

A Rocky Path: Kosovo's Transition to Provisional Self-Government¹

General Elections in 2001 and Beyond

Introduction

Observers of Kosovo's transition process towards provisional self-government might have been overly optimistic when general elections were announced for the autumn of 2001. The creation of "Provisional Institutions of Self-Government" (PISGs) as defined in the Constitutional Framework of May 2001 represented a benchmark in the implementation of UN Security Council Resolution 1244 and was to mark the starting point of the third phase in UNMIK's institution-building process before the intricate issues surrounding the final status of the territory were to be addressed.² In fact, it has become a true test of the UN Interim Administration's ability to forge agreement between, first, Kosovo Albanian political parties and, second, between the PISGs and the Kosovo Serb political establishment that only decided to join the central government in May 2002. The introduction of "benchmarks" by which progress in institution building will be measured, provided Kosovo's newly elected government with a prism through which the status issue will be viewed from now on.

This article reviews progress made in building political institutions, starting from the promulgation of the Constitutional Framework through conducting general elections half a year later to the formation of PISGs in spring 2002. The PISG implementation phase has inevitably resulted in some tension caused by the desire of democratically elected officials to take over more responsibility, on the one hand, and the duty of UNMIK to safeguard those areas which were reserved under the Constitutional Framework due to their sensitive nature, on the other. Before going into the details of how the new PISGs have assumed responsibility for the implementation of the new Special

1 The article reflects the authors' own analysis and does not necessarily represent the OSCE position.

2 According to UN Security Council Resolution 1244 of 10 June 1999, UNMIK (United Nations Mission in Kosovo) deployment was envisaged in four integrated phases. In the first phase, the international Mission would set up administrative structures, deploy an international civilian police force and provide emergency assistance to returning refugees. Throughout the second phase, focus would be on the administration of social services and utilities and the consolidation of the rule of law. In the third phase, UNMIK would conduct elections for a Kosovo Assembly and finalize preparations for the creation of provisional institutions of self-government while promoting the establishment of "substantial autonomy" for Kosovo. The concluding phase would depend on a final settlement of the status of Kosovo.

Representative of the UN Secretary-General (SRSG) Michael Steiner's ambitious programme, the institution-building process will be revisited.³

Building Political Institutions - A Protracted Process

In the immediate post-conflict environment, the imperative for the international community was to build institutions - an essential component of long-term sustainable peace. At the central level, on 15 May 2001, a significant step towards this was the signature of the Constitutional Framework for Provisional Self-Government in Kosovo as an UNMIK Regulation,⁴ which provided the basis for the formation of provisional institutions and future government. The Constitutional Framework determines the powers and responsibilities of the PISGs, the powers and responsibilities reserved to the SRSG and sets up an Assembly, as well as executive and judicial branches. Crucially, the SRSG is empowered to strike down any attempt to step outside the institutions' competencies. In particular, the institutions have no authority to make any unilateral moves towards deciding the issue of Kosovo's final status. This is in line with UN Security Council Resolution 1244, which established Kosovo's present interim system.⁵ While the document represented a fair compromise, it also set up a sustainable institutional framework wherein the participation of all ethnic communities could be guaranteed through the introduction of set-aside seats at the central level. Of the total number of 120 seats called for in the central Assembly, 100 seats were to be open for competition according to the system of proportional representation while 20 seats were "set aside" to ensure the over-representation of Kosovo's smaller communities. Ten seats were set aside for entities representing the Kosovo Serbs, four for the Kosovo Roma, Ashkali and Egyptians (RAE), three for the Bosniaks, two for the Turks and one for the Gorani.⁶ As a result, an institutional mechanism was created that would, it was hoped, be able to contain conflict at the central level. A year earlier, institutions - however imperfect - had been created at the municipal level within which societal conflict was to be resolved. Representatives from those ethnic communities that did not participate in the first municipal elections were appointed by the SRSG. UNMIK Regulation 2000/45 "On Self-Government of Municipalities in Kosovo" also provided for the establishment of mandatory community and mediation committees to allow individuals or groups of individuals to file complaints against alleged discrimination by the municipal administration.

3 This article covers the political developments up to August 2002.

4 UNMIK Regulation "On a Constitutional Framework for Provisional Self-Government in Kosovo", UNMIK/REG/2001/09 of 15 May 2001, at: www.un.org/peace/kosovo/pages/regulations/reg01.09.html.

5 See also Franklin de Vrieze, *Towards Self-Government in Kosovo*, in: *Helsinki Monitor* 1/2001, pp. 11-25, here: p. 13.

6 In addition, at least one out of every three candidates at the top two-thirds of the candidate lists were to be female.

The General Election - Facts and Figures

On 17 November 2001, members of all of Kosovo's communities cast ballots for the new Kosovo Assembly at orderly and well-prepared polls. Neither the boycott of Kosovo Serb voters nor the logistical difficulties that marred the 2000 municipal elections were repeated.⁷ The OSCE Mission in Kosovo (OMIK) delivered upon its commitment to provide safe and convenient access to the electoral process to all voters and communities and Kosovo proved that it was committed to democratic norms through peaceful adherence to the electoral rules throughout the campaign and on Election Day.⁸ Election Day itself followed a campaign of little violence or intimidation and few violations of the electoral rules. More than 65 per cent of 1.25 million registered voters cast ballots. Though the percentage turnout was 13 per cent higher in the municipal elections a year before, more people voted in the 2001 general election. Based upon the locations of the polling centres, it is estimated that some 67 per cent of the eligible voters residing in primarily Kosovo Albanian areas and 47 per cent of those living in primarily Kosovo non-Albanian areas (especially Kosovo Serbs, the Kosovo Roma, Ashkali and Egyptian communities as well as Kosovo Turks, Bosniaks and Gorani) voted. Meanwhile, outside of Kosovo, approximately 53 per cent absentee voters, 58 per cent of the eligible voters in the Republic of Serbia and 57 per cent of the eligible voters in the Republic of Montenegro participated in the election. Given that the Federal Republic of Yugoslavia (FRY) as well as Kosovo Serb leaders endorsed the electoral process only twelve days prior to the election, the estimated turnout among Kosovo Serbs both within Kosovo and Serbia proper and Montenegro was impressive. The Council of Europe Election Observation Mission (CEEOM II) reported, however, that anti-election intimidation was present in Kosovo Serb areas, especially in northern Kosovo (north Mitrovica, Leposavic, Zubin Potok and Zvecan). The fact that voters chose to participate in the election in the face of intimidation was a token of their seriousness about the democratic process.

