

**A KOSOVO ROADMAP (II)**

**INTERNAL BENCHMARKS**

1 March 2002



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## A KOSOVO ROADMAP (II)

### INTERNAL BENCHMARKS

#### EXECUTIVE SUMMARY AND RECOMMENDATIONS

##### A KOSOVO ROADMAP

Since Kosovo became an international protectorate under United Nations administration in June 1999, much has been done to stabilise the province and set up a functioning administration. Yet nothing has been done to address the central question that lay at the heart of the conflict in Kosovo, and which remains the issue of overriding importance for the province's inhabitants: the issue of final status.

The UN Resolution that established the interim system in Kosovo left the issue of final status open. Nor has the international community shown any appetite to address it. Yet it remains intensely controversial. The majority Albanians are unanimous that Kosovo will never again be subject to Serbian (or Yugoslav) sovereignty, while the minority Serbs, supported by Belgrade, are equally adamant that Kosovo must be restored to Serbian sovereignty, albeit with a large measure of political autonomy.

In examining Kosovo's final status, the International Crisis Group argues that the issue has two aspects, inseparable and overlapping but nevertheless distinct. The 'external' dimension involves the interests of, and relationships between, the different actors with a stake in Kosovo's future, while the 'internal' dimension concerns the development of Kosovo's own democratic institutions, laws and standards.

These dimensions are duly treated in a pair of reports sharing a common title, *A Kosovo Roadmap*, issued simultaneously and subtitled *I. Addressing Final Status* and *II. Internal Benchmarks*. Together, these reports show two, parallel paths which need be negotiated simultaneously in order to reach the desired destination: a stable, democratic Kosovo, standing on its own feet, peacefully integrated in its region, and with a clearly defined place in the international community.

In *Addressing Final Status*, ICG argued that the stakes in Kosovo today are simply too high to leave the issue unaddressed. A potential for further regional conflict exists, and the international community cannot afford to leave Kosovo or the region in a state of uneasy and potentially dangerous limbo just because the issues involved are awkward.

Accordingly, that report argued, the international community should proceed to address the question, having in mind that the most appropriate solution would likely be a version of *conditional independence* under a form of international trusteeship.

##### INTERNAL BENCHMARKS

One of the main arguments offered for not addressing the status question is the weakness of Kosovo's institutions – including the Assembly, its ministries and the criminal justice system – and the

inability of these institutions to protect the rights of the Serb and Roma minorities.

The present report, *Internal Benchmarks*, reveals that Kosovo indeed requires further preparation for any form of final status. The slow establishment of self-government institutions after the election of a new Assembly on 17 November 2001 reveals the inexperience of Kosovo's political parties and the deep fault lines that divide Kosovo society. In addition, the criminal justice system does not yet have the capacity to investigate and prosecute crimes in a truly impartial and effective manner. Minorities continue to lack freedom of movement and the economic and social opportunities that such freedom brings.

The onus is on UNMIK, as well as on the international community and Kosovo's leaders, to fulfil their obligation to develop autonomous institutions for whatever final status awaits Kosovo. Democratic, effective, and ethnically representative government institutions must and can be built.

In this spirit, the report outlines benchmarks for Kosovo's internal development – standards that should be met by its institutions, and principles that should govern the treatment of its citizens, in particular its minorities. For instance, the Assembly must be accountable to its electorate and able to process legislation. The civil service should be apolitical and transparent with the capacity to administer its sector of responsibility. The government must also have the capability to collect revenue and manage a Kosovo-wide budget to support its institutions.

An efficient, independent and impartial criminal-justice system, with the competence to investigate and prosecute crimes, is also vital if the rule of law is to become firmly rooted. Another crucial benchmark by which Kosovo's fitness for self-rule will be judged is that minorities should be able to live in security and dignity, without discrimination. Displaced persons must be able to return to their homes, and if they choose not to return, their property rights have to be protected.

Such benchmarks are – as this report shows – indispensable for assessing Kosovo's internal progress. However, while the achievement of these standards must influence the *timing* of the implementation of an agreed final status, it should

neither delay decisions on status nor determine what form it should take. The fact that much remains to be done internally is no reason to delay a formal consideration of the relative merits of different options for final status.

Much further work is needed to reach these benchmarks. The capacity of Kosovo's judiciary, police service and penal systems needs to be strengthened, training for the civil service undertaken, accountability of Assembly members to their electorate enforced, and the rights of minorities protected. To make progress towards these benchmarks, the international community must remain engaged in Kosovo and committed to its institutional development. Kosovo's leaders in turn must recognise their fundamental obligation to push this process forward.

## RECOMMENDATIONS

### TO THE INTERNATIONAL COMMUNITY

1. The international civilian and military commitment to Kosovo should be maintained for as long as needed to set Kosovo on its feet, and as long as the internal and external security situation requires.
2. Donors should avoid sustaining parallel structures outside Kosovo's official institutions, and should contribute to building the capacity of the institutions of self-government.
3. Donor assistance should wherever possible be applied in such a way as to promote the integration of Kosovo's majority and minority communities.
4. Adequate funding should be provided for the Housing and Property Directorate in its crucial work of disentangling complicated issues of residential property rights.

### TO UNMIK

5. In relation to self-government institutions, UNMIK should:

- (a) as far as is possible allow the interim institutions of self-government to take responsibility for governing; and
  - (b) give a high priority to training for the officials in the new self-government institutions, as well as for Assembly members. Training should be coordinated and based on an assessment of needs across institutions.
6. In relation to the criminal justice system, UNMIK should:
- (a) ensure the speedy dissemination of new regulations and ensure that judges and prosecutors are adequately trained in their implementation;
  - (b) ensure oversight of the court system by international judges and prosecutors for as long as the local judiciary does not demonstrate impartiality. This oversight should be extended to municipal and minor offence courts;
  - (c) strengthen regulatory mechanisms within the judiciary to curb ethnic and other forms of bias;
  - (d) discontinue the practice of extra-judicial detentions as far as possible, and refer cases to the judicial system;
  - (e) provide longer and more specialised training for Kosovo police officers, especially in investigative skills, to improve capacity to gather and analyse evidence;
  - (f) increase the capacity of the penal system, including the building of a "correction" element.
7. In relation to minority communities:
- (a) protection should continue, but should as far as possible be compatible with the aim of reintegrating them into Kosovo society, avoiding promoting a siege mentality. Measures to gradually reduce the number of static KFOR positions, such as checkpoints, should be considered; and
  - (b) efforts to promote return should concentrate on providing an adequate environment for sustainable return and

should avoid the creation of new enclaves.

#### **TO THE KOSOVO ALBANIANS**

8. Kosovo's elected Albanian leaders should concentrate in the first instance on making the new self-government institutions work, including by:
- (a) exerting their moral authority to take responsibility for improving the conditions of Serbs and Roma in Kosovo, reducing attacks, intimidation and discrimination against them and enabling the return of refugees; and
  - (b) upholding the rule of law, supporting the police and courts in the carrying out of their functions, and not seeking to exert political pressure on them.

#### **TO THE KOSOVO SERBS**

9. Kosovo's Serb leaders should represent their community through constructive participation in Kosovo's self-government institutions and cooperation with UNMIK.
10. These leaders should cooperate with UNMIK and KFOR in integrating the region north of the Ibar and other Serb enclaves into Kosovo's institutional framework.

#### **TO THE YUGOSLAV AND SERBIAN AUTHORITIES IN BELGRADE**

11. Belgrade should cooperate with UNMIK, cease undermining Kosovo institutions north of the Ibar and elsewhere, and end support for Kosovo Serb obstruction of the integration of Serb enclaves.

**Pristina/Brussels, 1 March 2002**



## A KOSOVO ROADMAP (II)

### INTERNAL BENCHMARKS

#### I. INTRODUCTION

Any assessment of the record of the NATO-led Kosovo Force (KFOR) and the UN Interim Administration in Kosovo (UNMIK) must begin by acknowledging the huge task that confronted them when they arrived in 1999. They found a situation in which institutions of government, law and order and utilities had completely broken down. Not surprisingly, much remains to be done.

Internal security is far from satisfactory. Although the level of violence against the Serb and Roma minorities has abated over time, it continues to be worryingly high. Most Serbs who have remained in Kosovo continue to live in KFOR-protected enclaves, isolated, denied freedom of movement and lacking the minimal conditions of normal life. Conditions for the safe return of those who fled continue to be unsatisfactory.

Progress has been made in “establishing and overseeing the development of provisional, democratic self-government institutions” as envisaged in UN Security Council Resolution (UNSCR) 1244, which established Kosovo’s present interim system.<sup>1</sup> An election for a province-wide Assembly on 17 November 2001 was supposed to be a major step in carrying out this crucial aspect of UNMIK’s mandate.<sup>2</sup> However, the difficulties experienced by local political leaders in forming new self-government institutions following the election demonstrated

just how difficult the process of transferring powers from the UN administration to local, elected authorities is likely to be.

For all these reasons, the time when KFOR and UNMIK will be able to bow out of Kosovo, leaving behind a functioning administration and a stable society, is some way off. It is also such outstanding matters that in part explain the reluctance of the international community to address the difficult question of Kosovo’s final status. It is often argued that there is little sense in talking about final status when there is still so much to be done in terms of building functioning institutions, and the security environment and the position of minorities are so unsatisfactory.<sup>3</sup>

The various reasons for the international reluctance to address the status issue were analysed in this report’s partner piece, *Addressing Final Status*. This reluctance revolves around the central dilemma that while Kosovo Albanians are united in their determination that they will never again be subject to Serbian (or Yugoslav) sovereignty, Kosovo Serbs, supported by Belgrade, likewise express their determination that while Kosovo may be autonomous, it must be restored to Serbian sovereignty.

While arguing that the reasons for the international community to engage with the status question certainly outweigh the difficulty of doing so, the ICG does not underestimate the necessity of preparing Kosovo, in terms of institutional

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<sup>1</sup> UNSCR 1244, adopted on 10 June 1999, Article 10. Full text available at [www.un.org/Docs/scres/1999/99sc1244.htm](http://www.un.org/Docs/scres/1999/99sc1244.htm)

<sup>2</sup> See ICG Balkans Report No. 120, *Kosovo: Landmark Election*, 21 November 2001.

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<sup>3</sup> For example, by Marta Dassu, “Statehood and Sovereignty - regional and internal dynamics in Kosovo’s future”, in *What Status for Kosovo?* (Chaillot Paper 50, October 2001, Institute for Security Studies, Western European Union).

development, security and minority rights for whatever final status may eventually be decided upon.

However, while this report discusses benchmarks for assessing progress in transforming Kosovo into a stable, functioning entity, it argues that the achievement of such benchmarks should only affect the *timing* of the implementation of an agreed final status and should not determine what the status itself should be. This is because the decision on Kosovo's final status is itself – for reasons elaborated in the companion report, *Addressing Final Status* – of key importance in achieving a stable Kosovo and a stable region. It is, therefore, important to begin to consider the relative merits of different options for final status, even while much remains to be done internally.

