

Cluster of Competence
The rehabilitation of war-torn societies
A Project co-ordinated by the
Centre for Applied Studies in International Negotiations (CASIN)

ADMINISTRATION AND GOVERNANCE
IN KOSOVO:
LESSONS LEARNED AND
LESSONS TO BE LEARNED

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Abstract

This paper aims to study the dynamics of the post-war administration of Kosovo by the international community. Such a study will use the experiences of the last three years in order to formulate new research questions that may enhance the ability of policy-makers to make knowledgeable decisions. By assessing the UN Mission in Kosovo and its implementation of both civilian and military components of its mandate, this paper identifies key successes and failures related to the administrative dynamics post-war Kosovo.

The paper is organized in four different sections, each one addressing a particular issue related to UNMIK's performance and drawing the reader's attention to possible lessons that may be learned from the experience. In the first section, we concentrate on key aspects of Kosovo's recent history and its place in the regional and international context. In this framework, we explore the legal foundations of the current administration of Kosovo and the performance of the international community (IC) in transferring competencies/responsibilities to newly established local structures. This is followed by a section that examines the performance of three security agencies -- the international military force led by NATO, the international civilian police and the local police service. We then analyze interethnic relations after the war and evaluate the efforts of various international and local actors in promoting reconciliation, dealing with property issues that affect community relations and facilitating the return of displaced populations. Finally, the paper looks at the divided city of Mitrovica as a case study, testing the saliency of issues of international engagement in local levels of administration in post-war Kosovo.

The progress and achievements in post-war Kosovo could not be imagined without an international presence. Despite policy efforts to hand over authority to local structures in some sectors, international presence remains a necessity. All the salient features of post-war and transitional countries in the Balkans have been attributed to Kosovo. As many in the IC claim, Kosovo is being rebuilt from scratch, while undergoing a transition to a market economy. It is administered by an international mission, which at times is confused about its role and vision. Adding to the complication is the external status of Kosovo, itself a taboo topic of discussion. Public life is being built from the bottom-up, starting from municipal structures to central structures.

The UNSC Resolution 1244 that mandated the UN Mission in Kosovo was as good as the political compromise that gave rise to it. Unlike many resolutions, 1244 has had quite an impact on the situation on the ground. Ambiguous aspects in the resolution led to conflicting interpretations by different stakeholders, such as Kosovo's legitimate political representatives, UNMIK, and Serb political entities. It is in these conflicting interpretations and their expectations that we ultimately conclude that 1244 was not necessarily the best mechanism to enable rebuilding Kosovo.

The expectations of the international community may at times be too high. The rehabilitation process is a long one. It needs greater synergy among international and local agencies in order to consider past and recent history, culture and traditions and build viable, sustainable structures of democratic decision and policymaking. Thus, peace-building processes will be better assessed and will lead to the higher quality of administration and governance in conflict-ridden areas.

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Introduction

This paper identifies several key issues in administering and governing post-war Kosovo. It explains how various stakeholders have been dealing with these issues, drawing lessons from the interaction between locals and the IC and thus inform our policy recommendations for the mission in Kosovo. Through this process, we hope our readers will draw lessons for similar missions that are bound to emerge in the near future. After an overall assessment of the general issues, the paper looks at several areas of governance and administration by studying the performance of the international administration as well as at the transfer of competencies in this regard to local actors. The first section delves into the question of the legal framework of Kosovo. The second section looks at the salient issue of security while analyzing the performances of the international military presence led by NATO, the international civilian police and the local police service. An analysis of interethnic relations after the war and institutional behavior in this regard follows in the third section. The fourth section looks at the postwar economic development and reconstruction. Finally, the paper looks at the specific case of the divided city of Mitrovica, the most difficult issue in the IC's administration of post-war Kosovo.

The main stakeholders to whom the paper is directed are: the international community present in Kosovo (UNMIK, OSCE, UNHCR, EUMIK and foreign diplomatic and liaison offices), the Kosovar government structures at all levels and political parties. However, the lessons drawn for future missions are in turn directed to the academic and peacekeeping communities at large whether involved with Kosovo or not. The paper makes an attempt to analytically describe the situation while leaving it up to the reader to what degree the situation constitutes a success or not.

Short historical background of Kosovo and UNMIK

Kosovo was a province of former Yugoslavia with its status upgraded to an autonomous federal entity since 1974. In the late eighties, Kosovo's autonomy was revoked by the Republic of Serbia. Kosovar Albanians (estimated to make up 90% of around the two million inhabitants of the prewar population) declared independence and organized their daily lives and parallel institutions around a peaceful resistance movement led by the Democratic League of Kosovo. Kosovo remained under a Serbian repressive security regime and unrest gradually increased, culminating in armed warfare in 1998 and with the forceful intervention of NATO in 1999. After the war, Kosovo has been administrated by a civilian mission, headed by the United Nations with the military component of the NATO-led Kosovo Force. This mission aimed to administer Kosovo without prejudging its external status, is defined by the UN Security Council Resolution 1244,¹ and described in greater detail in the first section.

For the first time in history, the UN was given an unprecedented mandate, both in scope and structural complexity, to replace the role of the state. Resolution 1244 gave rise to UNMIK, and called upon it to: perform basic civilian administrative functions, promote the establishment of substantial autonomy and self-government in Kosovo, facilitate a political process to determine Kosovo's future status, coordinate humanitarian and disaster relief of all international agencies, support the reconstruction of key infrastructure, maintain civil law and order, promote human rights and assure the safe and unimpeded return of all refugees and displaced persons to their home in Kosovo.

The operational framework of UNMIK has been divided into four pillars led by various international agencies that for the first time act as part of a government and enjoy a high degree of autonomy in creating and implementing policy. The humanitarian pillar led by the

UNHCR, was phased out in June 2000. In the fall of 2002, the pillars were: (i) Police and Justice, under the direct leadership of the UN; (ii) Civil Administration (UN); (iii) Democratization and Institution Building (OSCE); (iv) Reconstruction and Economic Development (EU).

AN OVERALL ASSESSMENT

Although the international administration of territories has historical precedence (e.g. Namibia, Cambodia, Eastern Slavonia, West Irian), the case of Kosovo along with a number of other cases in the nineties (such as Bosnia and Herzegovina and East Timor) presents a new typology for scholars in this field. The literature so far has been constrained to internal productions by the UN, and it has been only recently that relevant independent research has been made in this direction.

Richard Caplan produced a concise analysis in this regard, highlighting a number of issues that are related to such international missions.² This paper treats several salient issues regarding Kosovo specifically. Legitimacy is one of the key factors that an international mission needs to assert before moving into an area. UNMIK had legitimacy, although far from the level that was enjoyed by the NATO-led Kosovo force. In general, Kosovars shared the sentiment that Kosovo needed the security of the peacekeepers and not an omnipresent tutorship at all levels and spheres of public life. Nevertheless, all Kosovars and the two main leaders, Rugova and Thaçi, who publicly renounced the governing structures that they had created, either during the resistance or in the immediate aftermath of the war, accepted the mission. This was not the case with the Serb leadership in northern Mitrovica who have not renounced Belgrade leadership. Despite the challenges, the UN was the only viable organization that claimed its neutrality and multilateral enough to be acceptable to all concerned parties. Regarding the role of third parties in general, Stephen Stedman highlights the role of the “custodian” and the importance of gaining the acceptance from all parties concerned. “An essential prerequisite for successful peace processes is acceptable ‘custodians,’” described by Stephen Stedman as “international actors whose task is to oversee the implementation of the peace processes.”³ One of the duties of UNMIK, and arguably the most important one in the long run, has been to bring the territory to a level where the questions surrounding its external political status can be addressed. Whether it is an issue of the intractability of the conflict or that UNMIK did not offer the good offices that it was supposed to, it can be argued that while UNMIK has been well accepted, three and a half years after the conflict, it never managed to assume the role of a proper “custodian.”

One of the major conditions for a successful mission is a clear vision of the administered territory’s final political and economic status. “No international administration can function without having a political vision, implied or stated, for the society it is administering.”⁴ In the case of East Timor, Eastern Slavonia and Bosnia, the final goal was more or less clear. The unresolved status of Kosovo, on the other hand, continuously politicizes the peace process and fuels sentiment for radical movements. The taboo of this topic was broken in late 2002 with a regional roundtable organized by an independent American NGO quickly followed up by various initiatives. This issue continues to divide communities, breed fears and make peace-building efforts difficult. Perceiving a crisis, communities continue to withdraw within themselves, branding the UN as biased, furthering social cohesion and homogenization of each group with a psychological sense that some of the dynamics of the 1999 conflict still remain.

An important issue related to the completion of the mission is that of the level of involvement of various actors. This involvement and the nature of its implementation is predicated on (a) the organizational structure of the UN, (b) the nature of the mission and (c) staffing possibilities. Using its mandate, the UN has deeply permeated Kosovar society. The nature of this interaction, however, is not immune from criticism. Indeed, one of the first complaints about the mission is the lack of knowledge about Kosovo among those charged with

administering the region. Unlike the British colonial strategy of trying to understand the community that it governed, the UN mission did little to elicit input from the community or from the local leadership, while at the same time enjoying absolute immunity from legal and political accountability.

A lack of devolution of authority to the local structures has rendered all levels of government dependent on international structures. This has created increasing dependency on the UN. As Caplan rightly observed: “Early devolution also helps to prevent the administrative equivalent of aid dependency, in which the local population becomes accustomed to international representatives making decisions for them, including some of the harder decisions that they can thus choose to ignore.”⁵ This dependency has encouraged a culture of passivity. Local authorities were stripped of any decision-making responsibility or accountability. There is an argument to be made here that local authorities should have been allowed to make blunders even at the expense of their own community as freely elected representatives. The UN’s position was that they should be tutored for a longer period of time under the argument that they are not mature or tolerant enough.

The argument regarding the level of involvement also extends to almost dictatorial authorities of the Special Representative of the Secretary General (SRSG). Although the use of an all-powerful representative has been used far less than in Bosnia, where radicals have been winning elections continuously, heavy criticism has been received even from internationals such as the Ombudsperson of Kosovo. In violation to the European Charter on Human Rights, applicable in Kosovo, numerous people have been kept in detention with a special order by the SRSG for months and released later for the lack of evidence. Instead of serving as a model for democracy in a place where the latter never existed, the powers of the SRSG have greatly damaged the integrity and the credibility of the UN administration.

The extra judicial powers of the international community have been often perceived by the Kosovar leadership and community as political in nature. The perception among Kosovars is that the international administration was often politically oriented and one-sided regarding its influence. While the Serb community has often accused UNMIK of being pro-Albanian and doing little for the return of displaced Serbs, Albanians have often accused it of aiming to marginalize selected political forces and pushing Kosovo towards Serbia and blocking the functioning of its institutions under the disguise of political sensitivity. Although the role of international administration in Kosovo has been given the duty to prepare the region for resolving the final status, it is not clear whether there is any implicit role in its influencing the overall political outcome.

Preparing the region for the final status and not giving it a political direction only leaves one path open for the near future: help the establishment of local governing institutions at all levels and build up the economy. A faster transfer of competencies is the key and is a natural development of such an interim mission. There were different opinions among the international community regarding their attitude towards the existing local structures as illegitimate, inexistent, inadequate, or undemocratic. Despite the lack of a vision and the political will to resolve it, the primary objective “of a transitional regime must be to empower the local population to manage its own affairs.”⁶ Due to the political vision of the administration, this was considered problematic by many as the mere build-up of institutions was considered that it would lead to a finished act where Kosovars would be capable of running their own affairs and would thus no longer be as vulnerable as before to international pressure.

The lack of local involvement has stripped the Kosovars of formal and informal leadership responsibility. The international administration reports to the Security Council and to

member states only, giving no authority to local leaders, reproducing the lack of participation and accountability that Kosovars experienced for many years under Yugoslav rule. This was manifested in the latest elections, a useful barometer of the expectations of the Kosovar society regarding its own power for change. Despite the widespread euphoria in Kosovo after the war, the electoral turnout has fallen three years after the war to less than 50%. Such a lack of voter participation is mainly blamed on Kosovar perceptions that the local structures have no responsibility or competencies.

As Darby claims, "...in a divided society, internal responsibility for security instantly brands it as partial, whereas external, multinational bodies can serve as convenient scapegoats for unpopular policies."⁷ Kosovar politicians often find it easy to blame failures on UNMIK or to let them take the politically sensitive decisions. The record low electoral turnout in the Fall of 2002 is partly blamed on the low level of authority and competence by the local political elite. This accountability has also been partially reduced at the other end, by a great division between the political appointees and of the well-cushioned administration. Kosovar citizens, who are not even used to asking for transparency and accountability often express delusion at what they see as the first model of "democracy" up close.

Not only has this rendered local politicians unaccountable (though powerless too), but it has also strained the relations with representatives of the local communities, who were often given free hands to devise policies at local levels as they wished, resulting, for example, in different ways of managing municipalities depending on the skill, the experience and the tradition from which the international municipal administrator came.

Overall, Kosovars accepted UNMIK but never really felt it theirs. They saw it as political, secretive and unaccountable to the local community in any way. "The idea of international rule over a foreign territory can be legitimate only if that rule is exercised on behalf of, and for the benefit of, the foreign population."⁸ If one goes by this definition, UNMIK's legitimacy is in serious doubt, partially due to its imposed mandate from the top, but also due to the way it has been implemented. A number of Kosovars have even started to brand some features of UNMIK as neo-colonial.

Operationally, one of the issues mentioned in the sections below is the staffing politics of international agencies who are often unable to recruit the required number and quality of people from member states, who either do not have excess judges, policemen to send to a country or that their internal mechanisms make it difficult to do so.

One of the main criticisms to the civilian component of peacekeeping was the lack of planning. Unlike the military component that had a major proponent behind, NATO in general, and Britain and the US in particular, the UN found it politically sensitive to make any plans until very late in the process. Not only had UNMIK failed to plan before it began its mission, "the first UNMIK strategic planning document was not produced until 5 Dec 1999, six months after the start of the Mission."⁹ Caplan also concludes that the "organization is seldom prepared for the worst, missions are planned hurriedly, and support for them is insufficient long after their initial deployment."¹⁰ As the international system is composed of states as basic units, there is a natural tendency to move against this trend as a threat to the state system. Hence, there are current impediments that stem from: (a) political circumstances, (b) the organizational structure and the lack of interdepartmental planning and (c) the inability to coordinate with local structures on the ground.

Perhaps one of the most important recommendations that this paper makes is that the UN ought to plan well ahead even for crises that might never erupt. Standards for international administration of disputed war-torn territories such as Kosovo, and of failed states should be

developed just like for military and humanitarian operations. If early planning is not possible, constant research and intelligence gathering on areas of conflict remains an option. The DPA and the DPKO should establish a joint office that does research on economy, policing, law and a host of other issues about a number of crisis situations in the world.

LEGAL FRAMEWORK OF KOSOVO UNDER THE UNITED NATIONS' INTERIM ADMINISTRATION

Applicable Law: Theory and Praxis

By virtue of UNSC Resolution 1244 (1999) the Security Council of the United Nations authorized the Secretary-General to establish an international civil presence known as the United Nations Interim Administration Mission in Kosovo (UNMIK) with the mandate “to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia and 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 of Kosovo.”¹¹

The resolution is the result of diplomatic efforts before and during NATO's air campaign against Yugoslavia (24 March to 10 June 1999). Despite the failure to reach a peaceful settlement at Rambouillet, the military offensive of the Yugoslav army against the Kosovo Liberation Army (which led to the displacement of approximately half of the population of Kosovo), and the ensuing NATO air campaign, diplomatic efforts resulted in a political solution to the conflict that avoided a hostile intervention of NATO ground troops in Kosovo.¹²

In early June 1999, the envoy of the European Union, Mr. Martti Ahtisaari, and the envoy of the President of the Russian Federation, Mr. Victor Chernomyrdin, submitted a plan to the Yugoslav Government for the peaceful settlement of the conflict.¹³ The peace-plan was prepared by the G-8 Foreign Ministers on 6 May 1999 and envisaged the establishment of an interim administration for Kosovo under the auspices of the United Nations.

On 2 June 1999, the Yugoslav Government accepted the peace-plan and also agreed to the establishment of the international civil and security presences of the United Nations in Kosovo. The resolution incorporated the peace-plan and established UNMIK as a peacekeeping mission¹⁴ to provide an interim administration for Kosovo, pending a political process and settlement in regards to the final status of Kosovo.

Although not expressly stated in the resolution, the mandate to provide an interim administration for the people of Kosovo implies the authority to legislate. With reference to the resolution, the Special Representative of the Secretary-General (SRSG) in Kosovo stipulated in the very first UNMIK legislative act, namely UNMIK Regulation No. 1999/1 of 25 July 1999, 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.¹⁵ In the performance of the duties vested in UNMIK, the SRSG would issue legislative acts in the form of regulations.¹⁶

However, when the United Nations entered Kosovo, Kosovo was not a “law-free-area.” The Security Council preserved the sovereignty of the Federal Republic of Yugoslavia over Kosovo and with respect to that sovereignty, UNMIK provided that the Yugoslav laws applicable in the territory of Kosovo prior to 24 March 1999, shall continue to apply insofar as they do not conflict with internationally recognized human rights standards, the fulfilment of the mandate given to UNMIK or any regulation issued by UNMIK.¹⁷ The local legislation includes legislation of the Yugoslav Federation, of the Republic of Serbia and of the Province of Kosovo.