OMIK emerged with credit for conducting the general election in 2001 and rightly so. The media played a central if not crucial role in this. An extensive operation ensured that political entities and media outlets were well informed of their rights and obligations. The media regulations drafted by OMIK ensured that every certified political entity had an opportunity to inform the people of Kosovo of their platform in a fair and equitable manner. The

7 Cf. Daan Everts, *The OSCE Mission in Kosovo*, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (Ed.), *OSCE Yearbook 2001*, Baden-Baden 2002, pp. 137-148.

8 The Council of Europe Election Observation Mission (CEEOM II), the OSCE Parliamentary Assembly, the Council of Europe Parliamentary Assembly as well as the European Parliament have issued statements that "the Electoral Code provided conditions for free and fair elections", "registration was carried out successfully", "the elections were conducted in an efficient manner" and that "the organising authorities performed their duties in a constructive and professional manner".

monitoring and analysis conducted by OMIK's media monitoring unit ensured compliance with Central Election Commission (CEC) rules and provided the basis on which the Election Complaints and Appeals Sub-Commission (ECAC) took action to curb the worst excesses in the media. OSCE's Media Access Support Teams (MASTs) were again deployed to the regions to mediate complaints before they escalated.

The SRSG's immediate certification of the 2001 general election results on 24 November was, as noted by OMIK's former Head of Mission, Ambassador Daan Everts, a "testimony to the election's success". Upon certifying the results, the Special Representative announced that the inaugural session of the Kosovo Assembly was to be convened on 10 December. Importantly, the results of the general election were inclusive and reflected the diversity of Kosovo's society. All communities participated in the electoral process, and thanks to the set-aside seats, no voices were too small to be heard in the Assembly.⁹ 34 women were elected - almost 30 per cent of the Assembly. The elected candidates had been registered in 21 different municipalities. An excellent and inclusive Election Day, a transparent and accepted count and a representative Assembly have laid the right foundation for the transfer of responsibility to the provisional democratic self-government. Though 14 parties obtained regular seats, it is noteworthy that only three Kosovo Albanian parties gained more than one elected seat in the Assembly. The Democratic League of Kosovo (LDK) secured 47 seats, while the Democratic Party of Kosovo (PDK) gained 26 and the Alliance for the Future of Kosovo (AAK) eight elected seats. The Serb Povratak Coalition (KP) obtained twelve elected seats with their percentage of the vote in addition to ten set-aside seats as stipulated in the Constitutional Framework. Vatan, a coalition of Bosniak and Gorani parties, gained one elected seat in addition to three set-aside seats while the Turkish Democratic Party (KDTP) has a combined total of three elected and set-aside seats. In light of the election results, smaller Kosovo Albanian parties remain righteously indignant, stating that they have been discriminated against and that the international community should have done much more to support them and allow them to become a viable option for the people of Kosovo.

The Formation of the Provisional Institutions of Self-Government

The election results showed that no single party could dominate the Kosovo Assembly and implied that parties would have to work together. Yet, it took time to realize a compromise. For the first several months after the elections, the obstructionist tendencies that had been witnessed during the process of the implementation of the municipal election results dominated politics at the central level. Despite active mediation by the US Office in Pristina, sup-

9 For a summary of the election results of the 2001 general election and the distribution of seats in the Kosovo Assembly see the table at the end of this article.

ported by the British and German Offices, the three main Kosovo Albanian leaders failed for months to reach an agreement on establishing the PISGs. This resulted in three failed attempts by the Assembly to elect Ibrahim Rugova as the President of Kosovo. Because the talks on a “grand coalition” between the LDK, PDK and AAK did not lead to satisfactory results, the PDK walked out of the Assembly during the inaugural session. The main challenge was clear: to ensure that, pursuant to UNMIK Regulation 2001/19 “On the Executive Branch of the Provisional Institutions of Self-Government”, the President of the Assembly, defined by the Constitutional Framework as the member of the Presidency from the party or coalition having obtained the highest number of votes in the election for the Assembly, would now appoint a Prime Minister. The Assembly would also have to endorse the appointment to the Presidency - consisting of seven Assembly members - by formal vote.¹⁰ The challenge of the formation of the PISG’s executive branch was one that was only overcome after the new SRSG Steiner brokered an agreement between the three main Kosovo Albanian parties on 28 February 2002. One week later, the Kosovo Assembly had not only elected a President but had also approved the provisional government that included a Prime Minister and ten ministers.

However, ever since the central Assembly has held its first sessions, it has become clear that several political, procedural and logistical problems threaten to stall the institution’s work. As pointed out by OMIK, which closely monitors developments in the Assembly, Kosovo’s emergent parliamentary process remains severely hampered by a number of factors. At the political level, members of the Assembly have expressed concern and disagreement with the slow progress of its work, with approximately only one plenary session every three to four weeks, which is believed to undermine the capabilities of the elected representatives to reflect and address the concerns of the population.