## II. INTERNAL BENCHMARKS

A vital element in charting a roadmap towards Kosovo's final status is the task of building a democratic, functioning institutional structure that can be sustained after the UN administration has left. The issues of Kosovo's final status and its internal development are sometimes regarded as if they were at odds: as if Kosovo's institutional and democratic shortcomings somehow confirmed the wisdom – indeed, the necessity – of continuing to defer a resolution of the status issue.<sup>4</sup>

The ICG takes a different view. While the task of building a structure which can outlast the UN administration is essential in charting a roadmap towards Kosovo's final status, this process should move *in parallel* to the process of addressing final status, rather than serve as a substitute for it. The initiation of a process to address final status should not depend upon progress in building a sound basis in terms of functioning institutions for whatever final status is eventually decided on.

Moreover, the work of putting in place an effective framework of institutions and laws, and transferring responsibility to local officials, is a crucial part of UNMIK's mandate. Regardless of the final status of Kosovo, under UNSCR 1244 UNMIK is mandated to establish autonomous institutions of self-government. The Resolution states that "Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic institutions."<sup>5</sup>

Without a stable internal environment, with functioning institutions, no sort of final status agreement could be implemented. While the responsibility for leading this process lies with UNMIK, the onus is upon local leaders to demonstrate that they can govern effectively and fairly for all of Kosovo's citizens. This section suggests benchmarks for assessing progress in preparing Kosovo for whatever final status may be decided. While progress in achieving these benchmarks should not hold up the process of addressing the question of final status, it should

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<sup>4</sup> See Andrew Gray, "Kosovo status may be issue sooner than West wants," *Reuters*, 20 November 2001.

<sup>5</sup> UNSCR 1244, Annex 2.8.

affect the timing of the implementation of final status.

## A. SELF-GOVERNMENT INSTITUTIONS

In establishing self-government institutions, UNMIK has adopted a three-pronged approach.

- It set up and managed administrative departments. In some areas, such as the judiciary, UNMIK based its activity on re-establishing and overseeing predominantly nationally staffed systems. In the case of the police, it was necessary at first for UNMIK to employ international police while a Kosovo Police Service was established and its police officers trained.
- Together with international donors, it took the opportunity to rebuild and reform institutions according to European standards. For example, police were trained in modern, democratic methods; health care reforms were carried out; the education curriculum was rewritten; and new laws conforming with international human rights norms were enacted.
- UNMIK's most important task was to build indigenous capacity capable of administering these reformed institutions after the international community has left.

### 1. Establishing An Administration

For the UN, the Kosovo mission was the first time that it had taken on the task of governing a society. The challenge was immense. The first task was to avert a potential humanitarian crisis. Hundreds of thousands of refugees and internally displaced persons (IDPs) voluntarily returned within a few months of UNMIK's establishment. With winter quickly approaching, returnees found destroyed houses, damaged and looted buildings, and few employment opportunities. Post-war Kosovo was characterised by a climate of impunity: crimes were not investigated and criminals went unpunished. Despite the efforts of KFOR to provide a secure environment, revenge attacks on minorities contributed to the flight of over 200,000

Serbs from their homes,<sup>6</sup> in addition to other minority communities, notably Roma.

On top of the immediate challenges, Kosovo's institutions were handicapped by the legacy of misrule from Belgrade. Basic infrastructure such as roads, utilities, healthcare and education facilities had suffered from a decade of neglect. Albanians had faced severe discrimination at many levels. Discriminatory laws, such as a prohibition on land sales from Serbs to Albanians, were introduced. Many Albanian employees were either dismissed from their jobs or resigned in protest at measures of the Serbian government. In response to the imposition of a Serbian curriculum, a parallel educational system was established. While a feat of civic organisation under the circumstances, this system left a generation of Albanians with uncertain expertise and unrecognised qualifications.

With the exception of run-down buildings, UNMIK found little of the previous administrative structure intact when it arrived in Kosovo. In contrast to this bleak inheritance, their mandate to provide "civil administration" was sweeping. To fulfil its mandate, UNMIK had to reconstruct all the institutions of self-government, appoint international and local staff to these institutions, manage the running costs and equip the facilities while at the same time contending with complicated UN procurement and staffing procedures. As a result, UNMIK was slow to establish a presence on the ground.<sup>7</sup>

Indigenous parallel structures were, by contrast, quick to form. The Kosovo Liberation Army (KLA) rapidly set up a "provisional government" that created government departments, municipal administrations, and took over institutions such as health centres and hospitals. Similar, competing Democratic League of Kosovo (LDK) structures were also often in place, remnants of the parallel structures in the 1990s. In Serb-controlled enclaves Belgrade's authority continued, and health staff and teachers received instructions, pay, and supplies from Belgrade.

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<sup>6</sup> Information from UNHCR.

<sup>7</sup> See ICG Balkans Report No. 79, *Waiting for UNMIK: Local Administration in Kosovo*, 18 October 1999.

UNMIK was handicapped by its lack of resources, its slow deployment of personnel, and the parallel structures.<sup>8</sup> These factors caused a crisis of governance in the autumn of 1999. UNMIK was simply not in firm control of the province. In response, the then Special Representative of the [UN] Secretary-General (SRSG), Bernard Kouchner, established the Joint Interim Administrative Structure (JIAS) in January 2000.<sup>9</sup> JIAS essentially created co-governance between UNMIK and Kosovo representatives, with the goal of better administering the province and slowly building Kosovo's institutions.

The Interim Administrative Council (IAC) was established as the principal consultative mechanism between UNMIK and Kosovo's leaders, and was composed of Kosovo's three most important political parties and representatives from the Serb minority community. Political parties were allocated departments, and they appointed officials who would jointly govern these institutions with international officials. Minority representatives were given the co-head position in two departments, those for agriculture and labour. In an effort to build local capacity, international officials were twinned with local counterparts. In order to secure Serb participation in the IAC and to provide a point of contact with UNMIK in the Serb enclaves, Local Community Offices were established to meet the administrative needs of minority communities.<sup>10</sup>

In many sectors, hundreds of NGOs were actively implementing projects ranging from the provision of emergency services to training programs. Coordinating these efforts proved very difficult. Individual donors stepped in to introduce ambitious reform programs in a variety of sectors. In so doing they neglected to provide adequate support to UNMIK departments to build government capacity to manage the reform programs. Reforms most often took the form of projects implemented by NGOs from the donor country. Moreover, donors' time horizons tended to be short. Their focus was on quantifiable outputs, such as the number of houses rebuilt,

health clinics re-equipped and schools refurbished, rather than capacity building.

The JIAS departments were designed to form the basis of future ministries, their staff to become the future civil servants of Kosovo. However, they faced several challenges. These departments were often sorely understaffed structures that struggled to undertake basic administrative tasks such as establishing a payroll, procurement policies, staffing procedures, and transparent accounting systems. They were unable to ensure that the regulations and procedures were consistently applied throughout the province.

Although the logic behind the training of locals by their UNMIK counterparts was sound, some departments lacked international staff with experience working in Ministries in their countries of origin. Such experts could often provide valuable technical advice, but have little insight into how government departments should function. Their local counterparts, sometimes political appointees, encountered language barriers and were uncertain of their role vis-à-vis their international counterparts. And their role in providing substantive input into policy depended on the receptiveness of their international co-head.<sup>11</sup>

Local government elections in October 2000 transferred significant institutional responsibilities to the municipal level. Elected municipal assemblies became responsible for primary healthcare; public health; education; public services such as fire and emergency services; public utilities and infrastructure; social services and housing; and licensing of buildings, regulations; and services/facilities. Municipal administrations were established to exercise responsibility for these tasks. The SRSG retained authority to set aside any decision of a municipality in conflict with UNSCR 1244 or applicable law, or that did not take into account the rights and interests of minority communities. International municipal administrators, previously running the municipality, became advisors to the newly elected Municipal Assemblies, while retaining ultimate executive authority on behalf of the SRSG.

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<sup>8</sup> See ICG Balkans Report No. 83, *Starting from Scratch in Kosovo: The Honeymoon is Over*, 13 December 1999.

<sup>9</sup> UNMIK Regulation 2000/1, *On the Kosovo Joint Interim Administrative Structure*, 14 January 2001.

<sup>10</sup> See ICG Balkans Report No. 100, *Kosovo Report Card*, 28 August 2000.

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<sup>11</sup> ICG interviews with local co-heads of JIAS Departments.

In practice, the transfer of responsibilities from the central to the local level, and from the international administrator to the elected municipal assembly, was slow. For example, it took a year to transfer responsibilities for primary and public health to the municipal level.<sup>12</sup> In addition, local municipal officials had little experience of decentralised government.

International municipal administrators, on the other hand, were accustomed to running the municipality and familiar with UNMIK regulations. Their role in the months after the election was usually more than an advisory one. This sometimes caused frustration and resentment among elected representatives. Observers have commented on the need for continued international commitment and more oversight at the municipal level.<sup>13</sup> While this report focuses on central level institutions, many lessons from the municipal transfer of power from the international community to elected officials may prove relevant.

## 2. A Slow Start To Self-Government

The Constitutional Framework, signed on 15 May 2001, identified the responsibilities that would be transferred to the elected Assembly and the powers that would be reserved for the SRSG. The basis for elected representation was established, and accountability mechanisms were identified for the self-government institutions.<sup>14</sup>

The new provisional institutions are to have authority in such areas as health and education; economic and financial policy; domestic and foreign trade; agriculture; industry and investments; science and technology; culture; labour and social welfare; transport and communications; statistics; and oversight over local administration. With oversight from the SRSG, the new institutions also exercise limited

powers in such as judicial affairs and media regulation.

The SRSG retains responsibility in such areas as the rights and interests of communities; dissolving the assembly; final authority over the budget; monetary policy; customs; law enforcement; final authority on the appointment and disciplining of judges and prosecutors; control over the Kosovo Protection Corps (KPC); and the administration and regulation of public and socially owned property and enterprises.<sup>15</sup>

After the 17 November 2001 election for the Assembly, the transfer of power from the UN administration to the new institutions as foreseen in the Constitutional Framework was supposed to take place. The Constitutional Framework envisages several key positions. The President of the Assembly presides over Assembly sessions and, together with the Presidency of the Assembly, sets the agenda for Assembly sessions. Places in the Assembly Presidency are allocated according to seats in the Assembly, and with the current distribution of seats, two places each in the Presidency are allocated to the LDK, the PDK, and the Serb list "Povratak" ("Return"), while one place goes to a non-Serb minority representative.

The President of Kosovo, with a three-year mandate, is largely a ceremonial post, with external and public relations duties, but has symbolic importance. The Prime Minister is supposed to coordinate the work of the nine Ministries,<sup>16</sup> and has five support offices: Legal Support Services; Public Information; Good Governance, Human Rights, Equal Opportunity and Gender; Communities; and Senior Public Appointments Committee.<sup>17</sup>

The establishment of the new institutions was held up by a dispute over how the three key positions of

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<sup>12</sup> Before handing over responsibility to the municipalities, the Department of Health insisted upon a Municipal Services Agreement, which outlined in detail the services that the municipalities had to provide, and the relationship between the municipalities and the central level of government.