A precise rule on conflicts between local legislation and UNMIK legislation was introduced a few months later through UNMIK Regulation No. 1999/24 of 12 December 1999 on the Law Applicable in Kosovo. Thereby, the SRSG determined that in case of a conflict, the regulations and subsidiary instruments issued by UNMIK shall take precedence with respect to the local legislation in force.¹⁸

The real need for the issuance of said regulation was, however, caused by the determined refusal of the local judges and public prosecutors to apply the local legislation, which was in force on 24 March 1999. They considered this legislation as discriminatory against the Kosovar Albanian population of Kosovo since it was issued after the elimination of the autonomy status of Kosovo and thus without the participation of Kosovo in the respective legislative procedures.¹⁹ The local legal community started applying the legislation, which was in force before the suspension of the autonomy status of Kosovo, in particular in criminal matters. In order to avoid a discrepancy between the “law in books” and “the law in action” the SRSG decided to codify the described legal praxis determining that besides UNMIK legal acts the applicable legislation in Kosovo should also include the law in force on 22 March 1989.²⁰ Only if a situation was not covered by said legislation, laws in force after 22 March 1989 could be applied insofar as they were not discriminatory or in violation of internationally recognized human rights standards.²¹ This amendment as regards the applicable local legislation demonstrates the insufficient inclusion of the local legal community when UNMIK decided on the applicable legislation.

From a theoretical point of view the definition of the applicable legislation seemed to be clear. But from a practical point of view it was not clear at all. After the rapid deployment of the international civil presence in Kosovo, international staff members from various countries without prior training or adequate experience in providing interim administrative services under the auspices of the United Nations were confronted with the necessity to restore public order and safety, including the combating of criminal structures. In that context many persons were arrested and held in pre-trial detention. However, at this stage there was absolutely no knowledge about the applicable legislation in Kosovo on the basis of which a detention could be ordered and executed. Police officers from various countries with different legal background applied the legal principles and provisions that were used in their countries.

This situation did not improve much in the subsequent months of the Mission. International lawyers, mainly consultants brought to Kosovo to prepare a draft piece of legislation within a relatively short period of time, did not pay sufficient attention to the local legislation and thus prepared legislation that would hardly fit into the existing legal system. The major reason for this behaviour lay in the insufficient information on the applicable local legislation due to the difficult access of official sources on such legislation. Official Gazettes, which contained the relevant laws, were either lost or destroyed during the armed conflict. In addition to this, the lack of proficiency in the Albanian or Serbian language was a major obstacle for international lawyers to gain access to the local legislation. Even today, three years after the deployment of the Mission, there is still no database on the local legislation, although institutions such as the Kosovo Law Center, the former Administrative Department of Public Services and the OSCE improved the level of information through collections of laws and other publications.²²

UNMIK legislation between common law and civil law

Between June 1999 and September 2002 UNMIK passed 144 regulations and 86 administrative directions covering all areas of law, such as criminal law, civil/commercial law and public/administrative law.²³ This legislative activity has had an enormous impact on the legal system of Kosovo, in particular with respect to the civil law system. Despite all

socialist elements, the legal system of Kosovo as part of the overall Yugoslav legal system is to be classified as belonging to the continental civil law system based on Roman Law. The civil legislation included among other specific legislation a Law on Obligations,²⁴ a Law on Property Relations,²⁵ a Law on Civil Procedure,²⁶ thus reflecting a classical civil law system.

With the involvement of a number of international lawyers with a common law background in the legislative activities of UNMIK, and taking also into consideration the aforementioned lack of information on the legal system in Kosovo, UNMIK enacted legislation in many areas, which was evidently based on common law principles, such as the regulation on business organizations or the regulation on pledges. In the field of contract law, UNMIK simply transformed the UN Convention on the International Sale of Goods into domestic contract law without realizing the need for harmonizing this piece of legislation with the remaining legal system.²⁷ This approach did not only introduce common law terminology unknown to local lawyers trained in continental civil law (e.g. the term “*collateral*” in the context of pledges and mortgages) but also caused legal incoherence and contradictions, which in the end led to legal uncertainty.

This result was also supported by the legislative policy pursued by UNMIK, and which consisted in the singular regulation of specific matters (such as pledges) and avoiding the general and final regulation of a matter (such as regulating pledges in the context of a general Property Law).²⁸ This legislative policy is understandable when taking into account that UNMIK considered itself to be only a transitional administration and that it therefore did not want to undertake a long-term and complex legislative operation, such as drafting a new Civil Code for Kosovo.

Legislation of the Provisional Institutions of Self-Government

a. Reserved powers and transferred responsibilities

On 15 May 2001, UNMIK promulgated the Constitutional Framework for Provisional Self-Government (PISG) in Kosovo drafted by international and local experts thereby setting up provisional governmental institutions, including the Assembly of Kosovo, the Government and the Office of the President of Kosovo (UNMIK Regulation No. 2001/9). However, the authority of the SRSG over the PISG is expressed in chapter 8.1 of the Constitutional Framework, which authorizes the SRSG to dissolve the Assembly of Kosovo and to call for new elections in circumstances where the PISG are deemed to act in a manner, which is not compatible with UNSC Resolution 1244 (1999).²⁹ In addition, the Constitutional Framework expressly states that the exercise of the responsibilities of the PISG under the Constitutional Framework does not diminish or affect the authority of the SRSG to ensure full implementation of UNSC Resolution 1244 (1999), including overseeing the PISG, its officials and its agencies.³⁰

With the Constitutional Framework, the SRSG vested certain responsibilities in the PISG with respect to preparing laws, for example in the field of education, youth, culture, health, labor and social welfare, transport and telecommunications, public administration, agriculture, spatial planning and environmental protection, domestic and foreign trade and industry, statistics, tourism as well as good governance and human rights.³¹ In these fields both the Government as well as the Assembly have the right to initiate and to adopt laws and resolutions, the latter being non-binding declarations.³² Once the legislation has been adopted by the Assembly as the highest legislative body of the PISG it only enters into force if signed and thus promulgated by the SRSG.³³ A high UNMIK official describes this sort of legislative competence of the PISG as the exercise of legislative responsibility for and under

the authority of the SRSG.³⁴ The same principle applies to international agreements, which may be prepared by the PISG as an exercise if the subject matter falls under its responsibilities as referred to in chapter 5 of the Constitutional Framework.³⁵

On the other side, the SRSG retains some so-called reserved powers, where the SRSG has the sole and exclusive legislative power. These fields cover mostly, among others, sovereignty-related matters, such as external relations, the administration of public, state and socially owned property and enterprises, railways and civil aviation, control over the civil registry database, as well as matters relating to the appointment and removal of judges and public prosecutors, the protection of the rights of communities and co-operation with KFOR, the enforcement of public safety and order, defense, civil emergency and security preparedness.³⁶

This differentiation between legislative responsibilities transferred to the PISG and reserved powers of the SRSG, as well as the vague and extremely “open texture” of the relevant provisions in the Constitutional Framework concerning which area is transferred and which is not, proved to become one of the major sources of conflict between the PISG and UNMIK regarding the implementation of the Constitutional Framework. The example of the 23 February 2001 bilateral agreement on the determination of the border between the Federal Republic of Yugoslavia (FRY) and the Former Yugoslav Republic of Macedonia (FYROM) may illustrate the dimensions of the problem

In order to avoid future disputes of this nature, UNMIK and the PISG have established - at least for economic, fiscal and commercial legislation - under the umbrella of the Economic and Fiscal Council the first rudimentary principles and procedures for clarifying which subject-matters fall under reserved/transferred responsibilities, and for co-operation in legislative issues. Although this matter is the crucial issue in the future implementation of the Constitutional Framework and the further transfer of responsibilities to the PISG, legal clarity and effective co-ordination are, as of yet, far from being reached.

Case Study: Borderline

The borderline in questions was, however, also the borderline between Kosovo and FYROM. The result of the agreement was that approximately 2400 acres of land belonging to Kosovo were transferred to FYROM. The PISG considered this agreement to be in violation of the territorial integrity of Kosovo, which was protected by Resolution 1244 and chapter 1.2 of the Constitutional Framework.¹ Since the Security Council accepted the border agreement between FRY and FYROM, the Assembly of Kosovo adopted, on 23 May 2002, a resolution by which it did not recognize the border agreement and declared its effects to be null and void with respect to Kosovo (Assembly of Kosovo 2002). Its main argument was that the people of Kosovo were not consulted on this issue and that the borders of Kosovo could not be changed without the consent of the people of Kosovo, arguments deriving from the internationally recognized principle of internal self-determination of peoples. In an immediate reaction to the adoption of the resolution by the Assembly, the SRSG declared the resolution to be null and void. The SRSG's determination was based on the argument that the PISG is only entitled to pass a resolution if the subject matter in question falls under chapter 5 of the Constitutional Framework. Since “territorial integrity” was not enlisted in chapter 5 but was referred to in chapter 2, the PISG formally did not have the authority to issue any resolution on this matter. The outcome of this dispute was legalistic formality versus internal self-determination. The situation has remained as it was: the border agreement has not been implemented, yet, the PISG sticks to the resolution of the Assembly and UNMIK considers the resolution of the Assembly as nonexistent.

b. Harmonization of Kosovar Legislation with the *Acquis Communautaire*

Another aspect, which characterizes the Constitutional Framework with respect to legislation, is the commitment of the PISG to closer European integration. Pursuant to chapter 5.7 of the Constitutional Framework, the PISG are responsible for aligning their legislation and practices in all areas of responsibility with relevant European and international standards and norms. This provision contains a clear quasi-constitutional obligation to harmonize the Kosovar legislation with the *acquis communautaire* of the European Union.

With this provision, the Constitutional Framework of Kosovo has become the most developed constitutional text in the Balkan Peninsula as it regards commitment to European integration. In practice, however, the PISG lacks the necessary capacity and resources to indeed be able to undertake the required harmonization. In that context, the European Union has offered its support by providing legislative and administrative assistance through various institutions such as the European Agency for Reconstruction, UNMIK EU Pillar IV and the newly established EU Office in Kosovo, although a long-term, streamlined and coordinated approach is still missing. The major problem that is likely to arise in the context of harmonization with EU standards, is the underdeveloped capacity and the lack of sufficient resources on the Kosovar side to undertake legislative harmonization on their own, without the need to refer to sources outside of Kosovo. Capacity building in this field is of utmost importance for Kosovo in order to support a self-sustaining process for integration into EU structures.

c. Some Aspects of the Current Legislative Practices

Since the PISG are recently established institutions it is difficult to identify legislative practices and standards regarding the drafting and processing of legislation. However, in the first months after their establishment it can be observed that the legislative initiative is with the Government rather than with the Assembly. In fact, the Assembly takes a very passive role in this respect, criticizing the Government for not producing fast enough draft legislation but lacking in making any attempt to exercise its own right of legislative initiative.

Another aspect worth being illuminated is that of international legal advisers funded by various foreign agencies who are involved in the drafting and processing procedure within both the Government and the Assembly and who have their main focus on commercial and economic legislation. The legislation in this area is drafted mainly by those international advisers who offered the final product with little or even no participation of the local lawyers, employed in the PISG and without providing any capacity building for local lawyers, in order to become capable to draft such legislation on their own.

A third characteristic to be considered is that of a large number of international non-governmental organizations (NGO's) and agencies engaged in the administrative structures of the Assembly through "capacity-building-programs" for the civil service of the Assembly and the members of the Assembly. Lectures provided by international experts and consultants, study-trips to foreign legislative institutions, as well as advisory services are the major elements of such programs. On one side, these programs help both the civil servants and the members of the Assembly to become familiar with the functioning of an Assembly. On the other side, the programs often are not tailored to cope with the specific circumstances and needs of the Kosovo Assembly as such.

Up until now, there also is no sustainable capacity-building in the field of human resources, administrative management and technical infrastructure. The most dangerous side-effect of such an intense engagement of foreign NGO's and agencies in the day-to-day business of the Assembly (some NGO's may even participate in the proceedings of Assembly committees),

however, is that of their uncontrolled and direct possibility of influencing the members of the Assembly during the political decision-making process. This situation bears in itself the risk that it might not be the electorate that the members of the Assembly are listening to but rather financially potent international NGO's and agencies, a situation, which is questionable from a democracy point of view.

1.4. Policy Recommendations

The establishment of the United Nations Mission in East Timor a few months after the establishment of UNMIK shows that both Missions have an almost identical organizational structure, with the same extensive legislative powers, policies and techniques and which could serve as a model for future interim administration missions of the United Nations.³⁷ The legislative experience gained in Kosovo could very well serve as a "lessons-learned module" for future Missions.

- (a) The major problem that has been identified in this short analysis is the **insufficient knowledge about the local legal system**. It can hardly be imagined that the United Nations would have the administrative capacity to establish databases of laws for each and every country and to maintain units of trained and experienced lawyers to be "parachuted" into a country where a UN interim administration is conducted. **The preferable solution would be a United Nations Criminal Code and a United Nations Administrative Code**, which could be applied whenever the United Nations is supposed to conduct the administration of a territory.
- (b) The **conflict-of-laws rule** as developed by UNMIK in relation to the local legislation could very well apply as a general rule **for determining the relationship between the UN Codes and the respective local laws**. Bearing in mind that such UN Codes might face the risk of not being fully compatible with the domestic legislation, they would certainly avoid legal uncertainty, which inevitably exists in the context of any UN interim administration. **Peacekeepers could be trained in these codes and by applying them properly**, they would ensure an internationally accepted standard of rule of law.
- (c) Whenever the United Nations have the mandate to legislate in a country, the local legal traditions and systems should be respected. A confusing mixture between common and civil law elements, as exists in Kosovo, should not be repeated. In a country where civil law traditions dominates, **the UN should deploy lawyers trained in civil law and in common law countries lawyers with a common law background**.
- (d) In general, the United Nations have to **reconsider their peacekeeping approach** and shift from an originally **military undertaking to a more administrative approach**. The future peacekeepers will need to have the profile of public administrators, accountants and lawyers rather than that of soldiers. It is now, that the United Nations needs to start making serious changes in their approach and organization in order to be able to cope with the future challenges of peacekeeping.

INTERNAL SECURITY MANAGEMENT IN KOSOVO

Introduction

This section aims to analyze the international community's management of Kosovo's internal security. Its primary strategy towards stabilizing Kosovo and ensuring long-term stability was to build and develop the capacities of local authorities and ultimately transfer its security structures to them. The analysis will focus on three main stakeholders in this process, which ostensibly is the "transfer of competencies" to local Kosovar institutions. The first and perhaps most important security component to the current state of Kosovo is the NATO led Kosovo Force (KFOR). A second key component to the IC effort to enforce stability in Kosovo is the police force administered by the United Nations mission in Kosovo. The last component is the Kosovo Police Service (KPS), a local police force trained by OSCE. Within this triad remain a number of issues in how the considerable resources available to the international community may have affected the performance of these security institutions.

The legal framework to the IC's management of Kosovo's security has been outlined in UNSC Resolution 1244 (1999), citing Chapter VII of the UN Charter. The resolution identifies the international community as the sole legitimate entity with a mandate to law enforcement and the use of power in the region. The enforcement of peace, as stipulated by the resolution was granted solely to KFOR, whereas KFOR and UNMIK Police (CIVPOL) were given a mandate to exercise law enforcement jointly. A second mandate granted to UNMIK Police is developing the Kosovo Police Service (KPS).

What the resolution fails to specify is where and how accountability and responsibility in managing the internal security in Kosovo are to be drawn between the international military and civil presence. In its command structure, there are two quite distinct and often conflicting bodies at play in Kosovo. KFOR forces are responsible to NATO Headquarters in Brussels and are not answerable to UNMIK, whereas UNMIK Police and KPS are directly responsible to the SRSG. This bifurcation of command and control has led to some debilitating conflicts in policy as the case in Mitrovica, provided later, amply shows.

More importantly to the stated ambition of the international mission to "transfer competences" to local institutions, there are significant contradictions in the Constitutional Framework of Kosovo (CFK), promulgated by former SRSG, Hans Haekerup, on 15 May 2001. In the CFK, police and justice remain under UNMIK and are non-transferable competencies thereby denying the Kosovar Government any formal responsibility in the enforcement of law and order. The CFK does state that in the last phase of its mission, UNMIK police will transfer the primary responsibility to KPS with UNMIK Police assuming a supportive and monitoring role. The problem lies in the lack of any real timeframe in which the UN mission may be deemed ready to actually handover those responsibilities, creating institutional tensions between the Kosovar Government and UNMIK.³⁸

Deployment and Structuring of International Military Force and Civil Police

The main challenge to the UN Mission in Kosovo in regards to security is that it is the first-ever United Nations Mission that had a law enforcement mandate. Without any operational model to rely on, the attempts to, among other things, address the (in)security vacuum that emerged in Kosovo after the withdrawal of Yugoslav/Serbian armed forces in June 1999 was not coherent and often at odds with other tasks facing the mission.³⁹ Other challenges, such as supervising the demilitarization and transformation of the KLA (UÇK) into a civilian force

were compromised by the uncertainties of the mission.⁴⁰ Perhaps most interesting to point out in the often overlapping and contradictory responsibilities for security in Kosovo, was KFOR's role in law enforcement in the initial months of the mission. NATO troops, trained in combat were either not prepared or unwilling to fulfill the tasks of a civilian police force. This caused an initial period of chaos and cost Kosovo many months in the rebuilding process.

The confusion over the mission begins prior to NATO direct intervention in the Kosovo war. KFOR's original function was to contain the Kosovo conflict within its borders. Under the name of Operation Joint Guardian, the initial allocation of forces and funds took place in the summer of 1998 and was halted from October 1998 to February 1999.⁴¹ The planning phase that restarted in February 1999 for the inevitable intervention of NATO troops into Kosovo initiated a deployment of troops to Macedonia and Albania, eventually reaching a number of 17,500 troops by the June 9th, 1999 Military Technical Agreement signed between NATO and Yugoslav/Serbian authorities in Macedonia.