On the logistical front, the Assembly still faces huge challenges. Although mandatory according to the Provisional Rules of Procedure of the Assembly (Rule 36.2), up to now records of plenary Assembly meetings have not been kept. The main reason for this is a lack of qualified staff, a consequence of the fact that the 2002 Kosovo Consolidated Budget does not provide enough resources to produce transcripts. Only since May 2002, the agendas of Assembly sessions have been made available prior to the meetings in both Serb and Albanian and the minutes of the sessions have not been made available at all. Assembly members’ biographies and contact details are also not yet

10 The Constitutional Framework stipulates the following composition of the Presidency: (a) two members appointed by the party or coalition having obtained the highest number of votes in the Assembly elections, (b) two members appointed by the party or coalition having obtained the second highest and (c) one by the party or coalition having obtained the third highest number of votes in the Assembly elections; (d) one appointed member of the Kosovo Serb community and (e) one member from a non-Kosovo Serb and non-Kosovo Albanian community.

available. Several senior members of the Assembly continue to express dissatisfaction about the functioning of the Assembly Secretariat in this respect. Likewise, professional translators have not been made available for the Assembly and have to be negotiated for with UNMIK. There is serious concern as to whether the staff who will be hired as translators or legal counsellors will have the necessary qualifications and capabilities at all, as they would only receive a salary of up to 150 to 180 euro a month.

Further, members of the Kosovo Assembly continue to express the need for office space for individual members and parliamentary groups. Assembly members have neither meeting rooms nor sufficient computer or phone lines. In order to focus the international community's efforts to remedy some of the institutional pitfalls identified, OMIK created an inter-agency group, the Assembly Support Initiative (ASI), in January 2002, following talks with different organizations, governments and members of the Assembly Presidency. Since then, ASI has facilitated the planning of conferences and training sessions for Assembly members, as well as working visits to different countries by delegations from the Kosovo Assembly. ASI combines the work of the National Democratic Institute (NDI), United States Agency for International Development (USAID), Friedrich Ebert Foundation, Friedrich Naumann Foundation, Westminster Foundation, US Institute for Peace (USIP), the UK, US and the Belgian Offices in Pristina, the EU Pillar for Reconstruction and Development and OMIK. Representatives of most political entities (up to 100 from 120 Assembly members) have participated in ASI conferences on issues such as transparency, rules of procedure and drafting legislation. Throughout 2003, ASI will continue to focus on developing an effective and representative legislature, aimed at providing support in the development of government structures emphasizing transparency, ethical conduct and democratic governance through a comprehensive training programme for Assembly members and staff. The ultimate aim of this initiative remains to professionalize the work and the infrastructure of Kosovo's central Assembly.

At this early stage, initial indications were that political parties and their Assembly caucuses appeared to lack basic familiarity with parliamentary rules and procedures, as well as an understanding of the role of government in setting policy directions for approval by an elected assembly. With the government plan still to be presented, the Assembly exceeded its competencies on 23 May, when it adopted a resolution on the protection of the territorial integrity of Kosovo. The resolution declared, among other things "the Border Demarcation Agreement between FRY and FYROM of 21 January 2001 unacceptable" and did not recognize the Haekkerup-Covic Agreement of 5 November 2001, "including any other agreement made without the consent of the people of Kosovo and its institutions".¹¹ Immediately after its adoption,

11 While a total of 85 members of the Assembly, including the representatives of the non-Serb minorities, adopted the resolution, the Kosovo Serb members of the Assembly left

the SRSG formally declared the Assembly decision “null and void”. It was indeed unfortunate that despite the receipt of statements by both the President of the UN Security Council and the Presidency of the European Union that strongly advised against the adoption of the resolution, the newly elected leaders did not have the political maturity to shelve the initiative. Arguably, the protracted negotiation process proceeding the session itself constituted the first clear confrontation between the PISGs and UNMIK. If the Assembly attempts to expand its role beyond that which is envisaged in the Constitutional Framework, or continues to adopt a confrontational approach, the SRSG can be expected to keep it on a short leash. In any event, as already predicted in the aftermath of the general election, “the newly elected officials will be unlikely to accept for long the straightjacket imposed by the unelected international administration”.¹²

The Government and Its Programme

The Constitutional Framework separates civil administrative competencies into “transferred” and “reserved” areas. The twenty former Joint Interim Administrative Structure (JIAS) departments of UNMIK’s Pillar for Civil Administration were re-organized into transitional departments, vested with “transferred” powers while four UNMIK Directorates were created and vested with “reserved” powers.¹³ After the selection of a President and the establishment of the PISGs on 4 March 2002, ten ministries were officially formed. Certain powers and responsibilities were devolved to these while adequate structures and procedures to advise, monitor and oversee the ministries future activities were developed. Particularly the authoritative engagement of principal international officers in each of the ministries was deemed to be the key element of a strategy to ensure the full compliance of the executive branch with UN Security Council Resolution 1244.

The government programme was approved on 8 May and presented to the Assembly on 24 and 25 May 2002. It defined the general policy direction of the government and provided a time line for the passage of legislation in the field of transferred powers with an emphasis on economic development. The government identified key weaknesses that would have to be overcome in order to ensure economic development. First, it acknowledged the necessity to develop a legislative framework compatible with European standards to promote economic growth. It also recognized that the government’s ability to

during the voting process in protest. For a more detailed discussion of the UNMIK-FRY document see below.

12 International Crisis Group, Kosovo: Landmark Election, Balkans Report No. 120 of 21 November 2001, p. ii.

13 Reserved UN Directorates, currently under the auspices of UNMIK Pillar II, include the Directorate for Administrative Affairs (twinned with the Ministry for Public Services), Rural Affairs (twinned with the Ministry of Agriculture, Forestry and Rural Development), Infrastructure Affairs (twinned with the Ministry of Transport and Communications), and the Kosovo Protection Corps.

invest in infrastructure was limited and that therefore the government needed to create an environment that would encourage foreign investment and investment from the diaspora. To this end, the government programme included the following ten priorities:

1. fostering a programme for sustainable economic growth based on the transparency and accountability of government;
2. promoting agriculture and rural development;
3. achieving European standards of education;
4. modernizing and increasing the availability of transportation, postal, telecommunications and information technology services;
5. reforming the health care system;
6. creating social protection and pension schemes;
7. increasing the level of employment for the younger generation;
8. integrating all ethnic communities into Kosovar society;
9. improving the environment, spatial planning and the housing situation;
10. supporting culture, youth and sports.

