 2004 and Roudometof, 2002, pp. 211-223.

subversive military activities being sponsored by the former Kosovo Liberation Army (KLA) commanders who helped to mastermind the creation of the [National Liberation Army] NLA from the province.¹²⁷

A partitioned Kosovo could furthermore bring back on the agenda more maximalist and radical demands in favor of FYROM's Albanian community. The Ochrid Framework Agreement that is painstakingly being implemented would thus be imperiled once again.¹²⁸ In addition, a precedent for redrawing borders having been created, it is likely that demands could surface advocating that the Tetovo region join the adjacent Albanian-dominated province to form a Greater Kosovo.

If the international community sends through Kosovo's partition a clear message that agitation, violence and making UN administrative arrangements unworkable can lead to the redrawing of borders, the effective destabilization of Bosnia-Herzegovina could also come next. Struggling to achieve a workable, democratic and efficient *modus operandi* following the signing of the 1995 Dayton accords, Bosnia-Herzegovina remains a state with significant ethnic

¹²⁷ Phillips, 2004, p. 166.

¹²⁸ For the text of the Framework Agreement on the future of FYROM, see Internet Site <http://www.sinf.gov.mk/PressRoomEN/2001/07/n0815.htm>. The Agreement was ratified by FYROM's Parliament on 16 November 2001 by a vote of 93 in favor to 13 against, thus assuring the necessary 2/3 majority required for constitutional amendments. For a more recent discussion of developments in FYROM related to the implementation of administrative reforms based on Ochrid, as well as the failed attempt of a referendum aiming to stop them, see 'Macedonia's Referendum. A Narrow Squeak', *The Economist*, 13 November, 2004.

divisions.¹²⁹ Of particular importance is the existence of Republika Srpska with a population of perhaps 1,486,000 Serbs,¹³⁰ adjacent to Serbia and Montenegro.

Nobody wants to mention this, but everyone in Republika Srpska is watching what will happen in Kosovo ... If Kosovo gets independence, you can be sure that the Serbs of Bosnia will press for secession and integration into Serbia.¹³¹

This will most certainly be the case if Kosovo is partitioned. If existing borders are not considered sacrosanct and if many Kosovo Serbs are incorporated into Serbia with some part of the territory in which they currently reside, it will then probably be impossible to discourage Bosnian Serbs for demanding a similar treatment and the application of the same principles and precedent for their case. The continuation of a functioning Bosnia-Herzegovina might prove impossible, the de-legitimization of post-Dayton practices and compromises perhaps complete.

If a policy for Kosovo's partition prevails, Serbia could also be affected in a manner not conducive to the country's stability or even territorial integrity. Almost immediately, the continuation of the union between Serbia and Montenegro would probably be imperiled. Advocates of a separation could readily point out to the international community's willingness to accept the change of borders as a tool for

¹²⁹ For important accounts of post-Dayton Bosnia-Herzegovina see Bose, 2002; Chandler, 2000; ICG, 25 March 2002 and Knaus and Martin, 2003.

¹³⁰ Population estimates based on CIA, *The World Factbook 2004* at Internet Site: <http://www.cia.gov/cia/publications/factbook/geos/bk.html>.

¹³¹ Roger Cohen, 'The Serbian Question, Still on Europe's Plate', *International Herald Tribune*, 13 October 2004. The cited quotation belongs to Fuad Sabeta, a senior Bosnian Foreign Ministry official.

resolving regional and ethnic problems and argue that a similar policy should be acceptable to relations between Serbia and Montenegro, especially since the pro-independence Montenegrin movement does not pose the kind of dangers and complexities that appear in Kosovo.

Perhaps more significantly though, the 57,595 ethnic Albanians¹³² residing in the Presevo valley would pose a considerable political challenge to Serbia.

According to the latest census data (2002), ethnic Albanians form a majority in the municipalities of Presevo (90 per cent) and Bujanovac (54,5 per cent), and a minority in the municipality of Medvedja (26 per cent).¹³³

After the 1999 Kosovo Conflict, the Liberation Army of Presevo, Bujanovac and Medvedja (UCPMB)¹³⁴ became active in the Presevo valley, taking advantage of a small demilitarized area in Serbia, the Ground Safety Zone (GSZ). Following the intervention of the international community and the implementation of the Covic plan,¹³⁵ military agitation in the area subsided. Despite the existence of a fragile peace, the precedent for violent irredentist activities has clearly been established, armed attacks having since taken place sporadically and more seriously in August 2003.¹³⁶

¹³² This number is based on the 2002 census presented in ICG, 9 December 2003, p. 3.

¹³³ ICG, 25 February 2004, p. 22.

¹³⁴ On the UCPMB see also Phillips, 2004, pp. 2-7.

¹³⁵ See ICG, 10 August 2001. Nebojsa Covic was then the Serbian Deputy Prime Minister.

¹³⁶ See ICG, 9 December 2003. The more recent incident in Presevo was reported on 18 July 2004. See ICG, 22 July 2004, p. 16.

Perhaps sensing mounting tensions and the potential for trouble, Serbian troops were reinforced in Presevo during late 2004.¹³⁷ A few weeks later, a border incident during which an Albanian youth was killed by a Serb soldier while trying to illegally cross the borders with FYROM produced mass protests and necessitated an OSCE statement urging 'restraint and calm.'¹³⁸ Some 10,000 Albanians attended the teenager's funeral¹³⁹ and 5,000 were present at a subsequent demonstration, in which prominently displayed were 'banners read[ing]: "Serbia go home" and "Army out of the Valley"'¹⁴⁰ It thus still seems to be the case that 'problems, possibly armed problems, will continue in the Preshevo valley, particularly in the rural areas adjacent to the Kosovo border.'¹⁴¹

In the case of a partitioned Kosovo, Presevo Albanians could demand the exact treatment reserved for Kosovo Serbs, effectively aiming at the dismemberment of Serbia. In the words of a Presevo Albanian politician: 'Albanians of Presheva valley will ask nothing more than what Serbs of northern Kosovo are asking.'¹⁴² During the March Kosovo riots their silence was ominously deafening. They will almost certainly become vocal (possibly also opting for the use of force) if Kosovo is partitioned, contributing in this way towards instability in both Serbia and the wider region.

¹³⁷ See 'Troops in Southern Serbia are to be Reinforced', *Seeurope.net*, 23 December 2004 at Internet Site: <http://www.seeurope.net/en/Story.php?StoryID=54218&LangID=1>.

¹³⁸ See Internet Site: http://www.osce.org/news/show_news.php?id=4642 for the complete text of the OSCE statement that was made on 8 January 2005.

¹³⁹ See '10,000 Attend Funeral of Slain Albanian Boy', *Kathimerini English Edition*, 10 January 2005.

¹⁴⁰ Iric Radoman, 'Albanians Demand Army Withdrawal From Tense South Serbia after Killing', *Reuters*, 11 January 2005.

¹⁴¹ Churcher, 2003, p. 12.

¹⁴² Cited in *ibid.*, p. 5.

At this point, it has to be explained that although a partitioned Kosovo could affect the politics of Albanian populations in both Tetovo and Presevo, it is completely unrelated to fears about the eventual creation of a Greater Albania. Such a project exists primarily in the minds of intellectuals¹⁴³ and a rather small minority of Albanians.¹⁴⁴

The idea of using force to reunite all Albanians in a single country is genuinely unpopular ... Within Albania, there is little support for ethnic Albanian separatist movements either in southern Serbia or Macedonia. While some public support exists for Kosovo's independence, this is based more on general sympathy for the situation of Kosovo Albanians rather than any aspirations for unification with Kosovo or Macedonia.¹⁴⁵

There are several reasons why this is the case: Albanians are ethnically divided into Ghegs and Tosks. The Albanians of Kosovo, Presevo and Tetovo belong to the Gheg ethnic group, while Tosks are primarily concentrated in southern Albania. Thus,

¹⁴³ For the intellectual groundings of a Greater Albania project, see Academy of Sciences of Albania, 1998.

¹⁴⁴ Currently, only 9,7 per cent of Kosovo Albanians support a union with Albania. See Early Warning Report Kosovo, Number 7, May August 2004, Table A.3.3, p. 29. See also the exemplary, comprehensive and persuasive analysis in ICG, 25 February 2004 and also Kola, 2003, tellingly titled *The Myth of Greater Albania*. Both argue that a Greater Albania project does not represent a realistic threat for the foreseeable future. See also Phillips, 2004, pp. 169-170 who concludes that 'increasingly, [Kosovo's] independence is seen as an end in itself rather than an interim stop on the way to uniting all Albanians in one state.' For an excellent introduction to the history of the Albanian peoples consult Vickers, 1997.

¹⁴⁵ ICG, 25 February 2004, pp. 10 and 12.

Within ... an expanded Albania, power would shift decisively from the Tosks to the Ghegs, who would now be in the majority, and the Ghegs of northern Albania would themselves be outnumbered by the Ghegs of Kosovo.¹⁴⁶

Considerable variations in religious affiliation also exist, Albanians being Muslim, Eastern Orthodox, Catholic or atheist. Finally, there has been no significant historical example (and concomitant memories) of a Greater Albania (unlike the cases of Serbia, Greece and Bulgaria). The exception of the Greater Albania that was briefly created during the Second World War with the 1941 annexation of Kosovo was characterized by conditions of occupation and tutelage by Italian and Nazi forces, as well as by a resistance movement.¹⁴⁷ Hence it hardly serves as an 'idealized' paradigm worthy of emulation. Kosovo represents a truly complex problem ridden with dangers and potentially momentous consequences, but the creation of a Greater Albania is fortunately not one of them.

It can thus be concluded that the Kosovo issue is in its very essence a regional problem with significant regional implications. Seen in this light, partition ought to be actively discouraged by the international community, for such a policy would herald many ills for the western Balkans.

¹⁴⁶ Ibid., p. 12.

¹⁴⁷ See Fischer, 1999 which is the best historical study of Albania during the Second World War and especially pp. 83-88 and 165-171.

The Serbian Factor

Contemporary Serbian politics have departed from the brief post-Milosevic pro-reform consensus and have entered a period of relative confrontation and uncertainty.¹⁴⁸ Although forces that favor integration to Euro-Atlantic structures are far from negligible, nationalist tendencies continue to hold a considerable grip on many of the country's citizens.¹⁴⁹ Kosovo's fate could play a central role in influencing whether Serbia's future will be more inward looking or oriented towards reform and modernization.

Any final agreement on Kosovo must at least include Belgrade's acquiescence. Serbia will continue to be interested in Kosovo not only because of its historic and cultural links, but also because a Serbian ethnic community continues to reside there, despite the hardships and dangers following the province's change of regime in 1999. The precise number of Kosovo Serbs is a disputed and emotive issue. According to the most sophisticated and objective analysis, they probably total 128,000.¹⁵⁰ As many as '75,000 [are]

¹⁴⁸ See especially ICG, 26 March 2004; ICG, 22 July 2004 and also Pribicevic, 2004 and Judy Dempsey, '4 Years After Milosevic, Unity's Gone in Belgrade', *International Herald Tribune*, 26 October 2004. Any attempt to understand contemporary Serbian politics should be preceded by an understanding of the nation's history. An excellent introduction is Judah, 1997. For Milosevic's career and legacy particularly useful studies are Cohen, 2002 and LeBor, 2003.

¹⁴⁹ For example, in the December 2003 parliamentary elections the ultra nationalist Serbian Radical Party (SRS) (whose leader Vojislav Seselj is currently being tried by the ICTY), won 28 per cent of the vote and almost one third of all parliamentary seats. See also 'Something Nasty in the Balkans', *The Economist*, 3 January 2004.

¹⁵⁰ See the impartial and persuasive analysis in ESI, 7 June 2004, pp. 6-7. ESI bases its number of Serbs in Kosovo primarily on age structure and primary school enrollment data.

living in the Albanian-majority south.¹⁵¹ During 2003 Serbia spent some 125 million euros in support of Kosovo Serb institutions.¹⁵²

It is well understood that a return of the 90 per cent Albanian Kosovo to direct rule by Belgrade constitutes a chimera that even the most ardent of Serbian nationalists have seized to contemplate. Such a possibility is completely unrealistic, would cause an easily predictable conflict and is without any question not on the agenda of any of the sides and actors that are responsible for planning and deciding Kosovo's final status.

After the deadly March 2004 riots, there has been a renewed sense of frustration and urgency in addressing the issue of Kosovo's future. On 26 March 2004 the National Assembly of Serbia passed a significant resolution on Kosovo.¹⁵³ It described the events that had transpired as a 'pogrom,'¹⁵⁴ demanded that the international community bring to justice the culprits and also made a special reference to the cultural and religious monuments, thus indicating their unique importance to the Serbian nation. The resolution argued that 'Kosovo and Metohija is an integral part of Serbia and the State Union of Serbia and Montenegro,'¹⁵⁵ a claim probably consistent with UNSCR 1244 but not with contemporary reality. It also called upon 'the Government of the Republic of Serbia [to] prepare a proposal for a political solution of the present situation in Kosovo and Metohija.'¹⁵⁶

¹⁵¹ Ibid., p. 14.

¹⁵² See ICG, 26 March 2004, p. 10.

¹⁵³ See Internet Site: <http://www.parlament.sr.gov.yu/content/eng/index.asp>.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

An elaborate 'Plan for the Political Solution to the Situation in Kosovo and Metohija'¹⁵⁷ was submitted soon thereafter. It was

¹⁵⁷ See Appendix V. Serbia's plan was partly influenced by a previous plan that was submitted in 1998 arguing in favor of Kosovo's cantonization. It was authored by Professor Dusan Batakovic who is currently Ambassador of Serbia and Montenegro to Greece. The 'Batakovic Plan' can be found at Internet Site: http://www.kosovo.com/batakovic_cantonization.html#proposal. Interesting for the time that it was submitted, it has been superseded by developments. In the immediate aftermath of the March 2004 riots, Serbia's Prime Minister Vojislav Kostunica attempted to re-introduce proposals on the basis of cantonization, but was rebuffed by the European Union. See Stephen Castle and Vesna Percec Zimonjic, 'EU Rejects Call to Create Serb Cantons in Kosovo', *The Independent*, 24 March 2004. Belgrade subsequently opted for a new and comprehensive plan. An interesting but brief and underdeveloped proposal to secure a territorial accommodation for Kosovo's Serbs on the basis of cantons has been put forward by Edward P. Joseph. He suggests that 'defined cantons and municipalities for Serbs (including key historical sites) [be created] ... Serb cantons in a newly independent Kosovo need not be excessively large and, unlike Republika Srpska, should not be contiguous (except in the north, where special measures in Mitrovica could check the temptation to succeed)' (Joseph, 2005, pp. 119-120). Needless to say, the implementation of this proposal would require its prior much further elaboration (which of course was certainly beyond the scope of the *Foreign Affairs* essay in which it was presented). Nevertheless, several problems can be discerned: First, tiny Serb cantons will probably not be viable or function particularly efficiently at most levels. Secondly, as is the case with the current Serbian plan (and will be explained subsequently), plans on the basis of ethnic lines create a problematic precedent for the region of the western Balkans and are unpopular with both the European Union and several United Nations Security Council permanent member states. Finally, even if thus created, the existence of Serb cantons can not address by themselves the physical insecurity of their inhabitants, a fact that necessitates either the existence of Serbian military forces (a highly unlikely scenario, especially in an independent Kosovo) or an international military presence.

enthusiastically received and almost unanimously adopted by Serbia's Parliament on 29 April 2004.¹⁵⁸ The Serbian plan states that its authorship was prompted by the 'March 17 to March 19 2004 ... pogrom and ethnic cleansing of Kosovo Serbs.'¹⁵⁹ With much justification it stresses that UNMIK and the international community in general failed to ensure both the physical security of the Serbian community and the protection of many outstanding monasteries and churches.

Faced with the unacceptable but not unimaginable possibility that a similar situation may re-occur, the Serbian Assembly calls for the application of an 'autonomy-within-autonomy'¹⁶⁰ principle, according to which 'substantial autonomy'¹⁶¹ would be given to 'five territorial entities/districts' in which most Serbs reside, comprising 'the Region,'¹⁶² which would be an 'area of territorial autonomy.'¹⁶³

In clear and forceful language it is explained that the goal is not the partition of Kosovo, but the creation of a stable, safe multiethnic community, that however can only result if the plan's recommendations are implemented. Key to these proposals is that the autonomous region within Kosovo would exercise extensive powers (delegated according to the principle of subsidiarity) on a series of areas. They deserve to be cited in full, because they are of particular significance in evaluating the plan's true nature and – intentions:

¹⁵⁸ Only seven out of a total of 215 deputies who were present did not vote for the plan, deciding instead to abstain. See Internet Site: http://www.kosovo.com/news/archive/2004/April_30/2.html for a report of the assembly's proceedings.

¹⁵⁹ Appendix V.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Ibid.

- Organisation of the Region (the organisation of its bodies and electoral process)
- *Security (police) and civilian protection*
- Judiciary
- Education
- Health care
- Social policy
- Culture, media and sports
- Protection of cultural heritage
- Marital and family relations, inheritance and guardianship
- Real estate property rights
- Privatisation process in the Region
- Public registers
- Official use of language and script
- Sanctions provided for violations of regulations falling within the jurisdiction of the Region
- Development programmes
- Local self-government
- International regional cooperation within the jurisdiction of the Region
- Spatial planning
- Ecological protection
- Infrastructure of importance for the Region
- Establishment of the sources of revenue (budget and annual final report)
- Public property management
- Industry on the territory of the Region
- Natural and mineral resources
- Agriculture, cattle breeding, forestry, hunting and fishery
- Services.¹⁶⁴

¹⁶⁴ Ibid; emphasis mine.

These powers would be exercised through an Assembly of the Region, an Executive Council of the Region, as well as a Judiciary complete with municipal public prosecution and even a Regional Public Defender.

The plan also devotes considerable attention to the ‘protection and preservation [of the Serbian] cultural heritage in Kosovo.’¹⁶⁵ It emphasizes the lamentable failure of their protection during the riots and their undisputed and fundamental connection to Serbia’s history. It is proposed that depending on their location, Serbian monasteries and churches either fall under the jurisdiction of the proposed autonomous Region, or that their direct administration by the Republic of Serbia is granted.

The Serbian plan for Kosovo’s future represents a sophisticated and urgent attempt to address real grievances and dangers. However, upon closer scrutiny, it is problematic and ultimately untenable for a series of reasons. First, and despite protestations to the contrary, it does not so much represent an effort to create ‘autonomy-within autonomy’ but rather ‘a state within a state’: the proposed Region, geographically adjacent to Serbia, would have competence on almost all policy areas, as well as its own security force, judiciary and democratically elected Assembly. It can thus even be argued that Serbia’s proposals would perhaps, under certain circumstances, amount to partition by other means.

Secondly, it is very unlikely that the United Nations Security Council will ever accept this plan. This represents a potentially fatal problem, especially since the plan explicitly states and recognizes that its implementation lies exclusively within the Council’s jurisdiction. However, the plan’s likely rejection is not only the result of the fact that it comes perilously close to representing ‘a thinly disguised land-grab.’¹⁶⁶ Of even greater significance is that its entire conception and

¹⁶⁵ Ibid.