As agreed upon in Kumanovo/ë, NATO troops, numbering 16,100 entered Kosovo during the last day of withdrawal of Yugoslav/Serbian Forces on 18 June 1999. An additional 11,000 soldiers were made available in bases in FYROM.⁴² Within a few days, KFOR Headquarters was relocated from FYROM to Prishtina and five KFOR Regional headquarters at the level of brigades were established, corresponding with the nations (USA, Great Britain, France, Germany and Italy) in charge of regional commands. By the end of 1999, with the additional participation of more than 30 partner countries, KFOR's total troop deployment reached 45,000.⁴³

The rapid deployment of KFOR in Kosovo proved to be crucial to creating a secure environment in the region. This deployment made the return of 1.3 million Kosovar Albanian refugees possible.⁴⁴ The rate of return, however, far exceeded the expectations of the intervening institutions charged with providing humanitarian assistance and of course, security.⁴⁵ The end result was that the United Nations was not yet prepared to take over policing duties with its anticipated UNMIK Police force. KFOR, left with the responsibility of providing security and enforcing law and order, failed by all accounts. The murder rate in Kosovo by the second part of June 1999 reached the level of 50 murders per week.⁴⁶ This constituted a significant failure, compounded by the fact that Serb minorities were seen as targets for revenge on a large scale and that KFOR failed to prevent Belgrade from realizing the partition of Mitrovica and creation of ethnically-pure enclaves.

To its credit, KFOR vastly improved security over the next few months. Hundreds of suspected criminals were arrested, weapons and ammunition confiscated and to most observers, security and stability had been restored.⁴⁷ By the beginning of 2000, the murder rate declined to 5 per week.⁴⁸ In the context of responding to what appeared to be KFOR's mishandling of the protection of Serbs, since early 2000, more than half of KFOR's total troop engagement has been involved in protecting Serbs and other minorities.⁴⁹ As far as NATO was concerned, KFOR would have been more effective in performing its primary tasks if Kosovo had a stronger international police presence as well as a properly functioning judicial system.⁵⁰

In contrast to KFOR's activities, the international civilian police force has faced serious problems in that significant delay in the deployment of officers and the building of an operating structure forced the project to implement long-term security plans in Kosovo that dragged on well into 2000.⁵¹ The formal guidance for the functions of UNMIK Police, that are the bases for its operational planning over the long term, were initiated by the report of the UN Secretary General Kofi Annan on 12 July 1999, already a month after the KFOR

deployment.⁵² The end result of the United Nation's lack of preparation was that only a small initial force of 200 unarmed civilian personnel serving in the UN Mission in Bosnia and Herzegovina arrived in Kosovo in the end of June 1999.⁵³

The initial plan was that UNMIK Police would consist of 3110 police officers. These plans were quickly modified after receiving recommendations from then SRSG Bernard Kouchner, increasing the number to 4718.⁵⁴ Reinforcements started to arrive at the end of August 1999, first to Prishtina and finally arriving in Peja by June 2000. The current structure (regions and stations) was fully established by mid-2000 with the exception of the region of Mitrovica where UNMIK Police has full investigative authority but KFOR kept its technical primacy.⁵⁵

The problem with UNMIK Police ultimately lies in their competencies. More than half of the total number of international police officers deployed in Kosovo are from autocratic or highly corrupted countries. By importing police officers who have no experience in enforcing laws in democratic societies and operating in a courteous and helpful manner, UNMIK has been making matters worse. With such a profile of "international police" officers, it was clear they could not significantly contribute to the development of local policing and antagonized relations with the local population.⁵⁶ Moreover, the cost of engaging international police is very high and not sustainable for such international projects. The UN budget allocates approximately \$115,000,000 per year only for the UNMIK Police Officer's Mission Subsistence Allowance (MSA) (\$71 per day for one UNMIK Police Officer).⁵⁷ Due to the fact that a large number of UNMIK Police in Kosovo are insufficiently "police officers," the cost benefit of this undertaking needs to be seriously reassessed by United Nations.

The above analysis of the deployment and performance of KFOR and UNMIK Police in Kosovo highlights the following key lessons that might be used by the international community for possible future missions:

- (a) If the peace keeping/enforcement military component is compelled to perform the tasks of a civilian police force, the forces involved need additional training in executing tasks of public order and law enforcement. In this regard, military forces with specific civilian policing experience (like the French Gendarmerie, Italian Carabinieri or Spanish Guardia Civil) may play a crucial role in planning and performing civilian police duties in future missions.
- (b) There is a clear need for an advance police force with operational planning that should be accompanied by pre-deployment coordination with military forces. These efforts can be co-coordinated with national governments of the countries that contribute to the military component in order to avoid the lack of trained personnel flooding the field, as had happened in Kosovo.
- (c) The experience of Kosovo demonstrates that there is a need for re-approaching peace-keeping/enforcement operations by putting together, in a common package, military and police planning for future cases.

Enforcement of Law and Order

The international military and civilian mission in Kosovo was, in the beginning, operating in an atmosphere of legal uncertainty in respect to which laws to apply. This shortcoming was compounded by the fact that there was no supporting legal infrastructure in place at the time. This situation forced KFOR troops to process cases according to their national laws, because what could international police officers do in such a complex situation was to act to the best of their knowledge. In the case of criminal procedures, definitions of crimes and the concept of due process was not universally recognized by those enforcing the peace. As a

consequence of this situation, Kosovo citizens were living in legal chaos and their rights were often abused. Efforts were made to instruct law enforcement personnel of the applicable law in Kosovo at the time (UNMIK declared that laws in Kosovo in force prior to 23 March 1989 would serve this purpose). This failed miserably as copies of the law of Kosovo was only made available in English to international mission ten months after the mission started.⁵⁸

These circumstances resulted in UNMIK Police making many mistakes. In this period of legal chaos in executing policing functions, UNMIK Police had put forward a proposal calling for the implementation of a “generic criminal code” in which mission personnel could receive pre-training and apply it in circumstances of legal uncertainty. Unfortunately, this proposal had been ruled out by UNMIK.⁵⁹ Even more damaging, until January 2001, the UNMIK Police was not allowed to undertake undercover surveillance activities leading to serious inefficiencies in intelligence.⁶⁰ Despite these administrative barriers, many of these activities had been carried out with the self-initiative of a number of UNMIK Police officers.⁶¹

On the other side, the judicial system of Kosovo suffered a general lack of professionalism due to the disconnection of local Albanian prosecutors and judges from the system for a decade. The situation in the judicial system is being exasperated by the fact that it had become more complicated due to the cases of intimidation and coercion that were facing judicial workers.⁶² Moreover, the lack of a witnesses protection program has significantly hampered the implementation of the rule of law in Kosovo that is resulting in little co-operation from citizens with the police as far as serious crimes are concerned.⁶³

Initially there was tension between the judiciary and international police due to the fact that many police officers came from the countries where there is no tradition of investigative judges as is the case in Kosovo. In Kosovo, the investigative judge has the leading role in a criminal investigation. This investigative role has been hampered, however, by the fact that the Kosovo judiciary has limited capacities to properly do their work and UNMIK Police often circumvent the traditional procedures.⁶⁴

The other complicating issue in fighting crime in Kosovo is the lack of jail capacity; Kosovo’s jail capacity has room for only 600 detainees, whereas the daily arrest rate is between 50 and 60 persons.⁶⁵ This situation forces UNMIK Police to release many individuals who have committed crimes. This issue has still not been addressed properly by UNMIK.

In regards to the enforcement of the overall rule of law in Kosovo, KFOR is facing serious obstacles. Despite the fact that NATO decided early on to give COMKFOR command and control over all forces in Kosovo, there is still little co-ordination among the national brigades with the exception of British forces that are available to COMKFOR for deployment outside of their brigade sector. Every other national force goes its own way, whatever the situation might require, resulting in often conflicting methods of engagement and contradictory agendas.⁶⁶ Contrary to KFOR, UNMIK Police forces have a single chain of command and they are solely responsible to the UNMIK Police Commissioner, who is responsible to SRSG. UNMIK police has in place special anti-riot forces that might be located at any time and placed within Kosovo. These distinct communication and coordination issues have served as points of tension between the two entities over the last three years.

The limits of NATO control over forces in Kosovo have affected the enforcement of order and the rule of law in Northern Mitrovica, highlighted during periods of crisis. This is the most glaring problem in Kosovo today, as it is in this part of Kosovo where the UNMIK

police have no power to act. First, there is a lack of cooperation among the Serbian population; secondly, UNMIK officials have conceded that police operatives from Serbia are patrolling Mitrovica's streets in civilian clothes. Not only is this a breach of the Military Technical Agreement of 1999, it also makes it impossible for the local population to feel safe enough to cooperate with UNMIK Police if they wanted.⁶⁷ In response to criticisms, UNMIK Police claims that only KFOR can act and conduct military operations with the use of force. This bickering becomes more apparent when KFOR denies that it has any knowledge about Serb police officials operating in Mitrovica.⁶⁸ This denial has been impossible to sustain, however, with UNMIK Police discovering a list of 70 police officers from Serbia, who are under command of the General of Serbian Interior Ministry, Svetislav Gjorgjeviq.⁶⁹

It is only in late November 2002 that UNMIK started to extend its administrative duties to Northern Mitrovica. What ultimately explains this sudden turn around in UNMIK's success speaks more of UNMIK's political efforts than law enforcement efforts by KFOR and UNMIK Police.

In analyzing the experience of maintaining law and order in Kosovo, the following key lessons may be learned:

- (a) The initial lack of basic laws for conducting a criminal investigation and the development of special police agencies for fighting crime is proving to be one of the main obstacles to ensuring public order and safety in internationally administered territories. The UN needs, therefore, to formalize a package of laws that can be used by both peacekeeping troops and international police in order to avoid the vacuum created by a legal framework that actually hinders law enforcement by inviting procedural chaos.
- (b) Training officers in the international military and police forces in local criminal law is essential for ensuring inter-institutional effectiveness.
- (c) The weak chain of command with COMKFOR in relation with national chains of command makes it almost impossible to use NATO troops at the inter-regional level. This circumstance is affecting overall law enforcement in Kosovo, including the effective co-operation between KFOR and UNMIK Police in riot situations. A solution might be found in establishing a contingent of NATO multi-national troops under the direct command of COMKFOR, a force that can be used in situations when a single brigade is not sufficient.
- (d) Since both KFOR and UNMIK Police have the same law and order enforcement mandate, their co-operation and joint action in disabling the illegal operation of Serbian police forces in Kosovo is vital for securing the normal functioning of UNMIK and the Provisional Institutions of Self-Government administration in the entire territory.
- (e) The lack of detention centers is hindering efforts to fight crime in Kosovo. This issue needs to be urgently addressed by UNMIK and the international donor community.

Building Sustainability: Kosovo Police Service

The international community has shown a reluctance to use former KLA fighters and former police officers fired in 1989 to form the basis of Kosovo's civilian police force. According to UNMIK police, the rationale behind not giving back jobs to former police officers was due to the consequences of apartheid over the last decade in which few KPS officers had policing experience and many faced a decade of unemployment, requiring total retraining.⁷⁰ Under these conditions, the building of the Kosovo Police Service as a local police service started from scratch in the second half of 1999. The efforts of UNMIK in developing KPS are being

done through Pillar I of Police and Justice (Field training, supervision and monitoring) and Pillar III of Institutional Building, respectively through the OSCE Police School.

Candidates selected for training and subsequently recruited into the Kosovo Service must be residents of Kosovo between the ages of 21 to 55 and have finished secondary school. Apart from these general conditions, an internal investigation is being conducted by UNMIK police regarding the verification of the candidate's past. Thereafter, candidates undergo 12 weeks of classroom basic instruction at the Kosovo Police Service School (KPSS) and 15 weeks of structured training with UNMIK Police⁷¹ and starting a few months ago, with the KPS as well.⁷²

In the building process of KPS there have been initial obstacles mainly related to the training infrastructure (place and cadres), as well as to the type and style of training that should be given. Eventually, KPS adopted US Policing techniques and equipment due to the fact that the US government covers the main burden of financing the program.

According to US standards, four to five years of experience are needed for police officers to be considered for special duties while ten are needed for supervisory ones. This model cannot, however, be fully applied towards the KPS due to the urgency of developing its structure. Nevertheless, KPS personnel have rapidly developed. By September 2002, around 4500 officers from all of Kosovo's communities are members of the KPS.⁷³ At this stage, KPS has been implanted in all corners of the territory of Kosovo, including Northern Mitrovica.⁷⁴

Apart from these training programs conducted by OSCE, a re-certification/re-qualification program has been developed and delivered for verifying the proficiency of KPS Officers in specific areas. There have also been specialized trainings organized in necessary police disciplines used in law enforcement as well as other advanced training programs delivered by foreign experts, mainly Americans.⁷⁵

In addition, KPSS is organizing courses for supervisors, mid-management and one Senior Management Course. Graduates however, while obtaining ranks do not have any commanding function. The Colonel of KPS serves as an adviser to the UNMIK Police Commissioner, whereas Lieutenant Colonels serve as advisers to Regional UNMIK Commanders. KPS Police Officers are only allowed to occupy the first line supervisory/commanding responsibilities, once they are themselves fully "integrated" within UNMIK Police, including the Intelligence Unit on Organized Crime.⁷⁶

Graduates from the academy operate under the supervision from UN international police "field training officers." Most of these officers have little training in mentoring and lack familiarity with the region.⁷⁷ Moreover, a number of UNMIK Police Officers have little professional expertise. In many cases, KPS Police Officers are more professional than their UNMIK Police counterparts.⁷⁸ Due to the fact that KPS police officers are currently under UNMIK Police supervision, low professionalism of a number UNMIK Police Officers is causing tensions with the KPS Police force.⁷⁹ A promising sign that this is being addressed is that international police officers with a high level of expertise have been granted senior positions within UNMIK Police. This should prove promising for KPS as it increases its professionalism.

Despite the fact that UNMIK Police recognizes that KPS is more professional than some police forces in the region, UNMIK police do not yet consider it a stable civil servant force.⁸⁰ On the other hand, by KPS the key components for achieving stability are professionalism and the impartiality of KPS police officers as well as support from the community and respect for the internal hierarchy.⁸¹ The last component is very important for ensuring the

independence of the KPS. There have been cases in which individual KPS Police Officers have been promoted by UNMIK to the rank of Lieutenant Colonel without passing through the full cycle of promotion, which begins with the rank of sergeant. This accelerated career trajectory for some is causing dissatisfaction within KPS.

The full staffing of KPS will have a final authorized strength of 6283 complemented by over 2000 civilian support staff. It is projected that a complete transfer of policing services for Kosovo will be completed by 2005, thus taking a period of six years for completing the build up and transfer of power by UNMIK Police.⁸² As of 2005, UNMIK Police will assume monitoring and training duties.

There are inconsistencies to this transition process however. According to the Constitutional Framework of Kosovo, Police and Justice remain under UNMIK's control as one of the non-transferable competencies it has secured for itself. During this period, therefore, the transfer of competencies from UNMIK Police to KPS is not accompanied with the building of Kosovo officials' capacity to administer the Department of Police. The current situation can affect in the long run the sustainability of KPS in relation to its administration by Kosovar Government. UNMIK needs to address this issue by developing a clear transfer of competencies to Kosovar authorities, including the possibility of a joint administration of the Department of Police at an early stage. The full transfer of powers in policing to Kosovar authorities might be completed with the final evolution of Department of Police into Kosovo Ministry of Interior Affairs.

The above review of the last three years highlights the following key lessons:

- (a) Building a local police service up from scratch takes a long period of time. Although Kosovo has a relatively small population, it still will take six years to implement a full transition of powers. In this case, a new method of ensuring the speedy transfer of competencies is needed.
- (b) Building a credible and respected carrier as well as establishing standards to promote officers is a crucial issue for ensuring long-term institutional stability and sustainability for the local police force. In addition, there needs to be stronger professional criteria for monitoring by the international police force.
- (c) In order to ensure the sustainability of the administration of internal security in Kosovo, the transfer of competencies from UNMIK Police Department to Kosovar Government should be completed in parallel with the transferring of competencies from UNMIK Police to KPS.

Policy Recommendations:

- (a) The experience of Kosovo demonstrates that there is a need for re-approaching peace-keeping/enforcement operations by putting in a common package of military and police planning for cases when both are mandated to maintain and ensure law enforcement in internationally administered territories.
- (b) There is a need for early planning and a pre-deployment of international police officers who are on good communicative terms with military forces. As far as expertise is concerned, early joint planning of policing between international police and military forces can be enhanced with the co-operation of international police with military forces that have specific civilian policing experience.

- (c) The UN needs to formalize a package of laws for criminal procedures and investigation that can be used by both peacekeeping troops and international police in order to avoid a vacuum in the legal framework of the administered territory.
- (d) The transfer of competencies from UNMIK Police Department to Kosovar Government should be completed parallel with the transference of competencies from UNMIK Police to KPS.

INTERETHNIC RELATIONS IN KOSOVO: LOOKING AHEAD

Introduction

This section analyzes, assesses and provides recommendations to the international, regional and local institutions as well as community leaders that deal with interethnic relations in one way or another. The section makes an initial analysis of the benchmarks and the thinking of the international administration at the outset of the mission and the latter developments in the field with the aim of learning lessons of good practices regarding interethnic relations.

Interethnic relations in Kosovo today inherit a ten year legacy of conflict between the state and the Albanian majority in Kosovo that gradually escalated from persecution and massive human rights violations into armed warfare that resulted with over ten thousand persons killed or missing and 600 villages razed to the ground. After the end of the war, the previously privileged ethnic group found itself at the receiving end of a seemingly disorganized campaign of revenge and take-over of apartments, left over by the fleeing ones who often did so under pressure.

At the outset of the mission, the primary priority of UNMIK regarding ethnic relations was “to promote the right to return through a return planning strategy which emphasizes return to multiple geographic areas in an incremental, low-profile and orderly fashion.”⁸³ It stressed the need to be transparent, engage in maximum consultations and create confidence-building measures whenever possible. The fields deemed important were: Security, Freedom of movement, Property, Housing, Infrastructure, Public utilities, Health, Social services, Income generation, and Humanitarian assistance.