The pressing need for economic development and the improvement of economic conditions had already been emphasized in a recent assessment by the World Bank which pointed out that poverty is still a persistent and most probably long-term problem in Kosovo.¹⁴ The study indicates that approximately 11.9 per cent of the population live below the extreme poverty line and 50.3 per cent live below the overall poverty line. It is within this context that the ministries formulated their plans and in the meantime, significant work has been undertaken by the *Ministry of Labour and Social Welfare* to provide a social security network in the form of pensions and social benefits.¹⁵ The conditions are now in place for the Kosovo Assembly to fix the starting date of payments as well as set the rate of the basic pensions and to decide on the time and time period payments will be made to beneficiaries. A definite sum of money is earmarked for pension payments in the 2002 Kosovo Consolidated Budget.

Similarly, the *Ministry for Public Services* has become one of the most important structures of the newly emerging PISG administration and has continued its efforts to build a professional civil service. Procedures and structures to separate policy from regular operational functions have been put in place. Transition of all executive functions from the international staff to the local staff is underway with UNMIK staff focusing on a monitoring and advisory role. A policy of equitable minority representation at every level of the

14 Cf. World Bank Poverty Assessment 2001.

15 According to UNMIK Regulation 2001/35 "On Pensions in Kosovo" all permanent residents above the age of 65 (about 130,000 people) were to be provided with a basic pension.

Ministry has, however, not yet been implemented.¹⁶ In addition a real property rights register and a Kosovo cadastral database need to be established as well as revising procurement legislation. The Ministry's priority in the coming months will be to develop the civil service on the central as well as municipal level as a professional, merit-based, transparent and minority-tolerant administration. As a result of the central election and the transfer of power of some of the responsibilities of government to the PISGs, the creation of the Kosovo Institute for Public Administration (KIPA) will no longer be the sole responsibility of the international community. Its establishment will follow legislation that will have to be passed by the Kosovo Assembly. With the transition of the OMIK-sponsored Institute for Civil Administration (ICA) to the KIPA, OMIK will no longer act as a direct service provider of training courses, but will rather focus its resources on civil service support and advice. In the field of senior staff recruitment within the ten ministries, particularly with regard to Permanent Secretaries and Chief Executive Officers (CEOs), oversight will be kept by a Senior Public Appointments Committee (SPAC) which will be partly staffed by Kosovars.¹⁷ Significant strides have also been made by the *Ministry of Education, Science and Technology*, under the leadership of Rexhepi Omami (LDK), to reform the educational system to meet the new needs and priorities of Kosovo's society. It is well known that the illiteracy rate among women is 10.2 per cent, while among males it is 2.3 per cent.¹⁸ It is also well known that gender inequality in secondary schools is of particular concern among Kosovo Albanians: Last year only just over half of Kosovo Albanian girls were enrolled in secondary schools, compared to 74.2 per cent of boys. Among minorities other than the Kosovo Serbs, net enrolment rates in secondary schools dropped to less than 55 per cent. Among these groups, girls are particularly disadvantaged having enrolment rates of less than 40 per cent. Figures for tertiary education are not available. Thus, introducing the five-year primary school, followed by a four-year lower secondary and a three-year upper secondary school is under way and could be considered the biggest structural reform in the education sector. Education reform is being supplemented by a teacher training reform to be conducted at the newly created Faculty of Education at Pristina University. Efforts to regain authority granted by UN Security Council Resolution 1244 over the Serb-dominated education administration and structures in the enclaves and in the north of Kosovo are also under

16 The ministries that have an acceptable percentage of minority employment (in the range of ten to 25 per cent) include the Ministry for Education, Science and Technology; Health; Labour and Social Welfare. In the reserved areas, the Fire Rescue Service, Administrative Affairs and Railways have an average of some 18 per cent minority employment. Regrettably, minority employment in the Ministry of Finance, the Office of the Prime Minister and almost all public utilities is less than one per cent. The average percentage of minority employment in the municipalities is less than ten per cent.

17 According to UNMIK Regulation 2001/36 "On the Kosovo Civil Service", 22 December 2001.

18 Cf. World Bank Living Standards Measurement Survey of July 2001.

way. In order to meet the new realities of multi-ethnic education, the higher education sector for Slavic-speaking communities will have to be re-organized through curriculum reform. Programmes promoting gender equality with a focus on literacy among girls and women and promotion of anti-discrimination policies are taking place at schools and will be continued. Vocational and professional education programmes with a focus on Kosovo's economic development as well as special programmes for minority communities' will, as stated in the government programme, receive heightened attention.

The limited data available on health status suggests that Kosovo ranks lowest in Europe for virtually every health indicator.¹⁹ Hence, establishing the organizational structure of the *Ministry of Health*, led by Numan Balic (Vatan Coalition), and recruiting a competent and ethnically balanced staff has been the primary challenge to date. This has involved the devolution of primary health care to the municipalities as well as strengthening the district health authorities and improving their co-operation with the municipalities. A number of priority areas have already been identified, including the development of a pharmaceutical policy, the creation of a drug distribution system and the integration of minority health services into Kosovo's health care system. This would entail ensuring full and safe access for minorities to all health services and last but not least establishing regional arrangements with neighbouring countries to provide specialized services that are not available in Kosovo.

Given that 60 per cent of Kosovo's population live in rural areas and that agriculture and forestry form important segments of economic activity in Kosovo, the future work of the *Ministry of Agriculture, Forestry and Rural Development* is particularly important. However, progress in this Ministry in particular was hindered by the fact that the Povratak Coalition, which represents the Serb Community in the Assembly, only nominated a representative for the position of the Minister of Agriculture, Forestry and Rural Development and the Inter-Ministerial Co-ordinator for Returns in the Office of the Prime Minister at the end of May.²⁰ The main challenges facing the government remain, first, the transition of Kosovo's current rural economy, and second, the development of a comprehensive and updated cadastral database of land and infrastructure property.