<sup>13</sup> ICG interviews with UNMIK Municipal Officials and NDI.

<sup>14</sup> UNMIK Regulation 2001/19, *On the Executive Branch of the Provisional Institutions of Self-Government in Kosovo*, 13 September 2001.

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<sup>15</sup> For a discussion of the Constitutional Framework, see ICG Balkans Report No 120, *Kosovo: Landmark Election*, 21 November 2001.

<sup>16</sup> The following nine Ministries have been established: Finance and Economy; Trade and Industry; Education, Science and Technology; Culture, Youth and Sports; Health, Environment and Spatial Planning; Labour and Social Welfare; Transport and Communications; Public Services; and Agriculture, Forestry, and Rural Development. The number of ministries can be increased to twelve.

<sup>17</sup> UNMIK Regulation 2001/19, *On the Executive Branch*.

government – the President of the Assembly, the President of Kosovo, and the Prime Minister – would be divided between the LDK and the PDK. As envisaged in the Constitutional Framework, a member of the LDK, the party with the most seats, was elected as Assembly President at the Assembly's first session on 10 December 2001. The next step in forming an administration is the election by the Assembly of the President of Kosovo. However, further Assembly sessions, on 13 December 2001 and 10 January 2002, failed to secure the necessary number of votes for president (a two-thirds majority in the first two votes or the simple majority required in the third).

The LDK, having won 47 seats in the 120-seat Assembly and a majority of the Albanian vote, believed that it deserved all three key positions, with party leader Ibrahim Rugova as President. In a bid to secure the PDK's support for Rugova, the LDK offered the PDK five ministerial posts (out of the seven ministries allotted to Albanian parties). However, the PDK, having won 26 seats, believed that one of the three key positions belonged to them, specifically that of the prime minister. They feared that if they accepted ministerial posts, PDK ministers could be dismissed by an LDK prime minister and would lack real power and input into government decision making.<sup>18</sup> The LDK feared that if it agreed to a PDK prime minister, particularly if that Prime Minister was Hashim Thaci, they would see a repeat of the excesses of the Provisional Government in the summer of 1999.<sup>19</sup> With no agreement, and despite frenetic efforts at mediation by international representatives, the transfer of responsibility to the new institutions was deadlocked. The impasse was finally broken on 28 February, with an agreement between the LDK and PDK to have Rugova as president and a moderate PDK member, Bajram Rexhepi, as prime minister.

This slowness to get the new institutions up and running highlights the difficulty that UNMIK will have in transferring authority to local bodies. Of course, the whole process of forming a government is new to the parties, and the Constitutional Framework is untested. There is bound to be a steep learning curve as the parties accustom

themselves to the process of political bargaining and forming an administration. That there should be teething problems is hardly surprising.

The drawn out political crisis has also thrown into sharp relief the deep fault lines that cut across the Albanian political spectrum: divisions between those who fought for the KLA and those who did not, between rural and urban, and between the old guard and the new.

In the shifting sands of Kosovo's political scene, the priority for all of the main parties is to gain advantage in future rounds of the struggle for control. In the strategies of the parties, particularly the PDK and the AAK, looking beyond narrow party interests to facilitate the transfer of power from UNMIK to the new institutions, especially if they would be controlled by the LDK, is not the priority. For now, and despite the limited autonomy granted under the Constitutional Framework, Kosovo remains an international protectorate, and UNMIK can continue to provide a safety net for the irresponsibility of the local parties.

### 3. Benchmarks For Provisional Institutions

The political deadlock not only slowed the transfer of power from UNMIK to Kosovo's institutions; it also highlights how difficult institution building will be. In this section and in others the report identifies key benchmarks for assessing progress in establishing the democratic, functioning structures of self-rule.

Provisional institutions of self-government should include:

- An assembly that is democratic, accountable, conducts free and fair votes, and is able to process legislation.
- Ministries staffed by an apolitical, transparent and ethnically representative civil service, able to provide technical advice to their ministers; monitor the administration of their sector of responsibility, and ensure that standards are enforced throughout the province.
- Notwithstanding the need for a long-term international commitment to assist Kosovo's development, a sustainable revenue

<sup>18</sup> ICG interviews with PDK officials.

<sup>19</sup> ICG interviews with LDK officials. See ICG Balkans Report No. 88, *What Happened to the KLA?*, 3 March 2000.

collection capacity to support these institutions, as well as sound and transparent fiscal management.

#### *The Assembly: Democratic And Accountable*

Unlike the ministries, which evolved from established JIAS departments, the Assembly had to be created and staffed from scratch, and rules and regulations put in place for its operation. UNMIK set up an Assembly Service Secretariat that was responsible for initial staffing, outlined budget requirements and drew up interim Provisional Rules of Procedure for the Assembly.

This is the first time that a democratically elected Assembly has functioned in Kosovo, and it is the first time that most members have sat in such a legislative body. It will, therefore, take time for the Assembly to run smoothly, and for Assembly members to settle into their role. Their accountability to the electorate is somewhat hampered by the single, province-wide list system of proportional representation, which means that there is no direct responsibility to regional constituencies.

The OSCE and the National Democratic Institute (NDI) are providing training to Assembly members, which will continue into the near future. This training will focus on four issues: caucus development, transparency, ethics, and legislative procedures. While it is too early to assess the impact of such training and the functioning of the Assembly, its importance cannot be overstated.

In terms of providing institutional infrastructure and training, the international community has largely played its part. The test is for the political parties to show that they have the will to operate a functioning parliamentary democracy. The behaviour of the Albanians in the months after the 17 November 2001 election is not encouraging in this regard.

#### *The Ministries: Transparent And Multiethnic*

The Ministries, as noted above, grew out of the JIAS structure. The JIAS departments have been merged, and once a minister is appointed, the current international co-head will operate as the Principal International Officer (PIO). Responsibilities of each Ministry have been outlined, organisational charts prepared, budgets

established, staffing needs identified and recruitment has begun for new staff. UNMIK asserts that the transition to the ministries should be smooth as all the rules, procedures, and preparations have been put in place.<sup>20</sup>

While UNMIK has taken detailed steps to prepare for the transfer of power to the new institutions, it is one thing to establish the framework for ministries and another to ensure that this framework is respected in practice. Key questions remain. How transparent will the ministries be, and will they be able to ensure that their policies are respected throughout Kosovo? How will the civil service function? How will the ministries relate to the Assembly in practice? And what will be the relationship of the civil service and the minister with UNMIK staff, including the PIO, in each ministry?

Negative legacies of the JIAS structure will haunt the ministries. As mentioned earlier, the majority of donor funding went to individual projects, not to departments. These individual projects stretched the capacity of JIAS departments as they were forced to coordinate them and ensure that they were in line with the reform program. Some departments had many international technical experts, while others lacked such support. As many as 30 international experts supported the Ministry of Education, while the Department of Health struggled with less than half that number.<sup>21</sup> As a result, under-staffed departments were simply not able to establish critical mechanisms such as transparent accounting, procurement and information systems. Donors therefore missed an important opportunity to build the capacity of the Kosovo government.

An apolitical, multiethnic civil service accountable to the elected Assembly is an important component of any government, particularly in a transitional context such as Kosovo. UNMIK adopted a Civil Service Law that contains a Code of Conduct, lays the legal foundation for the civil service and establishes principles of accountability and

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<sup>20</sup> UNMIK officials to the ICG.

<sup>21</sup> ICG interview with Ministry of Education official; and information from the UNMIK Organigrams for the new ministries.

transparency, neutrality and impartiality, and a fair recruitment process.<sup>22</sup>

While the principles of the civil service are well articulated, ensuring that they are respected will be a challenge. UNMIK was late in establishing the foundations for a civil service. Many of the staff of the JIAS departments were political appointees, most of whom were dismissed with the dissolution of the JIAS structure. If these positions had been filled with recruits from open and fair competitions, these individuals could have been the starting point for the civil service.

Training for staff of the JIAS departments was provided by the OSCE Institute for Civil Administration and the Department of Public Services. This training was undoubtedly helpful, as it focused on needed technical skills such as computer and language training. However, it was not based on an assessment, coordinated across JIAS departments, of what is needed to build accountable ministries. The Institute for Civil Administration is in the process of being transformed into the Kosovo Institute for Public Administration to provide civil service training.

Recruitment is underway across the new ministries and it is too early to determine UNMIK's success in establishing an apolitical and multiethnic civil service. Some key positions, such as the highest position in each ministry, the Permanent Secretary, will only be appointed once the minister is appointed. UNMIK has committed itself to setting the ethnic composition of the civil service at levels closely proportionate to the ethnic composition of the Assembly. This means that approximately 29 per cent of the civil service should be composed of minorities, with 18 per cent being Serb.

It is important for UNMIK to encourage a multiethnic civil service, but the challenge extends beyond policy guidelines. Minorities will need to feel accepted by their majority counterparts, and have safe transport and working conditions. At the moment Kosovo is far from providing such conditions. In the case of the Serb minority, it is especially important that participation in the Kosovo civil service is not discouraged by fear of repercussions from Belgrade.

The relationship, as outlined in Appendix B, between the new institutions and UNMIK, could be a difficult one. If the municipalities provide any insight, the transition of responsibilities from international officials to local officials will be a slow and difficult process. The transition in roles of international officials from Head of the Department to the advisory position of the PIO, leaves considerable room for interpretation and adaptation.

The international community, having invested significant resources in reform programs, will be carefully watching the actions of the institutions to ensure that their investment is not put at risk. Kosovo remains an international protectorate. Given the reserved powers of the SRSG, particularly in the area of the budget and in the judicial sphere,<sup>23</sup> the PIOs, as representatives of the UN, could become more than just advisers and their role could easily be resented.

#### *Fiscal Sustainability*

This report argues that the international commitment to Kosovo will need to be long-term if Kosovo is to be set firmly on its feet. Supporting economic development, through technical assistance and advice, infrastructure development and so forth will be necessary for some time to come.<sup>24</sup> Nevertheless, a key aim if Kosovo is gradually to be weaned off international support must be to build a sustainable tax base, with the capacity to support the province's institutions.

The record since 1999 has been rather positive. The Central Fiscal Authority (CFA) has succeeded in raising domestically generated revenues to the point that in the 2002 budget it is anticipated that

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<sup>22</sup> UNMIK Regulation No. 2001/36, *On the Kosovo Civil Service*, 22 December 2001.

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<sup>23</sup> The Central Fiscal Authority, with its powers to set the budget and fiscal policy, will exist in parallel with the Ministry of Finance and Economy. The Ministry of Public Services will oversee "the organization and proper functioning of the courts, within existing court structures; and the provision, development, and maintenance of court and prosecutorial services", while Pillar One (Police and Justice Pillar) will continue to exercise control over the majority of responsibilities in the Judicial Sector. See Regulation 2001/9, *A Constitutional Framework*.