As the scope of this paper does not allow for a comprehensive analysis of all the related issues, it focuses on the most salient ones: sustainable returns, the role of Kosovar institutions in shaping an overall climate, property disputes, the inability to deal with parallel institutions, security strategy in ensuring safety and freedom of movement and the exclusion of the majority leadership.

Institutionally, even three years after the war, minority issues remain the exclusive competence of the SRSG. While there has been pressure on local Kosovar institutions, the major area where Kosovar institutions can have any influence is in shaping the public opinion. Kosovar politicians often complain that while they bear the brunt of the criticism and pressure when ethnic relations suffer, their authority in improving the situation on the ground is very limited, as they do not control the police nor can they influence the judiciary or other relevant institutions. Even local grievances within each municipality have a mechanism to sort their problems to the attention of the international administration at the central level.

Regardless of specific minority concerns, post-war democratization taking place in Kosovo continues to be fragile at best and flawed in many regards: (a) extremely centralized power structures by UNMIK amounting to almost dictatorial powers of the SRSG, (b) fledgling and relatively incompetent Kosovar governing structures, (c) slow rate of transfer of competencies.

Although belated, the establishment of Kosovar institutions is expected to increase accountability. However, the numerous reserved powers that remain with the top UN administration have been subject to discontent among Albanians and Serbs alike. Transfer of competencies does not only refer to political and security issues, but even to daily management of Kosovar municipalities, regardless of the ethnic composition of the

municipality. Even a document issued by the Serbian Coordination Center among others complained of low competencies to municipalities, this being in their interest to increase the control of Serb dominated northern municipalities. As a result, the Coordination Center (in conjunction with the Serb coalition Povratak), produced a decentralization plan for Kosovo that amounts to doubling the already swollen governing and administrative institutions in Kosovo, suggesting bicameral local, regional and national legislative bodies.

Overall, the present legal framework provides for a fairly decentralized local government in Kosovo. Despite the small size of Kosovo (one third of Wales), 30 municipalities retain control over most competencies on all public services, maintenance of historical monuments and sights, primary and secondary education, youth work, integration of minorities, economic framework, municipal fees, employment, implementation of central legal acts and procedures, relations to UNMIK, primary health provision, infrastructure, spatial and urban planning. Despite global trends of decentralization, due to low capacities in terms of human resources and finances, one might argue that what Kosovo needs is the opposite, the strengthening of central institutions.

Relations with non-Serb communities

Due to the salience of the relations of the Albanian majority with the Serb community, this is the main focus of this paper. It is however important to briefly note the situation of other minorities. Aside of Serbs, and to some degree of the Roma, the problems of other minorities are mainly of social nature and most are common with those of the mainstream Albanian population.

For example, the Ashkali and the Egyptians are stigmatized and kept away from well-paid jobs due to their historical discrimination and low qualifications as a result and due to prejudices common throughout South-Eastern Europe. The Ashkali and the Egyptians were previously categorized as Roma and today there is a standard practice to treat them under one heading as RAE communities (Roma-Ashkali-Egyptian) due to the commonality of their problems. The major difference is that the Ashkali and the Egyptians speak Albanian as their native language and are fairly well integrated within the Albanian community. They have also traditionally lived in Albanian neighborhoods or in close proximity. An additional factor for this differentiation was the after-war resentment of the Albanian population towards the Roma as members of the Roma community were accused of having collaborated with the Milosevic's regime. This served as extra stimuli to the Ashkali and the Egyptian communities to distinguish themselves from the other groups.

Turks in turn are very well integrated and one might even claim that their economic situation is relatively well off even compared to the Albanian majority. They speak Albanian, belong to the same religious affiliation and have traditionally been close to the Albanian community. Despite initial accusations by members of the majority that the local Turkish leadership had sided with Milosevic during the ten year rule and their non participation in the first local elections, they faced no major obstacles in their integration and no violence was exercised against members of this community.

The Bosnjak community is also in very good relations with the Albanian community mainly due to a common sense of victimhood during the war and due to shared religious affiliation. However, divisions remain, and as a result, this community faces indirect discrimination and disadvantages especially in higher education. Another local community, the Goranis that live almost exclusively in the most southern (and one of the most backward) municipalities finds

itself in a similar situation as the Bosnjak community, but due to their geographic isolation, they face no security issues.

The rest of the paper will focus exclusively on relations with Serbs with an emphasis on the most important issue that hinges on overall relations, that of returns.

Sustainable Returns

Perhaps the most salient aspect of interethnic relations is the much politicized issue of the returns of internally displaced persons (IDPs). Ever since 2000, the United Nations Interim Mission in Kosovo has been very engaged in planning and implementing a policy on returns. Led by the main humanitarian pillar of UNMIK, the United Nations Higher Commission on Refugees (UNHCR), the returns of displaced persons was promoted as a human right to a sustainable return. The right to private property was in turn seen as an inviolable right of any person, regardless of any change of borders or international status of the territory. Submitting to the will of each person, UNMIK sought to ensure sustainable individual returns to previous habitual residence.

In general, “[t]he role of UNMIK or any government authority is not to determine the location of the returns or to dictate IDPs and refugees how and when they can return, but to help improve the condition in a way that IDPs and refugees have the ability to exercise their individual decision to return.”⁸⁴ This policy has been counteracted by Belgrade and especially by the Coordination Center of FRY and of the Republic of Serbia, who from the beginning, sought to earn political points by promoting pompous organized returns.

During the first year of UNMIK administration, this issue was portrayed as a failure by Milosevic as a way to discredit UNMIK, by paying salaries and giving out apartments to IDP and by showing Kosovo in a horrific light as a way to keep his rule and preserve his traditional support base, the Kosovo Serbs. The mayor of Leposavic, Nenad Radosavljevic, who was later appointed as advisor to the SRSG, claimed that these policies later hurt the efforts to return IDPs as they had made a good living in Serbia itself.⁸⁵ After the fall of Milosevic, this policy subsided but was kept on track by the ensuing Yugoslav president, Vojislav Kostunica and his Kosovo envoy, the head of the Coordination Center, Nebojsa Covic.

Belgrade would always remain the major partner, both as a host of the IDPs and as their mother nation to which ethnic Serbs look towards, rather than Prishtina. After the fall of Milosevic, following an all-European exuberance, UNMIK tried to appease Belgrade with a host of agreements that in turn had a tremendous cost in the relations of UNMIK with its own Kosovar population. Belgrade was often accused of having discouraged local Serbs’ participation in the newly created institutions; to have acted obstructively in a host of bilateral issues, such as police cooperation or returning civil registry books, and that they have used extremist rhetoric created for internal public consumption as a way of showing that they are doing something to bring the “cradle of Serbia” back. The international community managed to get some concessions in return, most notably, the release of Albanian political prisoners, however, the issue of returns still remains the most lively debated even while this paper is being written.

In practical terms and in terms of location, the returns were planned in three phases: (i) to uninhabited areas or to present enclaves (if originally inhabited there); (ii) to present enclaves or close, (iii) to urban areas such as Prishtina/Albanians in the north. The strategy that UNMIK followed in order to conduct returns in a sustainable manner was the creation of Regional and Local Working Groups on Returns, known as RWGs and LWGs respectively in

the UNMIK jargon. Headed by the respective UNMIK Municipal Administrators, these bodies include representatives from the UNHCR, KFOR, specialized international agencies and NGOs involved in return activities and the local communities themselves (both majority and minority).⁸⁶ This has been effective only in some areas.

Despite public statements by UNMIK that the return process must be conducted at a grass-root level by meeting with neighbors in order to create a better zone of comfort, this was implemented in a top-down manner. Despite the involvement of various NGOs, the wide community and the municipal government were initially kept at bay. While the role of Kosovar participants was stressed as crucial, they were invited only at a later stage. This caused resentment of local politicians who felt that they were being called upon a done deal only to legitimize a manipulated process that they had no control over. Suspicions that a number of enclaves in Kosovo are being connected through back roads and that one soon might see their status upgraded to a canton, did not help either and made any Kosovar Albanian participant nervous. Despite a bad strategy, under informal pressure, several municipalities have been cooperating with the LWGs, welcoming both organized and spontaneous returnees.⁸⁷

“The Framework outlines the major actors who will be involved in return planning and/or implementation, and their respective **roles and responsibilities**. The actors include not only those members actively participating in the JCR and RWGs (UNHCR, UNMIK, KFOR, OSCE and Serb representatives) but also important players such as NGOs and the donor community.”⁸⁸

The thinking among the international administration does recognize the importance of creating “progress within and between communities to enhance tolerance and willingness to co-exist.”⁸⁹ They also recognize “the active and responsible participation of the Kosovo Albanian community, through their leaders” as a key element of successful return planning.⁹⁰ However, the role of Kosovar Albanian leaders remains tentative where the presence of “...Albanian leaders at all levels in the return planning and implementation process is also emphasized.”⁹¹ In principle, however, stripping Kosovars of responsibility and ownership over the process is retrospectively evaluated as a mistake.

Even at the municipal level, mechanisms were created to avoid over-voting by the Albanian majority. While local minorities can regularly be outvoted, the UNMIK Regulation 2000/45 on Local Self-Government provides for an international Local Community Officer in each municipality and the creation of two municipal mechanisms, the Mediation Committee and the Communities Committee, which have the power to bring an issue to the attention of the SRSG. The SRSG can then create a mixed three-member panel (international-Albanian-Serb) and if no resolution is decided, he then has the authority to decide.

The role of local Kosovar leadership from the receiving end is crucial if one is to ensure integration and long-lasting returns. There have been doubts from both ends on the readiness of the communities to accept returns and the willingness of the returnees to accept their own integration and accept the new reality created after the war. The host community on one hand complains that returnees might be war criminals, also fearing that more returns will make some type of Yugoslav/Serbian rule more probable. UNMIK’s attempts to alleviate fear of war criminals did little to pacify the people since the courts that must deal with this issue have been dysfunctional at best.

Kosovar institutions and the overall climate

Since all the key competencies regarding interethnic relations lie with the SRSG, the only responsibilities that remain with the Kosovar institutions is to influence the overall climate for improving interethnic relations.

Even two years following the war, the activities of Kosovar institutions did not go beyond conciliatory remarks aiming to please the international community. However, the findings of a poll in mid 2002 point to overall acceptance of the return of the Serb community by the vast majority. As delineated above, the role of municipal politicians and the desire of central governments to show a constructive policy have had an impact on the people. However, the opinion making needs to be matched with real policies when it comes to dealing with disputes quickly and effectively, otherwise politicians often find themselves advocating against the general will.

While on one hand international diplomats convince politicians that it is in their interest to advocate tolerance, politicians in turn are not able to explain and justify to the voters why parallel Serb institutions remain in place or why can't Albanians go back to northern Mitrovica. Some politicians have remembered that fiery rhetoric remarks against other communities are the easiest way to garner support. While the number of incidents has gone to an all-time low, the trust is not being regained easily due to the physical separation of the two communities and the lack of contacts as a result. Despite efforts to calm down the scene, overall political constellations perceived to be pushing Kosovo towards Serbia (primarily driven by the EU to create what many sarcastically refer to as "Solania"), the insoluble problems of Mitrovica, the recent border dispute with Macedonia, lobbying by Belgrade to march IDPs back to Kosovo massively, attempts to disguise cantonization under the heading of decentralization make it more difficult for politicians who advocate reconciliation and slow down any healing process of local communities, NGOs and the international community.

Sustainability hinges on many other issues. Knowing the Albanian language in the Albanian dominated Kosovo is a necessity for this community to integrate and to be able to make a living. Previously privileged, seemingly few Serbs speak Albanian, although most understand it. Also, previous privileges also make it very hard for Serbs to accept a numerically subordinated role that ensures equal treatment at best. Many Serb intellectuals will privately admit that Serbs continue to hold racist attitudes towards Albanians, which will make them more likely to flee to Serbia if they cease to be the masters in the area.

Some claim that without defining the status of Kosovo, conducting the returns will be a difficult issue. According to an influential journalist, "as long as Albanians fear that any returns of Serbs can bring about the return of the Serbian regime" it will be very difficult to conduct the returns.⁹² Others put the returns under a slightly different context, by claiming that the returns of Serbs to Kosovo can only succeed if they accept the new reality in Kosovo. Other communities have in one way or another agreed to this and made this public except the Serb community.⁹³ This declaration paved the way for a "Platform for Joint Action" by Albanian and RAE leaders. This platform among others rejected the notion of collective guilt, declared steps for better understanding of the needs of Kosovar RAE, committed to a process of returns, took steps to change the perception through the media, committed to develop a special program for RAE children to have access to education, and emancipation through participation.

Serb returnees on the other hand often preferred to remain loyal to Belgrade and to the leadership of northern Kosovo that aspired partition, as opposed to Serbs in the rest of

Kosovo who had more interest in improving relations with the international community and with the Albanians without alienating Belgrade. It is often said that an agreement always needs two willing parties. According to UNMIK, “Inter-ethnic dialogue requires not only the positive engagement of the Kosovo Albanian community, but also a willingness on the part of Kosovo Serb remainees and returnees to engage in positive communication and confidence building measures with Kosovo Albanians through municipal leadership structures and through community counterparts.”⁹⁴ As the willingness to embrace the newly created structures by local Serbs was very low, UNMIK implicitly accepted this dual pacification of both communities, justifying a separate parallel system for the Serb community.

Parallel Institutions

While the parallel system might have been justified at the very early stage as means of preservation, it quickly became clear that in the long run this was going to cause a lot of havoc. Over three years later, although officially illegal for the UNMIK administration, parallel Serbian institutions operate almost in every Serbian enclave within Kosovo, while the northern part has even been illegally attached to the Yugoslav Telecom and to the Serbian energetic system. As a result, communities remain physically sealed against each other with very limited levels of communication.

This short-term “guarantee” implies a perpetual isolation of minorities and a long-term failure. A particular issue that is addressed, within the context of an emerging self-government in Kosovo, is that of continued existence and entrenchment of parallel structures, which are becoming increasingly detrimental to ensuring access to essential services for minorities.⁹⁵ Three years later, combating these institutions would in the long run improve interethnic relations, stimulate integration and create a local Serb elite that would safeguard its own interests better than Belgrade does.

While one might argue that in some cases some parallel structures continue to be inevitable as an interim measure due to insecurity and restrictions of freedom of movement, these structures ultimately provide an unsustainable second-class service for minorities and inhibit important forms of inter-ethnic interaction. It has been found that little progress exists in this issue. As a matter of fact, some aspects in the divided city of northern Mitrovica have been getting worse gradually. Despite commitment and commendable efforts on the part of many dedicated individuals within the relevant JIAS department, the municipal structures and numerous NGOs, the provision of health care services is still largely marked by separate service provision for different ethnic groups.⁹⁶

So far, parallelisms have been most salient in health and education (approved by UNMIK and paid both by UNMIK and often paid double by Belgrade structures) and courts (not approved by UNMIK, but tacitly allowed to operate). As an example of UNMIK trying to deal with already swollen parallel structures and of greater entrenchment is the recent case when UNMIK appointed a new director of the hospital in Gracanica, who was not accepted by the majority of the workers who would receive lower salaries from the consolidated Kosovar budget.⁹⁷ This case also reflected disagreements among various political forces.

Reconstruction and Economic Opportunities

Another major precondition to returns was the reconstruction of destroyed homes and infrastructure, in which many donors have given millions of dollars for. The US, Italy, Germany, Switzerland, European Agency for Reconstruction, Serbia, UNHCR and other agencies have given close to twenty million dollars and more have been pledged. However,

while building houses is necessary, if this approach is to guarantee sustainability, it needs to be coupled with a political process that is nowhere in sight. As it stood in late 2002, most returnees are more likely to sell their property and leave for Serbia once again.

The sale of property presents another issue, the economic viability of returns. Regarding returns, UNMIK has mainly focused on operational issues. While the economic side of returns has not been overlooked, this issue is to some degree beyond their control. While it is understandable that certain communities may profit disproportionately from the economy, the economic viability of the Serb minority is certainly a function of overall Kosovar economy, which has in turn been a failure. Inadequate approaches to property issues, legal framework, inadequate customs policy, lack of a commercial law, inadequate educational system that does not match market demands, an increasing illiteracy rate, organized crime, corruption and nepotism, inadequate approach to socially owned enterprises⁹⁸ have all contributed to overall low economic prospects for Kosovo. Naturally, even the initial boosts of large amounts of money by the tremendous international presence mainly went to the benefit of the majority in the capital and seems not to have been invested in long-term self-generating business, but rather in unsustainable and badly planned investment that went down similarly to the high technology bubble in the United States.

One can also identify a natural flow of population of Serbs from Kosovo since the 1980s. Even before the conflict and despite the fact that a disproportionate share of high paid jobs went to the Serb population, Serbs and especially the youth have had a propensity to migrate to Belgrade from a relatively rural Kosovo. The interior Serbia continues to face a similar trend today. Furthermore, when compared to Serbia, Kosovo offers limited economic prospects even to Albanians. These arguments do not aim to present a bleak picture of what might be expected in this regard, but to present a realistic argument of what the UN administration and an increasingly receptive local government face. Even Serb leaders wonder about the number of Serbs who really want to live in Kosovo, a number, which remains totally unknown (Radosavljevic 2000/28/10). A famous human rights advocate, Adem Demaçi, cites how Bosnjaks who have been very well accepted are increasingly leaving after trying their luck for several years after the war. “We are attempting to return some, while others are leaving after having no economic prospects for three years,” Demaçi claims.⁹⁹

Avoiding this question (how many really want to return?) also brings to the issue of the immeasurability of the success in this regard. Regardless of the number who returned, this issue can be praised as a success or it can be criticized, depending on regional and global friendship constellations.