Economic revitalization will ultimately depend on Kosovo's development within the wider regional context and the improvement of regional infrastructure. Hence, the *Ministry of Transport and Communications* has continued efforts to improve Kosovo transport links with neighbouring countries. Establishing the UNMIK Civil Aviation Office to implement an adequate safety regime in compliance with International Civil Aviation Organization

19 Cf. World Bank, *Kosovo Poverty Assessment*, Vol. I: Main Report.

20 Only on 12 June 2002, all members of the government swore an oath of office pledging their commitment to serve all communities equally. After this the Assembly adopted the government programme, which was based on the agreement of 28 February and endorsed the benchmarks that the Special Representative of the UN Secretary-General had outlined to the Security Council in April 2002.

(ICAO) standards as well as reaching an agreement with Belgrade to open FRY air space for commercial flights will improve Kosovo's connections with the region. The Ministry is also striving to re-establish the transport line to connect Kosovo with the Serbian railway systems while efforts to upgrade and expand the existing telecommunications infrastructure are under way as well. The introduction of licensing fees to use the frequency spectrum as well as the establishment of a frequency-monitoring unit and the further restructuring of the Post and Telecommunications Enterprise of Kosovo (PTK) are meant to transform it into a modern telecommunication enterprise.

Kosovo in 2002: A Safe Place for All Communities?

While the UN Interim Administration and its constituent pillars²¹ may have intervened to manage crises and create institutions to contain and resolve conflict through political and legal mechanisms, inter-ethnic reconciliation remains an area where little, if any, progress has been visible. Although the situation of ethnic minorities in Kosovo is slowly improving, individuals still have few reasons to feel secure. While on occasion attacks against members of minority communities increase sharply, the number of arrests and successful prosecutions remains low. In addition, access to health services and employment continues to be difficult. The OSCE Mission in Kosovo recently highlighted two key issues facing ethnic communities in Kosovo:²² first, the continuing obstacles minorities face with regard to their freedom of movement; and second, the problems related to the return of ethnic communities to Kosovo. Though the upward trend in the mobility of minorities is encouraging, minorities, in particular Kosovo Serbs, appear to avoid travelling to urban centres without special escort arrangements due to their fear of harassment or violence. Similarly, access to essential services and institutions, in particular the judicial system, education, health and social services, as well as gaining employment remain a major concern.²³ Obstacles to the realization of

21 UNMIK itself is made up of four components, or "pillars". The Pillar for Police and Justice ensures better inter-organizational co-ordination in addressing all matters pertaining to the rule of law. The second component, the UN Civil Administration, is responsible for the administration of Kosovo. The OSCE Mission in Kosovo makes up the Pillar for Institution Building which is responsible for the creation of structures that could effectively ensure the democratic governance of the territory. The fourth Pillar, led by the European Union, is known as the Pillar for Reconstruction and Development.

22 Cf. Joint OSCE/UNHCR Report, Ninth Assessment of the Situation of Minorities in Kosovo, at: www.osce.org/kosovo.

23 Cf. Joint World Food Programme (WFP), UN High Commissioner for Refugees (UNHCR), Assessment on Food Security in Ethnic Community Areas in Kosovo, February 2002. This report highlights the prevailing features and consequences for minorities of living in an enclave, showing that restricted movement caused the progressive depletion of assets and the consequent increase in vulnerability and extreme poverty well above the Kosovo-wide average. In surveyed enclaves, employment levels are currently at ten to 20 per cent. A large segment of the population is underemployed and between six and 45 per

property rights as well as the difficulties minorities have in accessing housing reconstruction assistance are key problems hindering the stabilization of minority communities and the return of internally displaced persons. Clearly, the continued functioning of “parallel structures” sustained by the Serbian government in areas such as education and health care proves to be increasingly detrimental to ensuring access to essential services provided by UNMIK and perpetuate the isolation of minority communities.

Minority Return - The Vexed Issue

While Kosovo is clearly a safer, more stable, and yes, more democratic place than it was when the UN Interim Administration arrived in summer 1999, it has - during the last three years - seen a much greater exodus of minorities than it has seen returnees. Despite a growing openness by all ethnic communities in Kosovo to discuss the issue of return and an encouraging, albeit hesitant, recognition in some parts of Kosovo society that the return of minority refugees and displaced persons is not a threat but rather the exercise of a basic human right, minority communities have so far not returned to Kosovo.²⁴

Sustainable return of minorities requires integration. Thus far, however, it appears that UNMIK and KFOR have pursued a policy of “enclave stabilization” with the primary goal of convincing Kosovo Serbs to remain in Kosovo in the short term. “Enclave stabilization” essentially holds that integration now is not possible, that it is first necessary to place minority communities on a sound footing and that the problems of integration can only be confronted at a later undefined date. The short-term policy of “enclave stabilization” also essentially created what some observers call a trend towards permanent segregation that reinforces prejudice and builds long-term obstacles towards integration. In the context of institution building and democratization, the focus of the UN Interim Administration has somewhat shifted to integrating communities at the local level. First and foremost, the onus falls on the international community and its constituent parts - UNHCR, UNMIK Pillars, the regional and municipal administrations, UNMIK Police and KPS, KFOR, the international agencies and NGOs - to establish institutional mechanisms to resolve societal conflict and focus on projects that create incentives for the ethnic communities within Kosovo to work together. On the central level, UNMIK has decided to enter into a process of normalization with the FRY and institutionalize contacts which were intended to resolve issues of common concern.

cent of people living in minority areas fall under the UNMIK Social Assistance Scheme (SAS) versus less than ten per cent Kosovo-wide.

24 Official UNHCR figures for Kosovo Serb returnees show the return of only 679 persons in 2001, as opposed to 1,826 in 2000. During the same time period in 2001, only 360 Kosovo Roma, Ashkali and Egyptians returned while in 2000 the figure was 127. The trends for 2002 look equally bleak.