¹⁶⁶ Joseph, 2005, p. 120. In a similar manner, ICG stresses that ‘the

implementation is solely based upon ethnic lines. A precedent according to which substantial autonomy is given to newly created 'regions,' defined by ethnic criteria, in which a high concentration of a specific ethnic community resides would almost certainly endanger stability in the western Balkans.

Furthermore, the application of precisely the same principles and plans to Serbia could undoubtedly imperil the country's unity, given the existence of minorities (probably in a higher percentage than that of Serbs in Kosovo) in both Presevo and Vojvodina.¹⁶⁷ In addition, a solution to Kosovo's problems among ethnic lines might not be looked upon favorably by Russia and possibly China for reasons that will be discussed subsequently. In the final analysis, the international community (including the European Union) is determined that Kosovo's final status, even if it incorporates plans for decentralization or substantial regional autonomy, will be decided on the basis of geographic or other criteria, and not by ethnic divisions.

Belgrade plan is unacceptable and no basis for constructive discussion on the province's future' (ICG, 24 January 2005, p. 17) while the UK's House of Commons Foreign Affairs Committee concluded that the Serbian plan 'would result in an unacceptable transfer of population and could result in effective partition of Kosovo' (House of Commons Foreign Affairs Committee, 2005, p. 57). As regards Edward P. Joseph, he represents one of the most knowledgeable American voices on the Balkans. His most recent proposals on the future of the western Balkans and (often pithy) observations on regional developments (conveniently contained in Joseph, 2005) deserve particular attention by the relevant American and international decision-making authorities. Joseph's proposal in favor of Kosovo's cantonization was previously discussed.

¹⁶⁷ Vojvodina has roughly a 15 per cent ethnic Hungarian population and has alas witnessed an increase in violent and ethnic-related incidents. See 'Ethnic Tensions Top Serbia Talks', *BBC News*, 14 September 2004 and Joseph, 2005, p. 112. The considerable Albanian presence in Presevo was presented above.

Serbia's plan is perhaps more constructive as regards the protection of the Serbian cultural heritage in Kosovo. Although direct jurisdiction will probably not be granted to Belgrade and a Serbian autonomous region might not materialize as envisioned, the plan's problematique suggests the need for innovative proposals in order to address this issue. The comprehensive protection of Kosovo's invaluable Serbian monasteries and churches is imperative.

Given the bleak prospects of Kosovo's conundrum being resolved on the basis of the current Serbian plan, it is worth citing Richard Holbrooke's stern warning that

The Serbs in Belgrade should face reality and choose between Europe and Kosovo. If Serbs choose Kosovo, they will lose both Kosovo and Europe, whereas if they choose Europe, the entire Balkans will join the European Union in time, including Bosnia, Macedonia, Kosovo, Montenegro, Albania and Croatia.¹⁶⁸

Holbrooke's language is undiplomatic and unduly harsh but nevertheless seems to present a stark dilemma. However, it is not impossible for Serbia to pursue Europe and not abandon Kosovo. The key to such a strategy lies in the realization that although Serbia must abandon hopes of regaining Kosovo (or probably even a part of it), she can never abandon Kosovo's Serbs. Such an action would be unjust, immoral and tantamount to a sentence of death or ethnic cleansing for many of them. Serbia should thus choose Europe and the 'ironclad'¹⁶⁹ protection of its ethnic community in Kosovo,

¹⁶⁸ Cited in UNMIK Division of Public Information Media Monitoring, 'Headlines', 29 February 2004 (Sunday Edition).

¹⁶⁹ Interestingly, writing in the aftermath of the March 2004 riots, Richard Holbrooke while maintaining a general pro-independence stance, also admitted that 'any resolution of Kosovo's status required "ironclad"

although not on the basis of an autonomous region drawn upon ethnic lines. This is the absolute (but essential) minimum that the international community should expect of Belgrade. Hence, plans aiming at resolving Kosovo's final status ought to incorporate relevant and realistic protective provisions for all Kosovo Serbs.

Kosovo's future status should not lead to feelings of eternal bitterness and recrimination on the Serbian side. If the final agreement is judged unfair by the Serbian populace at large, it will strengthen the forces of extreme nationalism. The aim ought to be a Serbia satisfied to such an extent that she can continue her path towards joining Euro-Atlantic institutions and assuming her proper role as a regional power contributing to regional stability, democratic reforms and economic development.

A Security Council Issue

Any definitive decision on the future of Kosovo would have to be produced at the level of the United Nations Security Council, and would require a new resolution superseding 1244.¹⁷⁰ The realization of this fact automatically brings to forefront of the Kosovo issue the significance of the veto-yielding powers at the Security Council, particularly Russia and (to a lesser extent) China and the United States of America.

A final settlement of the Kosovo issue ought to take into consideration the likely objections of these states (especially Russia) that continue to retain a central role in the international politics of the

guarantees for the Serb Minority' (Evelyn Leopold, 'Holbrooke Says Violence in Kosovo was Inevitable', *Reuters*, 23 March 2004).

¹⁷⁰ On this point see Stefani Weiss 'Kosovo's Fifth Anniversary—On the Road to Nowhere?', Bertelsmann Stiftung, p. 3 at Internet Site: http://www.bertelsmann-stiftung.de/medien/pdf/Kosovos_Fifth_Anniversary_March2004.pdf.

21st century, not least because of their institutionalized power at the level of the United Nations. Any unilateral, violent or premature efforts in favor of independence or partition would probably prove counterproductive and be subject to their veto.

At the time of writing, Russia is not supportive of any plans to partition Kosovo but favors the province's gradual decentralization.¹⁷¹ It is often assumed by analysts that Moscow would probably block plans to grant Kosovo independence partly because of Russia's historic ties with the fellow Slavic nation of Serbia and also in order 'to avoid setting a precedent for an independent Chechnya.'¹⁷² Despite the lack of historic regional connections, China might also keep in mind the issue of its autonomous province of Tibet while deliberating the future of Kosovo.

The role of the US is potentially of importance. Decisions on Kosovo at the level of the Security Council could create precedents for Kurdistan, a sensitive issue that could affect developments in Iraq. Furthermore, there seems to be a question of whether the new Bush Administration might opt to bring 'closure' on issues in the Balkans (including Kosovo), thus making it easier to focus troops¹⁷³ and diplomatic attention entirely on other regions in the world such as the

¹⁷¹ Based on author's discussions with Russian diplomats in Greece and on a speech by the former Russian Ambassador to Greece during the 10th Thessaloniki Forum on 24 May 2004. According to at least one EU top diplomat, the Dumas' influence in Russia's foreign policy should be judged negatively as trying to nudge official policy towards intransigence, obstructionism and pro-Slav nationalist positions. Ultimate power however is not to be found in the Duma.

¹⁷² Phillips, 2004, p. 183.

¹⁷³ There are currently fewer than 2000 US troops serving in KFOR.

Middle East and Central Asia.¹⁷⁴ If such a rationale prevails, Washington might welcome and work towards an UNSC agreement on Kosovo's final status on an accelerated timetable, perhaps even taking some unilateral high profile decisions towards this goal. It is also possible for the United States to decide to take the 'back seat' and allow primarily the European Union to deal with what is quintessentially a European problem. However, such an approach is much more likely after Kosovo's final status has been decided.

The process leading to Kosovo's final status might be discussed to a considerable extent in an intergovernmental forum such as the G8 or the Contact Group, decisions of course eventually requiring Security Council endorsement. Precedents exist since (as was previously discussed) an important G8 resolution preceded UNSCR 1244, while the review process of the 'Standards before Status' policy was initially announced by the Contact Group and then confirmed by the UNSC.¹⁷⁵

However, even if such a course of action is followed, it must be stressed that Russia remains a member of both the G8 and the Contact Group, a fact that renders the country's concerns and interests a significant part of the decision-making process. Many decision-makers fear that Russia will link her agreement on Kosovo with various other international issues, or simply block the process because of her ties with Serbia.¹⁷⁶ However, attempts to ignore or supersede Russia while deciding Kosovo's final status will most likely prove either

¹⁷⁴ Based on discussions with US, EU and Greek diplomats who are eagerly awaiting to see the new Administrations Balkan policy preferences and actions.

¹⁷⁵ See footnote 53.

¹⁷⁶ Based on interviews and discussions with various diplomats and academics focusing on the western Balkans.

counterproductive or futile.¹⁷⁷ Russia's ultimate national interest is not to be found in close ties with Belgrade or even in any particular deal concerning Kosovo's future sovereignty. More important for Moscow is the existence of a multilateral institutional decision-making framework in which Russia is an indispensable part and the precedents that this creates for global diplomacy in the aftermath of the war in Iraq and America's preference for *ad hoc* coalitions of the willing. In other words, Moscow will probably value its membership in the decision-making process higher than any links and concerns about Belgrade or Kosovo.

It must thus be stressed that the process leading to Kosovo's final status ultimately requires the endorsement of the UNSC member-states with Russia playing a crucial role. Hence, UNSC realities, politics and concerns about the setting of precedents that could affect the domestic politics of Security Council permanent members ought to be considered beforehand and ameliorated to a considerable extent.

The Current Limited Role of the European Union

The European Union has played a substantial role in the funding of post-conflict Kosovo, particularly through the administration of UNMIK's Pillar IV (Reconstruction, Recovery and Economic Development). The EU is the single largest international donor, having allocated more than 1,6 billion euros since 1999.¹⁷⁸ For

¹⁷⁷ In arguing thus, this study disagrees with ICG's admonition that Russia's participation to the process leading to Kosovo's final status within the Contact Group framework is 'highly desirable but ... [not] necessary' (ICG, 24 January 2005, p. ii).

¹⁷⁸ See IP/O3/1811, 'Kosovo Receives New Funds from the European Union', 29 December 2003 at Internet Site: http://europa.eu.int/comm/external_relations/see/news/ip03_1811.htm. Only for Kosovo's energy sector during the years 1999-2003, the EU contributed 345,1 million euros. See Early Warning Report Kosovo, Number 7, May-August 2004, p. 18.

example, for 2003 total Community Assistance for Reconstruction Development and Stabilisation (CARDS) for Kosovo was over 76 million euros.¹⁷⁹ However, EU donations have now declined 'from [an annual] peak of over 300 million euros to 50 million euros.'¹⁸⁰

The EU and its official representatives have been consistent in publicly condemning acts of violence, supporting plans for the province's decentralization (not among ethnic lines) and declaring that 'whatever Kosovo's final status, its place belongs to Europe.'¹⁸¹ However, the fact remains that even though the EU will have a reserved seat in most discussions, the Union can play only a limited role in the process that will decide the future of Kosovo. This is because (as explained above) Kosovo's final status has to be decided by the United Nations Security Council and not by other international organizations, regardless of how well-intentioned or funded their aims may be. In other words, the EU's role in Kosovo can be of substance only post-1244. For this reason, various interesting if overambitious proposals, such as those advocating that the UN 'hand over the governance of Kosovo to the European Union itself, under the authority of the UN trusteeship system'¹⁸² presuppose and require a UNSC decision on the province's future and status – certainly not an automatic or uncomplicated task.

¹⁷⁹ See European Union@United Nations, 'Kosovo Receives New Funds from the European Union', 29 December 2003 at Internet Site: http://europa-eu-un.org/articles/et/article_31340_et.htm.

¹⁸⁰ ESPIG, 2004, p. 8.

¹⁸¹ Chris Patten, 'The Western Balkans: The Road to Europe', 28 April 2004 at Internet Site: http://europa.eu.int/comm/external_relations/news/patten/speech04_209.htm.

¹⁸² Doug Bereuter and Thomas D. Grant, 'The EU Must Take Over Kosovo', *The Wall Street Journal*, 25 August 2004.

The Concept of Sovereignty

Sovereignty represents one of the most critical but also complicated and misunderstood concepts in international relations.¹⁸³ The issue of sovereignty has been central to the modern state system, (conventionally but not accurately traced to the 1648 Treaty of Westphalia),¹⁸⁴ and has been addressed by theorists such as Bodin, Grotius and Vattel. Nevertheless, in more contemporary times, it has been observed (with some justification), that the term has been taken almost for granted in a somewhat ‘uncontested’¹⁸⁵ manner:

Its meaning might be marginally contestable by constitutional lawyers and other connoisseurs of fine lines, but for the most part state sovereignty expresses a commanding silence. At least some problems of political life, it seems to suggest, are simple and settled, fit for legalists and footnotes, but not of pressing concern to those interested in the cut and thrust of everyday political struggle.¹⁸⁶

In an elegant and theoretically rigorous attempt to define and analyze the concept of sovereignty (and thus dispel much confusion), Stephen D. Krasner has argued persuasively (and conclusively) that:

Sovereignty has been used in four different ways— international legal sovereignty, Westphalian sovereignty,

¹⁸³ See for example Bartelson, 1995, pp. 1-11 and Weber, 1995, pp. 1-3.

¹⁸⁴ See Krasner, 1993 and Osiander, 2001.

¹⁸⁵ Weber, 1995, p. 2.

¹⁸⁶ Walker, 1990, p. 1; cited in Weber, 1995, p. 2.

domestic sovereignty and interdependence sovereignty. International legal sovereignty refers to the practices associated with mutual recognition, usually between territorial entities that have formal juridical independence. Westphalian sovereignty refers to political organization based on the exclusion of external actors from authority structures within a given territory. Domestic sovereignty refers to the formal organization of political authority within the state and the ability of public authorities to exercise effective control within the borders of their own polity. Finally, interdependence sovereignty refers to the ability of public authorities to regulate the flow of information, ideas, goods, people, pollutants, or capital across the borders of their state ... *The various kinds of sovereignty do not necessarily covary. A state can have one but not another.*¹⁸⁷

Although considerations of Kosovo becoming an independent state have been central to all discussions about the province's future, it appears that a firm understanding of what a sovereign Kosovo would precisely entail is often lacking. The realization that sovereignty is a multi-dimensional concept with the possibility of a

¹⁸⁷ Krasner, 1999, pp. 3-4; emphasis mine. Krasner's international legal sovereignty is very close to Jackson's concept of negative sovereignty—see Jackson, 1990, pp. 26-29. However, Krasner presents a more nuanced and elegant description of the other forms of sovereignty that Jackson essentially compresses into the concept of positive sovereignty—see *ibid.*, pp. 29-30. For other important studies focusing on various aspects, implications and developments in the concept of sovereignty see Bartelson, 1995; Jackson, 1990; Krasner, 2001; Lyons and Mastanduno, 1995; Philpott, 2001 and Weber, 1995.

state possessing only some of its aspects in different degrees is crucial and has potentially significant policy implications.¹⁸⁸

Furthermore, the case remains that ‘it is foolhardy to grant unconditional, unitary sovereignty to new states with severe ethnic divisions.’¹⁸⁹ This is because a ‘tyranny of the majority’ could come into being, with intentions and practices varying from the oppression of minority groups to ethnic cleansing or outright murderous attacks. Seen in this light, the March 2004 riots become even more problematic, especially since they took place although all aspects of Kosovo’s sovereignty were seriously restricted or non-existent.

In accordance with the aforementioned analysis of the concept of sovereignty, we will subsequently argue that Kosovo could become an independent recognized state (international legal sovereignty), while simultaneously other aspects of its Westphalian and domestic

¹⁸⁸ See Keohane, 2003, p. 285. It is also worth keeping in mind that all new Balkan states had their Westphalian sovereignty originally constrained by external powers during both the 19th and 20th centuries. The case of Greece is particularly instructive, for her sovereignty was curtailed by foreign powers as regards the choice of a monarch, constitutional matters, and even crucial monetary issues. See the detailed discussion in Krasner, 1999, pp. 84-90, 132-35 and 157-75. Despite such considerable constraints on her Westphalian sovereignty during both the 19th and 20th centuries, Greece has managed to relatively prosper. Today Greece is a member of both the EU and NATO, enjoys political stability and recently even hosted with success the 2004 Summer Olympics—see Mazower, 2004. Such developments ought to encourage Kosovo’s society, for whatever the eventual restrictions on their Westphalian and domestic sovereignty, they will without any doubt fall short compared to the restrictions and humiliations that were visited by external powers upon Greece. As regards FYROM, the case of Greece ought also to be studied and important lessons deduced, for outside analysts have cautioned that FYROM is currently ‘forging with international states and donors what verge[s] on a *post-colonial relationship*’ (Phillips, 2004, p. 162; emphasis mine).

¹⁸⁹ Keohane, 2003, p. 287.

sovereignty would be limited so that certain minority issues, as well as other problems are adequately addressed. In other words, a conditionally independent Kosovo should not be equated with a non-sovereign Kosovo, especially since some restrictions will only be transitionally applied, in a manner consistent both with the practice of international relations and a sophisticated understanding of the concept of sovereignty.

The Question of Time

A policy of delaying or letting 'sleeping dogs lie' is often appealing to decision-makers, because it postpones the taking of often difficult and politically costly decisions. However, time is not anymore on the side of stability in Kosovo. The March 2004 events proved that dissatisfaction and hatred on the ground can turn deadly, with unfortunate consequences for the province's minorities. To ignore reality or simply try to delay and gain time might prove a serious mistake on behalf of the international community. Unfortunately, democracies tend to be at their best in reacting to crises—rarely do they function proactively with great success. Unless new policies and initiatives are undertaken and implemented, another calamity might be required to concentrate the mind of the international community.¹⁹⁰

The following section will thus contain specific proactive policy recommendations aiming to avoid instability as Kosovo's future status is delineated, focusing primarily on ways in which Kosovo's Westphalian and domestic sovereignty ought to be constrained while the province is simultaneously granted international legal sovereignty.

¹⁹⁰ See for example 'Is Kosovo in Front of New Wave of Violence?', *ERP KiM Newsletter*, 19 November 2004 at Internet Site: http://www.kosovo.com/news/archive/2004/November_19/2.html.

V

Kosovo's Future Sovereignty

The acid test of a policy ... is its ability to obtain domestic support ... The essence of policy is its contingency; its success depends on the correctness of an estimate which is in part conjectural ... Profound policy thrives on perpetual creation, on a constant redefinition of goals ... It is dangerous to separate planning from the responsibility of execution.

—Henry Kissinger.¹⁹¹

¹⁹¹ Kissinger, 1957, pp. 326-7.

Neotrusteeship and Kosovo

During the past fifteen years, the world has moved towards incorporating into its structures an extensive system (aptly described as 'neotrusteeship')¹⁹² that aims to deal with weak, failed or potentially rogue states. However,

It would be a mistake ... to suggest that international administration constitutes a mere extension of complex peacekeeping ... Never before has a mission had to make and enforce local laws, exercise total fiscal management of a territory, appoint and remove public officials, create a central bank, establish and maintain customs services, regulate the local media, adjudicate rival property claims, run schools, regulate local businesses and reconstruct and operate all public utilities, among numerous other functions.¹⁹³

Although this system has undisputed imperialistic overtones, it does not involve 'a single imperial or trust power asserting monopoly rights within [the trusteeship's] domain.'¹⁹⁴ It is quintessentially international. Crucially though, 'the agents of neotrusteeship want to exit as quickly as possible after intervening to reconstruct or reconfigure states.'¹⁹⁵ This in effect means that the enlarged scope of international administrative arrangements such as the existing ones in Kosovo is fundamentally of an *interim* nature.

¹⁹² Fearon and Laitin, 2004, p. 7. For analyses of international administration efforts see Caplan, 2002; Chesterton, 2004 and Fearon and Laitin, 2004.

¹⁹³ Caplan, 2002, p. 9.