Property Management

Kosovo has not had a satisfactory property system for as long as anyone can remember. Despite a legacy of problems throughout the century, the situation in Kosovo since 1989 (when the autonomy was stripped), has created a lot of problems.

“The property system began to collapse as of 1989, when the Belgrade regime instituted increasingly discriminatory property laws on the majority Albanian population. As a result, a significant numbers of Albanians lost their occupancy rights to socially owned properties, which were reallocated to Kosovo Serbs or Croatian Serb refugees. As a consequence, most property transactions among the Albanian community during this time were carried out informally (i.e. without legal records) which led to the property and cadastral records, the key to any functioning property system, losing most of their value as accurate documentation.”¹⁰⁰

After the war, deciding on the applicable law regarding property was extremely confusing, and many made the question whether all property transactions after the repeal of the autonomy were to be voided. Moreover, property was sold massively after the war, some of it under duress. Many people who had lost it during the ten years also tried to reclaim what they saw as unjustly taken over by the regime. Also, after the war, there were no institutions to provide for the legality of all property transactions and much property ended up being sold to more than one new owner, which resulted in many disputes.

“Many properties have multiple claimants to ownership, and proving ownership of a property is exceptionally difficult. Given the institutional vacuum and the lack of respect of the rule of law, it is hardly surprising that illegal occupations and constructions are widespread. The problems are further compounded by the wave of voluntary and involuntary returns of Kosovars to the province, since the arrival of UNMIK and KFOR.”¹⁰¹

When UNMIK realized the importance of property management and of good records by the cadastre, it set up the Housing and Property Directorate (HPD) managed by Habitat, often considered one of the major failures of the international mission. Even three years after the war, this issue remains a major obstacle not only to returns of displaced populations, but also to the development of the economy, to an end to many disputes, to foreign investment, and to privatization.

An important problem also became what the international community called “strategic sales” of minority-owned property, which can be defined as the practice whereby the minority owners of property, located in strategically important locations within minority areas, are induced to sell their property, as part of what *appears* to be an organized campaign.¹⁰² One attempt was made to curb this by requiring permission when conducting interethnic transactions of real estate. It was quickly put down as an idea.

Even for the IDPs who had planned to return, the more time passes by, the better they get stabilized in their new settlements, and the less likely they are to return. Skyrocket prices of real estate in downtown Prishtina, boosted by the very high number of foreigners and by a rapidly increasing Prishtina, whose population doubled after the war, served as an extra incentive to sell property. Much of the minority owned property in downtown Prishtina has been sold, most of it over the market price due to the extremely high demand for housing after the war. An apartment in Prishtina was normally sold double the price of a similar one in interior Serbia and usually higher than in Belgrade. Behind housing purchases, one should also look at basic market laws and the extremely limited supply for housing after the war. The trend is also that it is mostly in Albanian neighborhoods or towns that apartments are sold whereas those in the enclaves are not. The reason is that Albanians will not buy property in which they cannot move in right away. There is not much that UNMIK could do in these cases except privately conclude that Serbs with no property will probably not want to return to Kosovo.

Group rights and minority overrepresentation

The international community has also made advances in working along side the local leadership, but often railroading everyone, in creating special rights for minority communities.

Most notable was the creation of a strict proportional electoral system and twenty set-aside seats on top of that, ten for Serbs and ten for other minorities. We could think of no minorities in Europe that are over represented to this degree. Out of 120 seats of the Kosovar

Assembly, the overall Serb representation amounts to be in a strong third political block with 21 seats (11 won, 10 set aside), just five less than the second strongest Albanian block.

Municipal assemblies are also elected in a proportional system, though without any set aside seats. It is expected that Serbs will take over at least three municipalities (all three in the North) and are potentially able to take over two more (Novo Bërdë/Novo Brdo/Artanë and Shtërpcë/Strpce). It is worth mentioning that three out of these five were upgraded into municipalities during the Milosevic regime (Zubin Potok, Novo Bërdë and Strpce) and one after the arrival of the international administration (Zvecan). Although fairly skewed towards the Serb minority, the rules of the game have in general been accepted by all, though the Serb community made two major conditions/demands that have been rejected by UNMIK and by the local administration so far: the creation of a second municipality in Mitrovica and the implementation of a decentralization plan. In response, UNMIK has created a joint UNMIK-Kosovar government Joint group on Decentralization. It has also been decided that no new municipalities were to be formed, although the Constitutional Framework does not specify the overall number of municipalities.

In terms of ethnic political accommodation, the situation is not gloomy at all. Serbs are effectively in the government, not as a coalition partner, but through an agreement that grants one ministerial post to the Serbs and one to other minorities. Effectively, Serbs and other minorities (who take this post by rotation) are represented in the government. Minorities have also had high posts in municipal governments: an Egyptian was vice-president of the Municipal Assembly of Gjakova, a Serb was vice-president of Gjilan, and one Serb of Viti.

Minorities in Kosovo have also seen their concerns and priorities change somewhat over time. While security was never an issue with the Turkish community, it has decreased drastically for the Bosnjak, the Gorani, the Ashkali and the Egyptian communities, but it still remains somewhat of an issue for the Serbs and the Roma. Overall, areas of minority residence are safe, however, freedom of movement remains an issue for some local minorities throughout Kosovo. Although many Serbs drive their own vehicles to Serbia through Prishtina and the rest of Kosovo, there is a doze of fear involved nevertheless, due to objective and perceived risks. Albanians in turn prefer not to travel to enclaves, while traveling to northern Kosovo is out of the question. Local minorities in this context also include Albanians who live in the Serb dominated north of Kosovo, an issue that generally goes underreported.

UNHCR and OSCE report of gradual decrease in crime and violence against all minorities. While the level of interethnic crime grew sharply several months after the war, it has been falling ever since. Overall, there has been a decrease in serious security incidents. What goes unreported in these reports is a general increase in the overall rate of crime. The issue of security has been discussed in greater detail in the previous section of this paper.

One major positive development in this regard was a change of strategy by the NATO's Kosovo Force in guarding enclaves. Changing from an obvious physical military presence to a less intrusive presence with frequent mobile patrolling has proved very productive. With the gradual strengthening of law enforcement authorities (although unsatisfactory at best) the lack of watchtowers and tanks at the entrance of minority villages produces a positive psychological effect both among the external majority population as well as reduces the sense of isolation among the minorities. Aside of several minor incidents, the incidence rate is the same. Mobile patrolling also improves freedom of movement in major transport arteries and assures safer mobility of minorities.

Perhaps one of the most unhelpful decisions of the international community, which by and large was enforced without the previous blessing of the local political elite, was to take the date of 1 January 1998 as decisive for enfranchising residents of Kosovo. Much to the discontent of the Albanian population, this decision enfranchised Serb refugees from Croatia and Bosnia who were temporarily placed in Kosovo by the Milosevic regime, while it disenfranchised hundreds of thousands of Kosovar diasporas of all ethnic backgrounds who had left during the ten year long repression.

According to the population registration in 1991, there were 194,190 Serbs in Kosovo.¹⁰³ On the other hand, UNHCR/OSCE put the number of minorities displaced from Kosovo (in Serbia, Macedonia and Montenegro) at 235,000 (200,000 of them Serbs) while 20,000 are displaced internally within Kosovo.¹⁰⁴ The number of registered voters alone was put at 170,000. There are plenty of controversies related to these figures, which have raised suspicions on possible hidden motivations for various statistics games.

Good practices

There are success stories also in the aftermath of the war in Kosovo. Aside of some cases of returns, we have identified several issues that might shed light on what has worked in the past. The city of Gjilan is an example where Serbs have walked freely throughout the town with full freedom of speech. This is often attributed to (i) a young and energetic mayor and (ii) to a Serb leader who was ready to grab the hand of friendship that was offered to him. The skiing resort managed by local Serbs in Strpce started to be used by Albanians two and half years after the conflict. This is a sign how the motivation of money and the engagement of the international community made this happen. The ownership of this resort is disputable though. Albanians, Serbs and others reportedly have excellent relations in downtown Prishtina at the home for pensioners and the disabled.¹⁰⁵ Most important of all is a change of attitude among the media who now cover good interethnic stories extensively. Some media have contributed to the reconciliation efforts by seeking out good stories of interethnic coexistence and publicizing this widely in positive light. The most successful move was the establishment of “a common license plate”, copied after its success in Bosnia. Despite a moderate success in Kosovo, it never reached the level of Bosnia, as Serbs felt a dose of estrangement towards the newly Kosovar plates. Serbs today use Kosovar plates to travel within Kosovo and replace them with the old plates issued by the Serbian authorities.

Lessons Learned for future missions:

- (a) For any long-lasting solutions to stand the test of time, the international community needs to involve local communities in the decision-making processes; transfer administrative and political competencies early on (increases local ownership and accountability with its constituency);
- (b) Establish transparent structures and better accountability. Staff from hundreds of countries have different interests and ways of working and the absence of a clear hierarchy and accountability gives rise to corruption, political unaccountability, inefficiencies;
- (c) To be mindful of ethnic balances and previous power balances of local ethnic groups and political forces (favoring a minority that used to exercise an apartheid-like regime may remind the majority of previous injustice);
- (d) An administrative structure should always try to stay away from political decisions, despite the inevitability to do so; it should early on establish itself as a legitimate local

body. Maintaining closer contacts with the community will help the international mission understand events better and it will build a healthier relationship with the local constituency;

- (e) Establish a property dispute resolution system and a well functioning cadastre early on. Property is key to settling interethnic disputes.

Policy Recommendations

- (a) **Returns:** Promote the involvement of Kosovar institutions for a sustainable process of returns by giving true authority and responsibility; Depoliticize the returns process; Controversies in numbers enable the politicization of the issue and allow room for egregious declarations from all sides by parties who aim at aggravating the conflict further. As such, the Kosovar public and the government are more likely to feel a sense of ownership towards the process and commit funding from the Kosovar budget designated for returns; Assure conditions for a voluntary and safe returns that brings back the dignity to the returnees with adequate public services and support by the host community;
- (b) **Regional politics:** Pressure Belgrade through the international community not to support parallel institutions; Abolish the parallel system of justice immediately. Gradually work with health and education. The practice where minority judge minority cases should be replaced with close monitoring by the OSCE.¹⁰⁶
- (c) **Interethnic interaction:** Public support for political parties and non-governmental organizations that conduct work in improving interethnic relations; Search for practical steps to increase overall interethnic communication, such as joint marketplaces, or similar; Mixed police patrols in all minority areas.
- (d) **Establish rule of law across Kosovo:** Ordinary citizens in northern Kosovo support the establishment of the rule of law and dare not to confront local organized crime with strong ties to the political elite.
- (e) Start to approach the status issue in informal forums. This is a sensitive issue, however, many other components are held hostage to this question.
- (f) The **need for an exit strategy** of the international civilian mission. The international community should prepare the local communities to co-exist and govern in case of a sharp cut down of budget, staff and competencies of the international mission. This opens a lot of various interpretations ranging from: threat to Albanian institutions that Serbian ones might return, threat to the Serb population, pressure to solve the status. As funds brought by the international mission decrease, the less necessary they are viewed by the locals and the more they will insist on competencies and authority.
- (g) In order to improve the trust among the communities, all stakeholders should consider forming a **Truth and Reconciliation Committee** with representatives of all communities and of the international community; Trying war criminals will also bring a sense of justice among the victims and help them direct their anger towards specific individuals tried for the crimes instead of blaming the community collectively; Pressure Belgrade for a public apology/acknowledgment of suffering.
- (h) **Improve overall economic development:** Invest in rural infrastructure, as this was one of the main legacies of the communist system. This is a precondition to rural development; Create a “solidarity principle” (a fund for underdeveloped regions within

Kosovo) to ensure that any region does not lag behind others drastically, which would benefit to minorities and rural populations alike.

- (i) Support **non-territorial autonomy for all communities** (high degree of group rights) instead of renewed ideason how to carve-up territories within municipalities; Promote special culture ties to mother communities (Serbs with Belgrade, Turks with Ankara as a way to promote language instruction and study their own cultures); Approach the decentralization proposal by the Coordination Center (drafted by Povratak) carefully as it might breed cantonization, or what Albanians fear “a separate Serb geographic entity within Kosovo. Ideas for further decentralization should be supported, though with caution due to limited administrative resources and human capacity. Aside of political implications, Kosovo should seek ways to streamline and cut down in administration and local government and not bureaucratize them further to the point becoming unsustainable;
- (j) Help the Assembly to pass **anti-discriminatory laws** in general; Serbs and other outstanding groups will benefit with an overall positive result in the level of tolerance of the Kosovar society.

THE EUROPEAN UNION'S FIRST MISSION

While the last rounds of pre-accession negotiations are continuing with ten prospective new member states seeking to enter the European Union, Kosovo remains a unique case. Kosovo today is already using the Euro as its official currency, Prishtina is covered in blue and yellow flags to celebrate Europe Day on May 9th and Kosovo's first minister of Finance was a European Commission official. The promise of Kosovo's 'Europeanisation' and integration into the European family is continuously raised as a carrot to push for further reforms at all levels. Omnipresent Europe and its institutions are in Kosovo today, the promise of Europe remains uncomfortably vague however. Unless this ambiguity will change, the Balkans will remain an island of instability in the heart of Europe, exporting migrants and importing peacekeepers.¹⁰⁷

Peacekeepers, consultants and experts of all sorts are an abundant species in Kosovo. On June 10th 1999, the work of the European Union and other international organizations were welcomed by locals to develop a comprehensive approach to the economic development and stabilization of the region affected by the Kosovo crisis.¹⁰⁸ This was the only direct reference in the Security Council Resolution 1244 to the European Union, and it was to become the basis for a serious commitment by the European Union and its member states to rebuild, reconstruct and develop Kosovo and its economy. There were no internal procedures or precedents to fall back upon - Europe had never been 'on a mission' itself - the European Union Pillar (or Pillar IV) as part of the United Nations Mission in Kosovo (UNMIK) had to be invented from scratch.

In August 1999, the EU Pillar was a mere handful of seven commission experts and support staff headed by Jolly Dixon.¹⁰⁹ During the first year of its existence, the EU Pillar was not European in the sense that it was made up of staff from the European Union. Indeed, arguably one of its earliest institution building success stories, the Kosovo Central Fiscal Authority was implemented largely by Americans and Australians paid by USAID. Contractual arrangements varied greatly; staff was paid out of different budgets, staff even in the same department worked according to, at times, different benchmarks. For a few months in 2000, an Australian consultant headed the EU Pillar.

Over the past three years, the EU Pillar has been in constant flux. In order to understand EU Pillar policies, one needs to consider its unique set up and development. Its mandate and responsibilities have changed, resources have changed and its internal structures have also changed on several occasions. In addition, the EU Pillar has seen a rapid turnover of staff. The position of Spokesperson has changed hands four times. In the end, no other international institution in Kosovo has experienced so many dramatic changes between the summer of 1999 and today.

Today, the EU Pillar and the institutions in which its staff plays a leading role are responsible for an astonishing array of assets, people and tasks. The Kosovo Trust Agency¹¹⁰ is responsible for the privatization or liquidation of more than 400 socially owned and publicly owned enterprises and their assets all over Kosovo. The Banking and Payments Authority, Kosovo's revenue authority, customs, all public utilities, the airport and major concerns like the Trepca company are all managed, administered or supervised by the EU Pillar. The EU Pillar has always been the smallest of the four UNMIK pillars, but the only one that has grown continuously in terms of personnel and responsibilities. In 2002, the EU Pillar controls large resources, takes key economic decisions and directly manages key institutions. EU Pillar decisions affect all socially owned enterprises, over 50,000 registered private businesses and almost every single household in Kosovo.

To manage such a wide array of assets and responsibilities effectively requires a strong presence in the field, a good understanding of the Kosovo specific institutional and legal context, familiarity with the legacy of Yugoslav socialism and public institutions, and a system to widely share and manage Kosovo's scarcest resource: reliable information.

The EU Pillar has always had the smallest part of its staff outside Prishtina, having built up a modest field presence only since early 2000.¹¹¹ The EU Pillar's first regional office in Mitrovica was opened in April 2000, with one international and one local staff. The UN regional structure in Mitrovica at that time, without the municipal administrations in the region, employed about thirty internationals. In the summer of 2001, as few as twenty-one staff working for the Department of Trade and Industry were responsible for more than 400 socially owned enterprises in Kosovo. Few of these international experts were familiar with Yugoslav socialism and its peculiarities like workers self-management and socially owned property. The legal and practical meaning of specifically Yugoslav concepts like 'socially owned property' continues to confuse international experts today.

Reviving the ghosts

The evolution of the EU Pillar and its limitations are best captured by the example of its growing authority over the fruits of Kosovo's socialist development - Kosovo's four hundred or more socially owned enterprises (SOEs). Constrained by a severe lack of reliable information about the reality on the ground, hamstrung by its own limited administrative resources and misguided by uninformed staff, the EU Pillar accidentally revived the ghosts of socialist Yugoslavia.

For the first year and a half there was no EU Pillar presence in the field, and the authority to act as administrator or trustee with respect to all enterprises that are industrial or commercial in nature¹¹² was only transferred to the Department of Trade and Industry (DTI) in December 2000.¹¹³ From late 1999 to the end of 2000, UN administrators at the municipal level tried their best to direct the activities of socially owned enterprises on their territory by reinstating socialist-era reporting requirements and institutional controls.

Following the first Kosovo-wide municipal elections, several disputes broke out over the control of these SOEs,¹¹⁴ especially in those enterprises that produced a steady stream of cash flow from renting out parts of their premises or selling off stock. According to the applicable law, it was illegal to rent out socially owned assets and to pocket or re-distribute rent proceeds among the workforce instead of reinvesting them to enhance the company's value. Following a crisis in the metal production company Zahir Pajaziti (previously known as FAN or FAGARA) in Podujevo in February 2001, the EU Pillar tried to resolve conflicts between self-appointed directors, newly elected municipal assemblies and the workforce by reviving the institution of the workers' council as chief executive body of an enterprise, elected by the workers' collective as a whole. The workers in these enterprises were again able to elect and dismiss their own managers and to reallocate profits among themselves.