<sup>24</sup> For a discussion of the international community's strategy for Kosovo's economic development, see ICG Balkans Report No. 123, *Kosovo: A Strategy for Economic Development*, 19 December 2001.

donor participation will be needed to cover only 7 per cent of the ordinary operating expenses of government (the recurrent expenses).<sup>25</sup> Most revenue is collected at the border, in customs duties and a value-added tax (VAT) that was introduced in 2001. A payroll tax is being introduced in 2002, but, given the low average income in Kosovo, it is not expected to contribute significantly to revenues.

Up until 2001 almost all capital expenditure had been funded by donors. Most was spent on reconstruction as a result of war damage or decades of poor maintenance and general degradation to existing infrastructure. In 2001 and 2002 some funds were allocated from the Kosovo Consolidated Budget for maintenance of the refurbished capital stock, especially on roads. In 2002, the budget is expected to provide up to €100 million for capital investment.

Funds for capital investment came available in 2002 as a result of an accumulation of cash from faster than expected revenue growth in 2000-2001, starting from a base of almost zero. However, revenue growth is expected to taper off. While the CFA has experienced considerable success in covering recurrent expenditure, continued donor support is going to be required at high, if reduced, levels for some time. In the longer term, an increase in private foreign investment is the only viable option for promoting economic development, although as long as uncertainty over status and jurisdiction remains unresolved, many foreign investors will continue to be put off.

The CFA has placed a high emphasis on building local capacity to take over fiscal management, including on-the-job practical training. Careful planning and priority setting in order to keep expenditure under control will be key. Modesty in setting civil service salary levels may prove difficult, but will be necessary, as well as care not to allow social welfare expenditures such as pensions to grow beyond the capacity of revenue to cover them. Transparency, especially in order to minimise corruption, will also be vital.

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<sup>25</sup> Information from the CFA. This figure compares with about 90 per cent of operational expenses being funded by donors in 1999, 50 per cent in 2000 and 30 per cent in 2001. In 2003 it is expected that recurrent expenditure will be entirely covered by domestically generated revenue.

## B. THE CRIMINAL JUSTICE SYSTEM

A climate of impunity reigned when UNMIK and KFOR arrived in Kosovo.<sup>26</sup> Police lacked the strength to secure public safety; no judicial system existed to conduct trials, and no prisons could incarcerate criminals. After two-and-a-half years, the judiciary hears cases, trained Kosovo police officers patrol the streets, and a penal system functions. UNMIK took these issues so seriously as to establish the Police and Justice Pillar (known as Pillar One) in May 2001, to ensure effective coordination among police, the courts, and penal management. However, as we argue below, much needs to be done to build capacity within these critical institutions.

### 1. The Judiciary

From the outset, UNMIK faced several problems in establishing a functioning judiciary. The judicial structure had to be completely reconstituted. Courts had to be renovated and staffed, judges and prosecutors hired, and applicable law clarified. The judiciary consisted of inexperienced judges and prosecutors. They were susceptible to intimidation, unrepresentative of minorities, and suffered from years of discrimination and the effects of the war, with the result that the impartial dispensation of justice could not be guaranteed. Effective prosecution was severely hampered by confusion over the applicable law.<sup>27</sup>

Significant progress has been made in resolving the structural deficiencies of the system. There is now a fully functioning court system complete with support staff, materials, and prosecutors and judges. To create a clear legal framework, and to ensure that applicable law is in compliance with European human rights standards, a multitude of new regulations have been passed. To verse judges and lawyers in these new methods, training programs have been implemented. A School of Magistrates has established a curriculum for judges and prosecutors, while the OSCE founded the Criminal Defence Resource Centre to train defence lawyers. To build capacity and to act as a guarantor

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<sup>26</sup> See ICG Balkans Report No. 78, *Violence in Kosovo: Who's Killing Whom*, 2 November 1999.

<sup>27</sup> These concerns are described in a report by the OSCE Mission in Kosovo, *A Review of the Criminal Justice System, 1 February 2000 - 31 July 2000*. Available at <http://www.osce.org/kosovo/documents/reports/justice>.

of impartiality, UNMIK introduced international judges and prosecutors in each district court as well as in the Supreme Court. In Prishtina/Pristina University, law faculty reform is underway, and a Bar Exam was founded which held its first exam in December 2001.

The earlier structural deficiencies of the judicial system have largely been addressed. The legal monitoring section of the OSCE has asserted that "The current system has been endowed with the necessary mechanisms to ensure an efficient case-flow management whilst, on the one hand, guaranteeing individuals due process and, on the other hand, holding the members of the judiciary accountable for their performance."<sup>28</sup> Yet serious concerns remain about the capacity of the judiciary to apply the reformed legal framework; to ensure the impartial dispensation of justice; to exercise its role free from political interference; and to investigate and prosecute crimes.

Benchmarks for assessing a functioning judiciary are:

- A consistent legal framework in line with international human rights law.
- The impartial dispensation of justice for all people, regardless of ethnicity, and in courts at the municipal, district, and provincial levels.
- A fully independent, transparent, effective, and fair judiciary, free from political or other forms of interference.
- The capacity to investigate and prosecute crimes.
- Equal access to justice.

#### *A Consistent Legal Framework*

After much debate, UNMIK decided in December 1999 to use the Yugoslav Legal Code as it had existed before 22 March 1989 (the day that Kosovo lost its autonomous status) unless or until overridden by Regulations promulgated by the

SRSG. This meant that the criminal code that had applied in the autonomous province of Kosovo was applied, instead of the Serbian criminal code. In case of a conflict, universal human rights standards take precedent.<sup>29</sup>

This is clearly a complex mix for any judge and prosecutor, but particularly for a new and untested judicial structure. Confusion still reigns over the applicable law.<sup>30</sup> There is no central body, such as a Constitutional Court, to provide direction on applicable law. Given the short duration of the UNMIK mission, there is an absence of case law providing guidance on interpretation. Judges are often unfamiliar with human rights law, and its application. Another problematic issue is the failure of the SRSG's office promptly to translate and adequately distribute new regulations. Judges and prosecutors simply are not always aware of new regulations as they are passed.

Although the complications of applicable law will be resolved with time, as new regulations are gradually promulgated, the international community can take measures to provide further clarity. These regulations must be quickly translated and distributed throughout the legal structure, and training initiated on the implication of new laws. In the long term, responsibility for the distribution of justice rests in the hands of Kosovo's judges, prosecutors and defence lawyers. Members of the Kosovo judiciary must feel the professional obligation to acquaint themselves with these laws.

#### *The Impartial Dispensation Of Justice*

When courts began hearing cases in the summer and autumn of 1999, the problem of ethnic bias was from the outset a serious issue. Serbs or other minorities charged with crimes were investigated and tried by Albanian prosecutors and judges. These judges, either due to the legacy of the war or as a result of intimidation, did not deliver impartial verdicts.

Efforts by UNMIK to create a multiethnic judiciary have been hampered by interference from

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<sup>28</sup> OSCE Mission in Kosovo, Department of Human Rights and Rule of Law, *Kosovo: Review of the Criminal Justice System*, 21 October 2001, p. 54. Available at <http://www.osce.org/kosovo/documents/reports/justice>.

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<sup>29</sup> UNMIK Regulation No. 2000/59, *Amending UNMIK Regulation No. 1999/24 On the Law Applicable in Kosovo*, 27 October 2000.

<sup>30</sup> OSCE, *Review of the Criminal Justice System*, 1 February – 31 July 2000.

Belgrade. To date only four Serbian judges and prosecutors work within the system. Despite the appointment of Serb judges and prosecutors, many appointees have been reluctant to take up their post as Belgrade has threatened to withdraw their FRY pension rights if they work for UNMIK.<sup>31</sup>

The efforts of international judges and prosecutors assigned to courts to address ethnic bias were handicapped, in that three judges hear a case, and the verdict is by majority. The one international judge was often simply out-voted by his counterparts. In late 2000, UNMIK passed a regulation that allowed for the establishment of international panels, with an international prosecutor, in courts.<sup>32</sup> These panels hear sensitive cases where it is feared that the independence and impartiality of the judiciary or the proper administration of justice cannot be guaranteed.

Although these measures have reduced the risk of ethnic bias in trials for major crimes tried at the District or Supreme Court level, bias continues to be a serious factor in municipal and minor offences courts. These courts have largely escaped the scrutiny of the international community.<sup>33</sup> One recent example was the pre-trial detention, ordered by a municipal court, of an elderly Serb writer from the municipality of Shterpc/Strpce after a scuffle with a police officer. Although UNMIK officials claimed that this was not a case of bias, it is highly unlikely that an elderly Albanian man would have received the same treatment for such a relatively minor offence.<sup>34</sup> UNMIK is putting in place a system by which an international judge will be seconded to municipal or minor offences court that shows signs of bias or has a backlog of cases.

Bias extends beyond ethnicity. Trafficking, rape and other sexually related crimes are often not taken seriously by judges or prosecutors, and victims often face bias, discrimination and contempt. Instead of trafficked women being protected by the judicial system, they are often charged with prostitution or immigration-related offences. These charges are brought forward even though the law on trafficking states that women who can prove that they were victims of trafficking will not be liable for these offences.<sup>35</sup>

In cases of sexual violence, due forensic analysis and evidence gathering are not always undertaken, and there have been examples where judges and the prosecution are antagonistic towards the victims. The average sentence for sexual violence has declined from three years to one year.<sup>36</sup> While this is a region-wide problem, given that Kosovo is an international protectorate a more serious effort to stamp out such discrimination should be expected.

Increased action is needed to address bias at all levels of the judiciary. The involvement of international judges and prosecutors has been key to efforts to increase impartiality in the courts. While the provision of international judges and prosecutors has brought some redress, this solution is clearly not sustainable in the long-term. Instead, training for judges and prosecutors should be strengthened, and regulatory mechanisms institutionalised. UNMIK has established the Judicial Inspection Unit, which conducts disciplinary hearings against Kosovo judges and prosecutors.<sup>37</sup> This unit has taken disciplinary action against both judges and prosecutors.

However, beyond the efforts of the international community, it is for the Kosovo judiciary to demonstrate that it respects and will uphold the

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<sup>31</sup> UNSC, *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, 15 January 2002, p. 7. Also Senior UNMIK officials to the ICG.

<sup>32</sup> UNMIK Regulation No. 2000/64, *On Assignment of International Judges/Prosecutors*.

<sup>33</sup> OSCE, *Review of the Criminal Justice System*, 21 October 2001.

<sup>34</sup> Senior UNMIK officials denied that this was a case of ethnic bias, as the judge believed that the accused would try to escape from Kosovo and did not believe that the bail was high enough to prevent this. However, as UNMIK officials in Shterpc/Strpce pointed out, escape was unlikely as the Serb enclave in Shterpc/Strpce is completely isolated, with checkpoints at all access roads.