¹⁹⁴ Fearon and Laitin, 2004, p. 7.

¹⁹⁵ *Ibid.*

Given that sufficient progress on 'Standards before Status' has occurred, and against the current regional and international political environment, the UNSC ought to begin moving towards granting Kosovo international legal sovereignty, although this will probably not be an automatic or immediate decision. Whenever legal sovereignty is bestowed upon Kosovo it is crucial that simultaneously its Westphalian and domestic sovereignty be restricted in specific ways that will ensure the physical protection of minorities and cultural monuments, strengthen the rule of law, facilitate agreement at the level of Security Council, contribute to regional stability and also produce Serbia's acquiescence to these developments. These proposed targeted restrictions must be limited in scope and should ultimately strengthen Kosovo – not relegate it to the status of a 'quasi-state.'¹⁹⁶

Kosovo's International Legal Sovereignty

Kosovo ought to gain international legal sovereignty as soon as it is politically feasible. This would entail a seat at the United Nations, the ability to receive and send diplomatic missions, as well as a wide array of further privileges like the (much needed) right to get loans and enter into agreements with international organizations and

¹⁹⁶ Quasi states 'disclose limited empirical statehood: their populations do not enjoy many of the advantages traditionally associated with independent statehood. Their governments are often deficient in the political will, institutional authority, and organized power to protect human rights or provide socioeconomic welfare. The concrete benefits which have historically justified the undeniable burdens of sovereign statehood are often limited to fairly narrow elites and not yet extended to the citizenry at large whose lives may be scarcely improved by independence or even adversely affected by it. These states are primarily juridical' (Jackson, 1990, p. 21).

institutions such as the World Bank or the IMF. At the same time, Kosovo's (admittedly long) journey towards joining Euro-Atlantic institutions could effectively (and finally) begin, since such a prospect is again only feasible for states that enjoy international legal sovereignty.

These developments and prospects would undoubtedly be enthusiastically welcomed by the overwhelming majority of the province's population¹⁹⁷ that will at last be able to govern the newly recognized republic in a manner (hopefully) guaranteeing accountability and meaningful democratic practices. Furthermore, an internationally recognized Kosovo must entail its current borders, the international community thus avoiding all the potential regional ills (discussed above) that would probably emanate from the implementation of any partition plans.

Renunciation of Change in Borders

An internationally recognized Kosovo with no territorial concessions would represent a political development that ought to be mitigated through the limiting of the new state's Westphalian sovereignty in a manner conducive to regional stability. More specifically, the new republic should be prompted towards accepting the official and 'explicit renunciation of any change of borders, i.e. explicit renunciation of any project of Greater Kosovo (including, for example, Presevo Valley or western Macedonia).'¹⁹⁸ This

¹⁹⁷ As of July 2004, 89,3 per cent of Kosovo Albanians favored independence within the province's current borders. See Early Warning Report Kosovo, Number 7, May-August 2004, Table A.3.3, p. 29.

¹⁹⁸ Independent International Commission on Kosovo, 2001, p. 26. This aspect of the commission's proposal has also been endorsed and supported by ICG. See for example ICG, 1 March 2002, p. 12 fn. 27.

renunciation, probably through the signing of a treaty under the auspices of the United Nations, will also have to include the possibility of incorporating new territories through peaceful means.

Although unusual, such a development would not be unique in Europe's history of international relations. A significant precedent can be found in the State Treaty for the Re-establishment of an Independent and Democratic Austria that was signed in Vienna on 15 May 1955. This treaty prohibited Austria to

Enter into political or economic union with Germany in any form whatsoever ... In order to prevent such union Austria shall not conclude any agreement with Germany, nor do any act, nor take any measures likely, directly or indirectly, to promote political or economic union with Germany, or to impair its territorial integrity or political or economic independence.¹⁹⁹

A similar treaty in which Kosovo's new government renounces the possibility of any change of borders would have a series of advantages: First, it would create serious difficulties to any partition scenarios while at the same time it would reassure neighboring states that are nervous (even if not entirely justifiably), about the prospects of a Greater Albania or a Greater Kosovo coming into existence. Furthermore, all militant irredentist groups that do not discount the possibility of the future use of force in pursuit of their agenda would be discouraged in an unambiguous and official manner, their prospects of any ultimate success thus being seriously dampened. Finally, the UNSC would almost certainly welcome this development, many of its permanent members (with an eye to internal issues)

¹⁹⁹ State Treaty for the Re-establishment of an Independent and Democratic Austria, 15 May 1955 Article 4.1 and 4.2 at Internet Site: <http://www.ena.lu/mce.cfm>.

endorsing measures that limit the Westphalian sovereignty of newly independent states.

A Non-Militarized Zone (NMZ)²⁰⁰

In parallel to Kosovo being granted its international legal sovereignty it could also pledge (again through the signing of a treaty under the auspices of the UN) that it will constitute a NMZ.²⁰¹ Such an arrangement would further reassure neighboring states that there will be no prospect of any major warfare in the future connected with the Albanian factor in the western Balkans.

Furthermore, Kosovo's governments would be in a position to easily resist (primarily nationalistic) pressures to spend considerable amounts of money in order to militarily strengthen the new state. Such a possibility being forbidden given the existence of the aforementioned treaty, efforts and funds could be concentrated upon the immense economic and social challenges that will undoubtedly have to be confronted immediately after independence. Finally, a NMZ will constitute a precedent that ought to be welcomed and supported by all permanent UNSC members and especially Russia. If certain developments are required in the long-run as regards some of their more challenging domestic issues, Kosovo's precedent could be employed as a useful and advantageous model.

²⁰⁰ I am indebted to Theodore Couloumbis, Thanos Dokos, Evangelos Kofos, Dimitrios Triantaphyllou, Thanos Veremis and Alexandros Yannis, who discussed the issue of Kosovo as a De-Militarized Zone during several informal seminars that were organized by the Hellenic Foundation for European and Foreign Policy (ELIAMEP) in Athens, Greece during late 2004.

²⁰¹ We employ the term NMZ and not that of a De-Militarized Zone (DMZ) for the simple reason that such process would not be necessary since no heavy weaponry or military aircraft exist in Kosovo that do not belong to KFOR. Hence, the new republic's government could not enter into a process to get rid of things that it does not possess.

The European Union and the Western Balkans

During the early 1990's as Yugoslavia disintegrated violently, the then European Community (EC) exhibited some institutional innovation²⁰² and much initial willingness to confront a series of crises and wars. However it ultimately failed to present a coherent, united or successful stance.²⁰³ Despite this mediocre record, the EU did not abandon the Balkans, later playing an important role in resolving the 2001 crisis in FYROM,²⁰⁴ influencing the 2002 decision to create Serbia and Montenegro²⁰⁵ and forming the ambitious and relatively well funded Stabilization and Association Process (SAP).²⁰⁶

In addition, the EU contributed to FYROM's post-conflict stabilization through a military operation named *Concordia* that was active between 31 March and 15 December 2003²⁰⁷ following NATO's operation *Allied Harmony*.²⁰⁸ On December 2003 the EU launched the military mission *Proxima* in FYROM, in which some 1000 troops were involved.²⁰⁹ Also, in December 2004 the EU

²⁰² See for example Nuttall, 1994.

²⁰³ For example, it was the US that played the pivotal role in resolving the Bosnian war (see Daalder, 2000 and Holbrooke, 1998) and NATO's intervention that produced a new reality for Kosovo.

²⁰⁴ See for example Barnaby Mason, 'Analysis: The EU Role in Macedonia', *BBC News*, 2 April 2001.

²⁰⁵ See 'Yugoslavia's Death is Balkans' Gain', *BBC News*, 16 March 2002.

²⁰⁶ On the SAP see Internet Site: http://europa.eu.int/comm/external_relations/see/actions/sap.htm.

²⁰⁷ On *CONCORDIA* see Internet Site: <http://ue.eu.int/showPage.asp?id=594&lang=en&mode=g>.

²⁰⁸ *Allied Harmony* was active between January-March 2003 and followed operation *Amber Fox* (June-December 2002). On *Allied Harmony* see Internet Site: <http://www.nato.int/fyrom/home.htm>. On *Amber Fox* see Internet Site: <http://www.nato.int/fyrom/tff/home.htm>.

²⁰⁹ See Council Joint Action 2003/681/CFSP, 29 September 2003.

Military Operation in Bosnia and Herzegovina (European Force [EUFOR] - *Althea*) took over from NATO's Stabilization Force (S-FOR), aiming to provide stability and security.²¹⁰ This operation involves some 7,000 troops (a substantially scaled-down force compared to the initial 1995 60,000-strong NATO soldiers), the overwhelming majority of which come from EU member states.²¹¹

Furthermore, the June 2003 Thessaloniki European Council

Reiterated its determination to fully and *effectively support the European perspective of the Western Balkan countries, which will become an integral part of the EU, once they meet the established criteria.*²¹²

A subsequent European Union-Western Balkans Summit issued a declaration emphatically affirming that '*The future of the Balkans is within the European Union.*'²¹³

²¹⁰ See Council Joint Action 2004/570/CFSP, 12 July 2004.

²¹¹ Some 30 countries are represented in EUFOR, including small contingencies of non-EU states. See Nicholas Wood and Graham Bowley, 'EU Force to Take Over in Bosnia', *International Herald Tribune*, 2 December 2004 and especially 'EU Force Starts Bosnia Mission', *BBC News*, 2 December 2004. It should also be added that NATO will keep some 300 troops in Bosnia-Herzegovina.

²¹² Presidency Conclusions, Thessaloniki European Council, 19 and 20 June at Internet Site: http://europa.eu.int/comm/councils/th20030619/index_en.htm; emphasis mine.

²¹³ EU-Western Balkans Summit—Declaration, 21 June 2003 at Internet Site: http://europa.eu.int/comm/external_relations/see/sum_06_03/decl.htm; emphasis mine. This rhetoric was backed by promises of increased regional financial support of over 200 million euros for the years 2004-2006, representing a 12 per cent increase. Of course, complications may arise in the future. Unforeseen circumstance and perhaps referenda held in various EU member states as regards the accession of countries in the future have the potential of delaying or derailing the European prospects of the western Balkans.

It thus emerges that in recent years the Union has undertaken in recent years multifaceted and positive efforts in the western Balkans, asserting the region's eventual European orientation and assisting in a variety of political, economic and military ways. The EU has also exhibited ambition to play a more important role in global affairs.²¹⁴ However, such ambition is ultimately not credible if the Union can not contribute successfully towards the stabilization of the western Balkans and Kosovo in particular.

The EU ought to keep in mind that

This time ... [it] is in the lead. The stakes are high – for regional stability, to be sure, but also for the future of a serious European foreign policy and a newly balanced transatlantic relationship. The question, therefore, is no longer whether Europe can succeed in the Balkans; for its own sake, if not for America's, Europe must succeed there.²¹⁵

To quote the special-coordinator of the Stability Pact for South Eastern Europe Erhard Busek: 'We cannot afford to lose the Balkans again.'²¹⁶

We will thus argue in favor of specific arrangements under which the EU can confront some of Kosovo's central problems. It will be proposed that the new republic's Westphalian and domestic

²¹⁴ From the voluminous bibliography on the EU's foreign policy, external relations and attempts to create a meaningful Common Foreign and Security Policy (CFSP) and a European Security and Defence Policy (ESDP) of particular importance are Eliassen, 1998; Holland, 2004; Peterson and Sjursen, 2002; Rhodes, 1998 and Zielonka, 1998.

²¹⁵ Abramowitz and Hurlburt, 2002, p. 2.

²¹⁶ Cited in Simon Tisdall, 'War Crimes Indictment Could Push Teetering Kosovo to Edge', *The Guardian*, 5 January 2005.

sovereignty be limited by its new government's agreement with the EU as regards the protection of minorities and Serbian cultural monuments and monasteries.

Kosovo's Sovereignty and the European Union

We propose that a European Union military operation take over from KFOR with a mandate (specified by the United Nations Security Council) to protect Kosovo's minorities and guarantee security in the new republic. This EU force would almost certainly have to be the biggest in the Union's history, surpassing in total the 7,000 troops currently deployed in *Althea*. An adequate number of troops is essential in order to bestow upon the operation the necessary credibility and contribute towards the achievement of its goals. The EU would of course assume all the related and not insignificant costs. However, ultimate success in Kosovo would boost ESDP efforts, enhance the Union's international and regional prestige and contribute significantly towards stability in the western Balkans. The challenge is thus worthwhile and ought to be taken up by the only actor that has the unique combination of the capability, self interest and moral obligation to 'hack'²¹⁷ a post-1244 Kosovo that enjoys international legal sovereignty.

At the same time, the EU and the new Kosovo government could enter into shared sovereignty arrangements as regards Kosovo's invaluable Serbian monasteries and churches.²¹⁸ 'Shared sovereignty

²¹⁷ The term is borrowed from Abramowitz and Hurlburt, 2002 who titled their *Foreign Affairs* article 'Can the EU Hack the Balkans? A Proving Ground for Brussels.'

²¹⁸ I am indebted to Evangelos Kofos for pointing out to me the possibility and necessity of addressing the issue of Kosovo's Serbian monasteries and monuments in ways that go beyond current practices and proposals.

... involve[s] the engagement of external actors in some of the domestic authority structures of the target state for an indefinite period of time.’²¹⁹ In the case of Kosovo, the protection and preservation of the country’s cultural monuments can be jointly exercised with the EU, the latter having increased rights as regards issues of protection (in cooperation with the EU military force). The Union could also create a well endowed special fund with the aim to restore and preserve all cultural landmarks under joint sovereignty arrangements.²²⁰

Kosovo’s domestic sovereignty could also be somewhat limited by the implementation of a Union mission aimed at strengthening the new state’s legal system and framework. A precedent has been established in Georgia. More specifically, in June 2004 the EU decided to endorse the Rule of Law mission *EUJUST THEMIS* under its Rapid Reaction Mechanism (RRM), with an intended duration of 12 months. Some 4,46 million euros were allocated aiming at

Policy and institutional reform in four areas: (i) penitentiary and probation service reform; (ii) organisational reform of the Ministry of Justice as well as other public institutions; (iii) parliamentary and electoral reform; (iv) confidence building among population groups affected by conflict.²²¹

A similar mission, albeit with a longer duration, could be established in post-1244 Kosovo. In addition to the Georgia

²¹⁹ Krasner, 2004, p. 108.

²²⁰ It would probably be worthwhile to explore whether the United Nations Educational, Scientific and Cultural Organization (UNESCO) might also be interested in contributing financially in this effort.

²²¹ Internet Site: http://europa.eu.int/comm/external_relations/georgia/intro/ip04_846.htm.

arrangements however, some judges from EU member-states could be given jurisdiction in Kosovo for a number of years, in agreement and cooperation with the new government. The ultimate objective would be to secure fairness, efficiency and credibility for the crucial sector of the rule of law, a development from which all of Kosovo's ethnic groups would benefit.

This multifaceted involvement on behalf of the EU should, in principle, be welcomed in Belgrade and might therefore contribute in its acquiescence towards Kosovo's final status arrangements. It will provide the best possible security guarantee for the sizable and threatened Serbian minority in Kosovo. Furthermore, any attacks against EU forces would seriously imperil Kosovo's prospects of accession, a fact that should act as a serious deterrent. Serbia's cooperation with the Union on all these matters will also enhance the country's own European orientation (recently bolstered by the decision to hold talks on the signing of a Stabilization and Association Agreement),²²² while there will probably be satisfaction for a well-funded effort to protect Kosovo's Serbian cultural heritage.

Finally, the EU's contribution in the proposed manner would also successfully address the key issue of 'exit'²²³ that often bedevils international administration arrangements. In Kosovo's case, the answer will be rather simple and straightforward: *The European Union will exit Kosovo when Kosovo enters the European Union.*

²²² See 'Belgrade Steps Toward Joining EU', *BBC News*, 18 April 2005. Talks are scheduled to take place in October 2005. The decision to hold them was based on a feasibility study for Serbia and Montenegro that was conducted by the European Commission and can be found at Internet Site: http://europa.eu.int/comm/enlargement/docs/index.htm#feasibility_report.

²²³ Exit refers to the time and manner in which the international presence leaves or transfers authority to local actors. See for example Caplan, 2002, pp. 60-64 and Fearon and Laitin, 2004, pp. 36-41.

The aforementioned proposals do not amount to a comprehensive plan addressing every aspect of Kosovo's future status. Whether other policy areas currently under UNMIK's control should be also transferred to the EU, some other international organization or to Kosovo's local political forces constitute issues that are ultimately beyond the scope of this inquiry. Providing realistic and feasible answers will only be possible at the final stage of Kosovo's endgame, when an all-inclusive, UNSC-sanctioned plan will usher the province into its post-1244 future status.

Our more limited aim has been to provide an analysis of the most important parameters at play and to put forward proposals that, if implemented, would hopefully contribute towards regional stability. Kosovo's majority Albanian population should welcome the granting of international legal sovereignty within the province's present borders on an accelerated timetable. At the same time, by attaching sufficient limitations to Kosovo's Westphalian sovereignty (NMZ, renunciation of any change of borders), an agreement at the level of the UNSC is facilitated and neighboring states rest reassured. Furthermore, the proposals to bolster the post-1244 role of the EU and simultaneously protect Serbian minorities and monuments in an effective way ought to be welcomed in Belgrade. Perhaps then it might be easier (or necessary) to transfer all other powers to Kosovo's new government. At any rate, although none of the actors involved in deciding Kosovo's future can (or should) be completely satisfied, their grudging acquiescence to the abovementioned arrangements should not be discounted.

The challenge for the international community remains to successfully manage the process leading to Kosovo's final status, while avoiding regional instability. It is hoped that this study will contribute towards the attainment of this goal.