The system of workers' self-management was at the heart of Yugoslav socialism. It institutionalized workplace 'democracy' within the constraints of a one-party system committed to building a socialist society. At the same time, workers' collectives were made subject to a complex web of legal and institutional constraints. The result was an economic system marked by constant conflict, in which interminable negotiations rivalled production as the principal activity. Within the system enterprises were paralyzed despite sharply deteriorating economic outcomes. In the absence of any real market discipline the communist party was central to resolving conflicts over limited resources.

DTI's decision to re-introduce workers' self-management was based on an ad hoc decision by a few uninformed individuals and it turned out to be a fatal mistake. Enterprises managed by workers councils are per definition opposed to restructuring and downsizing, and naturally resist new investors and new ideas. Holding workers' council elections in about 100 enterprises did not help to assert DTI's¹¹⁵ power as administrator of all socially owned enterprises. In fact, control over some of Kosovo's most valuable assets continues to be decided outside the legal framework in various local disputes. The rule of the local strongman and not the rule of law prevails. In some enterprises workers council elections have been held, in others directors appointed by the post-war UCK government held on to power, in some instances pre-1989 directors returned to their posts; and in six cases DTI assumed direct administration.

The Department of Trade and Industry lacked the most basic information that was needed to formulate a sound policy. Until today, the actual number of socially owned enterprises in Kosovo is unknown, so is the number of employees working in these companies and nobody can tell you how many hectares of land are held by socially owned enterprises. The re-introduction of workers' self-management is a perfect example of how inadequate information eventually leads to inadequate policies. Instead of resolving the problem of corporate governance and management control in socially owned enterprises, it created additional impediments to economic development. The short-term policy to resolve disputes in socially owned enterprises by electing workers' councils based on the 1988 Law on Enterprise had been formulated without understanding Kosovo's complex institutional environment, without attempting to understand the legacy of Yugoslav socialism and without taking into account the limitations of DTI's own authority. As the World Bank repeatedly stressed in its Development Report 2002, much of the important work in building institutions lies in modifying *those that already exist* in order to complement better other institutions and to recognize *what not to build* in a particular context, as much as what to build.¹¹⁶ Even Yugoslav communist reformers had recognized the institution of workers' self-management as the Achilles' heel of the Yugoslav economic system. As John Allcock noted, "taken together, the constitution of 1974 and the Law on Associated Labor contributed as much as any other feature of Yugoslavia's history to its eventual collapse."¹¹⁷ By accident, DTI turned Kosovo into Europe's socialist museum.

The unknown private sector

Limited information also affected other policy areas that fell under the EU Pillar's mandate. The nature and structure of the private sector in Kosovo has been as much a mystery to most international observers, as has the Yugoslav system of workers' self management.

In July 1999, Jolly Dixon proclaimed that "the first key challenge is to enable the private sector to become the major engine of growth."¹¹⁸ Many foreign observers were struck by the speed with which a new private sector emerged in Kosovo after the conflict of 1999. But in many respects it was a return to a private sector of the past, which had roots in pre-socialist times, persisted throughout the Yugoslav era as *mala privreda* (small business) and expanded substantially in the early 1990s, only to stagnate from 1995 onwards.¹¹⁹

Kosovo's private sector is predominantly small-scale and not capital intensive. 58.3% of registered private businesses are engaged in trade and construction activities and 49.9% of registered businesses in September 2002 are one-person enterprises.¹²⁰ In many respects Kosovo's private sector in 2002 is similar to the US economy of the 1830s, with most private businesses centering on the family and small mini-markets selling a limited range of imported

goods in kiosks and corner stores. Most traders are simultaneously their own bankers, transporters, managers and insurers.

Despite the fact that private sector led growth was always considered a top priority, there was no common EU Pillar strategy on how to assist the local business community. The private sector never received the same amount of attention as did the old socialist industries and even fewer resources were allocated to gather information about its nature. In many respects Kosovo's private sector might appear "black" or "grey," but only because little effort was spent by international and local institutions on trying to understand this new private economy.

In late 2000, DTI set up a Private Sector Development Team in each of the five regions and employed seven internationals and four local staff. These teams spent most of their time collecting information about other NGOs or micro credit institutions, but no time was spent on exploring the real economy. The concerns of private traders remained unheard and obstacles to private sector led growth remained unknown to policy makers in Prishtina.

The policies that really affect the lives of Kosovo traders and producers were formulated in the offices of the Kosovo Customs Mission, discussed among tax administration officials and modified by new legislation developed by the Ministry of Labor and Social Welfare. Tax policies, the recognition of Kosovo license plates by other countries, free trade agreements and employment policies taken together created the framework within which private businesses can operate. In Prishtina town, 60% of micro enterprises are currently at the survival level.¹²¹ Any small market fluctuations or the introduction of a new tax policy might force them to end their business activities.

The development of policies aimed at strengthening the private sector is hindered by the limited and uncoordinated efforts to gather basic information about Kosovo's private economy. The whole system of business registrations and the official number of private businesses that applied for a provisional business registration is highly unreliable. According to tax administration officials about 10,000 of the registered 51,000 private businesses have disappeared again or never started any business activity.¹²² Estimates about the level of unemployment in Kosovo range from 30 to 60 percent. The number of people regularly employed by the private sector is equally unknown.

As foreign assistance and international donor money is expected to decline sharply in 2003, and as international organizations continue to cut their staff and budgets, the pressure on the private sector to absorb the unemployed increases. As official employment in Kosovo's socially owned enterprises is also expected to drop as a result of the KTA's privatization and liquidation policy - it is only in the private sector that new jobs will be created and new tax revenues for Kosovo's budget will be generated.

If there is no future policy to address Kosovo's high levels of unemployment and the poor state of infrastructure, the European Union's first mission in Kosovo will fail. As Kosovo would drift further away from Europe, the promise of European integration will gradually lose its appeal and the carrot that now pushes for reform would wither away. The success of the EU Pillar depends on Kosovo's private sector; in other words, the success of the mission will depend on UNMIK's ability to establish clear property rights.

Property is key

Field research in Kosovo clearly shows that what the private sector is lacking is access to serviced land, clear property titles and major improvements in basic infrastructure. In Kosovo and all over the region, new businesses have been forced to 'piggy-back' on the centers of socialist development in order to gain access to infrastructure, while most of the municipality

remains closed to development. There is a marked shortage of suitable premises available for private business, and small shops and businesses run out of space.¹²³

In former Yugoslavia, the central planning of infrastructure development was conducted purely to favor the SOE sector. There was no tradition of investing in infrastructure to develop rural areas, and certainly not to encourage private-sector growth. The poor state of infrastructure is a serious constraint on private-sector development throughout most of the region.¹²⁴

As a result, we can see wild urbanization along Kosovo's main roads - causing uneconomic use of space, raising infrastructure costs and damaging both the ecological and agricultural profile of rural areas. Each day, more agricultural land is converted into construction sites or transformed into another wild industrial zone. The Kosovo Ministry of Agriculture claims that between 15.000-20.000 hectares of agricultural land have disappeared since 1989.¹²⁵

Clarity of property titles would greatly reduce the transaction costs on the land market and free private capital. The prevailing confusion about the future of socially owned and publicly owned property results in real estate prices far exceeding the budgets of average Kosovar businessmen and absorbs valuable investment capital that could otherwise be spent on productive activities.

Most of the old socialist laws regulating property relations are still applicable in Kosovo today. Half of Kosovo's total landmass, or 466,000 hectares of land are publicly owned. This includes land underneath private homes in every town, huge parcels of land in various industrial zones as well as roads and rivers. All land covered by an urban plan within the boundaries of a city is by definition publicly owned. There is no private ownership on publicly owned land; owners of private homes only hold a user right - the right to use the property as long as the house is intact. Until today, all publicly owned land is still subject to the Law on Expropriation, and a competent authority can at any time expropriate the current user. The law foresees only limited compensation for the private "user."

Only land and properties outside an urban plan and thus out of reach of the Law on Land for Construction or the Law on Expropriation, has a clear and full ownership title.¹²⁶ Only land that has not been nationalized, confiscated or allocated to agro-cooperatives remains fully privately owned, encumberable and tradable.

Property is key to economic development. Clear property rights are the basis for social and political stability by making everybody a stakeholder. Clear property rights are closely linked to the rule of law and confusion over property rights is harmful to economic development.

Hernando De Soto convincingly argued that unless property rights are clearly established, property is nothing but a dead asset. In Kosovo, like in other developing countries,

“resources are held in defective forms: houses built on land whose ownership rights are not adequately recorded, unincorporated businesses with undefined liabilities, industries located where financiers and investors cannot see them. Because the rights to these possessions are not adequately documented, these assets cannot readily be turned into capital, cannot be traded outside of narrow local circles where people know and trust each other and cannot be used as collateral for a loan or a share against an investment.”¹²⁷

Kosovo's housing stock has an estimated value of around € 2 billion, but most property in Kosovo is a dead asset: It cannot be used to raise capital and it cannot be mortgaged.¹²⁸ Vast areas of prime commercial real estate are locked in dysfunctional socially owned enterprises;

vast areas of publicly owned land in Kosovo's towns are not freely tradable and encumberable. A new law on mortgages exists only in draft form. The private sector is starved of space and investment capital. The Special Representative of the Secretary General Michael Steiner even raised the issue in his inauguration speech delivered on 19 February 2002: "Property reform and privatization will have to be tackled. Every house, every shop and every inch of land should have a clear owner. Valuable assets should be developed. Otherwise, they just remain dead capital."¹²⁹

Property creation is peacekeeping

It is UNMIK's basic goal to create a viable economy under the rule of law. This entails replacing the old system with a functioning property regime. The failure to do so carries significant economic and social costs.

Without clear property titles there will be no investment in Kosovo. Without tradable and encumberable property titles, the private sector will be starved off fresh capital. Without a government capable of enforcing property rights, shopkeepers and small businessmen across Kosovo have to resort to private security companies to protect their interests. The absence of clear, enforceable property titles creates a market for private protection agencies, substituting for the weak state. This undermines all international efforts to establish the rule of law and a safe and secure environment.

Property creation is a political problem par excellence. Resolving the status of social ownership in Kosovo is not just a preserve for lawyers and economists. No genuine social change can be brought about without identifying and working with constituencies and local interests with a stake in such reforms. Who are these local constituencies in Kosovo?

A study on the Bosnian municipality of Kalesija showed clearly that given the right conditions, the new private sector can be the main engine of growth. In Kalesija, the private sector expanded from 5 to 42 percent of total official employment within a few years.¹³⁰ The private sectors is the key beneficiary of any property reform and private businesses will profit most from successful privatizations and liquidations that would free the assets of socially owned enterprises for private investment.

Besides the private sector, municipalities would also benefit directly from clarity regarding municipal, socially owned and publicly owned property. Whereas before municipalities were able to allocate publicly owned construction land for commercial zones or social housing, today the newly established Kosovo Trust Agency¹³¹ as trustee of all publicly-owned and socially-owned enterprises and related assets, is in control of large parts of municipal property. Many of the prime real estate assets are now in the hands of the KTA and the KTA is burdened with a huge social and political responsibility to develop, sell, allocate and designate such parcels of land.

Today, municipalities are left with the legacy of bad socialist planning and social ownership, but they are stripped of the means to tackle the problems. Most municipalities are still operating on the basis of urban and zoning plans that have been developed for the needs of socialist planning dating back to the mid-80s. Socialist Yugoslav town planning focused on large industries and not on the needs of the private sector.

Kosovo's private sector urgently needs a functioning property regime in order to develop and to provide new jobs for future generations. What is needed is a policy that addresses simultaneously two issues: create secure and clear property title and address the problem of Kosovo's poor infrastructure.

From reconstruction to development

Kosovo has experienced an impressive and unprecedented flow of international reconstruction aid. More than 500 kilometers of roads have been repaired, water systems have been rehabilitated and more than twenty thousand houses have been rebuilt. However, not a single new kilometer of road has been paved and sixty percent of Kosovo's population still lives in villages without any paved roads. Many of these village dirt roads become inaccessible on rainy days. In Kline municipality, only 19% of inhabitants are connected to the local water system. In Viti/Vitina municipality garbage collection is limited to Vitina town; there is no waste disposal system for the remaining 42 villages.

In the absence of the state most local infrastructure in villages around Kosovo has been privately financed. Villagers themselves organize the collection of funds within the village and among the Diaspora community, call for tender offers and contribute their own labor to pave a road, install a sewerage system or build a youth center. In Stubble, the village committee has collected funds for 3 kilometers of asphalt, a youth center and a local ambulance. In Sllatina e Epërme, € 130.000 have been raised by the village religious leader for the construction of a sewerage system.

Rural areas in Kosovo traditionally missed out on the benefits of Yugoslav development. Socialist planners deliberately ignored the needs of the private sector and forgot about the countryside. The economic incentives to pursue more than subsistence agriculture are so low that a high proportion of agricultural land in Kosovo has been abandoned altogether or sold dearly to the new private sector. The agricultural sector cannot absorb the unemployed, and unless the patterns of development become more even between towns, industrial zones and rural areas, Kosovo will continue to experience labor migration to towns and export its labor force to Europe.¹³²

Managing ignorance

What distinguishes effective development strategies from pure reconstruction is that they focus on developing local institutions and capacities. Only by understanding the strengths and weaknesses of existing structures is it possible to accomplish the lasting institutional change, which is a precondition for sustained economic development.¹³³

Identifying your own information deficits has to be priority number one for every international organization aiming to reform an inherited institution or economic system. A sound and realistic reform agenda has to be based on accurate information about the reality on the ground. An economic strategy has to take stock of the status quo in the country, region or sector concerned. International organizations generally invest a lot in their human capital, their IT equipment and public relations. Too little time and resources are however spent on gathering basic information in the field, analyzing the available data, sharing these data with other agencies, seeking out local expertise and retaining institutional memory.

The success of the European Union's first mission will depend on its ability to learn how to collect information and manage ignorance better. A better-informed policy debate could have prevented the misguided policy of reconstituting workers' self-management in socially owned enterprises. Donor resources could have been allocated more efficiently to improve rural infrastructure and access to serviced land based on more accurate information about the needs of the private sector. Property reform should have been on the agenda for the last three years.

The real challenge of international institutions working in an unfamiliar and ever-changing environment like Kosovo, is to acknowledge ignorance and to manage it in the most effective way. The ad hoc nature and temptation of international missions to engage in continuous short-term fire fighting, clearly works against time-consuming efforts to gather and collect the necessary information for an informed policy debate. However, the long-term costs of a policy that failed as a result of ignorance outweigh the short-term benefits of quick solutions.

The future of Kosovo depends on a strong private sector. None of the new provisional institutions of government, the education system or the healthcare system can function without a strong private sector. It is only in the private economy, where the tax base of this country is generated. In 2001, the private sector alone generated € 24 million in taxes.

For the EU Pillar to successfully contribute to the economic development and stabilization of the region, as foreseen in Security Council Resolution 1244, more time and resources need to be allocated to the triple challenge of gathering information, consulting with key stakeholders and understanding the reality on the ground.¹³⁴

The main lesson from the EU Pillar's short-lived attempt to develop Kosovo's private sector has to be that, in future missions, international experts have to switch off their computers and go out into the streets to discover the real economy. Private sector development is about identifying the real constraints on private-sector development. The private sector of any country is not something esoteric or abstract, it is about traders, producers, consumers, electricity providers, tax officials and infrastructure planners.

REHABILITATION IN MITROVICA

Mitrovica, and its future status remains one of the most intractable problems in Europe, complementing the tremendous obstacles facing Kosovo as a whole. The situation, therefore, deserves individual attention due to the severity of its obstacles, particularly in the areas of security and the rule of law, administration and governance, as well as interethnic relations. This section addresses how approaches taken in other parts of Kosovo were not applied to Mitrovica and analyze what this neglect means for the stability of the area. Opting for such stability requires the application of sustainable solutions to deep-rooted problems; these solutions must be sought out through research and then implemented by all stakeholders involved, including UNMIK, KFOR, the Kosovo government, the local administration and Belgrade.