After more than a week of discussions, the UNMIK-FRY Common Document was signed on 5 November 2001 in Belgrade. It stipulated that UNMIK remains the only body responsible for the administration of Kosovo while leaving the Constitutional Framework and the PISGs untouched. The signature of the document followed a series of meetings held between the then SRSG Hans Haekkerup and the FRY President Vojislav Kostunica with the aim of garnering support for Kosovo Serb participation in the Kosovo-wide election.²⁵ As an important step towards rebuilding mutual confidence, an agreement was reached on FRY-UNMIK co-operation in certain areas, namely the identification of missing and detained persons as well as establishing co-operation in the judicial field. The High Ranking Working Group between UNMIK and the FRY Co-ordination Centre was set up as a result of this document. Its first meeting was held on 13 December 2001.²⁶ It was also agreed that a number of working groups would be formed with FRY representatives on one side, and representatives of UNMIK and the PISGs on the other, to deal with specific areas of engagement and common interest. At the time of its formation it was stated that representatives of the PISGs would be fully integrated in the project.

Throughout Kosovo, the reaction to the document's signature in the Kosovo Albanian press was severe and even the more moderate Kosovo Albanian dailies firmly denounced the document as being against Kosovo Albanian interests. Primary among the Kosovo Albanian concerns was, and still is, the suggestion of greater influence of the FRY authority in Kosovo that arguably contradicts the tenets of UN Security Council Resolution 1244. As a result, following SRSG Haekkerup's return from Belgrade, a special Interim Administrative Council (IAC) session on 5 November was convened, which was boycotted by the PDK. Despite initial reservations, almost six months later, significant progress on the implementation of the Common Document had been made at the working level and through the High Ranking Working Group. For example, a working group on judiciary and police co-operation was established to focus on the exchange of information to enhance efficiency in the co-ordinated fight against organized crime. Three protocols, related to the issue of missing persons, have been signed: (1) Cross Boundary Transfer of Identified Remains, (2) Exchange of Forensic Experts and Expertise and (3) Joint Verification Teams on Alleged Hidden Prisons.

Meetings were held with the Association of the Families of Missing Persons when SRSG Steiner visited Belgrade on 3 April. Three weeks later, lengthy

25 As a consequence of the signing of the UNMIK-FRY Common Document, OMIK was given the green light to begin work on election preparation in the Republics of Serbia and Montenegro.

26 The SRSG or his Principle Deputy chair the meetings; participants include the Head of the Police and Justice Pillar and the Commander of KFOR. The Head of the Co-ordination Centre, Serbian Deputy Prime Minister Nebojsa Covic, leads the FRY Delegation.

negotiations between UNMIK and Serbian Deputy Prime Minister Nebojsa Covic culminated in the transfer of 146 Kosovo Albanian detainees from Serbia. The transfer was preceded by the handing over of court files relating to the majority of the remaining detainees, which were reviewed by officials in UNMIK's Department of Justice, including international judges. The judicial review determined that a significant number of detainees had been convicted on insufficient grounds. A smaller number of detainees were found to have valid convictions and they will serve out their sentences in Kosovo. On 26 May, UNMIK transferred six Serb prisoners to custody in Serbia proper as per the Agreement on the Transfer of Sentenced Persons between UNMIK and the FRY. In the area of transport, UNMIK Railways and Serbian Railways reached a technical understanding on cross-boundary railway traffic, which opened the way for a direct railroad connection from Belgrade to Skopje, via Kosovo. Discussions continue concerning a draft protocol on the unhindered movement of vehicles between Kosovo and Serbia proper and on the issuance of free license plates to Kosovo Serbs, with the purpose of improving freedom of movement. The number of agreements reached on technical issues, partly with the consent of the PISGs, clearly marks a considerable détente in the relationship between Pristina and Belgrade - an issue which has been described as lying at the core of Special Representative Steiner's agenda.

UNMIK's New Priorities

When Michael Steiner assumed his post as Special Representative of the UN Secretary-General in Kosovo on 14 February 2002, he was quick to announce UNMIK's primary goals and challenges. As already noted, the SRSG's first priority was to accelerate the returns process in summer of 2002. According to Steiner, Kosovo will have to provide a safe home for all its residents, as the eyes of the world will judge Kosovo on how it treats its ethnic minorities. The SRSG's second stated priority consists in laying the foundations for economic recovery with a focus on education, jobs, income and enterprises. This requires that the private sector become the primary driving force for creating new jobs and income. Though far from being a sovereign state, Kosovo also needs to develop mechanisms that would allow its provisional institutions to borrow from international financial institutions. Regional trade will also feature high on UNMIK's new economic agenda.

The SRSG's first priority of return is an essential condition for the eventual determination of Kosovo's final status. With the successful establishment of a multi-ethnic government, returns are at the heart of the Kosovo political agenda. Its basic tenets are set out in a Statement of Principles dated 8 June 2001, which were endorsed by the Interim Administrative Council. A mission-wide strategy was determined as essential to achieve breakthroughs in

minority returns during the summer and autumn of 2002 and build momentum for more significant numbers of returns during 2003. According to a recently published concept paper,²⁷ UNMIK has chosen a two-pronged approach whereby UNMIK and its partners will, first, reach out to the internally displaced persons and refugees with appropriate and realistic information about the conditions in Kosovo while, second, work to ensure that the conditions on the ground for returnees are sustainable.²⁸ Just as it is essential in the short term to guarantee returning minorities access to social assistance schemes, it is deemed equally crucial for their long-term sustainability to have fair and equal employment opportunities in the public and private sector. UNMIK and the government authorities have the responsibility to ensure equitable representation of all communities in the public sector and provide effective remedies for discrimination both in the workplace and in the hiring process.

Further, the SRSR has identified the creation of clear property titles to all productive assets as the most urgent economic policy goal in Kosovo, as clear property titles are the basis for both economic development and the rule of law. Secondly, idle assets will be put into productive use by eliminating defunct socially owned enterprises (SOEs) and by releasing the assets for the private sector. Thirdly, the privatization process will serve to facilitate and protect new investment. Since the late 1970s, the SOE sector has been seriously neglected, with little capital investment. There are hardly any SOEs left that pursue their traditional commercial activities. Instead, the roughly 350 SOEs in Kosovo control large amounts of real estate, which is being rented out or even privatized in an unregulated manner. UNMIK has decided to institute an administratively transparent process of transferring SOEs into private hands, realizing that investors have in the past been deterred by the non-transparent use of assets and incomes and by conflicts over enterprise control. In order to manage the process of privatization, the new Kosovo Trust Agency (KTA) will deal with all 350 SOEs either through liquidation of enterprises with idle assets that should be mobilized for the private sector, or a spin-off procedure in the case of viable enterprises.²⁹ In addition to mobilizing the assets of the SOEs for economic use, preserving their value and creating secure ownership rights, the KTA will also be charged with maintaining potential creditors' and owners' claims on the old SOEs.