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<sup>35</sup> See UNMIK Regulation 2001/4, *On the Prohibition of Trafficking in Persons in Kosovo*, 12 January 2001. Available at : [http://www.unmikonline.org/regulations/index\\_reg\\_2001.htm](http://www.unmikonline.org/regulations/index_reg_2001.htm)

<sup>36</sup> OSCE, *Review of the Criminal Justice System*, October 2001; OSCE, *Review of the Criminal Justice System* 1 September 2001-28 February 2001; Human Rights Watch, *Human Rights Watch World Report 2002*, "Federal Republic of Yugoslavia," New York: Human Rights Watch, 2002. Available at: <http://www.hrw.org/wr2k2/>

<sup>37</sup> United National Security Council (UNSC), *Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo*, 2 October 2001.

rights of all, regardless of ethnicity and gender. And it is the responsibility of the wider Albanian community, above all its leading figures, to set the tone by insisting that everyone in the society is entitled to fair and equal protection before the law.

Competent defence lawyers are also a critical element of a functioning justice system, and important to ensure that defendants receive a fair trial. The international community has emphasised the training of judges and prosecutors, but until recently, neglected the training of defence lawyers. The OSCE cites examples where defence counsels have failed to request forensic analysis, adequately investigate the case, properly question witnesses, present supporting evidence, and object to inadmissible evidence.<sup>38</sup> A Criminal Defence Resource Centre has been set up to assist in training defence counsels.

### *An Independent Judiciary*

At the beginning of its mandate, UNMIK placed full legislative, executive and judicial authority in the hands of the SRSG.<sup>39</sup> Underpinned by UNSCR 1244, a resolution adopted under Chapter VII of the UN Charter, the SRSG and the KFOR commander (ComKFOR) can order executive detention outside of judicial scrutiny for cases where, in their opinion, public safety is threatened. In other words, the SRSG and ComKFOR do not have to present evidence to a court citing that pre-trial detention is necessary, and detainees may have no written documentation that establishes the legal grounds and period of their detention. In effect, there is no independence of the judiciary.

Human rights experts argue that the immunity of UNMIK and KFOR against any form of legal process means that UNMIK and KFOR can act with impunity,<sup>40</sup> and that this violates the European Convention on Human Rights.<sup>41</sup> KFOR and the SRSG's office cite the need to protect public

safety, especially because current rules of evidence do not allow covertly gained evidence in court.<sup>42</sup>

In the extremely difficult security environment of the immediate post-war period, when Kosovo lacked a functioning judiciary, such detentions were seen as necessary in order to establish a secure environment. In a sense, UNMIK has faced a dilemma between the need to establish a secure environment and the objective of building a democratic, law-governed society. In many cases, UNMIK has chosen security over judicial processes. However, two and a half years into the UNMIK mandate, and after considerable progress in establishing a functioning judiciary has been made, such extra-judicial detentions may no longer be justified.

To address the criticism of extra-judicial detentions, the SRSG established the Detention Review Commission. This commission reviews cases of detention according to guidelines,<sup>43</sup> but its members are selected by the SRSG and it is independent from the judiciary. Despite the weaknesses in the judicial system noted in this report, UNMIK and KFOR need to recognise that the practice of extra-judicial detentions in effect sets back efforts to build an independent judiciary in the long term. It certainly does not set a good example to the new institutions of the need for a judiciary to be independent of the executive.

### *Capacity To Investigate And Prosecute Crimes*

The judicial sector is undergoing a complete reform. As described above, to bring the applicable law into conformity with European standards and human rights law, new regulations are continually being passed. The pace of change is rapid, which demands constant instruction of judges, prosecutors, and defence lawyers.

Beyond the rapid pace of change, the judiciary is entering into new and sensitive areas of responsibility. Key concerns are organised crime, political violence, terrorism, and violence against

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<sup>38</sup> OSCE, *Review of the Criminal Justice System*, October 2001.

<sup>39</sup> UNMIK Regulation No. 1999/1 on the Authority of the Interim Administration in Kosovo, 25 July 1999.

<sup>40</sup> Marek Antoni Nowicki, Ombudsperson in Kosovo, presentation to the Informal Meeting of the Permanent Council of the Organisation for Security and Cooperation in Europe, 7 November 2001.

<sup>41</sup> OSCE, *Review of the Criminal Justice System*, October 2001, p. 8.

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<sup>42</sup> Senior UNMIK officials informed ICG that a regulation was under preparation to allow for covertly gathered evidence to be used in court.

<sup>43</sup> UNMIK Regulation 2001/28, *On the Establishment of a Detention Review Commission for Extra-Judicial Detentions Based on Executive Orders*, 25 August 2001.

minorities.<sup>44</sup> Organized crime is a region-wide issue and includes trafficking of women, weapons smuggling, money laundering, and drug trafficking. Despite the best efforts of KFOR and the Customs Service, Kosovo's borders are porous. Although no one is able to indicate the extent of organized crime, frequent accounts appear of police freeing trafficked women and of KFOR and UNMIK Customs finding weapons and other goods being smuggled across Kosovo's frontiers.

Political violence has been a persistent problem, almost exclusively against representatives of the LDK. Since the summer of 2000, five senior and mid-level LDK officials have been killed. No one has been charged with these murders. The campaign for the 17 November 2001 election was marked by considerably less violence than had been the case in the period before the October 2000 municipal elections. However, two months after the election the first member of the Kosovo Assembly, an LDK representative, was killed outside his home.<sup>45</sup> While violence against minorities has declined, large parts of Kosovo remain profoundly unsafe and intimidating for Serbs and Roma especially. There have been few prosecutions for the wave of violent attacks in 1999 and 2000.

The judiciary has lacked the tools to investigate and prosecute such crimes. Although KFOR has stronger intelligence gathering capacity than the police, some national contingents are often reluctant to share evidence or allow it to be used in court. The December 2001 release of the three suspects in the 16 February bombing of a bus carrying Serbs from Nis to Kosovo (known as the Nis Express) is a stark reminder of the weakness of judicial instruments. The intelligence information upon which KFOR based its detention of the suspects could not be translated into the evidence necessary to secure their conviction in a court of law.<sup>46</sup> Under the FRY Criminal Code (part of the applicable law in Kosovo), covertly gathered evidence cannot be used as evidence in court.

Regulations to establish the legal mechanisms to combat organized crime, including a witness

protection program, and the means to facilitate "cooperative witnesses" (informers who would otherwise be charged with an offence) have been adopted.<sup>47</sup> A revised criminal code has been prepared and awaits approval. New specialised units have been established within the Department of Justice and UNMIK police. Their mandate is to gather and analyse intelligence, process sensitive evidence for use in courtrooms, and provide expertise on organized crime and terrorism to international prosecutors and judges.<sup>48</sup>

While these new regulations and specialised units are important steps, the capacity of the courts to enforce these new laws remains weak. Specialised units and initiatives, such as the witness protection program, are often in their infancy and lack resources. As discussed above, judges and prosecutors need further training, especially given the confusing patchwork of applicable law. Regulations such as the new criminal code still need to be passed.

Policing practices have also been reformed. There is a lack of clarity between the investigative roles of the judiciary versus those of the police. These issues need to be addressed before the judiciary can have sufficient capacity to investigate and prosecute crimes effectively.

## 2. The Police

Resolution 1244 committed UNMIK to build an autonomous police force to maintain law and order.<sup>49</sup> For the international training of the police service to be judged a success, the Kosovo Police Service must:

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<sup>47</sup> UNMIK Regulation 2001/12, *On the Prohibition of Terrorism and Related Offences*, 14 June 2001; UNMIK Regulation 2001/22, *On Measures Against Organized Crime*, 20 September, 2001; UNMIK Regulation 2001/20, *On the Protection of Injured Parties and Witnesses in Criminal Proceedings*, 19 September 2001; UNMIK Regulation 2001/21, *On Cooperative Witnesses*, 19 September, 2001.

<sup>48</sup> The five units are: The Central Intelligence Unit (UNMIK Police); Kosovo Organized Crime Bureau (UNMIK police); Sensitive Information and Operations Unit (Department of Justice); Legal Policy Unit (Department of Justice); and the Victim Advocacy and Assistance Unit (Department of Justice).

<sup>49</sup> UNSCR 1244, Article 11 (i).

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<sup>44</sup> See ICG Balkans Report No. 88, *What Happened to the KLA?*, 3 March 2000.

<sup>45</sup> *Koha Ditore*, 18 January 2001.

<sup>46</sup> UNSC, *Report of the Secretary General*, 15 January 2001; *Reuters* 18 December 2001.

- ❑ Be an accountable and effective multiethnic police force that provides a secure and safe environment for all communities.
- ❑ Have the capacity to investigate crimes in a professional manner.
- ❑ Ensure the reform efforts of the international community are sustainable.

Unlike other sectors, the police system was initially completely staffed by internationals while UNMIK built local policing capacity. UNMIK Civilian Police (CivPol) established a policing structure, complete with regional stations, investigation units, special operations and border police. Police have gained full policing primacy in all areas.<sup>50</sup> In early 2002, UNMIK had more than 4,400 international police.<sup>51</sup>

#### *An Accountable, Multiethnic Police Force*

The development of the Kosovo Police Service (KPS), while not problem-free, is seen as one of the success stories of the international effort in Kosovo. By early 2002, over 4,300 Kosovo Police Officers had graduated from the OSCE Police Service School, 18 per cent of them women. The international community hopes to train a total of 10,000 KPS officers.<sup>52</sup> KPS recruits are screened for previous offences, and once accepted, receive an initial eight-week training course, followed by a fifteen-week structured field-training program under the supervision of international officers. The curriculum emphasises human right standards, as well as methods of community policing.<sup>53</sup>

The KPS is a multiethnic force. Of the current KPS force, approximately 15 per cent are from minorities. Serb and Albanian KPS undergo their training together and carry out joint patrols in some areas. Collaboration among KPS officers of different ethnicities has been seen as constructive.

While mixed patrols have not so far been able to establish a presence in Serb enclaves such as Shterpc/Strpce and Gracanica, in mixed areas such as Lipjan/Lipljan, Gjilan/Gnjilane, and Kamenica, such patrols have generally been seen as positive. Most Serb communities are policed by Serb KPS officers, but as is discussed below, in north Mitrovica the KPS has yet to be introduced.

A clear hand-over strategy for transferring responsibilities to the KPS has been developed. Frontline KPS officers are being prepared to assume full responsibility for patrol duties, with UNMIK police in a monitoring capacity, a transition that is anticipated for the end of 2002. With this transition, UNMIK also hopes to give KPS full responsibility for one of the five regional police stations. Through shadowing international commanders, KPS officers are being trained in the administration of police operations. By the end of 2003, KPS officers will be in supervisory positions; by 2004 they should be in middle management positions; and by 2005, they are supposed to assume executive management positions.<sup>54</sup>

While the international community has made a good start in establishing a police force, the KPS will require continued monitoring and oversight. Particularly given the speed at which KPS officers were recruited, further background checks may be necessary.<sup>55</sup> The recent arrest of a KPS officer charged with war crimes and the suspension of officers investigated for corruption are a reminder that continued international oversight and scrutiny will be required.