Mitrovica is located in the north of Kosovo, having an estimated pre-war population of about 300,000 of which about 43,000 were Serbs.¹³⁵ The Ibar River runs across the high plains of Kosovo and passes under the five bridges of Mitrovica which in better times were used by Kosovo's population to cross the river. The traditional function of the bridges was significantly different after the war, serving as the center piece for a peculiar surrounding consisting of international peacekeepers standing guard at armed checkpoints with tanks and stumbles of razor wire deployed to prevent people from using the bridge as they once did. During the conflict, the Kosovo Albanian majority residences suffered heavy damage, with an estimated 65% of homes looted and destroyed, while the predominately Serb neighborhoods were barely touched.¹³⁶ Cynicism towards reaching a political solution that is satisfying to both communities, in an area where the "outsider has been reduced to hatred and revenge and a river with a divide both narrow and vast," prevails.¹³⁷

Even with the presence of foreign troops, there have been strict rules limiting movement in between zones.¹³⁸ The city has subsequently accommodated three administrative structures, -- Kosovo Albanian, Kosovo Serb and the UN civil administration. The northern area of the town now contains about 12,000 Kosovo Serbs, 3,000 Kosovo Albanians, 600 Turks, 500 Roma, as well as some 5,000 Internally Displaced Persons (IDP's) from the north.¹³⁹ On the other hand, the South contains close to 50,000 Kosovo Albanians, with 300 Serb families who had been residing there before the war.¹⁴⁰

In recent weeks, the UN's SRSG, Michael Steiner, has declared UNMIK authority in northern Mitrovica, reporting on the official closing of all Serbian Belgrade-funded parallel institutions that took root subsequent to the war. On 2 October 2002, Steiner announced his seven-point plan for Mitrovica, emphasizing that the people of Kosovo must decide if they long for "stagnation or change." He argued that leaving things as they are would contribute to "lawlessness, insecurity, fear and political marginalisation."¹⁴¹

The Albanians and Serbs immediately responded to the plan, mostly with skepticism; Mitrovica Serbs were against "the manner" in which the plan was formulated, while Albanian inhabitants were pessimistic, not because of the content of the plan, but because of "the failure of previous plans" announced by UNMIK.¹⁴² In other words, Steiner's plan incited concern within the Albanian community, mainly because the international community "hasn't been efficient thus far, in penetrating northern Mitrovica with its administration."¹⁴³ On the other hand, the Serbs see the plan as more of an ultimatum as the Serbian representatives argue that they were not consulted with the details of the plan prior to the declaration.¹⁴⁴

Notwithstanding the fact that the UN has finally claimed its mandated authority over the city, Kosovar inhabitants question the determination and willingness of the international community in moving towards the achievement of expressed goals. This requires a

determined approach on UNMIK's part, in putting formal ideas into meaningful action; this will be a gradual process but it must be a visibly successful one. This process started on November 25, 2002, as UNMIK declared its authority on Mitrovica in order to bring "normalcy to the city."¹⁴⁵

Security

One of the areas that requires improvement is security. Authority needs to be reintroduced in the North of Mitrovica in order to create a safe and secure environment that will stimulate the return of refugees and the freedom of movement. The reasons for the present situation stems from organized efforts to maintain ethnic separation after the war by forces loyal to the then Serbian leader, Milosevic. Serb agents set up illegal checkpoints, restricting movement between the two sides. This group of Kosovo Serbs -- the "Group from the Bridge -- was "able to mobilize hundreds of people within minutes to prevent any attempts by Kosovo Albanians from moving into the North of the town."¹⁴⁶

The Group's main preoccupation continues to be its opposition to the return of Kosovo Albanians to the North; the group has argued that a return policy would result in an expulsion of all Serbs from the North and eventually the whole region.¹⁴⁷ ICG argues that "if the Serb hardliners can demonstrate that KFOR and UNMIK are incapable of creating a secure environment for non-Albanians and functioning institutions in strife-ridden areas, then Belgrade can push its case more forcefully."¹⁴⁸

The group has engaged in several criminal acts north of the city, including the intimidation of members of the local Serb population who have cooperated with UNMIK.¹⁴⁹ Compounding the problem is the fact that there has been little effort on the part of KFOR and UNMIK to "crack down" on the group.¹⁵⁰ This dilemma requires the arrest of radical criminals who are pushing for the partitioning of Mitrovica and who may stand in the way of functioning multi-ethnic institutions. Such measures are necessary in order to build a sense of security in people who want to return home. A similar dilemma existed in East Timor, where angry militias were not ready to admit defeat, causing troops to spread to the border region to block their attempts to sabotage the UN efforts there. Jonathon Steel deemed the efforts to counter Indonesia efforts to disrupt UN efforts as "vital in capturing former militia members who attempted to go back to their villages as returning refugees."¹⁵¹

Steiner has argued that UNMIK and KFOR have taken a more robust and active approach towards the so-called "bridgewatchers" that has helped to decrease the level of violence in the North.¹⁵² However, as stated in the security section of this assessment, UNMIK claims that only KFOR can act and conduct military operations by force. At the same time, UNMIK police has no power to act in the North due to the non-consent of the Serbian population, another challenge in building a multi-ethnic police force.¹⁵³

An incident that occurred on 8 April 2002 reinforces the obstacles that remain in the area of security and safety, regardless of the fact that violence has abated since 1999.¹⁵⁴ Violence erupted after UNMIK attempted to arrest a known "bridgewatcher" for inciting riots in February 2002; the individual was also accused of other crimes committed prior to the incident.¹⁵⁵ Consequently, he resisted arrest, which provoked a riot and ignited the crowd to throw grenades at the police, injuring a total of 26 UNMIK officers and some Serb civilians. UNMIK, KFOR and the Serbs responded to the incident in different ways; however, little was done to address the severity of the incident.¹⁵⁶

SRSG Michael Steiner's response consisted of a mere condemnation, with no official statement; KFOR command claimed that they were "not informed of the action, which meant

there was no KFOR intervention, although they “did safeguard their existing checkpoints and called for reinforcements.”¹⁵⁷ UNMIK police, on the other hand, discerned the incident as “routine” and described their effort to enforce the rule of law as consistent. Notwithstanding these claims, “UNMIK administration and KFOR officials privately claim that the attack was attributed partly to a poorly led police action and a breakdown of coordination between the police and KFOR.”¹⁵⁸

The roots of failure can be traced to the beginning of the NATO mission with insufficient measures taken by KFOR in providing security in the city; failing to insist on an undivided city. A similar strategy was adopted in Bosnia in a “belief that this was the best way to maintain security.”¹⁵⁹ Perhaps for the short term, but reversing the strategy has proven more difficult.

These security issues tie directly into the concerns of inhabitants who desire to return to their former homes, to obtain access to jobs and better services. If UNMIK continues with its administration without addressing these issues, multi-ethnic cooperation will not be possible, especially if more determined security measures are not undertaken in order to prevent groups from harming one another. As UN administrator for Mitrovica, John Rodgers pointed out, things such as freedom of movement will not come over night but the important thing is putting together the basic structures that are needed. This includes adequate security to be provided by UNMIK and KPS with the assistance of KFOR when necessary. Without security and the rule of law, taking advantage of freedom of movement and access to institutions will not be feasible, even in the long future.

The first two points of Steiner’s plan for Mitrovica tie directly into these security issues; the first point states that UNMIK police and KFOR should keep close watch of the bridge, while the second point states that the Serbs will move forward in being integrated into KPS as full time police officers.¹⁶⁰ The former has been the case until now, but criminals still reside at the bridge and continue to interfere with law and order with little measures taken to arrest them; therefore, more aggressive action needs to be taken in this respect. Similarly, for a multi-ethnic force to function in harmony, the force must fully accept that it has been integrated in the Kosovo Police Force, breaking ties with Belgrade and working together with other ethnic groups. They must also push for the arrest of known criminals in the north as they do for any other criminal in Kosovo.

In East Timor, the UN peacekeeping mission has been successful in its primary goals of the mission, which included protecting East Timorize from reprisals by the militias and “providing an environment for most refugees, one-third of the population, to come home.”¹⁶¹ This happened because peacekeepers continued to guard East Timor’s borders from infiltrating trouble-makers. Such an approach is essential for Kosovo over the next couple of years. Along these lines, it is important that peacekeeping missions are generously and quickly funded from the start. As seen in Srebrenica, lack of adequate troop strength to provide a “safe haven” intensified the problem. If security is not exercised adequately and properly, the goal of refugee return will not be possible.

At the same time, judicial institutions and tribunals are central to the future success of a democratic Kosovo. UNMIK must demonstrate its determination in asserting its authority in North Mitrovica in order to stimulate the improvement of rule of law and functioning judicial systems. Secretary General Annan declared that sustained “support for the missions’ fight against crimes, through criminal investigation leading to arrests and capacity building of the local police and the judiciary, will lead Kosovo towards normalization.”¹⁶² These gestures must be backed with action.

Sustainability is especially vital in the area of security in Mitrovica. The significance of sustainability is also illustrated in the case of Cambodia where the United Nations attempted to establish a strong state and to protect human rights in the country.¹⁶³ Democracy was to be the basis of these efforts. This process failed because the efforts were not sustained. While constructive intervention was to be part of peacebuilding, in the view of local people and elites, such intervention was not “moving in the right direction,” mainly because some sectors felt threatened by the process.

Mitrovica remains a challenge to the implementation of the Security Council mandates on Kosovo, with the mission seeking to stabilize the situation on the ground by continuing dialogue with the Federal Republic of Yugoslavia. The Albanian relationship with the French peacekeepers remains ambivalent with many Albanians claiming the troops lack objectivity in their mission and do little to tackle different criminal activity by violent and aggressive groups.¹⁶⁴ At the same time, the Serbs will not let anyone cross the bridge without interrogation, “deciding who may enter and threatening others.” The results of UNMIK’s recent action remain to be seen, but what is clear is that there will be diminutive if meaningful enforcement of its mandate in the North is not taken.

Administration

UN Administrator for Mitrovica, John Rodgers, explained that in terms of administration, the most important factor is making sure proper services are provided to all persons throughout the municipality. However, he argues that what remains to be managed is the “right to accept and receive these services.”¹⁶⁵ Rodgers is optimistic in Steiner’s plan for Mitrovica in bringing order to the city, although he emphasized that such a process requires time and continuous cooperation; he is not alone in this optimism. Among other issues is the issue of employment within UNMIK institutions with seventy job vacancies recently being announced.

The UNMIK administration has explained the procedure for hiring new employees as being based on a potential candidates credentials; they must be “skilled and competent people, making sure that jobs that are done, are done properly.”¹⁶⁶ He stressed the importance of hiring people who can complete jobs efficiently and effectively, and in a professional manner. However one concern is related to the likelihood of creating a multi-ethnic work force.

If this issue is not addressed, the working environment may consist of UNMIK working with the Serbs alone in the north, stimulating the development of a separate municipality, and embarking in such a set-up that will stimulate a dangerous precedent-partitioning of the city. UNMIK was unable to establish authority in the North, which meant they were unable to maintain a multiethnic hospital, court structure, and other public services; institutions such as education and health report to respective ministries in Belgrade.¹⁶⁷ This has driven frustration in the Albanians who have been denied access to these institutions; thus, lack of employment in the South further aggravates the feeling of alienation of the ethnic Albanians.

The main concerns of the Albanians in the South is returning to their property, and making use of facilities, such as health and education insitutions; but more importantly, they are seeking improvement in their economic well-being. Most see UNMIK’s plan as neglecting to address this issue of employment, moving backward in improving the economic standings of many unemployed Albanians now residing in the South.¹⁶⁸ While building common institutions is important, the international community must not neglect the issue of economic development. In East Timor, many of the problems arose from inadequacies in the UNTAET’s

internal management, insufficient training to Timorese and a tendency to highlight institution building too far above social and economic development. These operations and the insensitive behavior of many of its staff prompted justifiable complaints from local people.

Points five and six of Steiner's plan for Mitrovica include improving the economic standings of Mitrovica, as well as providing investment. At the same time, Steiner argues that without legitimate institutions, the implementation of such investment will not be feasible; however, the international community should more strongly promote such an issue since this investment could directly contribute to the making of stable institutions and their sustainability, as well as people's economic standings. UNMIK must take into consideration all aspects of the problem if lasting change is to eventuate; it is clear that if economic support is not sustained in the area, the situation will not progress. This consideration is especially necessary, since the Serbs lack the economic capacity to support Serb refugee return while "the international community lacks political will and resources, and facing a draw down in funding, will probably not be able to invest substantially either in refugee returns or economic growth."¹⁶⁹

Ramadan Kelmendi, LDK representative in Mitrovica claims that UNMIK has illusions in regards to the problems involved, explaining UNMIK's actions as steps that should have been attempted three years ago. He claimed that there are 23,000 apartments and houses that need to be returned to, including their renovations, access to health and faculties, employment, authority and competence.¹⁷⁰ Prime Minister, Bajram Rexhepi explains that things will happen gradually in moving from the zero level of activity, but that stakeholders need to be realistic, especially in respect to the disposal of parallel institutions. At the same time, the return of refugees will be a slow process that must be countered not only by the international community and governments but also by the citizens who need to be ready to do their part.¹⁷¹

Institutions need to be mixed in their ethnicity with expertise, not party affiliation being the basis for the hiring and selection within these institutions. Point three of Steiner's plan focuses on decisions that are jointly to be made at the municipal level under UNMIK auspices, guarding against outvoting the majority coalition agreement between the Serb and Albanian political parties in the Municipal Assembly. The agreement would assume that, irrespective of their size, the communities have a say at the municipal level. However, Steiner concludes that in order to move forward, political participation in the municipality is necessary, and that without legitimate institutions, there can be no descent and no investment.

The Local Serbs and Belgrade

On 14 November 1999 The New York Times reported that Slobodan Milosevic was assisting the organization of security and ordinary life in the northern part of the Mitrovica and in northern Kosovo itself.¹⁷² Most Westerners argued that Belgrade was using the North, which it supplies with money and goods, to try to destabilize Kosovo or to prevent its "normalization" in the aftermath of Milosevic's bloody campaign against Albanians. It seems that such a strategy is still in place, three years later. It was Milosevic's aim to attempt to at least keep part of Kosovo within Serbia and under the influence of Belgrade, which feels that Western governments have flouted Serbian sovereignty over the region with the fear that Kosovo will eventually desire real independence.

Much of the culpability for the difficulties in Mitrovica is attributed to hard-line elements among the Serbs in both Belgrade and Mitrovica who have been "unwilling to submit to UNMIK rule, or to accept integration of the northern part of the city into Kosovo society and

political institutions.”¹⁷³ At the same time, Belgrade is viewed as “a crucial factor in determining the political behavior of Kosovo’s remaining Serbs.”¹⁷⁴

ICG describes the reasons for this as “partly political, partly ethnic and partly criminal” and emphasizes that UNMIK and KFOR must understand these “interlocked motivations” to deal successfully with Mitrovica. At the same time, Belgrade has been using scarce resources to support parallel institutions with lack of transparency in terms of the budget that has concealed the distribution of these funds. Belgrade has funded Kosovo with at least 50 million during the first months of 2001 and as many as 29,800 people in Kosovo were on the payroll of Serbia in 2001.

While UNMIK’s resolve in the area has been weak, they did open a community office in northern Mitrovica in early 2002. However, even though such an office exists, “Belgrade uses every available means to maintain its grip on the North with the intention of partitioning the province,” as opposed to promoting strategies to unite Mitrovica.¹⁷⁵ Local Serbs claim that the international community has not provided sufficient protection against violent attacks, leading to distrust; therefore, they turned to Belgrade for civil authority. In the past, Serbia has paid the salaries of northern Mitrovica civil servants even though elsewhere the UN has been in charge. Nebojsa Covic, Serbia’s Vice Premier and the Minister responsible for Kosovo, “salutes” Steiner’s plan, but he also challenges it, since Serbian representatives were not involved in its formulation.

The Kosovo government expresses Belgrade’s intention to once again sabotage the international community and the SRSG’s efforts for normalizing the situation and unifying Mitrovica.¹⁷⁶ Although it is too soon to analyze the progress that has been made since UNMIK declared its authority in northern Mitrovica, some have claimed that the documentation of 120 workers of parallel institutions have been moved to residential buildings near the hospital, with UNMIK being aware that these illegal structures exist. UNMIK denied these accusations, claiming that parallel institutions will no longer exist, and that the documentation will remain enact due to the benefit of the Serbs in this respect.¹⁷⁷

However, they stated that they would deal with the location of such documentation after buildings are renovated; UNMIK should not delay addressing this issue. UNMIK must consider the distrust that has been expressed towards them and the support that the Serbs have received from Belgrade, leaving the impression that “the Serbs lack an equivalent incentive to cooperate in its arrangement,” even if UNMIK has now made clear its priority in extending the rule of law throughout Kosovo.¹⁷⁸ Albanians and Serbs have little confidence in the Albanian-controlled municipality treating them with equitably or providing them with services.

The Serbs in northern Mitrovica are far from satisfied to losing the whole of Kosovo to the Albanians, claiming that if Kosovo became fully independent from Yugoslavia, they would seek to secede from Kosovo. In this regards, some Western officials make a case for the partitioning of Kosovo, giving the Serbs the north of the region and the Albanians the remaining parts. This is a dangerous scenario, which is not democratically feasible; hence constructing such a division would set a dangerous precedent.

The first obstacle to any easy partition plan around Mitrovica is ringed with mines, providing gold, zinc, and other precious metals. These mines conquered by Hitler in WWII and vital to the Yugoslav economy during the Cold War, have taken on extreme mystical importance to the locals.¹⁷⁹ From the beginning, Steiner stressed that “business and investment would not flow into the gray zone of illegal parallel structures.”¹⁸⁰ Overall, Kosovo’s economy as a whole is still far from being self-sustainable with a framework of privatization being created.

At the same time, privatization must be carried out in a transparent manner to enable the international community to follow development.

The Kosovo Albanians

The economic challenges are more visible to decision makers away from Kosovo, while cultural and political issues are more clear to decision makers within Kosovo with rapid communication not solving the challenge of developing a common perspective from a distance.¹⁸¹ For the Albanians, “the need to construct some form of self-sufficient economy and alleviate unemployment made ownership and control of Trepca an economic necessity.”¹⁸²

This includes the existence of foreign investment. In this respect, the Serbs have attempted to “separate some of the processing capacity from less profitable raw material production and “strengthen ties to the rest of Serbia, reopening mutually beneficial trade links and providing some economic security.”¹⁸³ The fate of Trepca along with its resources divided between majority Albanian and majority Serb areas will continue to be an important issue for Kosovo.

The Kosovo government calls for freedom of movement, a disbanding of the “bridgewatchers,” return to institutions such as health and education, and return to property. More pessimism on the Kosovo Albanian part deals with the spreading of rumors, regarding the signing of an agreement between Covic and UNMIK. This has caused fear within the Albanians that UNMIK has agreed to the creation of a new municipality in northern Mitrovica. This is something that would be unacceptable to the ethnic Albanians; if this occurred, violence would result.