Appendices

APPENDIX I

Resolution 1244 (1999)

Adopted by the Security Council at its 4011th meeting,
on 10 June 1999

The Security Council,

Bearing in mind the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security,

Recalling its resolutions 1160 (1998) of 31 March 1998, 1199 (1998) of 23 September 1998, 1203 (1998) of 24 October 1998 and 1239 (1999) of 14 May 1999,

Regretting that there has not been full compliance with the requirements of these resolutions,

Determined to resolve the grave humanitarian situation in Kosovo, Federal Republic of Yugoslavia, and to provide for the safe and free return of all refugees and displaced persons to their homes,

Condemning all acts of violence against the Kosovo population as well as all terrorist acts by any party,

Recalling the statement made by the Secretary-General on 9 April 1999, expressing concern at the humanitarian tragedy taking place in Kosovo,

Reaffirming the right of all refugees and displaced persons to return to their homes in safety,

Recalling the jurisdiction and the mandate of the International Tribunal for the Former Yugoslavia,

Welcoming the general principles on a political solution to the Kosovo crisis adopted on 6 May 1999 (S/1999/516, annex 1 to this resolution) and welcoming also the acceptance by the Federal Republic of Yugoslavia of the principles set forth in points 1 to 9 of the paper presented in Belgrade on 2 June 1999 (S/1999/649, annex 2 to this resolution), and the Federal Republic of Yugoslavia's agreement to that paper,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the

other States of the region, as set out in the Helsinki Final Act and annex 2,

Reaffirming the call in previous resolutions for substantial autonomy and meaningful self-administration for Kosovo,

Determining that the situation in the region continues to constitute a threat to international peace and security,

Determined to ensure the safety and security of international personnel and the implementation by all concerned of their responsibilities under the present resolution, and acting for these purposes under Chapter VII of the Charter of the United Nations,

1. Decides that a political solution to the Kosovo crisis shall be based on the general principles in annex 1 and as further elaborated in the principles and other required elements in annex 2;
2. Welcomes the acceptance by the Federal Republic of Yugoslavia of the principles and other required elements referred to in paragraph 1 above, and demands the full cooperation of the Federal Republic of Yugoslavia in their rapid implementation;
3. Demands in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo will be synchronized;
4. Confirms that after the withdrawal an agreed number of Yugoslav and Serb military and police personnel will be permitted to return to Kosovo to perform the functions in accordance with annex 2;
5. Decides on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcomes

the agreement of the Federal Republic of Yugoslavia to such presences;

6. Requests the Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence, and further requests the Secretary-General to instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner;
7. Authorizes Member States and relevant international organizations to establish the international security presence in Kosovo as set out in point 4 of annex 2 with all necessary means to fulfil its responsibilities under paragraph 9 below;
8. Affirms the need for the rapid early deployment of effective international civil and security presences to Kosovo, and demands that the parties cooperate fully in their deployment;
9. Decides that the responsibilities of the international security presence to be deployed and acting in Kosovo will include:
 - (a) Deterring renewed hostilities, maintaining and where necessary enforcing a ceasefire, and ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces, except as provided in point 6 of annex 2;
 - (b) Demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups as required in paragraph 15 below;
 - (c) Establishing a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered;

- (d) Ensuring public safety and order until the international civil presence can take responsibility for this task;
 - (e) Supervising demining until the international civil presence can, as appropriate, take over responsibility for this task;
 - (f) Supporting, as appropriate, and coordinating closely with the work of the international civil presence;
 - (g) Conducting border monitoring duties as required;
 - (h) Ensuring the protection and freedom of movement of itself, the international civil presence, and other international organizations;
10. Authorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo;
11. Decides that the main responsibilities of the international civil presence will include:
- (a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648);
 - (b) Performing basic civilian administrative functions where and as long as required;
 - (c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;

- (d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities;
 - (e) Facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords (S/1999/648);
 - (f) In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement;
 - (g) Supporting the reconstruction of key infrastructure and other economic reconstruction;
 - (h) Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid;
 - (i) Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;
 - (j) Protecting and promoting human rights;
 - (k) Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo;
12. Emphasizes the need for coordinated humanitarian relief operations, and for the Federal Republic of Yugoslavia to allow unimpeded access to Kosovo by humanitarian aid organizations and to cooperate with such organizations so as to ensure the fast and effective delivery of international aid;
13. Encourages all Member States and international organizations to contribute to economic and social reconstruction as well as to the safe return of refugees and displaced persons, and emphasizes in this context the importance of convening an international donors' conference, particularly for the purposes set out in paragraph 11 (g) above, at the earliest possible date;

14. Demands full cooperation by all concerned, including the international security presence, with the International Tribunal for the Former Yugoslavia;
15. Demands that the KLA and other armed Kosovo Albanian groups end immediately all offensive actions and comply with the requirements for demilitarization as laid down by the head of the international security presence in consultation with the Special Representative of the Secretary-General;
16. Decides that the prohibitions imposed by paragraph 8 of resolution 1160 (1998) shall not apply to arms and related matériel for the use of the international civil and security presences;
17. Welcomes the work in hand in the European Union and other international organizations to develop a comprehensive approach to the economic development and stabilization of the region affected by the Kosovo crisis, including the implementation of a Stability Pact for South Eastern Europe with broad international participation in order to further the promotion of democracy, economic prosperity, stability and regional cooperation;
18. Demands that all States in the region cooperate fully in the implementation of all aspects of this resolution;
19. Decides that the international civil and security presences are established for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise;
20. Requests the Secretary-General to report to the Council at regular intervals on the implementation of this resolution, including reports from the leaderships of the international civil and security presences, the first reports to be submitted within 30 days of the adoption of this resolution;
21. Decides to remain actively seized of the matter.

Annex 1

Statement by the Chairman on the conclusion of the meeting of the G-8 Foreign Ministers held at the Petersberg Centre on 6 May 1999

The G-8 Foreign Ministers adopted the following general principles on the political solution to the Kosovo crisis:

- Immediate and verifiable end of violence and repression in Kosovo;
- Withdrawal from Kosovo of military, police and paramilitary forces;
- Deployment in Kosovo of effective international civil and security presences, endorsed and adopted by the United Nations, capable of guaranteeing the achievement of the common objectives;
- Establishment of an interim administration for Kosovo to be decided by the Security Council of the United Nations to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo;
- The safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian aid organizations;
- A political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of the KLA;
- Comprehensive approach to the economic development and stabilization of the crisis region.

Annex 2

Agreement should be reached on the following principles to move towards a resolution of the Kosovo crisis:

1. An immediate and verifiable end of violence and repression in Kosovo.
2. Verifiable withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable.
3. Deployment in Kosovo under United Nations auspices of effective international civil and security presences, acting as may be decided under Chapter VII of the Charter, capable of guaranteeing the achievement of common objectives.
4. The international security presence with substantial North Atlantic Treaty Organization participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.
5. Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.
6. After withdrawal, an agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the following functions:
 - Liaison with the international civil mission and the international security presence;
 - Marking/clearing minefields;

- Maintaining a presence at Serb patrimonial sites;
 - Maintaining a presence at key border crossings.
7. Safe and free return of all refugees and displaced persons under the supervision of the Office of the United Nations High Commissioner for Refugees and unimpeded access to Kosovo by humanitarian aid organizations.
 8. A political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions.
 9. A comprehensive approach to the economic development and stabilization of the crisis region. This will include the implementation of a stability pact for South-Eastern Europe with broad international participation in order to further promotion of democracy, economic prosperity, stability and regional cooperation.
 10. Suspension of military activity will require acceptance of the principles set forth above in addition to agreement to other, previously identified, required elements, which are specified in the footnote below.¹ A military-technical agreement will then be rapidly concluded that would, among other things, specify additional modalities, including the roles and functions of Yugoslav/Serb personnel in Kosovo:

Withdrawal

- Procedures for withdrawals, including the phased, detailed schedule and delineation of a buffer area in Serbia beyond which forces will be withdrawn;

Returning personnel

- Equipment associated with returning personnel;
- Terms of reference for their functional responsibilities;
- Timetable for their return;
- Delineation of their geographical areas of operation;
- Rules governing their relationship to the international security presence and the international civil mission.

Notes

¹ Other required elements:

- A rapid and precise timetable for withdrawals, meaning, e.g., seven days to complete withdrawal and air defence weapons withdrawn outside a 25 kilometre mutual safety zone within 48 hours;
- Return of personnel for the four functions specified above will be under the supervision of the international security presence and will be limited to a small agreed number (hundreds, not thousands);
- Suspension of military activity will occur after the beginning of verifiable withdrawals;
- The discussion and achievement of a military-technical agreement shall not extend the previously determined time for completion of withdrawals.

APPENDIX II

Constitutional Framework for Provisional Self-Government

UNMIK/REG/2001/9 - 15 May 2001

Preamble
The Special Representative
of the Secretary-General (SRSG),

Pursuant to the authority given to him under United Nations Security Council Resolution 1244(1999) of 10 June 1999 (UNSCR 1244(1999));

Recalling that UNSCR 1244(1999) envisages the setting-up and development of meaningful self-government in Kosovo pending a final settlement;

Acknowledging Kosovo's historical, legal and constitutional development; and taking into consideration the legitimate aspirations of the people of Kosovo to live in freedom, in peace, and in friendly relations with other people in the region;

Emphasizing that, since its establishment, the United Nations Interim Administration Mission in Kosovo (UNMIK) has supported and assisted the people of Kosovo and has worked towards this aim by enabling them to take responsibility gradually for the administration of Kosovo through the establishment of the Joint Interim Administrative Structure (JIAS);

Considering that, building on the efforts undertaken by UNMIK and on the achievements of JIAS, including the valuable contribution by the people of Kosovo, and with a view to the further development of self-government in Kosovo, Provisional Institutions of Self-Government in the legislative, executive and judicial fields shall be established through the participation of the people of Kosovo in free and fair elections;

Determining that, within the limits defined by UNSCR 1244(1999), responsibilities will be transferred to Provisional Institutions of Self-Government which shall work constructively towards ensuring conditions for a peaceful and normal life for all inhabitants of Kosovo, with a view to facilitating the determination of Kosovo's future status through a process at an appropriate future stage which

shall, in accordance with UNSCR 1244(1999), take full account of all relevant factors including the will of the people;

Considering that gradual transfer of responsibilities to Provisional Institutions of Self-Government will, through parliamentary democracy, enhance democratic governance and respect for the rule of law in Kosovo;

Endeavouring to promote economic prosperity in Kosovo and the welfare of its people through the development of a market economy;

Affirming that the exercise of the responsibilities of the Provisional Institutions of Self-Government in Kosovo shall not in any way affect or diminish the ultimate authority of the SRSG for the implementation of UNSCR 1244(1999);

Taking into account the Charter of the United Nations; the Universal Declaration on Human Rights; the International Covenant on Civil and Political Rights and the Protocols thereto; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto; the European Charter for Regional or Minority Languages; the Council of Europe's Framework Convention for the Protection of National Minorities; and other relevant principles reflected in internationally recognized legal instruments;

Recognizing the need to fully protect and uphold the rights of all Communities of Kosovo and their members;

Reaffirming the commitment to facilitating the safe return of refugees and displaced persons to their homes and their exercise of the right to recover their property and possessions, and the commitment to creating conditions for freedom of movement for all persons;

Recognizing the importance of creating a free, open and safe environment which facilitates the participation of all persons including all members of Communities in the process of establishing democratic institutions of self-government;

Hereby promulgates the following:

Chapter 1

Basic Provisions

- 1.1 Kosovo is an entity under interim international administration which, with its people, has unique historical, legal, cultural and linguistic attributes.
- 1.2 Kosovo is an undivided territory throughout which the Provisional Institutions of Self-Government established by this Constitutional Framework for Provisional Self-Government (Constitutional Framework) shall exercise their responsibilities.
- 1.3 Kosovo is composed of municipalities, which are the basic territorial units of local self-government with responsibilities as set forth in UNMIK legislation in force on local self-government and municipalities in Kosovo.
- 1.4 Kosovo shall be governed democratically through legislative, executive, and judicial bodies and institutions in accordance with this Constitutional Framework and UNSCR 1244(1999).
- 1.5 The Provisional Institutions of Self-Government are:
 - (a) Assembly;
 - (b) President of Kosovo;
 - (c) Government;
 - (d) Courts; and
 - (e) Other bodies and institutions set forth in this Constitutional Framework.
- 1.6 The seat of the Provisional Institutions of Self-Government is Pristina.
- 1.7 The Provisional Institutions of Self-Government shall use only such symbols as are or as may be set forth in UNMIK legislation.

Chapter 2

Principles to be Observed by the Provisional Institutions of Self-Government

The Provisional Institutions of Self-Government and their officials shall:

- (a) Exercise their authorities consistent with the provisions of UNSCR 1244(1999) and the terms set forth in this Constitutional Framework;
- (b) Promote and fully respect the rule of law, human rights and freedoms, democratic principles and reconciliation; and
- (c) Promote and respect the principle of the division of powers between the legislature, the executive and the judiciary.

Chapter 3

Human Rights

- 3.1 All persons in Kosovo shall enjoy, without discrimination on any ground and in full equality, human rights and fundamental freedoms.
- 3.2 The Provisional Institutions of Self-Government shall observe and ensure internationally recognized human rights and fundamental freedoms, including those rights and freedoms set forth in:
- (a) The Universal Declaration on Human Rights;
 - (b) The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
 - (c) The International Covenant on Civil and Political Rights and the Protocols thereto;
 - (d) The Convention on the Elimination of All Forms of Racial Discrimination;
 - (e) The Convention on the Elimination of All Forms of Discrimination Against Women;
 - (f) The Convention on the Rights of the Child;
 - (g) The European Charter for Regional or Minority Languages; and
 - (h) The Council of Europe's Framework Convention for the Protection of National Minorities.
- 3.3 The provisions on rights and freedoms set forth in these instruments shall be directly applicable in Kosovo as part of this Constitutional Framework.

3.4 All refugees and displaced persons from Kosovo shall have the right to return to their homes, and to recover their property and personal possessions. The competent institutions and organs in Kosovo shall take all measures necessary to facilitate the safe return of refugees and displaced persons to Kosovo, and shall cooperate fully with all efforts by the United Nations High Commissioner for Refugees and other international and non-governmental organizations concerning the return of refugees and displaced persons.

Chapter 4

Rights of Communities and Their Members

General Provisions

- 4.1 Communities of inhabitants belonging to the same ethnic or religious or linguistic group (Communities) shall have the rights set forth in this Chapter in order to preserve, protect and express their ethnic, cultural, religious, and linguistic identities.
- 4.2 No person shall be obliged to declare to which Community he belongs, or to declare himself a member of any Community. No disadvantage shall result from an individual's exercise of the right to declare or not declare himself a member of a Community.
- 4.3 The Provisional Institutions of Self-Government shall be guided in their policy and practice by the need to promote coexistence and support reconciliation between Communities and to create appropriate conditions enabling Communities to preserve, protect and develop their identities. The Institutions also shall promote the preservation of Kosovo's cultural heritage of all Communities without discrimination.

Rights of Communities and Their Members

- 4.4 Communities and their members shall have the right to:
- (a) Use their language and alphabets freely, including before the courts, agencies, and other public bodies in Kosovo;

- (b) Receive education in their own language;
- (c) Enjoy access to information in their own language;
- (d) Enjoy equal opportunity with respect to employment in public bodies at all levels and with respect to access to public services at all levels;
- (e) Enjoy unhindered contacts among themselves and with members of their respective Communities within and outside of Kosovo;
- (f) Use and display Community symbols, subject to the law;
- (g) Establish associations to promote the interests of their Community;
- (h) Enjoy unhindered contacts with, and participate in, local, regional and international non-governmental organizations in accordance with the procedures of such organizations;
- (i) Provide information in the language and alphabet of their Community, including by establishing and maintaining their own media;
- (j) Provide for education and establish educational institutions, in particular for schooling in their own language and alphabet and in Community culture and history, for which financial assistance may be provided, including from public funds in accordance with applicable law; provided that, curricula shall respect the applicable law and shall reflect a spirit of tolerance among Communities and respect for human rights and the cultural traditions of all Communities;
- (k) Promote respect for Community traditions;
- (l) Preserve sites of religious, historical, or cultural importance to the Community, in cooperation with relevant public authorities;
- (m) Receive and provide public health and social services, on a non-discriminatory basis, in accordance with applicable standards;
- (n) Operate religious institutions;
- (o) Be guaranteed access to, and representation in, public broadcast media, as well as programming in relevant languages; and

- (p) Finance their activities by collecting voluntary contributions from their members or from organizations outside Kosovo, or by receiving such funding as may be provided by the Provisional Institutions of Self-Government or by local public authorities, so long as such financing is conducted in a fully transparent manner.

Protection of Rights of Communities and Their Members

4.5 The Provisional Institutions of Self-Government shall ensure that all Communities and their members may exercise the rights specified above. The Provisional Institutions also shall ensure fair representation of Communities in employment in public bodies at all levels.

4.6 Based on his direct responsibilities under UNSCR 1244(1999) to protect and promote human rights and to support peace-building activities, the SRSG will retain the authority to intervene as necessary in the exercise of self-government for the purpose of protecting the rights of Communities and their members.

Chapter 5
Responsibilities of the Provisional Institutions
of Self-Government

5.1 The Provisional Institutions of Self-Government shall have responsibilities in the following fields:

- (a) Economic and financial policy;
- (b) Fiscal and budgetary issues;
- (c) Administrative and operational customs activities;
- (d) Domestic and foreign trade, industry and investments;
- (e) Education, science and technology;
- (f) Youth and sport;
- (g) Culture;
- (h) Health;
- (i) Environmental protection;

- (j) Labour and social welfare;
- (k) Family, gender and minors;
- (l) Transport, post, telecommunications and information technologies;
- (m) Public administration services;
- (n) Agriculture, forestry and rural development;
- (o) Statistics;
- (p) Spatial planning;
- (q) Tourism;
- (r) Good governance, human rights and equal opportunity; and
- (s) Non-resident affairs.

5.2 The Provisional Institutions of Self-Government shall also have the following responsibilities in the field of local administration:

- (a) Supporting inter-municipal cooperation;
- (b) Promoting the development of a professional municipal civil service;
- (c) Assisting the municipalities in the development of their own budgets and financial management systems;
- (d) Monitoring the quality of municipal services;
- (e) Identifying ways and means for training activities for the municipalities;
- (f) Assisting the municipalities in making their activities transparent to the public;
- (g) Providing legal guidance and advice to the municipalities;
- (h) Coordinating the activities of international agencies and non-governmental organizations pertaining to municipalities; and
- (i) Overseeing compliance with responsibilities and powers delegated to municipalities based on the organizational structures that emerged from the municipal elections in October 2000, as well as responsibilities and powers transferred in the meantime. It is understood that additional powers will be progressively transferred in an orderly manner.

5.3 The Provisional Institutions of Self-Government shall also have

the following responsibilities in the field of judicial affairs:

- (a) Making decisions regarding the appointment of judges and prosecutors;
- (b) Exercising responsibilities regarding the organization and proper functioning of the courts, within existing court structures;
- (c) The provision, development and maintenance of court and prosecutorial services;
- (d) The provision of technical and financial requirements, support personnel and material resources to ensure the effective functioning of the judicial and prosecutorial systems;
- (e) The training, including professional and vocational training, of judicial personnel in cooperation with the Organisation for Security and Cooperation in Europe (OSCE);
- (f) The organization of examinations for qualification of judges, prosecutors, lawyers and other legal professionals through an independent professional body;
- (g) The appointment, training, disciplining and dismissing of members of judicial support staff;
- (h) Ensuring coordination on matters pertaining to the judicial system and the correctional service;
- (i) Co-operating with appropriate organizations in respect of independent monitoring of the judicial system and the correctional service;
- (j) Providing information and statistics on the judicial system and the correctional service, as appropriate;
- (k) Protecting personal data relating to the judicial system and correctional service;
- (l) Ensuring cooperation in judicial and correctional matters with appropriate entities inside Kosovo; and
- (m) Assisting in the recruitment, training and evaluation of personnel for the correctional service.

5.4 The Provisional Institutions of Self-Government shall also have the following responsibilities in the field of mass media:

- (a) Adopting laws and enforcement mechanisms in accordance with international human rights and freedom of expression standards as contained in Articles 19 and 29 of the Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols to prevent defamation or hate speech in the Kosovo systems of mass media;
- (b) Regulating broadcast media consistent with these international legal constraints and the best European practices through an independent media commission, whose members will be appointed by the Provisional Institutions of Self-Government from nominations submitted by non-governmental and non-political organizations in Kosovo; these members will include both genders and will reflect the ethnic and regional diversity of Kosovo society;
- (c) Guaranteeing the editorial independence of the public broadcaster by safeguarding the independence of its Board, whose members will be appointed by the Provisional Institutions of Self-Government from nominations submitted by non-governmental and non-political organizations in Kosovo; these members will include both genders and will reflect the ethnic and regional diversity of Kosovo society; and
- (d) Establishing an office or offices of public information to present the Institutions' deliberations and decisions to the international and local media.