#### *Capacity To Investigate Crimes*

The police mission in Kosovo has had clear successes. Notably, the incidence of some types of violent crimes has declined. Much of this decrease is a result of the gradual passing of the post-war environment, but the stronger police presence has also played a role. In 2001, the number of murders fell by half compared with the previous year, while

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<sup>50</sup> In the first phase of operations, when UNMIK police capacity was low, KFOR had policing primacy throughout Kosovo. Gradually UNMIK police took over from KFOR in all areas except northern Mitrovica.

<sup>51</sup> UNSC, *Report of the Secretary General*, 15 January 2002.

<sup>52</sup> UNSC, *Report of the Secretary General*, 15 January 2002.

<sup>53</sup> OSCE, *2000 Annual Report for the Kosovo Police Service School*, 2001.

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<sup>54</sup> Discussions with UN CivPol Officials.

<sup>55</sup> According to UNMIK police officials, the screening for previous offences among the first and second year intakes of the KPS was done quickly due to political pressure to get people trained and to include former members of the KLA. Background checks on these individuals are currently being carried out in more detail.

arson attacks fell by 58 per cent and looting by 73 per cent. While rape, attempted rape and assault rates increased, the police believe that this reflects the increased willingness of individuals to report crime rather than increases in the crimes themselves.<sup>56</sup> A 60 per cent clear-up rate for major crimes has been achieved.

The police have begun to make very sensitive arrests, including members of the Kosovo Protection Corps (KPC), the successor to the disbanded KLA. In May 2001 UNMIK police arrested Sali Veshi, a KPC commander, and charged him with murder. In November, UNMIK police arrested Gani Ymeri, a KPC regional commander in Vushtri/Vucitrn, and charged him with crimes against Serbs. In January 2002, Alush Shala, another high-ranking KPC member, was arrested. Also in January 2002, UNMIK police arrested three individuals for alleged crimes against Albanians during the war, among them a member of the PDK, a sergeant in the KPS, and another KPC member.<sup>57</sup>

Much remains to be done. There is generally a gap between the law and the capacity of the police to enforce the law.<sup>58</sup> OSCE legal reports cite the limited capacity of the police to gather and analyse forensic evidence, the occasional failure of police to inform arrested people of their rights to counsel, and their failure to present arrested individuals to a judge within the 24-hour time limit under applicable law.<sup>59</sup>

Organized crime, political violence, and crimes against minorities present serious challenges for the police. Despite the attention given to these issues, and the promises by senior UNMIK officials that charges against key people are imminent,<sup>60</sup> few arrests have been made and many of the more sensitive cases go unpunished. Further training of the KPS is needed. Police need to be

able to gather evidence, analyse that evidence, and present it to the court. Particularly as more investigative responsibilities are handed to the KPS, the capacity to manage these responsibilities needs to be built.

#### *Sustainability of reforms*

The KPS was established very quickly, and the speed of graduation was emphasised over the duration of training. An eight-week training program, particularly considering the need for translation of instruction into two languages, is too short. Although this has been supplemented with field training, the quality of field instruction depends on the quality of the international police officer. Especially given the complications of applicable law, the reform of the judicial system and the reform of policing, further training is essential. As noted above, there is clearly a need for additional development of the investigative capacity of the police. The international community has to commit itself to a continued high level of monitoring of KPS officers, and further training.

Some international officers have expressed the fear that after the international community leaves, the multiethnic and gender component of the force may be lost. The police are promoting women and minorities into supervisory roles in the police in an effort to institutionalise their role in the police force. Ultimately, the sustainability of the reform effort will rest in the hands of the KPS.

### **3. The Penal System**

With international attention focused on the police and judicial systems, the development of a penal system tended to be rather overlooked. Adequate prison facilities are needed to house convicted criminals, and those prisons must be managed in accordance with human rights standards. Benchmarks for a democratic and accountable penal system are:

- A lawful and safe system of detention, incarceration, and conditional release.
- Full compliance with international penal management standards and international human rights norms.
- A multiethnic penal management service.

<sup>56</sup> Information from UNMIK Police, Office of Press and Public Information, January 2002.

<sup>57</sup> See the *IWPR Balkan Crisis Reports*, "Kosovo Extremists Targeted", 31 January 2002.

<sup>58</sup> ICG interview with senior UNMIK official.

<sup>59</sup> OSCE, *Review of the Criminal Justice System*, October 2001

<sup>60</sup> In an interview with Kosovo media before he left his post, the outgoing Police Commissioner, Christopher Albiston, stated: "You will see some of the 'top' criminals being caught during this year." *KosovoLive News Agency*, 28 January 2002.

- The capacity to accommodate all convicted felons.

The prison system was established from scratch. Seven facilities were completely renovated, made secure and staffed by January 2001. The system was initially manned by police officers, a job for which they are not trained. The Penal Management Service developed a four-week basic course at the Police School, which has trained over 600 prison officers. Only four of these officers are Serb, but efforts are underway to recruit more minority members. Middle managers are currently being trained, from which directors of prisons will be identified. Kosovo Corrections Service prison officers are being trained as staff instructors. The timetable for the transfer is the end of 2004.

More work clearly needs to be done to meet the benchmarks identified above. While an incarceration system exists, parole (conditional release) is not permitted under applicable law. UNMIK is working to establish the legal and structural framework for parole. Until now there has been no "corrections" component to the penal management system: no social workers working with inmates to reduce the risk of re-offending. Although plans to implement a corrections program exist, these plans are not funded. Due to the lack of experience among locals of working to international penal management standards, UNMIK penal officers have been reluctant to hand-over significant responsibility to local staff.

Local capacity needs to be developed in order to run prisons, as the level of international involvement is not sustainable. There is a need for further capacity building including human rights training throughout the penal system. As discussed above, the minority component of the staff must be increased to create a multiethnic penal management service. More prison space is needed, particularly if the police begin a serious crackdown on organised crime. If the current incarceration rate is maintained, the prisons will reach their capacity of 1,000 beds by March 2002.

#### 4. The Kosovo Protection Corps (KPC)

If the KPS is to be allowed to continue to exist, and to develop as a civil defence force, the key benchmark for assessing its performance is as follows:

- The KPC will have to demonstrate its ability to operate in the service of a law-governed state.

The KPC was established in 1999 as part of the international community's effort to demobilise the KLA. Many members of the KLA were recruited into the KPC, which has the mandate of a civil emergency force. The intention was that while initially the KPC would be a 5,000 strong force, it was intended that gradually 2,000 of its members would be decommissioned into a reserve contingent. This decommissioning has been repeatedly delayed. While the KPC leadership cites lack of support to train and employ decommissioned members, KFOR insists that the agreement establishing the KPC must be honoured.<sup>61</sup>

The KPC has made no secret of its desire to become the professional army of an independent Kosovo. However, the recent arrests of several KPC members have cast a shadow over a force that has often been regarded with suspicion by the international community. Some KPC members have been suspected of organized crime, violent acts against the minorities, illegal policing, and breaches of political neutrality.<sup>62</sup>

The international community appears to be at a loss as to what to do with it in the long term. An indigenous civil emergency force is needed in Kosovo. Ideally such a force would be able to assist and relieve KFOR in some of its duties. However, given the questionable character of some of its membership, it is open to doubt as to whether the KPC could form the core of such a force. The KPC leadership will need to ensure that the activities of all of its members are above scrutiny, including rooting out many of them, if it is to demonstrate its ability to operate in the service of a law-governed state.

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<sup>61</sup> ICG interview with KFOR and the KPC.

<sup>62</sup> Andreas Heinemann-Gruder and Wolf-Christian Paes, *Wag the Dog: The Mobilization and Demobilization of the Kosovo Liberation Army*, Brief 20, Bonn International Centre for Conversion, 20 August 2001.

## C. MINORITY COMMUNITIES

To ensure a future for minority communities in Kosovo is one of the chief goals of the international community and a huge challenge for the Albanian majority. It is an area in which progress has been particularly unsatisfactory. Since KFOR's arrival over 235,000 members of minority groups have been displaced to Serbia, Montenegro, or Macedonia, while over 20,000 have been displaced within Kosovo.<sup>63</sup> Remaining Serbs live cloistered in heavily guarded enclaves, lacking freedom of movement or the basic conditions for a normal life.

The bleak conditions faced by the Serb and Roma minorities in particular is sadly reflected in their lack of confidence in Kosovo's institutions. In surveys carried out just prior to the November 2001 election, 63 per cent of Serb respondents believed that the role of UNMIK and KFOR was very negative. Only 7.3 per cent of Serb respondents thought that UNMIK treats all ethnic groups equally.<sup>64</sup> Every third Kosovo Serb says they would live outside Kosovo if they had the opportunity to leave.<sup>65</sup> Eighty-eight per cent of Serbs stated that if they had a dispute, they would not seek resolution in court; 89 per cent stated that they did not believe that the courts would resolve fairly a dispute with a person of another ethnicity; 80 per cent had no confidence in judges or prosecutors, and 50 per cent had no confidence in municipal governments.<sup>66</sup> No similar surveys were available for the other key minority populations in Kosovo.

The international community needs to send a clear, unequivocal message that minorities have a place in Kosovo, doing its utmost to establish a secure and safe environment through support for the return process, continued assistance to the resolution of property disputes, and efforts to build cooperation between communities. However, the

biggest responsibility lies with Albanian leaders and the wider Albanian community to show that they sincerely wish to build a society based on equal rights for all citizens. Unless and until Albanians demonstrate the will to ensure equal rights for minorities, the international community cannot entrust local leaders with the responsibility for running Kosovo's affairs.

Relevant benchmarks for adequate minority status and security are:

- Freedom of movement and physical security.
- Equal access to employment opportunities and essential services.
- Freedom to return to their homes in safety and dignity.
- Guaranteed property rights.

While the work of ensuring adequate conditions for minorities applies to all minorities, this section focuses in particular on the plight of the Serb community, which, together with the Roma community, suffers particularly acutely in Kosovo.

### 1. Freedom Of Movement And Security

The security situation has improved since 1999, in large part a result of the passage of time. However, considering so much of the Serb and Roma population left their homes in the six months after KFOR's arrival, this hardly seems an appropriate reference point. As noted above, through the strengthened police and judicial system, the climate of impunity that so characterised the post-war period is being slowly improved. Yet much remains to be done.

The train route from Zvecan to Lipjan/Lipljan, as well as KFOR-escorted buses, do enable Serbs to travel outside the enclaves. However, the need for such escorted services reveals how bad the situation is. Unescorted movement is still rare, and confidence remains low. Minorities have adapted to restrictions on their movement, perhaps so much so that they consider it natural not to move outside their communities without armed escort.<sup>67</sup>

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<sup>63</sup> UNSC, *Report of the Secretary General*, 15 January 2002; *Human Rights Watch World Report 2002*, UNHCR/OSCE, *Second Assessment of the Situation of Ethnic Minorities in Kosovo*, 6 September 1999.

<sup>64</sup> PRISM Market, Media and Social Research, *UNMIK Opinion Survey of the Kosovo Serb Population*, 19 October 2001.