27 The Right to Sustainable Return, UNMIK Concept Paper, 17 May 2002.

28 KFOR and UNMIK Police will have to shift to a flexible, threat assessment-based approach in order to achieve the gradual dismantling of protected enclaves and to promote local-level integration and reconciliation.

29 In the meantime, the draft KTA Regulation has been submitted to the government for a one-month consultation period and to the prospective members of the Economic and Fiscal Council (established by the Constitutional Framework to advise the SRSR on economic, financial and fiscal issues in the realm of his reserved powers that require consultation with the PISGs) for a six-week period which ended at the end of May 2002. A further regulation would be required to regulate land ownership before the privatization process can go ahead.

Since economic development is intimately linked to good governance and the rule of law, UNMIK and in particular its police and justice component (Pillar I) will have to focus on economic crime and specifically on organized crime. UNMIK's organized crime strategy defines the means and methods by which to identify key networks and leading criminals within them, collect evidential material for conviction (within the constraints of security classification), disrupt economic crime in order to freeze and confiscate the proceeds of organized crime using pan-pillar resources (customs etc) and establish effective border controls as well as appropriate liaisons with international law enforcement agencies including Interpol, Europol and the FBI. In order to be able to mount intelligence-driven operations, a Central Intelligence Unit (CIU) staffed by 40 specialized intelligence officers has already been created within the UNMIK Police. The CIU develops intelligence-based target packs and shares information with KFOR and Interpol. While it has begun to build a detailed intelligence database on those individuals who head or play a major role in organized crime within Kosovo, its mandate was expanded recently to include counter-terrorist intelligence. By September 2002, the Kosovo Organized Crime Bureau (KOCB) will be fully established to serve as the operational arm of the CIU and turn intelligence into evidence for criminal proceedings. Within the Department of Justice, a reserved area under the Constitutional Framework and part of UNMIK's Pillar I, the Sensitive Information and Operations Unit (SIOU) was created to provide prosecutorial input to KFOR and UNMIK Police on serious cases in order to ensure successful prosecution against organized crime, terrorism and cross-border insurgency. It will also support organized crime-related operations undertaken by KFOR and the Police, process sensitive or classified information for use in courtroom prosecutions as well as providing expertise and support on organized crime and terrorism issues to the police, international prosecutors and judges. In the legislative field, legislation on covert measures has been introduced³⁰ in order to increase police evidence-gathering capacity by allowing an array of techniques from interception to eavesdropping devices.

If the fight against organized crime is to be successful, it will be necessary to use international judges and prosecutors on these cases for the foreseeable future. By mid-2002, the number of international judges and prosecutors had increased to 20. While this is a large increase from the mid-August 2001 number of eleven, it is significantly less than the goal of 34 required by the UNMIK-FRY Common Document. It is, however, clear that there has been considerable progress in the recreation of the local judicial system which is now functioning with approximately 340 judges and prosecutors - only slightly less than the number estimated to be sufficient to meet the demand for its services. Yet, out of these 340 judges and prosecutors, there are only three Kosovo Serb judges and one prosecutor. Although a specialized unit

30 UNMIK Regulation 2002/6 "On Covert and Technical Measures of Surveillance and Investigation" of 18 March 2002.

has been set up in the Department of Justice to recruit more Kosovo Serbs, this effort has been hampered by a lack of support for the initiative from Belgrade.

“Standards Before Status”

The time for “(f)acilitating a political process designed to determine Kosovo’s future status”, as foreseen by UN Security Council Resolution 1244, has not yet come. According to the UN Security Council, Kosovo society and institutions will first have to “prove” that they are ready for such a process. At the same time, UNMIK has given a clear signal that certain “benchmarks” must be achieved before a final settlement process can be launched. According to the UN Interim Administration, quantifiable progress must be achieved in eight areas:

- *Functioning, effective and representative democratic institutions:* Objectives include progress towards democratic governance, the consolidation of minority political participation and access to public services and public employment, the collection of revenues and efficient delivery of public services and the extension of PISG authority throughout Kosovo.
- *Rule of law:* Goals include the disruption of criminal networks, an end to extremist violence, public respect for police and judiciary, impartiality of judges and KPS, the prosecution of all suspected criminals and fair trial guarantees for everyone as well as sufficient minority representation.
- *Freedom of movement:* All communities must be enabled to circulate freely (without reliance on military or police) throughout Kosovo, including city centres, and be allowed to use their language.
- *Returns and integration:* Respect of the right of all ethnic communities to remain in Kosovo, the right to property and their right to return must be guaranteed.
- *Economy:* Objectives include the creation of a sound institutional basis for a market economy and an improved system of tax and revenue collection, a balanced budget and the privatization of socially owned assets.
- *Property Rights:* All property, including residential property, land, enterprises and other socially owned assets, will have a clear and rightful owner.
- *Dialogue with Belgrade:* Normal relations with the FRY and other neighbouring countries will have been established that include direct contact of PISGs with their counterparts.

- *Kosovo Protection Corps*: The Kosovo Protection Corps must be reduced to numbers commensurate with its mandate.

Articulating a concrete set of benchmarks serves to give the government a direction in which to work within a joint venture to create the conditions for addressing future status in accordance with UN Security Council Resolution 1244.³¹ Second, the setting of certain benchmarks is designed to solicit the commitment of the public to and support for the goal of building a democratic and tolerant society with European values and standards. Third, it will also provide the UNMIK pillar structure as such with criteria according to which it should realign its activities. According to the concept launched by SRSG Steiner, Kosovo will move towards creating a fair and just society and advance along the path to European integration through achievement of these benchmarks. The design of the benchmarks, which are presently under consideration, will obviously need to take into account the sustainability of achieved progress beyond the presence of UNMIK and KFOR. For example, attainment of an acceptable level of security and respect for minority rights resulting from activities by UNMIK and KFOR does not automatically guarantee that minority returns will continue to take place unhindered after the downsizing and eventual withdrawal of the international civilian and military presence from Kosovo.