5.5 The Provisional Institutions of Self-Government shall also have the following responsibilities in the field of emergency preparedness:

- (a) Developing and implementing a strategy for emergency planning and civil protection services; and
- (b) Directing and coordinating fire and rescue services in close cooperation with the municipalities.

5.6 The Provisional Institutions of Self-Government shall also have

the following responsibilities in the field of external relations:

- International and external cooperation, including the reaching and finalising of agreements. Such activities shall be coordinated with the SRSG.

5.7 The Provisional Institutions of Self-Government shall be responsible for aligning their legislation and practices in all areas of responsibility with relevant European and international standards and norms, with a particular view to facilitating closer economic, social and other ties between the people of Kosovo and other Europeans, and in awareness that respect for such standards and norms will be central for the development of relations with the Euro-Atlantic community.

5.8 The Provisional Institutions of Self-Government shall have such other responsibilities as are specified herein or in other legal instruments.

Chapter 6

Law and Order

Maintenance of law and order is of fundamental importance for all the people of Kosovo. The Kosovo Police Service, which functions under the authority of the SRSG and under the supervision of UNMIK Police, contributes significantly to achieving this objective through its supporting role in crime prevention and public protection and safety. With the support of the international community, the capacity of the Kosovo Police Service in crime prevention, criminal information gathering, criminal investigation and fighting against criminality is being enhanced. This will make it possible for the Kosovo Police Service to gradually assume additional responsibilities for the maintenance of law and order.

Chapter 7

Kosovo Protection Corps

The Kosovo Protection Corps is a civilian emergency organisation,

established under the law, which carries out in Kosovo rapid disaster response tasks for public safety in times of emergency and humanitarian assistance.

Chapter 8

Powers and Responsibilities Reserved to the SRSG

8.1 The powers and responsibilities of the Provisional Institutions of Self-Government shall not include certain reserved powers and responsibilities, which will remain exclusively in the hands of the SRSG. These reserved powers shall include:

- (a) Full authority to ensure that the rights and interests of Communities are fully protected;
- (b) Dissolving the assembly and calling for new elections in circumstances where the Provisional Institutions of Self-Government are deemed to act in a manner which is not in conformity with UNSCR 1244(1999), or in the exercise of the SRSG's responsibilities under that Resolution. The SRSG shall exercise this power after consultation with the President of Kosovo. The Assembly may, by a decision supported by two-thirds of its members, request the SRSG to dissolve the Assembly. Such a request shall be communicated to the SRSG by the President of Kosovo;
- (c) Final authority to set the financial and policy parameters for, and to approve, the Kosovo Consolidated Budget, acting on the advice of the Economic and Fiscal Council;
- (d) Monetary policy;
- (e) Establishing arrangements for the independent external audit of the Kosovo Consolidated Budget;
- (f) Exercising control and authority over the UNMIK Customs Service;
- (g) Exercising final authority regarding the appointment, removal from office and disciplining of judges and prosecutors;
- (h) Deciding upon requests regarding the assignment of

international judges and prosecutors, as well as change of venue, in accordance with the relevant UNMIK legislation in force;

- (i) Exercising powers and responsibilities of an international nature in the legal field;
- (j) Exercising authority over law enforcement institutions and the correctional service, both of which include and are supported by local staff;
- (k) Exercising control and authority over the Kosovo Protection Corps;
- (l) Exercising control and authority over the management of the administration and financing of civil security and emergency preparedness. Responsibility shall be gradually assumed by the Provisional Institutions of Self-Government;
- (m) Concluding agreements with states and international organizations in all matters within the scope of UNSCR 1244 (1999);
- (n) Overseeing the fulfilment of commitments in international agreements entered into on behalf of UNMIK;
- (o) External relations, including with states and international organisations, as may be necessary for the implementation of his mandate. In exercising his responsibilities for external relations, the SRSG will consult and co-operate with the Provisional Institutions of Self-Government with respect to matters of concern to the institutions;
- (p) Control over cross-border/boundary transit of goods (including animals). The Provisional Institutions of Self-Government shall co-operate in this regard;
- (q) Authority to administer public, state and socially-owned property in accordance with the relevant UNMIK legislation in force, in cooperation with the Provisional Institutions of Self-Government;
- (r) Regulation of public and socially-owned enterprises after having

- consulted the Economic and Fiscal Council and the Provisional Institutions of Self-Government;
- (s) Administrative control and authority over railways, frequency management and civil aviation functions. Certain administrative functions shall be carried out by the Provisional Institutions of Self-Government and the relevant independent regulatory bodies;
 - (t) Control and authority over the Housing and Property Directorate, including the Housing Claims Commission;
 - (u) Defining the jurisdiction and competence for the resolution of commercial property disputes;
 - (v) Preserving the existing boundaries of municipalities;
 - (w) Responsibility to ensure that the system of local municipal administration functions effectively based on internationally recognized and accepted principles;
 - (x) Appointing the members of the Economic and Fiscal Council, the Governing Board of the Banking and Payments Authority of Kosovo, the chief executives of the Customs Service and Tax Inspectorate, and the Auditor General; convening and presiding over the Economic and Fiscal Council;
 - (y) Appointing international experts to the managing boards or commissions of the public broadcaster, the independent media regulatory body and other institutions involved in regulating the mass media, with the proviso that the number of such SRSG nominations will not constitute the majority of any such managing board or commission;
 - (z) Control and authority over the civil registry database, which shall be maintained in cooperation with the Provisional Institutions of Self-Government.
- 8.2 The SRSG shall coordinate closely with the International Security Presence (KFOR) in:
- (a) Conducting border monitoring duties;
 - (b) Regulating possession of firearms;

- (c) Enforcing public safety and order; and
- (d) Exercising functions that may be attributed to the domain of defence, civil emergency and security preparedness.

Chapter 9

Provisional Institutions of Self-Government

Section 1: The Assembly

9.1.1 The Assembly is the highest representative and legislative Provisional Institution of Self-Government of Kosovo.

Composition of the Assembly

9.1.2 The Assembly shall have 120 members elected by secret ballot.

Election of the Assembly

9.1.3 Kosovo shall, for the purposes of election of the Assembly, be considered a single, multi-member electoral district.

- (a) One hundred (100) of 120 seats of the Assembly shall be distributed amongst all parties, coalitions, citizens' initiatives, and independent candidates in proportion to the number of valid votes received by them in the election to the Assembly.
- (b) Twenty (20) of the 120 seats shall be reserved for the additional representation of non-Albanian Kosovo Communities as follows:
 - (i) Ten (10) seats shall be allocated to parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community. These seats shall be distributed to such parties, coalitions, citizens' initiatives and independent candidates in proportion to the number of valid votes received by them in the election to the Assembly; and
 - (ii) Ten (10) seats shall be allocated to other Communities as follows: the Roma, Ashkali and Egyptian Communities four (4), the Bosniak Community three (3), the Turkish Community two (2) and the Gorani Community one (1).

The seats for each such Community or group of Communities shall be distributed to parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing each such Community in proportion to the number of valid votes received by them in the election to the Assembly.

- (c) Each person having attained 18 years of age on the day of the election and satisfying the other criteria of eligibility to vote as applied to the municipal elections held in Kosovo on 28 October 2000 shall be entitled to vote.
- (d) The rank order of the candidates on lists of parties, coalitions and citizens' initiatives submitted for the purpose of election to the Assembly shall be considered fixed.
- (e) Geographical and gender requirements in respect of candidate lists submitted by parties, coalitions and citizens' initiatives for the purpose of the election to the Assembly may be specified by the SRSG on the recommendation of the Central Election Commission.

Assembly Members' Mandate and Eligibility

Length of Mandate

9.1.4 The term of the Assembly shall be three years, commencing on the date of the inaugural session, which shall be convened within thirty days after the certification of the election results.

9.1.5 Without prejudice to the competencies of the SRSG, at least two-thirds of the members of the Assembly may request the SRSG to dissolve the Assembly. Such a request shall be communicated to the SRSG by the President of Kosovo.

Candidate Eligibility

9.1.6 A person who fulfils the voter eligibility requirements shall be eligible to stand as a candidate in Assembly elections provided he is not:

- (a) A member of the Central Election Commission, the Election Complaints and Appeals sub-Commission, an Assembly Election Commission, or a Polling Station Committee;
- (b) A member of the Kosovo Protection Corps or of the Kosovo Police Service;
- (c) Serving as a judge or prosecutor;
- (d) Serving a sentence imposed by the International Criminal Tribunal for the Former Yugoslavia or under indictment by the Tribunal and has failed to comply with an order to appear before the Tribunal; or
- (e) Deprived of legal capacity by a final court decision.

Presidency of the Assembly

9.1.7 The Assembly shall have a Presidency consisting of seven Assembly members who shall be selected as follows:

- (a) Two members shall be appointed by the party or coalition having obtained the highest number of votes in the Assembly elections;
- (b) Two members shall be appointed by the party or coalition having obtained the second highest number of votes in the Assembly elections;
- (c) One member shall be appointed by the party or coalition having obtained the third highest number of votes in the Assembly elections;
- (d) One member shall be appointed from among the members of the Assembly belonging to those parties having declared themselves representative of the Kosovo Serb Community; and
- (e) One member shall be appointed from among the members of the Assembly belonging to parties having declared themselves representative of a non-Kosovo Albanian and non-Kosovo Serb Community. The method for appointing this latter member shall be determined by members of the Assembly belonging to these same Communities.

9.1.8 The Assembly shall endorse these appointments by a formal vote.

President of the Assembly

9.1.9 A member of the Presidency from the party or coalition having obtained the highest number of votes in the elections for the Assembly shall be the President of the Assembly.

Assembly Committees

9.1.10 There shall be Main and Functional Committees of the Assembly to review draft laws and make recommendations as appropriate.

Main Committees

Budget Committee

9.1.11 The Budget Committee shall be composed of 12 members, allocated proportionally among the parties and coalitions represented in the Assembly. It shall have general competencies in budgetary and financial matters. It shall also be responsible for ensuring that all proposed laws having budgetary implications are accompanied by a financial impact statement.

Committee on Rights and Interests of Communities

9.1.12 The Committee on Rights and Interests of Communities shall be composed of two members from each of Kosovo's Communities elected to the Assembly. Communities represented by only one member in the Assembly shall be represented by this member in the Committee.

9.1.13 At the request of any member of the Presidency of the Assembly, any proposed law shall be submitted to the Committee on Rights and Interests of Communities. The Committee, by a majority vote of its members, shall decide whether to make recommendations regarding the proposed law within the time limit specified below.

9.1.14 If the Committee on Rights and Interests of Communities decides to take such action, it shall, within a period of two weeks from receiving such a proposed law, make recommendations regarding the proposed law with a view to ensuring that Community rights and interests are adequately addressed and submit these recommendations to the relevant Functional Committee or to the Assembly as appropriate.

9.1.15 The Committee may on its own initiative propose laws and such other measures within the responsibilities of the Assembly as it deems appropriate to address the concerns of Communities.

9.1.16 Each member of the Committee shall have the right to attach a written opinion to any proposed law referred to or taken up by the Committee.

9.1.17 A matter may be referred to the Committee for an advisory opinion by the Presidency of the Assembly, a Main or Functional Committee or a group composed of ten or more members of the Assembly.

Functional Committees

9.1.18 The Assembly may establish such Functional Committees as it deems necessary and appropriate to carry out its responsibilities.

9.1.19 The Assembly shall decide on the number of members of each functional committee. The membership of all Functional Committees shall reflect the diversity of the membership of the Assembly.

9.1.20 If a party of coalition represented in the Assembly does not have a seat on a given Functional Committee, it shall have the right to send an Assembly member to all meetings of that Functional Committee in an observer capacity.

Chairmen and Vice-Chairmen of Committees

9.1.21 The chairmanships of all the Committees of the Assembly shall be distributed proportionally among the parties and coalitions represented in the Assembly.

9.1.22 Committees shall have two Vice-Chairmen from different parties or coalitions than that of the Chairman. At least one Vice-Chairman shall be of a different Community than the Chairman.

Rights, Immunities and Remuneration

9.1.23 Each member of the Assembly shall have an equal right and obligation to participate fully in the proceedings of the Assembly. This shall include, but not be limited to, the rights to initiate draft laws and resolutions, to vote on all proposed decisions by the Assembly, and to take part on an equal basis with other members in all debates of the Assembly.

9.1.24 All members of the Assembly shall be immune from all civil and criminal proceedings with regard to words spoken or other acts performed in their capacity as members of the Assembly. Such immunity shall not cover acts that are clearly conducive to inter-Community violence.

9.1.25 All members of the Assembly shall receive salaries for their participation in the work of the Assembly and its Committees.

Responsibilities of the Assembly

9.1.26 The Assembly shall have the following responsibilities:

- (a) Adopting laws and resolutions in the areas of responsibility of the Provisional Institutions of Self-Government as set out in Chapter 5;
- (b) Endorsing the Presidency of the Assembly;
- (c) Electing the President of Kosovo;
- (d) Endorsing or rejecting the Prime Minister candidate together with the list of Ministers of the Government proposed by the Prime Minister candidate;
- (e) Making decisions on other appointments as specified in this Constitutional Framework;
- (f) Considering and endorsing proposed international agreements within the scope of its responsibilities;

- (g) Deciding on motions of no-confidence in the Government;
- (h) Instructing the Government to prepare draft laws;
- (i) Adopting the Rules of Procedure of the Assembly and its committees; and
- (j) Other responsibilities specified herein or in other legal instruments.

9.1.27 Laws, once promulgated, are binding legislative acts of a general nature. Resolutions are non-binding declarations.

Responsibilities of the Presidency of the Assembly

9.1.28 The Presidency of the Assembly shall have the following responsibilities:

- (a) Making recommendations to the Assembly on all organizational matters of Assembly business, including the agenda;
- (b) Maintaining appropriate external parliamentary contacts, in coordination with the SRSG; and
- (c) Acting on motions as provided in paragraphs 9.1.40 and 9.1.41.

9.1.29 The Presidency shall endeavour to adopt all decisions by consensus. When efforts to reach consensus have failed, except when acting on motions under paragraph 9.1.40, it shall decide by majority vote of those present and voting, provided that at least five members are present. In the event of a tie vote, the President's vote shall decide the matter.

Responsibilities of the President of the Assembly

9.1.30 The President shall represent the Assembly.

9.1.31 The President shall preside at meetings of the Assembly, call its sessions to order, and perform other tasks prescribed by the rules of procedure of the Assembly.

Decision-Making Procedures

9.1.32 A majority of the members of the Assembly shall constitute a quorum. The Assembly may initiate and conduct its proceedings

when at least one-third of the members are present provided that, for the taking of decisions, the quorum requirement shall be satisfied.

9.1.33 Decisions of the Assembly shall be adopted by a majority of the members of the Assembly present and voting, unless otherwise explicitly provided herein.

Procedure for Adopting Laws

9.1.34 One or more members of the Assembly or the Government shall present the draft law to the Assembly for a first reading.

9.1.35 The draft law shall be considered by the relevant main and functional committees, which may propose amendments where appropriate.

9.1.36 The Assembly shall in the second reading consider the draft law together with any amendments proposed by the committee(s) or by individual or groups of members of the Assembly or by the Government.

9.1.37 At the end of the second reading, the Assembly shall vote on the proposed amendments and thereafter on the draft law as a whole. The draft law shall be approved if it receives the majority of the votes of those present and voting.

9.1.38 The Assembly may decide to submit a draft law that failed to receive the necessary votes in the second reading for a third reading together with any further amendments that have been approved. The draft law shall be approved if it receives the majority of the votes of those present and voting.

9.1.39 Within 48 hours from the approval of a law by the Assembly pursuant to paragraphs 9.1.37 or 9.1.38 above, any member of the Assembly, supported by five additional members, may submit a motion to the Presidency claiming that the law or certain of its provisions violate vital interests of the Community to which he belongs. The motion shall set out a reasoned explanation of the claimed violation. A motion may be made on the grounds that

the law or provisions discriminate against a Community, adversely affect the rights of the Community or its members under Chapters 3 or 4, or otherwise seriously interfere with the ability of the Community to preserve, protect or express its ethnic, cultural, religious or linguistic identity.

9.1.40 The Presidency shall request the sponsors of the law or provisions to provide within three days reasoned arguments in reply. At the same time, the Presidency shall request each of the two sides to designate a representative to serve on the special panel provided for in paragraph 9.1.41. The Presidency shall attempt to submit, within five days following receipt of the reply, a consensus proposal to the Assembly.

9.1.41 If the Presidency fails to submit such a consensus proposal within the five-day period, a special three-member Panel consisting of representatives of the two sides and one member, who shall preside, designated by the SRSG shall automatically be seized of the matter. The Panel shall within five days issue a decision recommending that the Assembly reject the motion, that the Assembly reject the law or provisions at issue, or that the Assembly adopt the law with amendments that the Panel shall propose. The Panel shall take its decisions by a majority of its members.

9.1.42 The Assembly shall decide whether to accept the consensus proposal of the Presidency, if such a proposal is submitted, or the recommendation of the Panel. No amendments other than those proposed pursuant to paragraphs 9.1.40 or 9.1.41 above may be introduced at this stage. If the Assembly rejects the consensus proposal of the Presidency or the recommendation of the Panel, or accepts a consensus proposal or recommendation for the rejection of the motion, the law as previously approved by the Assembly shall stand.

9.1.43 If no motion is submitted within the 48-hour period specified in paragraph 9.1.39 above, or following approval of a law

pursuant to paragraph 9.1.42 above, the law shall be considered adopted.

9.1.44 The President shall sign each law adopted by the Assembly and forward it to the SRSG for promulgation.

9.1.45 Laws shall become effective on the day of their promulgation by the SRSG, unless otherwise specified.

Other Procedures

Removal from Office

9.1.46 A member of the Assembly who has been convicted of a criminal offence and sentenced to serve a prison term of six months or more shall cease to be a member.

9.1.47 If a member of the Assembly fails throughout a period of six consecutive months to attend any session of the Assembly or the Committee(s) of which he is a member, he shall, unless the failure was due to a reason approved by the Assembly, cease to be a member.

Vacancies

9.1.48 Vacancies in the Assembly shall be filled in accordance with the UNMIK legislation governing the Kosovo-wide elections.

Languages of the Assembly

9.1.49 Meetings of the Assembly and its Committees shall be conducted in both the Albanian and Serbian languages. All official documents of the Assembly shall be printed in both the Albanian and Serbian languages. The Assembly shall endeavour to make official documents which concern a specific Community available in the language of that Community.

9.1.50 Assembly members from Communities other than the Kosovo Albanian and Kosovo Serb Communities shall be permitted to address the Assembly or its Committees in their own language and to submit documents for consideration by the Assembly in their own language. In such cases, interpretation or translation

into the Albanian and Serbian languages shall be provided for the other members of the Assembly or Committee.

9.1.51 All promulgated laws shall be published in the Albanian, Bosniak, English, Serbian and Turkish languages.

Section 2: The President of Kosovo

9.2.1 The President of Kosovo shall represent the unity of the people and guarantee the democratic functioning of the Provisional Institutions of Self-Government.

9.2.2 The President of Kosovo shall, in coordination with the SRSG, represent Kosovo and exercise his rights and duties in accordance with the provisions of this Constitutional Framework and the applicable law.