<sup>65</sup> *Opinion Survey of the Kosovo Serb Population*.

<sup>66</sup> PRISM Market, Media and Social Research, *NDI Public Opinion Poll*, November 2001.

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<sup>67</sup> UNHCR/OSCE, *Assessment of the Situation of Ethnic Minorities in Kosovo*, March 2001 to August 2001.

Incidents, such as the bombing in February 2001 of the coach that killed twelve and the November 2001 shooting of an elderly couple on a train from Fushe Kosove/Kosovo Polje to Zvecan which left one dead, are stark reminders of the fragility of the security environment for minorities.

Most Serb communities are protected by a heavy KFOR presence. In many towns and villages, checkpoints mark the entrances in and out of Serb-inhabited areas. Such security measures were seen as the only way to protect many beleaguered Serb communities in 1999. Even with such a KFOR presence, communities remain vulnerable, as KFOR cannot protect against every extremist. These security measures do provide comfort to minorities and the KFOR presence continues to be needed as a deterrent against attacks. They are, however, personnel intensive and are not sustainable in the long term.<sup>68</sup>

Heavy security, particularly in the form of checkpoints, has the negative effect of contributing to a siege mentality among the Serb community. While they may have been necessary as a measure to protect Serb communities in the aftermath of the conflict, in the long run they perpetuate divisions in Kosovo society and the isolation of Serb communities. Their effectiveness is also open to question, as a determined extremist could easily enough circumvent such static positions. It is notable that in some mixed areas, such as Lipjan/Lipljan and Fushe Kosove/Kosovo Polje, patchworks of communities where it was impractical to set them up, checkpoints are not in place. That is not to say that Serbs in such areas enjoy better conditions than those in the closed enclaves, but neither do they appear to be worse off. In the long run, however, it could be expected that the prospects for integration of the Serbs in such areas are better.

While the security environment in Kosovo remains precarious, continued high levels of protection for minority communities remain necessary. However, at some point the utility of static positions such as checkpoints at the edges of minority communities should be reconsidered. KFOR is considering revising its security measures, on the basis of a risk

assessment, to reduce the number of static positions in conjunction with increased KFOR foot patrols and a heightened UNMIK CivPol and KPS presence.<sup>69</sup> Such a transition would be a positive development.

## 2. Access To Employment And Services

Minority communities do not enjoy equal access to basic services such as healthcare, education, public utilities and markets. While there is a heightened engagement by UNMIK to discuss problems with minority communities, finding solutions is more difficult.<sup>70</sup> Minority communities visited by ICG experience lengthy electricity cuts, far more severe than the cuts that plague the rest of Kosovo. Access to telephone services is equally problematic. Although most minority enclaves have access to primary healthcare, the availability of drugs and supplies is problematic,<sup>71</sup> and many travel to Serbia for hospital care. While Belgrade continues to run schools in Serb enclaves, some children in isolated areas are unable to attend school.

Unemployment among minority communities continues to be very high. Farmers have difficulty accessing markets to sell their produce, and, therefore, even self-employed individuals struggle to sustain themselves and their families. Projects encouraging Serb markets are underway in communities across Kosovo. Unemployment may be slightly alleviated as UNMIK hires members of minorities for the multiethnic civil service. In the long term, the only hope for minority communities is for them to be fully integrated, without discrimination, into the wider society. Part of the responsibility lies with the minorities themselves, but the main onus is on the Albanian community and its leaders to ensure that minorities can be integrated into Kosovo society.

Local Community Offices (LCOs) play an important role in monitoring the situation of minority communities, facilitating public employment, and ensuring access to basic services.

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<sup>68</sup> A senior KFOR officer told the ICG that 40 per cent of the force is being used in static roles, such as guarding patrimonial sites, manning checkpoints, and providing escorts.

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<sup>69</sup> Interviews with senior UNMIK officials, UNMIK Local Community Officers, UNHCR, and KFOR.

<sup>70</sup> *Assessment of the Situation of Ethnic Minorities*, March 2001 to August 2001.

<sup>71</sup> Most health clinics in Serb areas receive occasional drug shipments from Belgrade. Despite these shipments, clinics report shortages.

LCOs are the eyes and ears of UNMIK in minority communities. There has been criticism that LCOs promote division between communities as they focus exclusively on the needs of the minority and thus perpetuate the siege mentality of enclaves. Although in some cases this may be true, LCOs can be well-placed to promote dialogue between communities. UNMIK should ensure that while protecting the interests of minority communities, LCOs search for mutually beneficial opportunities for cooperation between Serb and Albanian communities.

### 3. The Right Of Return

The ability of IDPs to return to their homes is a key marker for Kosovo. Until the conditions exist for all IDPs voluntarily to return to their homes in Kosovo and live in security, the conflict has not fully ended. The return process to-date has been very slow, and much of the attention has focused on the return of Serbs as opposed to Roma and other minorities. As of 8 December 2001, only 2,432 out of the 229,900 registered IDPs had returned to their homes. Two-thirds of these returns took place in 2000, while only 1,000 returned in 2001.<sup>72</sup> The main factors that impede return are concerns about security and freedom of movement, employment and service provision, as well as fears about Kosovo's future status.<sup>73</sup>

The strategy of the return process has been focused on strategic communities for return, and less on facilitating the general conditions for return,<sup>74</sup>. Most spontaneous returns have been to existing enclaves and to the north of Kosovo. Organised return projects have brought approximately 150 Kosovo Serbs back to their communities. The majority of organised returns were to the Osojane Valley, in the Peja/Pec region, where returnees are guarded by Spanish KFOR. Critics of the Osojane project argue that such projects simply create more isolated enclaves – the Osojane Valley currently contains more Spaniards than Serbs.

The SRSG established the Office on Returns and Communities to act as an oversight body for the

management of the return process, as well as working to better the situation of minorities in general. The Office will focus on establishing the conditions for sustainable return through coordination of housing reconstruction in return areas, dialogue at the local community level to create the conditions for outward-looking settlements, and economic support projects in areas of return. To ensure that the return process receives appropriate funding, the Office on Returns and Communities plans to hold a donor conference in Switzerland in April 2002 to fund returns in 2002 and 2003.

While UNMIK should encourage return, return movements do not follow international political agendas. Conditions must be right before significant number of IDPs will come back. Above all, receiving communities must recognise the right of minorities to return. It is for Albanian leaders to show a genuine commitment to minority returns. The returnee also has a responsibility, in the words of one report: "the returnee, if genuine and sincere in [...] intention to contribute to the future development of Kosovo, must be possessed of sufficient open-mindedness to embrace the new realities of the province."<sup>75</sup> While recognising that many IDPs may never return to Kosovo, the objective is to create to the extent possible the conditions for return, so that all IDPs have a genuinely free choice.

### 4. Property Rights

The ability to enjoy the right to one's property is crucially related to return. It is also a basic human right. As personal assets are often in the form of real estate and land, property in Kosovo remains one of the few assets of many IDPs. Yet determining property ownership can be difficult. In March 1989, the law barred sales of property to Albanians. In order to get around this, properties often changed hands without any official, legal trace. After the conflict, which saw the destruction of tens of thousands of Albanian homes, squatters took over many Serb-owned homes. There are estimates that up to 20,000 people are occupying flats in Prishtina/Pristina alone. As these squatters demand a fee of as much as €5,000 to leave these flats, it is often difficult for legal owners to sell or

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<sup>72</sup> UNSC, *Report of the Secretary General*, 15 January 2002, p. 5.

<sup>73</sup> ICG discussions with senior UNHCR official in Prishtina/Pristina.

<sup>74</sup> See Unmik's Joint Committee on the Return of Kosovo Serbs, *Framework for Return 2001*, January 2001.

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<sup>75</sup> UNHCR/OSCE, *Assessment of the Situation of Ethnic Minorities*, March 2001 through August 2001, p.7.

rent them. Homes were also destroyed, and new houses built in their place, making it in some cases impossible for owners to reclaim their property.

UNMIK has determined that local courts could not exercise sufficient impartiality to resolve residential property issues. Therefore, to disentangle the difficult issues involved, the SRSG established the Housing and Property Directorate (HPD) to provide an internationally supervised legal mechanism to resolve residential property disputes, and to protect the legal status of the owners of abandoned properties. The Housing and Property Claims Commission (HPCC) is the quasi-judicial body of HPD that rules on claims. The HPD and the HPCC have the jurisdiction to resolve the following types of claims:

- Individuals whose property rights have been revoked subsequent to 23 March 1989 on the basis of discriminatory legislation. As of November 2001, 5 per cent of claims were of this nature.
- Individuals who engaged in informal transactions of residential property after 1989, on the basis of free will of all parties concerned, who would like these transactions legalised. These claims represented 10 per cent of total claims.
- Claims by persons who owned residential property prior to 24 March 1999, left this property involuntarily, and are no longer in possession of this property. These represent 85 per cent of all claims.

The majority of the claims that the HPD deals with are from the post-March 1999 period, and they expect a maximum of 75,000 claims to be filed in Kosovo, Serbia, and Montenegro by the deadline of 1 December 2002. To facilitate the process of claims by the Serb IDPs, the HPD has opened five offices in Serbia proper. If the HPD secured U.S.\$ 11 million in funding per year, it would take over six years to resolve claims, at an average cost of an estimated U.S.\$ 1,000 per claim.<sup>76</sup>

Despite the importance of the resolution of property claims to the process of return, at the time of writing this report the HPD faced a funding

crisis. Critics argue that the HPD's process of resolving disputes is too slow and that the agency is overly bureaucratic and unresponsive – many claimants state that they submitted their claim over a year ago and received no further notification from the HPD. In an effort to speed things up, a triage process based upon past cases has been established; claims are sorted into categories of clear-cut claims, complicated disputes requiring a great deal of time, and claims that can be easily dismissed.

It is clear that efforts should be made to speed up the process and increase responsiveness to claimants. However, it is questionable whether cutting funding to the HPD would accomplish these objectives. The establishment of the HPD followed the experience in Bosnia, where the international community was much slower to recognise the key importance of property issues to speeding up the return process. That experience should not be ignored in Kosovo. The HPD's system has been set-up, individuals have been trained, and enforcement mechanisms established. If funding is not secured, the HPD will be downsized and this capacity will be lost. Without further resources, decisions of the commission made to date would be implemented, and the HPD would continue to collect claims. However, these claims would not be processed, and those dispossessed of their property may have no opportunity to reclaim their property or to be adequately compensated for their loss.

## 5. Reintegration Initiatives

From an early stage of its mission, UNMIK concluded that it was too early to promote reconciliation between communities in Kosovo. It was argued that the memories of the 1990s, the war, and ensuing hatreds between communities were simply too strong. Instead, the less ambitious goal of peaceful co-existence was formulated. The argument was that after a period of "co-existence", i.e. just living side by side, hostilities would gradually break down, communities would realise their mutual interests and then reconciliation might eventually become possible.