The 2002 Elections and Beyond

Much of the OSCE Mission's work in 2002 was focused on the preparations for the municipal elections on 26 October. Two years ago, the first round of municipal elections was held in 27 of the 30 municipalities in Kosovo. As a result, Assemblies were directly elected in 27 municipalities, while councilors had to be appointed to three Assemblies.³² Of the 27 directly elected Assemblies, 24 have managed to reach a stage of implementation without serious breakdown. Three municipalities, however, have faced serious political crises that have virtually stalled their Municipal Assemblies.³³ 29 Assemblies, with the exception of Strpce municipality, have elected Presidents and Deputy Presidents. Yet the challenges to local governance remain considerable. Within the first year, much time was spent forming the three mandatory Assembly committees. Moreover, even one and a half years after their formation, the lack of understanding of municipality functions and powers as well as of the principles of public accountability and transparency is palpable.

31 In the final stage of its engagement, UNMIK will, in accordance with UN Security Council Resolution 1244 para. 11 (e and f), facilitate "a political process designed to determine Kosovo's future status" and oversee the "transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement".

32 In the Leposavic, Zubin Potok and Zvecan municipalities.

33 In the Mitrovica, Strpce and Malisevo municipalities.

Clearly, the successful establishment of a multi-ethnic government at the central level and the creation of two key positions for the Povratak Coalition - an Inter-Ministerial Co-ordinator on Returns in the Office of the Prime Minister and a Senior Adviser on Returns in the Office of the SRSG - facilitates the process of political integration. At the next stage, the democratically elected central Assembly, the PISGs and the municipal governments to be elected will have to assume co-responsibility for the creation of a multi-ethnic Kosovo. Active advocacy and support for returns and integration of minorities by all political and community leaders, especially by elected local officials, have been defined by SRSG Steiner as key benchmarks for the development of Kosovo society. Importantly, creating a sustainable return process would also require the active involvement of the government and its ministries, particularly those institutions that provide access to the relevant services. Thus while Kosovo experienced a generally improved political environment each year from 1999 to 2002, institutional progress must continue to be made. There is no doubt that the full participation of the Kosovo Serb community in the 2002 municipal elections could have a further significant impact upon the respect for the right of the approximately 250,000 internally displaced persons, most of them based in decrepit community centres or private accommodations in central Serbia, to return and integrate into their former communities of residence. Without this and viable progress on all of the benchmarks determined by the SRSG, the process that would ultimately lead to the resolution of Kosovo's final status cannot, and will not, be launched. Thus, the time frame for that process now depends to a considerable degree on the people of Kosovo.

November 2001 Kosovo-Wide Elections

| Political Entity | President | Votes | % Votes | Seats |
|---|--------------------|---------|---------|-------|
| LDK (Democratic League of Kosovo) | Ibrahim Rugova | 359,851 | 45.65 | 47 |
| PDK (Democratic Party of Kosovo) | Hasim Thaci | 202,622 | 25.7 | 26 |
| KP (Serb Coalition Povratak) | Sima Gazikalovic | 89,388 | 11.34 | 22 |
| AAK (Alliance for the Future of Kosovo) | Ramush Haradinaj | 61,688 | 7.83 | 8 |
| Vatan (Coalition of three Bosniak/Muslim parties*) | Numan Balic | 9,030 | 1.15 | 4 |
| KDTP (Turkish Democratic Party of Kosovo) | Mahir Yagcilar | 7,879 | 1.0 | 3 |
| IRDK (Egyptian Democratic Initiative of Kosovo) | Bislim Hoti | 3,976 | 0.5 | 2 |
| PDASHK (Ashkali Democratic Party of Kosovo) | Sabit Rahmani | 3,411 | 0.43 | 2 |
| LKCK (National Movement for the Liberation of Kosovo) | Sabit Gashi | 8,725 | 1.11 | 1 |
| PSHDK (Albanian Christian Democratic Party of Kosovo) | Mark Krasniqi | 7,701 | 0.98 | 1 |
| PD (Justice Party) | Syleman Cerkezi | 4,504 | 0.57 | 1 |
| LPK (Peoples Movement of Kosovo) | Emrush Xhemajli | 4,404 | 0.56 | 1 |
| BSDAK (Bosniak Democratic Action Party) | Hilmo Kandic | 2,906 | 0.37 | 1 |
| PREBK (United Roma Party of Kosovo) | Haxhi Zulfi Merxha | 2,717 | 0.34 | 1 |
| PLK (Liberal Party of Kosovo) | Gjergj Dedaj | 3,600 | 0.46 | 0 |
| BK (National Front) | Katjaz Fazlia | 2,881 | 0.37 | 0 |
| PQLK (Liberal Centre Party of Kosovo) | Ibrahim Shala | 2,403 | 0.3 | 0 |
| PGJK (The Green Party of Kosovo) | Daut Maluku | 2,325 | 0.29 | 0 |
| PSDK (Social Democratic Party of Kosovo) | Kaqusha Jashari | 1,785 | 0.23 | 0 |
| PRK (Republican Party of Kosovo) | Feti Grapci | 643 | 0.08 | 0 |
| PNDSh (Albanian National Democratic Party) | Skender Berisha | 1,066 | 0.14 | 0 |
| IQK (Kosovo Citizens' Initiative) | Qemail Sokoli | 631 | 0.08 | 0 |
| PLSH (Albanian Liberal Party) | Gjergj Rapi | 428 | 0.05 | 0 |

*SDA (Democratic Action Party), DRSM (Muslims' Democratic Reforms Party), GIG (Citizens' Initiative of Gora)