9.2.3 The mandate of the President of Kosovo shall be three years.

9.2.4 The President of Kosovo shall exercise the following duties in accordance with this Constitutional Framework and the applicable law:

- (a) In coordination with the SRSG, take action in the field of external relations;
- (b) Following consultations with the political parties represented in the Assembly, propose to the Assembly the Prime Minister;
- (c) Communicate to the SRSG a request of the Assembly to dissolve the Assembly, in accordance with paragraph 8.1(b);
- (d) Present a report to the Assembly on the general state of affairs in Kosovo at least once a year; and
- (e) Present awards and express gratitude.

9.2.5 If the President of Kosovo becomes temporarily unable to perform his duties, the functions of the President of Kosovo shall be exercised by the President of the Assembly.

9.2.6 The President of Kosovo shall enjoy immunity with respect to acts performed in exercising his functions.

9.2.7 The President of Kosovo shall not hold any other office or employment.

9.2.8 The President of Kosovo shall be elected by the Assembly by secret ballot. A nomination for the post of President of Kosovo shall require the support of the party having the largest number of seats in the Assembly or of at least 25 members. The Assembly shall elect the President of Kosovo by a two-thirds majority of the members of the Assembly. If after two ballots a two-thirds majority is not obtained, in the following ballots a majority of the votes of all members of the Assembly shall be required for election.

9.2.9 The term of office of the President of Kosovo shall end upon:

- (a) The completion of his mandate;
- (b) His death;
- (c) His resignation; or
- (d) His dismissal from office by means of the votes of a two-thirds majority of all the members of the Assembly.

Section 3: The Government

Responsibilities of the Government

9.3.1 The Government shall exercise the executive authority and shall implement Assembly laws and other laws within the scope of responsibilities of the Provisional Institutions of Self-Government established by this Constitutional Framework.

9.3.2 The Government may propose draft laws to the Assembly at its own initiative and shall do so at the request of the Assembly.

Ministries and Executive Agencies

9.3.3 There shall be established ministries and other executive agencies as are necessary to carry out functions within the competence of the Government.

Composition of the Government

9.3.4 The Government shall consist of the Prime Minister and Ministers.

9.3.5 At all times, at least two Ministers shall be from Communities other than the Community having a majority representation in the Assembly.

- (a) At least one of these Ministers shall be from the Kosovo Serb Community and one from another Community.
- (b) In the event that there are more than twelve Ministers, a third Minister shall be from a non-majority Community.
- (c) The selection of these Ministers and their responsibilities shall be determined after consultation with parties, coalitions or groups representing non-majority Communities.

9.3.6 The Prime Minister and Ministers may be members of the Assembly, or qualified persons from outside the membership of the Assembly. Ministers from Communities, other than the one having the majority among the members of the Assembly, shall, if appointed from outside the Assembly, require the formal endorsement of the members of the Assembly from the Community concerned.

Outside Activities of the Ministers

9.3.7 The Prime Minister and Ministers may not hold other public office or other employment on a full-time basis, nor exercise any activity on a part-time basis incompatible with their office, while exercising their responsibilities.

Election of the Prime Minister and Ministers

9.3.8 Following Assembly elections, or if the Prime Minister resigns or his office becomes vacant for another reason, the President of Kosovo shall, following consultations with the parties, coalitions or groups represented in the Assembly, propose to the Assembly a candidate for Prime Minister. The proposed candidate shall present a list of proposed Ministers to the Assembly. The Prime Minister shall be elected together with the Ministers by a majority of the members of the Assembly.

9.3.9 If the proposed candidate does not obtain the required majority, the President of Kosovo shall propose within ten days a new candidate for Prime Minister. The new candidate, together with the list of ministers proposed by him, shall be elected by a majority of the members of the Assembly.

Motion of No-Confidence

9.3.10 The Assembly may express its lack of confidence in the Government only if, by a majority of its members, it elects simultaneously a new Prime Minister together with a list of Ministers proposed by him.

9.3.11 The term of office of the outgoing Government shall end with the election of the new Prime Minister and Ministers.

Changes in the Composition of the Government

9.3.12 Following his election, the Prime Minister may replace any Minister without the consent of the Assembly.

9.3.13 Upon the resignation of the Prime Minister, the entire Government shall resign. The Government shall continue in a caretaker capacity until the election of a new Prime Minister.

Procedures within the Government

9.3.14 The Prime Minister shall call and chair meetings of the Government and propose the agenda for these meetings. He shall represent the Government as appropriate, define the general lines of policy of the Government, and coordinate its work.

9.3.15 Each Minister shall be responsible for implementing the policy of the Government within his area of responsibility.

9.3.16 The Government shall endeavour to reach its decisions by consensus. If a vote is necessary, decisions shall be taken by a majority of the Ministers present and voting. The Prime Minister shall cast the deciding vote in the event Ministers are divided equally. The Government shall otherwise decide its own rules of procedure.

Languages of the Government

9.3.17 Meetings of the Government and its bodies shall be conducted in both the Albanian and Serbian languages. All official documents of the Government shall be printed in both the Albanian and Serbian languages.

9.3.18 Members of the Government from Communities other than the Kosovo Albanian and Kosovo Serb Communities shall be permitted to use their own language.

Immunities

9.3.19 All members of the Government shall be immune from all civil and criminal proceedings with regard to words spoken or other acts performed in their capacity as members of the Government. Such immunity shall not cover acts that are clearly conducive to inter-Community violence.

Section 4: The Judicial System

Administration of Justice

9.4.1 The courts are responsible for the administration of justice in Kosovo in accordance with the applicable law.

9.4.2 Each person claiming to have been directly and adversely affected by a decision of the Government or an executive agency under the responsibility of the Government shall have the right to judicial review of the legality of that decision after exhausting all avenues for administrative review.

9.4.3 Each person shall be entitled to have all issues relating to his rights and obligations and to have any criminal charges laid against him decided within a reasonable time by an independent and impartial court.

The Court Structure

9.4.4 There shall be the Supreme Court of Kosovo, District Courts, Municipal Courts and Minor Offense Courts.

Court Proceedings

9.4.5 Unless otherwise specified in the applicable law, all Kosovo courts shall hold proceedings in public.

Judges and Prosecutors

9.4.6 Judges shall be independent and impartial. They shall not hold any other public office.

9.4.7 Judges of all courts of Kosovo shall be distinguished jurists of the highest moral character, with adequate qualifications. The membership of the judiciary shall reflect the diversity of the people of Kosovo. International judges and prosecutors shall serve within the judicial system according to rules established by the SRSG.

9.4.8 Judges and Prosecutors shall be appointed by the SRSG from lists of candidates proposed by the Kosovo Judicial and Prosecutorial Council and endorsed by the Assembly. Decisions on the promotion, transfer and dismissal of judges and prosecutors shall be taken by the SRSG on the basis of recommendations by the Kosovo Judicial and Prosecutorial Council and exceptionally on his own initiative.

Office of the Public Prosecutor

9.4.9 There shall be an Office of the Public Prosecutor for Kosovo, as well as offices of district and municipal prosecutors.

9.4.10 The Office of the Public Prosecutor as well as the offices of the district and municipal prosecutors shall exercise its functions in accordance with the applicable law.

***Special Chamber of the Supreme Court
on Constitutional Framework Matters***

9.4.11 A Special Chamber of the Supreme Court shall decide:

- (a) At the request of the President of Kosovo, any member of the Presidency of the Assembly, any Assembly Committee, no fewer

- than five members of the Assembly, or the Government, whether any law adopted by the Assembly is incompatible with this Constitutional Framework, including the international legal instruments specified in Chapter 3 on Human Rights;
- (b) In the event of disputes between or among Provisional Institutions of Self-Government, or between a Provisional Institution of Self-Government and an Assembly Committee, one or more members of the Presidency of the Assembly, or one or more members of the Assembly on the extent of their rights and obligations under this Constitutional Framework;
 - (c) At the request of any independent body or office referred to in Chapters 10 and 11, whether a decision of a Provisional Institution of Self-Government infringes upon the independence and responsibilities of the relevant independent body or office; and
 - (d) At the request of the Office of the Public Prosecutor, whether an act by a member of the Assembly, a member of the Government or the President of Kosovo constitutes an official act and as such is covered by immunity under this Constitutional Framework.

Chapter 10

Ombudsperson

- 10.1 Natural and legal persons in Kosovo shall have the right, without threat of reprisal, to make complaints to an independent Office concerning human rights violations or actions constituting abuse of authority by any public authority in Kosovo.
- 10.2 The Office, in accordance with UNMIK legislation in force, shall have jurisdiction to receive and investigate complaints, monitor, take preventive steps, make recommendations and advise on any such matters.
- 10.3 The Ombudsperson shall give particular priority to allegations of especially severe or systematic violations, allegations founded on discrimination, including discrimination against Communities and

their members, and allegations of violations of rights of Communities and their members.

Chapter 11

Independent Bodies and Offices

11.1 The following bodies and offices shall carry out their functions independently of the Provisional Institutions of Self-Government:

- (a) Central Election Commission;
- (b) Kosovo Judicial and Prosecutorial Council;
- (c) Office of the Auditor-General;
- (d) Banking and Payments Authority of Kosovo;
- (e) Independent Media Commission;
- (f) Board of the Public Broadcaster; and
- (g) Housing and Property Directorate and the Housing and Property Claims Commission.

11.2 The bodies and offices specified above, and such other independent bodies and offices as may be established by law, shall have the powers, obligations, and composition specified in the legal instruments by which they are established.

Chapter 12

Authority of the SRSG

The exercise of the responsibilities of the Provisional Institutions of Self-Government under this Constitutional Framework shall not affect or diminish the authority of the SRSG to ensure full implementation of UNSCR 1244(1999), including overseeing the Provisional Institutions of Self-Government, its officials and its agencies, and taking appropriate measures whenever their actions are inconsistent with UNSCR 1244(1999) or this Constitutional Framework.

Chapter 13

Authority of KFOR

Nothing in this Constitutional Framework shall affect the authority of

the International Security Presence (KFOR) to fulfil all aspects of its mandate under UNSCR 1244(1999) and the Military Technical Agreement (Kumanovo Agreement).

Chapter 14

Final Provisions

- 14.1 In case of conflict between this Constitutional Framework and any law of the Assembly, this Constitutional Framework shall prevail.
- 14.2 The SRSG shall take the necessary measures to facilitate the transfer of powers and responsibilities to the Provisional Institutions of Self-Government.
- 14.3 The SRSG, on his own initiative or upon a request supported by two-thirds of the members of the Assembly, may effect amendments to this Constitutional Framework.
- 14.4 The English, Albanian and Serbian language versions of this Constitutional Framework are equally authentic. In case of conflict, the English language version shall prevail. This Constitutional Framework shall also be published in the Bosniak and Turkish languages.
- 14.5 This Constitutional Framework shall enter into force upon promulgation by the SRSG.

Signed on this 15th day of May 2001.

Hans Haekkerup
Special Representative of the Secretary-General

APPENDIX III

UNMIK/PR719
Wednesday, 24 April 2002

Address to the Security Council By Michael Steiner
Special Representative of the Secretary-General

Mr. President, Members of the Council,

I am pleased to tell you that the UN operation in Kosovo under Resolution 1244 has entered a new phase, allowing us to make new proposals for the way ahead.

In the period from June 1999 UNMIK concentrated on the humanitarian crisis, essential services and on stopping open hostilities, with KFOR's support. Indeed, the Kosovo where my predecessors arrived looked very different from Kosovo today.

I. WHAT HAS BEEN ACHIEVED?

You have seen the comprehensive report of the Secretary-General. His support has been invaluable in our work.

Government: The Kosovo-wide elections in November were universally recognised as free and fair. The Assembly, the President and the multi-ethnic Government of Kosovo are now in place and working. We are building an inclusive public service. We have set aside more than 20 % of posts to non-majority communities, 18% to Kosovo Serbs.

Police and justice: We have a functioning police and justice system. The crime rate has gone down steadily. There were 500 murders during the second half of 1999, 250 in 2000, and 136 last year. Since January 2002 there have been 16 and, if this trend continues, we can expect less than 100 murders this year.

The economy: It is slowly beginning to function. The 2002 Kosovo Consolidated Budget of 374 million Euros is now over 95 per cent funded from local taxes and revenues. Starting this month, people are paying income taxes. More than 50,000 businesses have been registered. There has been a four-fold increase in the rate of electricity production since 1999.

Public services: The social infrastructure has been rebuilt from scratch. We have more than 1,100 schools with a total of 450,000 pupils. Five regional hospitals have been refurbished and equipped. There are 360 functioning health care facilities throughout Kosovo. 130,000 pensioners will start receiving pensions as of July 2002.

II. PRIORITIES

Now we have the Provisional Institutions of Self-Government (PISG). What has changed? Until now the mission had a general view of where it was headed, but we didn't see how it would get there. Now we can see more clearly how to structure the path. The road is not endless. We have a vision on how to finish our job.

We need to look both inside and outside. We need to transfer authority within Kosovo to the Provisional Government. We also need to convince the Kosovans to look beyond Kosovo to Belgrade and to the region.

What are our priorities?

Firstly Reliable institutions: We now have Kosovan partners that we can work with: President Rugova, Prime Minister Rexhepi and Assembly President Daci. We need to consolidate the Provisional Institutions, to ensure that they are effective, representative and transparent. We will make a particular effort to ensure their multi-ethnic character at all levels. The Kosovo Serbs have agreed to my proposals for their participation in the Government. They will nominate a Minister for Agriculture, as well as an Inter-Ministerial Coordinator on Returns. This is significant progress. On the local level, the OSCE-run municipal elections this autumn will be key. There are good reasons why especially the Kosovo Serbs want these elections now.

Secondly Boosting the economy: 50% unemployment rate is an untenable situation. At the same time, UNMIK is downsizing. There has already been a substantial drop in donor money. And Kosovo is unable to borrow on the international markets. Getting the economic fundamentals right is therefore even more important. A key element is privatisation. Privatisation will not solve the problem in the short term, but it is the only basis for secure jobs in the long-term. The legislation to create the Kosovo Trust Agency, which will be the vehicle for privatisation, is now with the Provisional Government for comments.

Thirdly Rule of law: Effective police and judiciary are essential. We will gradually transfer policing responsibilities to the multi-ethnic Kosovo Police Force under UNMIK supervision. Let me pay tribute here to the brave UNMIK policemen and women. The Polish Special Police demonstrated their dedication recently in an exemplary manner. We are also enhancing capabilities to effectively combat organised crime, terrorism and corruption. However, I must emphasise that as we begin to make significant arrests against the criminal gangs, we should anticipate a criminal backlash. Commander KFOR General Marcel Valentin and I stand shoulder to shoulder on maintaining order. We must count on your support - particularly when the going gets tough.

Finally Returns: Now that the Kosovo Serbs will be part of the government, we can focus more efficiently on an integrated effort to facilitate return. The years 2002 and 2003 will be decisive. We are committed to create the preconditions for a substantial returns process. Damage assessments in over 80 minority villages and urban areas have been completed. Serb returns to 14 villages and non-Serb minority returns to 7 locations should commence within the next three months. The Kosovo Serbs will have their official representatives working on returns within the Government and in my office. It is time to work on a real breakthrough in returns. For this I must ask for your help. When the returns start, on the basis of our integrated approach, we need to be sure that there will be money to follow the returnees. Only this way can we achieve sustainable returns.

Here I would like to make a more general point that relates to the previous one. We need to follow a dual track approach. Multi-ethnicity and integration are the two mutually reinforcing elements here. On the one hand, the Kosovo Albanians as the majority community have to practice what their leaders preach. Multi-ethnicity means doing everything they can to encourage the smaller communities to stay in Kosovo and to make returns possible. On the

other hand, the smaller communities have to participate in the institutions that we have set up under Resolution 1244. They must integrate and abandon parallel structures. The rule of law must apply everywhere in Kosovo. This is also true for Mitrovica.

There will be no multi-ethnicity without integration. But there will also be no integration without multi-ethnicity.

Integration within Kosovo needs to be complemented by strengthening relations with Belgrade as well as the cooperation within the region. Just as Kosovo is a factor influencing stability within the region, relations with regional neighbours influence stability in Kosovo. I have already made my first trips to Belgrade, Skopje, Tirana and Sarajevo. We will continue to foster regional dialogue both on the bilateral and the multilateral level. Belgrade will be the crucial partner in this process.

III. BENCHMARKS

I have described the priorities of my Mission. The work of implementing Resolution 1244 is now a joint effort with the Provisional Institutions.

We are transferring our responsibilities to these institutions in the process of building substantial autonomy. This will bring us closer to a stage when it is time to begin the political process designed to determine Kosovo's future status. This will be one of my main responsibilities, as foreseen in paragraph 11(e) of Resolution 1244.

But the time for this has not yet come. Kosovo society and institutions will have to show that they are ready for this process - without prejudging its outcome. We must make clear what is expected from them. Therefore, I am embarking on a benchmarks process. These benchmarks should be achieved before launching a discussion on status, in accordance with Resolution 1244.

The benchmarks are:

- existence of effective, representative and functioning institutions;
- enforcement of the rule of law;

- freedom of movement;
- respect for the right of all Kosovans to remain and return;
- development of a sound basis for a market economy;
- clarity of property title;
- normalised dialogue with Belgrade; and
- reduction and transformation of the Kosovo Protection Corps in line with its mandate.

You should have in front of you an illustration of our thinking on benchmarks. These benchmarks articulate our expectations of Kosovo's leaders and the wider public. They mirror the Principles and Priorities in the Coalition Agreement signed on 28 February by political parties forming the Government. Through stimulating public debate, we can also gain broad support for needed reforms.

Attaining these benchmarks is an objective in itself. Kosovo can only advance towards a fair and just society when these minimum preconditions are met. And when the changes in institutions are sustainable even without an international presence.

I offer this to you as an "exit strategy" which is, in reality, an "entry strategy" into the European integration process. The benchmarks complement the preconditions that Kosovo needs to meet to qualify for the Stabilisation and Association process.

I rely on the support of the Security Council for this strategy. But in addition to political support, I will still need your sustained technical and financial support. This is essential in achieving our priorities. Yes, we will have to reduce our engagement. But not in the moment when we should be capitalising on our past work. I am concerned about the anticipated premature reduction in the Kosovo peacekeeping budget. After the marathon that we have run in Kosovo since '99, it would be tragic to falter as we are nearing the finish line.

The next stages of authority transfer will succeed only with your help. And only with your backing will Kosovo be able to develop normalised dialogue and meaningful relations with Belgrade and its neighbours.

The more we invest now, the more stable, sustainable and fair a society we will leave behind. Can we afford not to afford returns? Remember: a stable Kosovo is a key to a stable region. The more support you give us now, the faster we will be able to reduce spending and international personnel.

You have visited Kosovo twice. You have seen it develop. Where there was rubble there are now roads and schools and hospitals. Where there was anarchy, there are now democratically mandated institutions. This has been accomplished through our international presence and the funds that we have committed. I would like to invite you to come again and see what you have achieved. Mr. President, we have to finish the job we started together. It still takes time. But this is now the decisive phase.

Thank you.