The lessons learned by the following analysis include:

- (a) UNMIK has not been efficient in effecting northern Mitrovica with its administration leading to diminutive progress in the area. Action to eliminate parallel institutions and to formulate and administer lawful structures, generally recognized throughout the territory of the municipality, has only recently been declared.
- (b) Although violence has decreased, obstacles remain in the area of security and the rule of law, especially in arresting criminals responsible for violence; lack of coordination between UNMIK and KFOR has contributed to the problem.
- (c) Belgrade has continually supported the parallel structures in northern Mitrovica, including radical elements, unwilling to submit to UNMIK rule or to accept the integration of northern Mitrovica.
- (d) The rule of law has not been extended to northern Mitrovica, denying freedom of movement, return of refugees and access to health and education institutions and employment.
- (e) UNMIK has not been transparent in the actions it has taken to establish authority in northern Mitrovica.

The following areas must be sustained if meaningful change is to transpire, including refugee return, access to institutions and investment. Cooperation between all actors must progress in implementing an effective and multi-ethnic administration. Efficient and democratic leadership is a significant factor in striving for change.

Recommendations:

- (a) To UNMIK: Stand firm in establishing authority in Northern Mitrovica by putting formal expressions into meaningful action. This includes practicing sustainability in formulating and administering structures generally recognized throughout the territory of the municipality; confirming the elimination of parallel structures; and opting for a multi-ethnic working environment by treating both ends of Mitrovica as one municipality
- (b) Practice transparency in informing the public on the steps that are taken in attempting to establish efficient and democratic governance in Northern Mitrovica.
- (c) UNMIK police: Take more aggressive measures in arresting criminals, where there is sufficient evidence at hand, as well as cracking down on parallel institutions that continue to exist and promoting the rule of law. This entails continual cooperation with KFOR, who need to support the process and provide security and adequate border control.
- (d) To Belgrade: commit to the authority of UNMIK and cease funding of parallel institutions.
- (e) Kosovo Albanians and Serbs: accept the integrity of the Mitrovica municipality and the return of all refugees.

CONCLUSION

As the international community is faced with potentially another disastrous post war situation in Iraq, lessons learned from what has transpired in Kosovo over the last three years becomes of paramount importance. The international community's allergic behavior towards criticism of its activities in Kosovo reflect a general reactive sensibility that is not conducive to improving the operational capacities of the many agencies bound to be involved in post conflict Iraq. As the above has suggested in detail, there are a number of factors that need to be addressed when taking on the responsibility of rebuilding a society, which has faced decades of social and economic marginality as well as political and cultural repression.

In failing to adapt a more flexible and at the same time, ethnically consistent approach to the administration of Kosovo, the noted failures have intensified the factors that initiated the conflicts of the late twentieth century in the Balkans, rather than dilute them. Failing to adopt an appreciation for the fundamental dynamism of human communities along with the ever-changing needs of these communities has left Kosovo's inhabitants often at a loss as to where their future will take them. Tragically, the momentary sense of security they may have felt in the summer of 1999 has vanished. The subsequent intensification of collective fear and a growing sense that what has transpired over the last three years does not warrant the explicit support of Kosovo's population should serve as a warning when practitioners of future projects enter into potentially far more hostile environments. Iraq, much like Kosovo, is a complex and ethnically diverse entity that will not be easily "reformed;" assumed sensibilities will always turn out more complicated than initially assumed.

The appropriation of state and society building roles by the international community has exhibited the most fundamental flaws of the developed world in respect to its relationship to the other societies. The events on September 11, 2001 should be a warning that institutional neglect and the arrogance and patronizing attitudes of the post industrial world will not translate into effective governance. Unless future stake-holders in the resuscitation of Iraq or other future missions indulge in long-term and thorough research into the dynamics and collective as well as individual needs of the subject population, Kosovo's lessons will not have been learned and the stability of other regions of the world will be permanently under threat as is currently the case in the Balkans. The above contribution has illuminated a parochialism in the administration of post conflict societies that if allowed to persist, will enable anti-democratic forces around the world to continuously threaten the humanitarian interests of the people most in need.

Abbreviations and Language clarifications

CFK Constitutional Framework of Kosovo

CIVPOL UNMIK Police

COMKFOR Commander KFOR

DTI Department of Trade and Industry

EU European Union

EUMIK European Union Mission in Kosovo

FRY Federal Republic of Yugoslavia

FYROM Former Yugoslav Republic of Macedonia

ICG International Crisis Group

IDP internally displaced persons

JCR Joint Committee on Returns

JIAS Joint Interim Administrative Structures (joint UNMIK/Kosovar structures serving as interim ministerial functions)

KFOR Kosovo Force (NATO)

KLA Ushtria Çlirimtare e Kosovës (Kosovo Liberation Army)

KTA Kosovo Trust Agency

OSCE Organization for Security and Cooperation in Europe

OSRSG Office of the Special Representative of the Secretary-General

HPD Housing and Property Directorate

HPCC Housing and Property Claims Commission

IC International Community

LCO Local Community Officer

LWG Local Working Groups on Return

KPS Kosovo Police Service

KPSS Kosovo Police Service School

LDK Mr. Rugova's Party

Minority is used to describe a numerically inferior community and does not necessarily bear political and legal implications. It is often used for *local minorities*, members of the majority situation within a minority dominated geographic area.

MSA Mission Subsistence Allowance

PISG Provisional Institutions of Self-Government

"*RAE communities*" is used to denote Roma-Ashkali-Egyptian communities under one heading as they share most problems.

RWG Regional Working Groups on Return

SC/JCR Steering Committee of the Joint Committee on Returns

SRSRSG Special Representative of the Secretary-General of the UN

UCK (KLA) Ushtria Çlirimtare e Kosovës (Kosovo Liberation Army)

UNHCR United Nations High Commissioner for Refugees

UNMIK United Nations Interim Administration Mission in Kosovo

UNSC United Nations Security Council

Names of towns/villages are quoted according to OSCE's custom. New names, after the war, are occasionally used if the Editorial Board deems that this version has entered into widespread use.

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Endnotes:

¹ Henceforth “the resolution”.

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³ Stedman, Stephen “Spoiler Problems in Peace Processes,” *International Security* 22, no. 2 (Fall 1997): 5-53.

⁴ Caplan 76.

⁵ Caplan 51-52

⁶ Caplan 51.

⁷ Darby, John “The Effects of Violence on Peace Processes,” Washington D.C.: United States Institute of Peace 2001, p: 8.

⁸ Caplan 57-58.

⁹ Caplan 49.

¹⁰ Caplan 66.

¹¹ UNSC Resolution S/RES/1244 (1999) of 10 June 1999, in: M. Bothe/ Th. Dorschel: *UN Peacekeeping – A Documentary Introduction*, The Hague/ London/ Boston, p. 249.

¹² The Independent International Commission on Kosovo (2002 August 15) *The Kosovo Report*, Oxford: 2000, 67.

¹³ S/1999/649 of 7 June 1999 [The so-called “Chernomyrdin-Ahtisaari-Document”] to be found at <http://un.org/peace/kosovo/s1999649.pdf>

¹⁴ It is a disputed matter whether UNMIK is based directly on Chapter VII of the UN-Charter or has its legal basis in the agreement of the Yugoslav Government. See Perrit H.H. and J.M. Scheib (2000, May 8). “Rebuilding Kosovo - UNMIK as a Trustee Occupant, Paper delivered at the Southeastern European Business Conference” in *Matheson M.J.* “United Nations Governance of Post-Conflict Societies” *The American Journal of International Law* 93, 857.

¹⁵ UNMIK Regulation No. 1999/1 of 25 July 1999, 1.1.

¹⁶ UNMIK REG1999/1, 4.

¹⁷ UNMIK REG 1999/1, 3.

¹⁸ UNMIK Regulation No. 1999/24 of 12 December 1999, 1.1.

¹⁹ Report of the Secretary-General 1999, S/1999/1250, Par. 55.

²⁰ UNMIK REG 1999/24, 1.1.

²¹ UNMIK REG 1999/24, 1.2.

²² In order to involve the local legal community in legislative affairs, UNMIK established the Joint Advisory Committee on Legal Matters as a consultative body for the SRSG, and which consisted of local lawyers mainly with academic and less with practical background.

²³ For a full and detailed overview on this legislative activity see the official UNMIK webpage at <http://www.unmikonline.org/regulations/index.htm>.

²⁴ FRY Official Gazette 78/29.

²⁵ FRY Official Gazette 80/6.

²⁶ FRY Official Gazette 77/4.

²⁷ See UNMIK Regulation No. 2000/68 on Contracts for the Sale of Goods.

²⁸ A general Criminal Code was prepared by UNMIK with the support of the European Council. The Criminal Code is still a draft and is despite persistent demands of the Kosovar legal community still not promulgated.

²⁹ UNMIK Regulation No. 2001/9 of 15 May 2001, chapter 8.1.

³⁰ UNMIK REG 2001/9, 12.

³¹ UNMIK REG 2001/9, 5.1.

³² UNMIK REG 2001/9, 9.1.26.

³³ UNMIK REG2001/9, 9.1.45.

³⁴ Hoefer-Wissing, Neithart. “UNMIK holds on to a share of power,” *Focus Kosovo*, 2002 February, 11.

³⁵ UNMIK REG2001/9, 9.1.26f.

³⁶ UNMIK REG2001/9, 8.1 and 8.2.

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³⁹ Conducted as a result of the Military Technical Agreement signed between the International Security Force (KFOR) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, signed on June 9th, 1999. Source: <http://www.nato.int/kfor/kfor/documents/mta.html>

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- ⁵² Source: http://www.civpol.org/unmik/report_july.html
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- ¹⁰⁷ ESI/LLA, "Western Balkans 2004: Assistance, Cohesion and the new boundaries of Europe. A call for policy reform, 3 November 2002, www.esiweb.org
- ¹⁰⁸ United Nations Security Council Resolution S/R/1244 (1999), www.un.org
- ¹⁰⁹ Please note the difference between the European Agency for Reconstruction (EAR, www.ear.int), the donor arm of the European Commission, and the EU Pillar, responsible for the development of economic policies and an integral part of UNMIK (www.euinkosovo.org).
- ¹¹⁰ The Kosovo Trust Agency (KTA) was created per UNMIK Regulation 2002/12 on 13 June 2002.
- ¹¹¹ The EU Pillar's regional offices are to be closed by the end of 2002.
- ¹¹² UNMIK Regulation 2000/63 promulgated on 7 December 2000.
- ¹¹³ Established per UN Security Council Resolution 2000/63 in December 2000.
- ¹¹⁴ Socially owned enterprises (SOEs).
- ¹¹⁵ Department of Trade and Industry.
- ¹¹⁶ World Bank Development Report 2002.
- ¹¹⁷ Allcock, John B, Explaining Yugoslavia, Hurst & Company, 2000.
- ¹¹⁸ Reconstruction and Investment 2001-2003.
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- ¹²¹ Prishtina. The Kosovo Big Small-Business Market, Small Scale Enterprise, Situation and Perspective, published by the Administrative Department of Labor and Employment, August 2002.
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- ¹²⁷ De Soto, Hernando. *The Mystery of Capital*, Basic Books, 2000.
- ¹²⁸ Macroeconomic Unit of the Central Fiscal Authority, Kosovo, October 2002.
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- ¹³³ ESI/LLA Kalesija Report. www.esiweb.org
- ¹³⁴ UN SCR 1244, 10 June 1999.
- ¹³⁵ OSCE, *As Seen As Told: An Analysis of Human Rights Violations in Kosovo* (Warsaw: Office of Democratic Institutions and Human Rights, 1999), p. 89.
- ¹³⁶ Ibid. p. 89.
- ¹³⁷ Steven Erlanger, "Fears Grow Over the De Facto Partition of Kosovo," *New York Times*, 14 November 1999.
- ¹³⁸ OSCE op cit., p. 89.
- ¹³⁹ OSCE population estimate cited in International Crisis Group (ICG), *UNMIK's Kosovo Albatross; Tackling Division in Mitrovica* (Pristina: International Crisis Group, 3 June 2002), p. 3.
- ¹⁴⁰ Ibid. p. 3.
- ¹⁴¹ Micheal Steiner, Special Representative for the Secretary General, *A Choice for Mitrovica* 1 October, 2002.
- ¹⁴² UNMIK Division of Public Information-Media Monitoring, "Serbs Consider Seven Point Plan an Ultimatum, Albanians are Skeptical," *Koha Ditore*, 6 October 2002.
- ¹⁴³ Ibid.
- ¹⁴⁴ Ibid.
- ¹⁴⁵ UNMIK, New Coverage, *UN Assumes Administrative Control in Mitrovica*, November 26, 2002. <http://www.unmikonline.org/news>.
- ¹⁴⁶ OSCE, *As Seen As Told: An Analysis of Human Rights Violations in Kosovo* (Warsaw: Office of Democratic Institutions and Human Rights, 1999), p. 90.
- ¹⁴⁷ Ibid.
- ¹⁴⁸ ICG, *UNMIK's Kosovo Albatross; Tackling Division in Mitrovica* (Pristina: International Crisis Group, 3 June 2002) (note 5), p. 7.
- ¹⁴⁹ Ibid. p. 3. ICG describes the "Bridgewatchers" as being paid by the Serbian Ministry of the Interior (MUP) as members of State Security (DB); consequently, directly violating UNSCR 1244. They force shops to pay "protection" fees and distribute occupied apartments for rent. See ICG, Interview with KFOR and UNMIK (note 4), p. 3. ICG writes that the "Bridgewatchers" supplement their funds through organized crime including smuggling and prostitution. They also prevent many Albanians and other minorities from returning to their homes and frustrate the efforts of the international community to establish a presence in the North.
- ¹⁵⁰ Andrew Pervis, A Legacy of Hate. *Time Europe*, 18 February 2002 (note 4) states that Covic attempted to persuade one of the first leaders of the "Bridgewatcher", Ivanovic, to support the establishment of a multi-ethnic police force in which Ivanovic agreed to only if they had their own budget and uniforms. This is unacceptable in the drive for a multi-ethnic police force. It is also unacceptable in terms of its separation with northern Mitrovica moving, more or less, into its own municipal structure.
- ¹⁵¹ Jonathon Steel, "Nation Building in East Timor," *World Policy Journal*, Summer 2002, Vol 11, Issue 2, p. 56.
- ¹⁵² United Nations. Security Council Press Release, "Council Members Regret Stalemate in Installation of Kosovo's Newly Elected Institutions," 21 January 2002, SC/7278, p. 13.
- ¹⁵³ See Section 2 on Internal and External Security.
- ¹⁵⁴ ICG (note 4), p. 3. In February 2000, a rocket-propelled grenade attack on a UNHCR bus carrying Serbs from Mitrovica killed three and wounded several others. This set off revenge attacks and a cycle of violence.
- ¹⁵⁵ OSCE, *As Seen As Told*, p. 90.
- ¹⁵⁶ ICG, *UNMIK's Kosovo Albatross*, p. 4
- ¹⁵⁷ Ibid.
- ¹⁵⁸ Ibid, p. 5.
- ¹⁵⁹ Independent International Commission on Kosovo. Kosovo Report. (New York: Oxford, 2000), p.109.
- ¹⁶⁰ Michael Steiner, Special Representative to the UN Secretary General, *The Seven Point Plan: A Choice for Mitrovica*, 1 October 2002.
- ¹⁶¹ Steel, op cit.
- ¹⁶² United Nations. "Kosovo Making Progress in Security, Inter-ethnic Relations, Annan Reports." 26 July 2002. <http://www.un.org/apps/news/story>.

¹⁶³ Lizee, Pierie. "Conflict Resolution as a Construction of Security: Peace-Building, Constructive Intervention, and Human Security in Southeast Asia." *Development and Security in Southeast Asia Symposium* (Toronto: York University 1999) 25 October.

¹⁶⁴ Guy Lawson, "The View from the Bridge," *New York Times*, 20 August 2000.

¹⁶⁵ Radio Mitrovica, Op cit.

¹⁶⁶ Ibid.

¹⁶⁷ ICG, p. 3. Serbian Interior Ministry forces operate in the North, and suspects arrested by them are brought to trial at courts in Serbia.

¹⁶⁸ The Economist, *First of All, be Nicer to Each Other*, 5 October 2002, Vol. 365, Issue 8293.

¹⁶⁹ The Economist, Op cit.

¹⁷⁰ Radio Mitrovica, Op cit.

¹⁷¹ Interview with Bajram Rexhepi. *KTV Direct*, December 6, 2002.

¹⁷² Steven Erlanger, "Fears Grow over the De Facto Partition of Kosovo." *New York Times*. 14 November 1999

¹⁷³ ICG, UNMIK's Kosovo *Albatross*, Op cit. p. 6.

¹⁷⁴ Ibid.

¹⁷⁵ Andrew Pervis, A Legacy of Hate. *Time Europe*. February 18, 2002, Vol.59, No. 7.

¹⁷⁶ Musa Mustafa and Violeta Hyseni, "Serbian Parallel Institutions Continue in New Location." *Koha Ditore*, 3 December 2002.

¹⁷⁷ UNMIK Division of Public Information, *Media Monitors*, *Bota Sot*, 6 October 2002.

¹⁷⁸ ICG op cit. p.: 6.

¹⁷⁹ Carlotta Gall, "NATO-Led Troops Caught in Battle over Kosovo Town." *New York Times*, 14 February 2000.

¹⁸⁰ United Nations, Security Council Press Release, "Council Reviews Persistent Challenges Facing the Province." 30 July 2002, no SC/7472.

¹⁸¹ Dana Eyre. "Partnership for Peace: Revitalizing Trepca and the Building of Peace in Kosovo." *Peacekeeping and International Relations*, vol. 30, no. 4, pp19-22

¹⁸² OSCE. *As Seen as Told: An Analysis of the Human Rights Findings of the OSCE Verification Mission*. October 1998 to June 1999, p. 93.

¹⁸³ Ibid.