APPENDIX IV

United Nations Security Council

Press Release 7951

12/12/2003

Security Council
4880th Meeting (PM)

***SECURITY COUNCIL,
IN PRESIDENTIAL STATEMENT,
EXPRESSES SUPPORT FOR 'STANDARDS***

***FOR KOSOVO', WELCOMES LAUNCH
OF REVIEW MECHANISM***

The Security Council this afternoon expressed support for the "Standards for Kosovo", presented on 10 December in Pristina, after hearing a briefing yesterday from Under-Secretary-General for Peacekeeping Operations, Jean-Marie Guéhenno.

The 10–page standards document sets out point-by-point the meaning of the standards, which had been set to prepare Kosovo for final status. Under the "standards before status" policy, designed for Kosovo (Serbia and Montenegro) and endorsed by the Council in application of its resolution 1244 (1999), Provisional Institutions for Self-Government have to achieve certain standards before final status of Kosovo can be addressed. The eight standards under the policy are: functioning democratic institutions; rule of law; freedom of movement; returns and reintegration; economy; property rights; dialogue with Belgrade; and the Kosovo Protection Corps.

In a Statement read by Council President Stefan Tafrov (Bulgaria), the Council also welcomed the launching of a review mechanism on 5 November in Pristina, which would give new momentum to the implementation of the "standards before status" policy. It supported the prospect of a comprehensive review of progress made by the Provisional Institutions of Self-government in meeting the standards. A first opportunity for such a comprehensive review should occur around mid-2005.

The Council urged the Provisional Institutions of Self-Government to

participate fully and constructively in the working groups within the framework of the direct dialogue with Belgrade on practical issues of mutual interest and to demonstrate their commitment to the process. [In a 30 October Council briefing, the Secretary-General's Special Representative, Harri Holkeri, had said that direct talks between Pristina and Belgrade had started on 14 October in Vienna, Austria, but that key figures had not participated. On the Kosovo side, four working groups with multi-ethnic representation must be promptly established and begin technical talks in Belgrade and Pristina.]

The Council reiterated the primacy of the regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments as the law applicable in Kosovo.

The meeting began at 1:33 p.m. and adjourned at 1:40 p.m.

Presidential Statement

The full text of Presidential Statement S/PRST/2003/26 reads as follows:

“The Security Council welcomes the launching of a review mechanism, under the auspices of the Special Representative of the Secretary-General, as presented on 5 November in Pristina and Belgrade, on the initiative of the Contact Group (France, Germany, Italy, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, the United States of America, with representatives from the European Union), giving new momentum to the implementation of the “standards before status” policy that was designed for Kosovo (Serbia and Montenegro), and endorsed by this Council in application of its resolution 1244 (1999).

“The Security Council recalls the eight standards, namely: functioning democratic institutions; rule of law; freedom of movement; returns and reintegration; economy; property rights; dialogue with Belgrade; and the Kosovo Protection Corps. The Council in this respect urges the Provisional Institutions of Self-

Government to participate fully and constructively in the working groups within the framework of the direct dialogue with Belgrade on practical issues of mutual interest, to demonstrate their commitment to the process.

“The Security Council supports the “Standards for Kosovo” presented on 10 December 2003. The Council awaits an implementation plan, to be finalized by the Special Representative of the Secretary-General in his continuing consultation with the Provisional Institutions of Self-Government, and other relevant parties as appropriate, to be submitted to the Council. The plan should serve as a basis for the assessment of the Provisional Institutions of Self-Government’s progress in meeting the standards.

“The Security Council takes note that the Special Representative of the Secretary-General, within his authority as set out in resolution 1244 (1999), inter alia, in the context of the review mechanism, will continue to consult closely with interested parties, in particular the Contact Group. The Council reaffirms its intention to continue to consider the regular reports of the Secretary-General, including an assessment from the Special Representative of the Secretary-General, as to the Provisional Institutions of Self-Government’s progress towards meeting the standards. The Council takes note that the Contact Group intends to make a substantive contribution to the regular reviews and to submit its assessments to the Special Representative of the Secretary-General.

“The Security Council supports the prospect of a comprehensive review of the Provisional Institutions of Self-Government’s progress in meeting the standards. The Council notes that, depending on progress made as assessed during the periodical review, a first opportunity for such a comprehensive review should occur around mid-2005. Reaffirming the “standards before status” policy, the Council stresses that further advancement towards a process to determine future status of Kosovo in accordance with resolution

1244 (1999) will depend on the positive outcome of this comprehensive review. The Council reiterates the primacy of the regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments as the law applicable in Kosovo.

“The Security Council reaffirms its full support to the Special Representative of the Secretary-General Holkeri and calls on the Provisional Institutions of Self-Government of Kosovo and all concerned to cooperate fully with him.”

APPENDIX V

*A Plan for the Political Solution to the Situation
in Kosovo and Metohija.*

A PLAN FOR THE POLITICAL SOLUTION TO THE SITUATION IN KOSOVO AND METOHIIJA

I. INTRODUCTION

The basic political and legal documents of the contemporary civilisation have reaffirmed and strengthened the universal values of inherent dignity, equal and inalienable rights of all members of the human family, which create the foundation of freedom, justice and peace in the world. The documents such as the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms are explicit that the protection of human life, freedom and safety is the vital duty of each and every public authority, including governments and inter-state bodies – international organisations and their security and legal mechanisms.

This duty deserves utmost prominence if a mandate to guarantee and provide effective protection for these values has been granted to the United Nations, as is the case in the Province of Kosovo and Metohija, where the world organisation has been present since the end of the 1999 war, under the United Nations Security Council Resolution 1244. The United Nations was created to “reaffirm faith in fundamental human rights, in the dignity and worth of the human person.” However, the materialisation of the aforementioned civilisational values in Kosovo has been either impossible or seriously hindered since the United Nations arrived in the province. The historic and inherited, as well as more recent reasons for such a situation, also include a vast ethnic distance, which often translates itself into ethnic hatred and intolerance. The most pronounced manifestation of the former is the extreme animosity of ethnic Albanians, who make up a majority of the Kosovo population,

towards the Kosovo Serbs, hardly one-third of whom remained in the province after it was placed under the U.N. authority in June 1999.

Serbia does not want to diminish any effort by the international military and civilian missions in Kosovo and Metohija to curb inter-ethnic conflicts, but the above said explains why the U.N. mandate, as provided by the U.N. Security Council Resolution 1244, has been so difficult to realise. Under the Resolution 1244, the United Nations was to “*establish and oversee the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo ..., to assure the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo..., and to protect and promote human rights.*”

The events in Kosovo that took place from March 17 to March 19, 2004, assuming the proportions of a pogrom and ethnic cleansing of Kosovo Serbs, unveiled the failure of the U.N. mandate to protect the life, freedom, safety, property, prosperity, religious sites and cultural heritage of the Kosovo Serb community. We believe that most of the U.N. mission discharged their duties conscientiously and in good faith, and that the reason for the failure was the objective inability of a couple of tens of thousands of soldiers from NATO member states and other countries to offer effective physical protection to a hundred thousand Serbs, their property and churches, scattered throughout quite a large territory.

The nationalist intolerance demonstrated by the majority population is so powerful that it literally threatens the physical existence of local Serbs on the territory they have inhabited continually for more than ten centuries. Neither the United Nations nor the international community took this into account when they accepted a mission to preserve peace and protect human rights in Kosovo and Metohija. Consequently, it is necessary to change the institutional framework

and the policy supposed to create conditions for a peaceful and normal life for all Serbs and other non-Albanians in Kosovo and to ensure their safe and unimpeded return to the territory of Kosovo and Metohija, from which they were forcibly expelled. Likewise, it is necessary to provide for efficient protection and promotion of human rights in accordance with European norms and standards, since the province, the State Union of Serbia and Montenegro, and the entire region for that matter, comprise a natural part of the European civilisation.

The suggested change should result in the principles, frameworks and institutions of a territorial autonomy for Serbs and other non-Albanians. This change will not threaten the territorial integrity of the province, or the lawful rights of the Albanian ethnic community. The “autonomy-within-autonomy” principle does not mean that the fundamentals of a multiethnic and multicultural society will be abandoned. Quite the contrary, this is the only way to make it possible. Kosovo and Serbia have a central place in the Balkans, whose multiethnicity and multiculturalism make it recognisable and historically viable. In time, the territorial autonomy will create conditions for the seriously damaged Kosovo society to embrace ethnic, religious and cultural reconciliation and mutual trust.

The international community has been trying for years to convince Serbia that the autonomy of Kosovo and Metohija requires special and atypical elements. Today, however, it has to admit that autonomy for Kosovo Serbs, for objective reasons and in order to make their survival possible, requires the same. It also entails the decentralisation of public affairs and the principles under which the people's needs can be met by the bodies closest to them. These are the principles of local democracy and self-administration that both the Council of Europe and the European Union have supported and promoted.

A plan for the political solution to the situation in Kosovo and

Metohija set out in this document proceeded from the prevalent condition – Kosovo and Metohija is a part of the Republic of Serbia under the U.N. civilian and military administration. The document offers an outline of institutional guarantees for the position of the Serb community in the province. The document does not deal with the final status of Kosovo and Metohija, specified by the U.N. Security Council Resolution 1244.

II. TERRITORIAL AUTONOMY

2.1. The existing territorial organisation of Kosovo and Metohija mirrors the unsuccessful political and territorial concept of a multiethnic yet deeply divided society. It rests on an inaccurate presumption that the Kosovo autonomy, as defined under the 1974 Constitution, represented a rational and just solution for the ethnic relationship between the two dominant communities – Albanians and Serbs. Neither the Albanians were satisfied with it – as evidenced by a broad rebellion in the spring of 1981 – nor the Serbs found it acceptable, since it offered no safeguards for their rights. The post-war period aside, the largest Kosovo Serb migration wave was recorded precisely in the early 1980s.

The major ethnic cleansing of Serbs took place before the March 17 pogrom – they were brutally drive out of their homes after June 1999. The Kosovo Serbs and other non-Albanians were confined to insignificant, scattered enclaves, in which they are slowly but surely disappearing. Having in mind this “reality”, an independent Kosovo offers itself as “a logical solution,” notwithstanding the fact that it might destabilise the region with far-reaching consequences and bring about changes to the borders of Serbia and the state union of Serbia and Montenegro.

The Parliament of the Republic of Serbia believes that the only realistic, reasonable and just solution lies in genuine and effective actions aimed at creating conditions for multiethnicity in Kosovo and

Metohija. In order to make it possible, it is necessary to root out any possibility of a Serb pogrom and violence happening again and, equally important, to enable all internally displaced persons to return to the province. Delaying their return for the lack of security and freedom of movement is no longer a plausible excuse. What the safety of people in Kosovo and the protection of their lives and property really means is a life in "their own" ethnic communities today. This entails a proper territorial organisation of the province that allows for territorial autonomy for the Serbs, as well as other ethnic communities willing to accept it (Romanians, Gorans, Bosniaks/Muslims, etc.). The territorial autonomy does not call for a partition of Kosovo, nor has it been conceived as a surrogate autonomy. It does not lead to a change of borders as the consequence of monoethnicity. Quite the contrary, it will prevent it by creating durable conditions for the survival and return of Serbs and other non-Albanians, so that multiethnicity, as a contemporary civilisational value, can be restored and developed in the future.

2.2. The municipalities, parts of municipalities and settlements in which Serbs comprised a majority before the 1999 exodus would be the areas of future autonomy. These territories would also include farmlands and other areas owned by the Serbs before the 1999 war. Having in mind that most of the exiled Serbs lived in urban areas, in which they either no longer exist or their numbers have been reduced to hundreds (Pristina, Pec, Gnjilane, Prizren, Urosevac, Istok, Lipljan, south of Kosovska Mitrovica, etc.), and that their return is not possible in the foreseeable future, **just compensation** (*compensatio iustum*) is a necessity.

In other words, the Serbs would be entitled to parts of the territory that links in a natural way Serb-dominated settlements, in which they previously did not make up a majority, but to which the Serbs exiled from their homes during the ethnic cleansing operation tend to return. This is a major precondition for the future areas of territorial autonomy to have the characteristics of a region. More precisely,

their geographical and natural features, economic and agricultural resources, the existing and potential transportation, energy, communal and other infrastructure, as well as other necessary elements, should combine into integrated territorial entities, in which life and sustainable development, necessary for the repatriation of refugees to be a success, are possible.

Initially, these areas would not be contrived as urban centres, but realistic possibilities for them to develop into ones would be created. The areas that include urban centres would make available all segments of administration, security, education, health care, culture, sports and entertainment in accordance with the size and needs of the population. This requires a civilised, prosperous and democratically organised life. If it turns out to be impossible, the idea of a multiethnic and multicultural society, in which one ethnic and/or cultural community does not prosper at the expense of another, will be doomed to failure.

The territorial connection between autonomous areas is not a fundamental prerequisite for their existence and development, but a desirable one it certainly is. The fundamental safeguards for life and property and the freedom of movement are easier to achieve comprehensively in the areas linked in this way. Likewise, in determining the territorial entities it would be prudent to consider those close to central Serbia, because they are safer than the areas in the Kosovo interior. Communication with their compatriots in central Serbia, and, consequently, the very survival of the inhabitants of these areas, would be largely facilitated in this way.

The territorial autonomy of Serbs in Kosovo and Metohija would provide for five territorial entities/districts – the Central Kosovo District, the North Kosovo District, the Kosovo-Morava River Basin District, the Sarplanina Mountain District and the Metohija District. The most significant religious sites, as well as the Serb cultural and historical monuments that belong to or can be connected with the above listed districts, would be an integral part of them. The others

would require appropriate guarantees by the Republic of Serbia, international guarantees and effective physical protection. The Districts would make up the Region - the political and legal holder of territorial autonomy within Kosovo and Metohija.

III. CHARACTERISTICS OF AUTONOMY OF THE AUTONOMOUS SERB COMMUNITY IN KOSOVO AND METOHIJA

This Plan provides dual protection for the Serb community in Kosovo and Metohija – through territorial autonomy (arising from the establishment of the Region), which would protect most of the Serbs, and through cultural and personal autonomy, which would protect the rights of Serbs living outside the area of territorial autonomy (the Region). The two forms of protection, put together, define the term “Autonomous Serb Community in Kosovo and Metohija.”

3.1. Organisation of the Region

In the areas in which the Serbs make up a compact population, territorial autonomy will be established in the form of the Region, with unified rights, powers and institutions. In the domains of rights and powers as defined under Item 3.1.2., legislative, executive and judicial powers will be vested in citizens. In the exercise of their duties, government bodies are obliged to follow the principles of separation of power and its democratic control, as well as the tenets of ethnic, cultural and religious tolerance.

3.1.2. Powers of the Region

In specifying the powers of the Region, the principle of subsidiarity has been used. This principle defines the powers that, under the circumstances, will be exercised more efficiently within the territorial autonomy and local self-government than within Kosovo and Metohija in its entirety. These powers are:

- Organisation of the Region (the organisation of its bodies and electoral process)

- Security (police) and civilian protection
- Judiciary
- Education
- Health care
- Social policy
- Culture, media and sports
- Protection of cultural heritage
- Marital and family relations, inheritance and guardianship
- Real estate property rights
- Privatisation process in the Region
- Public registers
- Official use of language and script
- Sanctions provided for violations of regulations falling within the jurisdiction of the Region
- Development programmes
- Local self-government
- International regional cooperation within the jurisdiction of the Region
- Spatial planning
- Ecological protection
- Infrastructure of importance for the Region
- Establishment of the sources of revenue (budget and annual final report)
- Public property management
- Industry on the territory of the Region
- Natural and mineral resources
- Agriculture, cattle breeding, forestry, hunting and fishery
- Services

In the above sectors, the powers are exercised in compliance with the prevailing policy of Kosovo and Metohija.

3.1.3. Bodies of the Region

The bodies of territorial autonomy (the Region) are: the Assembly of the Region, the Executive Council of the Region, administrative bodies and courts (first- and second-instance courts).

The Assembly of the Region is the highest representative and legislative body of territorial autonomy. It is elected in a secret ballot, on the basis of the universal and equal right to vote given to all citizens of the five Districts that comprise the Region. There is approximately proportional representation of each District in the unicameral regional assembly. The Assembly is granted legislative and supervising powers.

The Executive Council of the Region is the holder of executive powers. Together with administrative bodies, it implements the regulations passed by the Assembly of the Region, defines and runs policies falling within the jurisdiction of the Region. The Executive Council is also in charge of implementing the regulations passed by the Parliament of Kosovo and Metohija in the Districts that make up the Region.

The election of the Assembly, the Executive Council, administrative bodies and other organs and bodies, as well as the mode of their operation, is defined by regulations passed by the Assembly of the Region.

Judiciary. Apart from legislative and executive powers, the Region has judicial powers, too, effective in the Districts comprising the Region. Judiciary is to ensure that general legal norms are applied in an independent, unbiased and just manner in individual disputes involving citizens, legal persons or public authorities. As ethnic bias makes it very difficult to apply laws and establish the facts of relevance to their implementation in any community divided along ethnic lines, the exercise of judicial powers in Kosovo and Metohija has been quite problematic. Accordingly, it is necessary that judicial powers, save final decisions on legality, be exercised in the Region.

First-instance courts of general jurisdiction are organised on the municipal level, covering one or more municipalities within the Region. The Region also has a **second-instance court of general jurisdiction**. Commercial and administrative disputes would fall within the jurisdiction of the Regional Court.

The Supreme Court of Kosovo and Metohija is the highest court within the competence of the Province, beyond the constitutional-court control and protection of human rights and civil liberties guaranteed by the constitution and international treaties.

The Special Chamber of the Supreme Court on Constitutional Framework Matters is to establish a three-member panel including a Serb judge of the Supreme Court, an Albanian judge of the Supreme Court and an international judge appointed by the Special Representative of the Secretary-General of the United Nations (SRSG). The panel rules in all proceedings related to the regulations and actions by regional and local-self government bodies within the Region.

The Region has **municipal public prosecutors** and the **Regional Public Prosecutor**, performing their duties in accordance with the applicable law.

The Region has a substantial role in the election of judges of first-instance courts and the Regional Court, municipal public prosecutors and the Regional Public Prosecutor.

The judges and prosecutors are appointed by the SRSG, following nominations by the Assembly of the Region, selected from a list of candidates put forward by the Advisory Council for Regional Judiciary. The Assembly of the Region also proposes to the parliamentary Council of the Kosovo Serb Community two-thirds of Serb candidates for judges of the Supreme Court of Kosovo and Metohija. The Assembly of the Region appoints regional magistrates.

Provisional institutions of self-government in Kosovo and Metohija transfer to the Region the responsibility of funding the courts, salaries

and other income of judges, public prosecutors and magistrates on the territory of the Region.

3.2. Financial Autonomy of the Region

An open market economy is being built in Kosovo, and no provision of this Plan does not and must not endanger a free flow of people, goods, services and capital on the territory of the province.

The Budget of the Region has sufficient income for funding the operations under its competence. The budgetary sources of income include taxes, fees, charges and other dues, property income, donations, etc. The central authority provides subsidies for the Region to perform transferred duties. The Region is allowed to borrow for investment purposes. The Assembly of the Region passes the Budget and annual financial reports.

Income from customs duties, value added tax, excise taxes and other similar dues is channeled to the central authority. The Region and its municipalities will be entitled to income from direct taxes, including income tax, profit tax, property tax, administrative and utility taxes, public property usage tax and other taxes. The Region has an autonomous tax authority.

The Region and the municipalities comprising the Region own the property that serves the purpose of their operation.

On behalf of Kosovo and Metohija, the SRSG will enter into bilateral and regional free-trade agreements with the states of the region.

3.3. The Status of Serbs Outside the Territory of the Region

Aside from classic human rights guaranteed to all citizens of Kosovo and Metohija, the Serbs living outside the territory of the Region must enjoy special collective rights, necessary for them to preserve their identity. They are exercised not only as the rights arising from *status negativus*, which imply the obligation of the provisional institutions of self-government to restrain from interfering in the free

exercise of these rights, or the rights arising from *status activus*, which allow the Kosovo Serbs to participate in public life and enjoy equal employment treatment in public services, but also as the rights inherent to *status positivus*, which imply the duty of the provisional institutions of self-government to take measures to improve the position of the Kosovo Serb community in parts of Kosovo and Metohija in which it has been threatened.

Proceeding from these assumptions, the Serb national community must be granted the following legal instruments – freedom of expression of national identity; prohibition of discrimination; measures to ensure equality; prohibition of forcible assimilation; development of the spirit of tolerance; prohibition of incitement to racial, national and religious hatred; the right to preserve identity (the right to use the Serbian language, the right to choose and use a personal name, the official use of language and script, the right to foster culture and tradition, the right to equal opportunity with respect to employment with public bodies, education in Serbian, the use of national symbols, access to public information in Serbian); the right to association; the right to cooperation with compatriots in the Region and outside the territory of Kosovo and Metohija; prohibition of violation of rights of members of the Serb community; court protection for members of the Serb community; the establishment of a national council of the Serb community and the Ombudsman to protect the rights of members of national communities.

The rights of members of the Serb national community are listed more specifically in the Annex to this Plan.

3.4. Position of other national communities in the Region

Members of other national communities living in the districts that comprise the Region enjoy all the rights referred to under Paragraph 4 (Rights of Communities and Their Members) of the Constitutional Framework for Provisional Self-Government.

IV. PROTECTION AND PRESERVATION OF CULTURAL HERITAGE

4.1. Cultural heritage in Kosovo and Metohija deserves special protection and preservation;

First, because the valuable cultural monuments in Kosovo represent a unique cultural legacy recognised a long ago as the European heritage;

Secondly, because the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage recognised the duty of each State Party to the Convention to ensure the protection, conservation and transmission to future generations of the cultural and natural heritage “situated on its territory.”

Thirdly, because, together with the population and the land ownership, they represent the third incontestable criterion in establishing the rights of Serbs and Albanians in Kosovo and Metohija.

4.2. The cultural monuments in Kosovo represent a unique legacy recognised between World War I and World War II as an integral part of the European heritage.

It is important to note that the cultural heritage in Kosovo

- preserved the architecture and, in part, art of the Roman and Byzantine Empires, the mediaeval Serb state, the Ottoman Empire and more recent Serb and Albanian architecture in an uninterrupted continuum of centuries, which is a unique case in the history of architecture and art;
- presents the peak of the Byzantine architecture and art;
- largely integrates the Orthodox Byzantine architecture with that of the Roman Catholics, which is also a unique phenomenon;
- preserved the monuments and sites that exemplify two centuries (from 1170 to 1371) of growth of the medieval Serbia as one of the developed European states;

This unique European cultural heritage must be preserved in its original form and, enriched, transferred to future generations. This is an imperative under all conventions concerning cultural heritage.

4.3. Based on the United Nations Security Council Resolution 1244, the Serb cultural heritage in Kosovo is currently under the authority of the United Nations Interim Administration Mission in Kosovo (UNMIK). However, the legitimate inheritor and guardian of the cultural heritage in Kosovo is the Republic of Serbia, because

- the Republic of Serbia protected and preserved the cultural heritage in Kosovo on the basis of state laws;
- the mediaeval Serb state built most of cultural monuments in Kosovo and the most valuable of them;
- the cultural monuments are largely owned by the Serbian Orthodox Church;
- after the liberation from Turkish rule, Serbia found most of these monuments abandoned and in ruins. During the last century, the country invested enormous financial and human resources in their reconstruction;
- the Principle 9 of the 1976 Vancouver Declaration on Human Settlements stipulates that *every country should have the right to be a sovereign inheritor of its own cultural values created throughout its history*, which is precisely the case of Serbian cultural heritage in Kosovo and Metohija.

Since June 1999, the UNMIK administration and provisional institutions of self-government have been trying to impose the term “Kosovo heritage”, in a clear bid to alienate it from Serbia. Relevant international conventions and general practice make it clear that cultural heritage belongs to nations or states. A territory cannot have a heritage. In its 2003 Report on the cultural heritage in Kosovo, UNESCO has avoided the term “Kosovo heritage”, preferring the “cultural heritage in Kosovo.”

4.4. The prevailing approach to the protection, preservation and maintenance of cultural heritage in Kosovo and Metohija is best illustrated by the following:

- UNMIK has failed to establish a body in charge of preserving the cultural heritage in Kosovo, even though it had to do so under the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (Article 7, Paragraph 2). UNMIK has also failed to accept the responsibility for the protection of cultural property “within the territory of other High Contracting Parties”, Serbia in this case, as provided for by Article 4 of the Hague Convention.
- Contrary to this obligation, UNMIK, led by political criteria, transferred the responsibility for the protection and preservation of cultural heritage to provisional institutions of self-government, even though aware that they have not reached the level of proficiency required for the task. Moreover, they showed no sign of willingness to carry out this duty effectively.

Consequently, this unique cultural heritage was left without proper official care for more than four years. There was no one to save it from the ravages of time, which the world can only describe as an uncivilised act.

The entire period of time since June 1999, when the barbarous destruction of cultural heritage in Kosovo and Metohija began, as well as the latest events in Kosovo on March 17-19, makes it perfectly clear that the guarantees that have been offered are insufficient and that the KFOR physical protection is not enough. Vandals in Kosovo think that there is no legal guardian to take care of the Serb heritage in the province. On March 17 and 18 alone, 35 churches and monasteries were demolished and damaged – 16 of them being items of cultural heritage. The latest wave of destruction exceeded the post-war one in 1999, because two of six monuments of universal value, as defined by the 2003 UNESCO Report on Kosovo, were devastated – the Monastery of the Holy Archangels,

with its tomb of King Dusan, and the unique Church of Bogorodica Ljeviska.

If the status of these monuments does not change, the same crime can happen again.

4.5. The fact is that the Serb cultural heritage has been scattered throughout the territory of Kosovo and Metohija. Accordingly, it requires dual protection - through the status of the cultural monuments within the Region and the status they may have outside the Region.

Within the Region, the responsibility for the preservation of cultural heritage has been defined as its autonomous power, exercised under the Law on Cultural Heritage of Serbia.

Outside the Region, the cultural monuments of major importance are to be granted the status of cultural property under the Republic of Serbia's direct administration. Such a status ensures the implementation of Article 6, Annex II of the U.N. Security Council Resolution 1244, which permits Serbian personnel "to maintain a presence at Serb patrimonial sites." It is necessary to establish criteria under which cultural property suitable for this status is selected. It must include the cultural heritage of special importance for the history and culture of Serbia and the Serbian Orthodox Church, which can also qualify for the European cultural heritage. (the Pec Patriarchate, the Kosovo Battle Memorial, the tombs of the Nemanjic Dynasty rulers, the oldest medieval town in Serbia and all active monasteries). The reasonable assumption is that the list of monuments to be granted the extraterritorial status will be made by an UNESCO expert committee, at the proposal of the Republic of Serbia.

***V. RELATIONSHIP BETWEEN BODIES OF TERRITORIAL
AUTONOMY (REGION) AND PROVISIONAL INSTITUTIONS
OF SELF-GOVERNMENT IN KOSOVO AND METOHIJA***

5.1. Principles on which the relationship is based

- the principle of subsidiarity
- the principle of equality of citizens in terms of exercise and protection of their basic freedoms and rights
- the principle of coordination
- the principle of harmonisation
- the principle of subordination

The relationship between provisional institutions of self-government and the Region should be defined normatively so as to ensure a high level of autonomy (substantial autonomy) for the Region in relation to the provisional institutions of self-government. This can be achieved by establishing a broad spectre of originery and transferred powers, which the Region can exercise independently and autonomously. Thus the Region can assume full responsibility for the duties falling within its competence. The principle of subsidiarity and a mechanism to solve possible conflicts of competence between the Region and provisional institutions of self-government can eliminate successfully the negative sides of a multi-level decision-making process typical of complex power distribution structures.

In exercising its powers and responsibilities, the autonomy of the Region would be limited by the universal principle of respect to human rights of all inhabitants of the Region. The restriction of the rights of the Region would also involve the principle of coordination of the work of regional bodies, as well as the harmonisation of acts and procedures of the regional administration in the application of law and other general enactments, through the activities of the Regional Administrator. Certain restrictions would be also placed on

the implementation of the principle of subordination through measures in the supervising process exercised by the provisional institutions of self-government over the bodies of the Region. Furthermore, the autonomy of the Region would be limited considerably by the opportunity given to the provisional institutions of self-government to implement certain general regulations on the territory of the Region, when the very nature of them necessitates such an action.

5.2. Substance of the relationship

5.2.1. Any change to the status of territorial autonomy (Region) requires the consent of no less than two-thirds of all members of the Assembly of the Region.

5.2.2. In accordance with the principle of subsidiarity, apart from the originery powers of the Region, all powers that are not reserved to the SRSG and the provisional institutions of self-government are vested in the Region and municipalities.

5.2.3. In exercising their powers, the bodies of the Region cannot restrict the freedoms and rights of citizens guaranteed by the Constitutional Framework.

5.2.4. Regulations of the Region have primacy in implementation over the regulations of provisional institutions of self-government. In case of conflict between the two, a regional regulation will apply until the Special Chamber of the Supreme Court of Kosovo and Metohija makes a final decision.

5.2.5. The Special Chamber of the Supreme Court of Kosovo and Metohija decides in case of conflict of competence between the bodies of the Region and the provisional institutions of self-government.

5.2.6. The Executive Council of the Region is authorised to institute proceedings before the Special Chamber of the Supreme Court of Kosovo and Metohija over incompatibilities between the regulations

of the provisional institutions of self-government and the Constitutional Framework, if they impinge upon the competence of the Region.

5.2.7. The regulations of the Region enacted within the competence of the Region must be in compliance with the basic act, the Statute of the Region. The Regional Court exercises control of their compliance with the Statute of the Region in administrative court proceedings.

5.2.8. The regulations of the Region endorsed for the purpose of implementation of the regulations of the provisional institutions of self-government must be in compliance with general enactments and the Constitutional Framework.

5.2.9. As a rule, the regulations of the provisional institutions of self-government are implemented on the territory of the Region by relevant regional bodies.

5.2.10. The bodies of the provisional institutions of self-government have the right to supervise the implementation of regulations of the provisional institutions of self-government by the bodies of the Region. In the supervising procedure, the bodies of the provisional institutions of self-government may point to irregularities in the implementation of their enactments. If after that the bodies of provisional institutions of self-government find out that the irregularities have not been eliminated, they can institute proceedings for the annulment of a regional general enactment before the Special Chamber of the Supreme Court of Kosovo and Metohija.

5.2.11. The regulations and decisions of the provisional institutions of self-government the nature of which requires their direct application by the provisional institutions of self-government on the territory of the Region, cannot go into force if a majority in the Serb parliamentary delegation to the Parliament of Kosovo calls for a special procedure provided for issues of vital interest for the Serb national community.

5.2.12. If the harmonisation process fails to produce a consensus, a

final decision will be made by a special panel consisting of a representative of the Serb national community, a representative of the proponent and a member appointed by the SRSG.

5.2.13. The Assembly of the Region can initiate legislation falling within the competence of the Parliament of Kosovo and Metohija.

5.2.14. Prior to the adoption of a law of particular significance for the Region, the Parliament of Kosovo and Metohija is obliged to seek the opinion of the Assembly of the Region.

5.2.15. The Assembly of the Region can place an absolute veto on an international agreement made by the provisional institutions of self-government, if it is related to the issues falling within the competence of the Region.

5.2.16. Amendments to the Constitutional Framework and laws of the Parliament of Kosovo and Metohija related to the rights to real estate located within the Region cannot go into force on the territory of the Region without the consent of the Assembly of the Region.

5.2.17. For the territory of the Region, the SRSG appoints a Regional Administrator, whose powers include the supervision of implementation of regulations passed by the provisional institutions of self-government, and harmonisation of the work of the regional administration with the provisional institutions of self-government.

5.2.18. The Regional Administrator is appointed from the list of five candidates nominated by the Assembly of the Region.

VI. PROCEDURE FOR THE ESTABLISHMENT OF AUTONOMOUS SERB COMMUNITY IN KOSOVO AND METOHIJA

6.1. In order to establish the Autonomous Serb Community in Kosovo and Metohija, the United Nations Security Council must pass a special resolution. The purpose of the document is the materialisation of special rights of the Serb community, as the only

way to resolve promptly the question of its survival in the province, and make it possible for two thirds of the Kosovo Serb population (around 220,000) expelled to central Serbia to return to their homes in Kosovo. The experience gained in nearly five years of the U.N. military and civil presence in the province has made it clear that the only way to ensure the survival and return of Kosovo Serbs is to implement a mechanism of interim administration within Kosovo and Metohija, which would be similar to that provided under Item 10 of the U.N. Security Council Resolution 1244 for the entire province "within the Federal Republic of Yugoslavia." It is the model of "substantial autonomy."

In terms of goals and content, the new U.N. Security Council Resolution would not replace the Resolution 1244, but only add to it new provisions that would solve in principle the major problem in Kosovo and Metohija – the protection of rights of the Serb national community.

6.2. The new U.N. Security Council Resolution implies the drafting and promulgation of the Statute of the Autonomous Serb Community in Kosovo and Metohija. The Statute would define the Districts of the Region. The drafting of the Statute would be based on the drafting procedure applied in the case of the Constitutional Framework. The only difference is that apart from representatives of UNMIK, Kosovo Serbs and Kosovo Albanians (i.e. the provisional institutions of self-government), representatives of Serbia, i.e. Serbia and Montenegro would also take part in the process. This is necessary to ensure general consensus for the establishment of the Autonomous Serb Community in Kosovo and Metohija.

Following consultations between legitimate representatives of all parties concerned, the final text of the Statute of the Autonomous Serb Community in Kosovo and Metohija would be promulgated by a special decree endorsed by the SRSG.

6.3. Procedural operations should be completed as soon as possible,

so that the Statute of the Autonomous Serb Community in Kosovo and Metohija can be applied immediately after the promulgation. The adoption and application of the Statute would provide sufficient guarantees for the Kosovo Serb community, including the majority of it expelled to central Serbia, that they can live freely and participate in public life not only within the newly-established Region, but the whole of Kosovo and Metohija. Their participation in the elections for new regional bodies would be a strong encouragement for them to take part in the upcoming elections in Kosovo and Metohija. In a nutshell, the new organisation of the life of Serbs in the province would certainly open a new, peacetime page in the life of the multiethnic society of Kosovo and Metohija.

Annex: Status of Serbs Outside Territorial Autonomy (Region)

Freedom of expression of national identity

The freedom to express national affiliation is guaranteed.

No one is obliged to reveal his/her national affiliation.

Prohibition of Discrimination

Equality before the law and equal legal protection are guaranteed, regardless of national affiliation.

Any discrimination based on national affiliation is prohibited.

Measures to Ensure Equality

It is the duty of the provisional institutions of self-government to adopt, whenever necessary, appropriate measures to improve full and effective equality between members of different national communities, in all spheres of economic, social, political and cultural life.

Prohibition of Forcible Assimilation

Assimilation of members of national communities against their will is prohibited.

The provisional institutions of self-government are obliged to protect members of national communities against any action aimed at such assimilation.

Promotion of Spirit of Tolerance

In the spheres of education, culture and information, the provisional institutions of self-government promote the spirit of tolerance and intercultural dialogue, and take effective measures to promote mutual respect, understanding and cooperation among all inhabitants of Kosovo and Metohija, regardless of their ethnic, cultural, linguistic or religious identity.

Prohibition of Incitement to Racial, National and Ethnic Hatred

Any incitement to and instigation of national, racial, religious or any other inequality, as well as any action to provoke or invigorate national, racial, religious or any other hatred and animosity are prohibited.

Right to Preservation of Identity

Members of national community can use freely their language and script, both in private and in public.

Members of national communities have the right to use their names and surnames in their own languages. They are also allowed to write their names in all identification documents using the language and spelling of their respective national communities.

On the territory of a municipal self-government traditionally inhabited by a national community, the equal official use of its language and script is permitted. The official use of the language of a national

community particularly concerns the following: court and administrative proceedings in the language of a national community; the use of the language of a national community in communication between public authorities and citizens; the issuance of identification documents and public registers kept in the language of a national community, as well as the acceptance of these documents as valid; the use of the language of a national community on ballot papers and in other electoral materials and in the work of representative bodies.

Members of national communities have the right to display traditional local names, the names of streets and settlements, and topographical indications in their own languages.

Members of national communities have the right to express, preserve, foster, develop, transfer and demonstrate in public their national, ethnic, cultural, religious and linguistic identity.

Members of national communities are entitled to appropriate representation in public services, the provisional institutions of self-government and local self-governments.

Members of national communities are entitled to education in their own languages in public pre-school, primary school and secondary school establishments.

Members of national communities have the right to establish private educational institutions at all levels.

Members of national communities have the right to choose and use their national symbols in public.

Members of national communities have the right to full and unbiased information in their own languages, including the right to express, receive, send and exchange information and ideas, as well as the right to establish their own media.

Right to Association

Members of national communities have the right to establish educational and cultural organisations and associations, financed on a voluntary basis.

The organisations and associations of national communities are recognised a special role in the exercise of rights of their members.

Cooperation with Compatriots in the Region and Outside Kosovo and Metohija

Members of national communities have the right to maintain unhindered contacts and to cooperate with their compatriots living in the Region and outside the territory of Kosovo and Metohija.

Prohibition of Violations of the Rights of Members of National Communities

Measures that can change the population ratio in the areas inhabited by different national communities and those that can hinder the exercise and materialisation of their rights are prohibited.

Judicial Protection of the Rights of Members of National Communities

Members of national communities have to right to seek court protection of their rights.

Having exhausted all regular legal remedies, a member of a national community who considers his/her right violated or denied, can initiate proceedings for the protection of his/her rights before the European Court of Human Rights.

National Council of a National Community

Members of national communities can elect national councils, in

order to exercise their right to self-government in the spheres of use of language and script, education, information and culture.

The national council represents the given national community in the spheres of official use of its language, education, information and culture, participates in the decision-making process and decides on relevant matters, and establishes institutions in these fields.

The Serb national community can decide that the functions of its national council be performed by regional bodies.

Ombudsman for the Rights of Members of National Communities

The Ombudsman has the right to monitor respect for the rights of members of national communities and ensure promotion of these rights; to receive petitions from persons who believe that the rights they have as members of national minorities have been violated or denied, and to address the provisional institutions of self-government in connection with the petitions; to prepare draft legislation to ensure the implementation and promotion of the rights of national communities and, in the capacity of authorised proponent, to submit them to the provisional institutions of self-government for adoption; to institute proceedings for constitutional review before the Special Chamber of the Supreme Court of Kosovo and Metohija.

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