In the circumstances of 1999, this policy was probably a reflection of what could realistically be accomplished. Yet the policy of peaceful co-existence has tended to entrench, rather than alleviate divisions. It justified UNMIK and the

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<sup>76</sup> Information from the HPD.

international community setting aside the thorny, time-consuming, and risky process of addressing the deep-seeded hostilities between Albanians and minority communities, especially Serbs and Roma. In its fear of heightening hostilities, the international community addressed the needs of the Albanian majority and the Serbian minority in parallel. Too little effort was made to move beyond the status quo of enclaves and parallel structures.

Few attempts have been made to engage Albanians and minority communities in realising their common interests – such as economic benefits, access to quality healthcare, public utilities etc. International officials tend to fear the potential risks of initiatives, particularly the possibility of outbreaks of violence. Few donors have accepted the challenge of projects that encompass both communities. They worry that the effort entailed would derail the achievement of project objectives, and have, therefore, usually supported separate programs in Albanian areas and in Serb areas. Development assistance to Albanian areas and institutions has not generally been made conditional upon the inclusion of minority beneficiaries in project objectives. One exception is Kosovo's Ombudsperson, who is undertaking a series of meetings throughout Kosovo, bringing communities together to discuss their common problems and common interests.

To achieve the benchmarks for minority communities outlined above, UNMIK and the wider international community must place a higher emphasis on projects and measures designed to be integrative in character. The time has come for the implementation of confidence-building measures to break down barriers between communities and build cooperative links. Such measures should be practical in nature, focusing on the shared interests of both communities, and avoid exaggerated standards for success. For example, a project to build a new facility should be conditional on its being available for use by members of all communities.

The Albanian majority needs to realise that they will be judged on the rights that they accord to minorities. For their part, the Serb minority must realise that its future lies in Kosovo and with Kosovo's institutions. Their vote in the 17 November elections and their participation in the new institutions, albeit only when mandated by Belgrade, is a positive step in this direction.

However, Belgrade's influence remains strong in all Serb enclaves in Kosovo, and is often highly detrimental to the cause of reintegrating the Serb community into Kosovo society.

Nowhere is Belgrade's influence more strongly felt than north of the Ibar River, in north Mitrovica and beyond. Unlike in most other municipalities, Serbs in Mitrovica (the same is also true of Shterpc/Strpce, in southern Kosovo) have not taken up the seats set aside for them on the municipal council.<sup>77</sup> The infamous "Bridge Watchers", who guard the entrance of north Mitrovica against Albanian infiltration, while weakened, remain an ominous presence. Efforts to establish a Serb KPS presence in Mitrovica have been handicapped as potential recruits are subject to threats.

Examples of Belgrade's encouragement of parallel structures in Kosovo include the appointment by the Serbian Minister of Health of the director of the Mitrovica hospital.<sup>78</sup> A parallel justice system functions, with the "Prishtina/Pristina District Court" operating out of Nis. Threats are made against potential Serb recruits to the UNMIK Department of Justice that they will lose their pensions and future right to work in Serbia if they sign contracts with UNMIK. Albanians continue to have tremendous difficulty getting Yugoslav passports – many who have gone through the difficult, and sometimes expensive, process of obtaining a passport from the FRY office in Kosovo have then had their passport numbers declared illegal by Belgrade.<sup>79</sup> Such moves by Belgrade contradict public rhetoric of cooperation with UNMIK.

Mitrovica remains the most contentious and unstable area in Kosovo.<sup>80</sup> UNMIK, aided by a lately more engaged KFOR presence, has slowly extended its influence in the northern part of the city. The municipality is opening a sub-office in the north of the city to enable easy access for

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<sup>77</sup> Seats were set aside for Serb deputies after Serbs boycotted the October 2000 municipal elections.

<sup>78</sup> Reported in V.I.P Daily News Report, 31 January 2002.

<sup>79</sup> "Lista e pasaporave 'te dyshimta' ne Kosove", *Koha Ditore*, 4 February 2002.

<sup>80</sup> See ICG Balkans Report No. 96, *Kosovo's Linchpin: Overcoming Division in Mitrovica*, 31 May 2000.

residents to UNMIK services.<sup>81</sup> UNMIK police undertake regular patrols in north Mitrovica and appear to be slowly gaining the trust of the population. The police are beginning to crack down on the “Bridge Watchers”, and have arrested some of their members. While such positive moves should be extended, continuity of UNMIK leadership remains problematic. UNMIK continues to move from one regional administrator to another, all of whom cite frustration with their limited authority and the lack of engagement of UNMIK headquarters in Prishtina/Pristina.

Northern Mitrovica remains an extension of Serbia into Kosovo. Hopes of establishing the KPS in north Mitrovica continue to face problems. These include Serb claims that training should at least partly be conducted in Serbia proper, and that uniforms should include Serbian insignia, conditions that are unacceptable to UNMIK and which do not apply to Serb KPS officers elsewhere in Kosovo. UNMIK’s efforts to strengthen its influence north of the Ibar must be furthered, and efforts actively to engage with the citizens of the north continued. However, the obstacles that handicap UNMIK’s presence in the north will not be fully solved until Belgrade adopts a more constructive attitude.

### III. CONCLUSION

This is the second of a pair of reports under the common title, *A Kosovo Roadmap*, identifying parallel paths which need be negotiated simultaneously in order to reach the desired destination: a stable, democratic Kosovo, standing on its own feet, peacefully integrated in its region, and with a clearly defined place in the international community.

This report suggests key benchmarks that need to be satisfied if Kosovo is to be judged ready for whatever final status may eventually be agreed. While much of the responsibility for getting Kosovo into shape rests with the UN administration, it is the majority Albanian community and above all its leaders that must show that they are capable of governing effectively and fairly for all of Kosovo’s citizens.

As the international community has shied away from tackling the key issue of Kosovo’s final status, an anomaly has arisen between UNMIK’s mandate to build autonomous institutions on the ground and the continued hope in many capitals that Kosovo could be fitted back into the FRY. With the help of donor assistance, Kosovo institutions have been rebuilt and reformed. The emerging institutions are designed to be completely autonomous, and they have little resemblance to counterpart institutions in Serbia. The international community may hold firm to the notion that Kosovo remains a part of the FRY, but that is not where its efforts in Kosovo have been leading.

The parallel threads of international engagement in Kosovo need to be synchronised again. The international community should overcome its divisions and address the question of Kosovo’s future status on the basis of a realistic appraisal of the situation on the ground. Belgrade and Kosovo’s Albanians need to begin a dialogue, over relatively modest issues to begin with, but leading to fully fledged negotiations. The role of the international community in providing an environment conducive to fruitful dialogue will be critical.

Having considered the relative merits of various options for Kosovo, ICG has concluded that conditional independence under some form of international trusteeship is the most realistic

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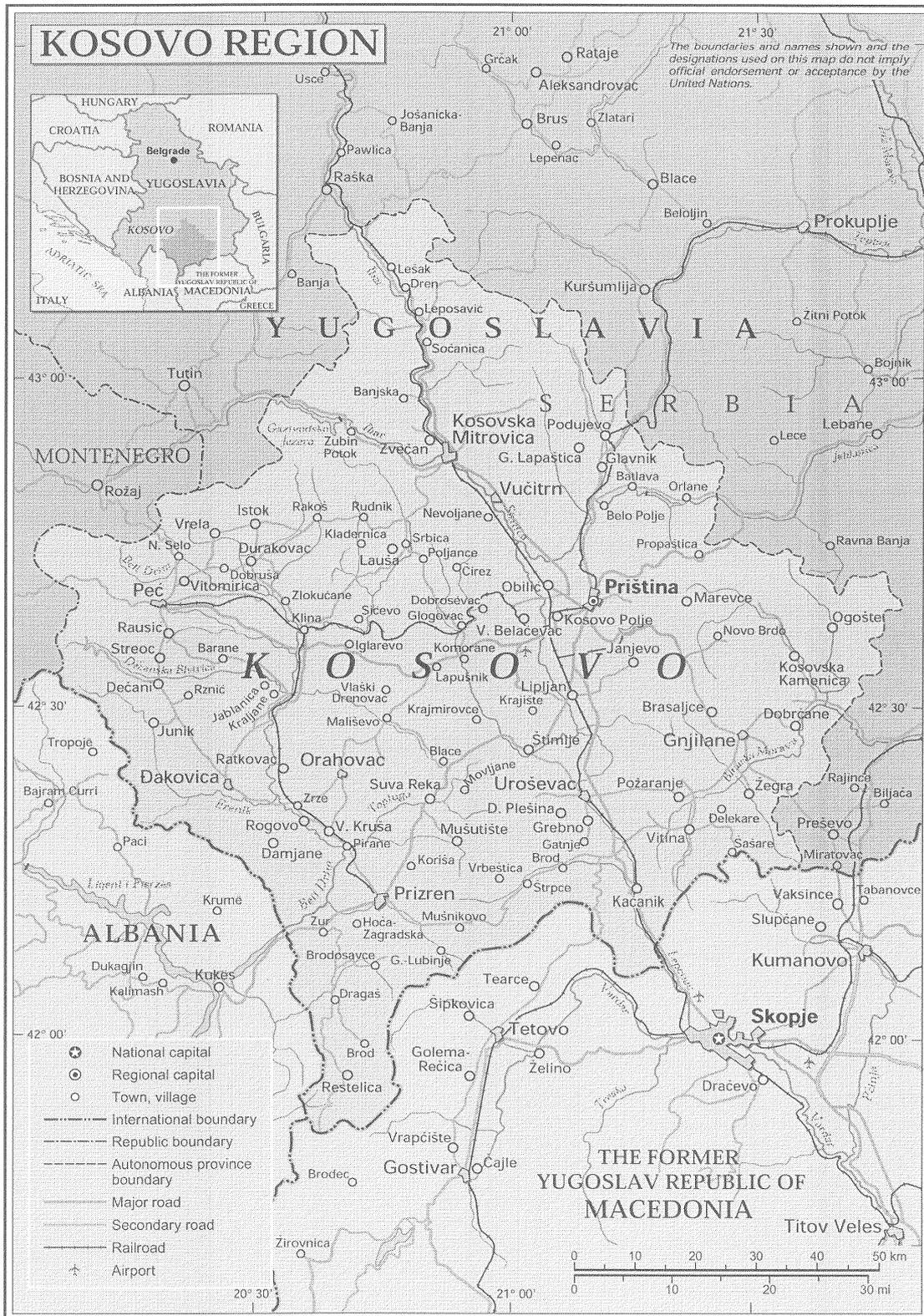
<sup>81</sup> When UNMIK established the LCO in the north part of Mitrovica, they shut down the parallel municipal structures. This sparked a series of protests from Serbs, and an intervention by Nebojsa Covic supporting the right of the residents of northern Mitrovica to have their own municipality separate from the south.

solution. If adopted, this would mean acknowledging that Kosovo will not remain part of Serbia or the FRY and should enjoy a much greater degree of self-government, while it strives to meet all the benchmarks for full sovereignty to be contemplated.

**Pristina/Brussels, 1 March 2002**

## APPENDIX A

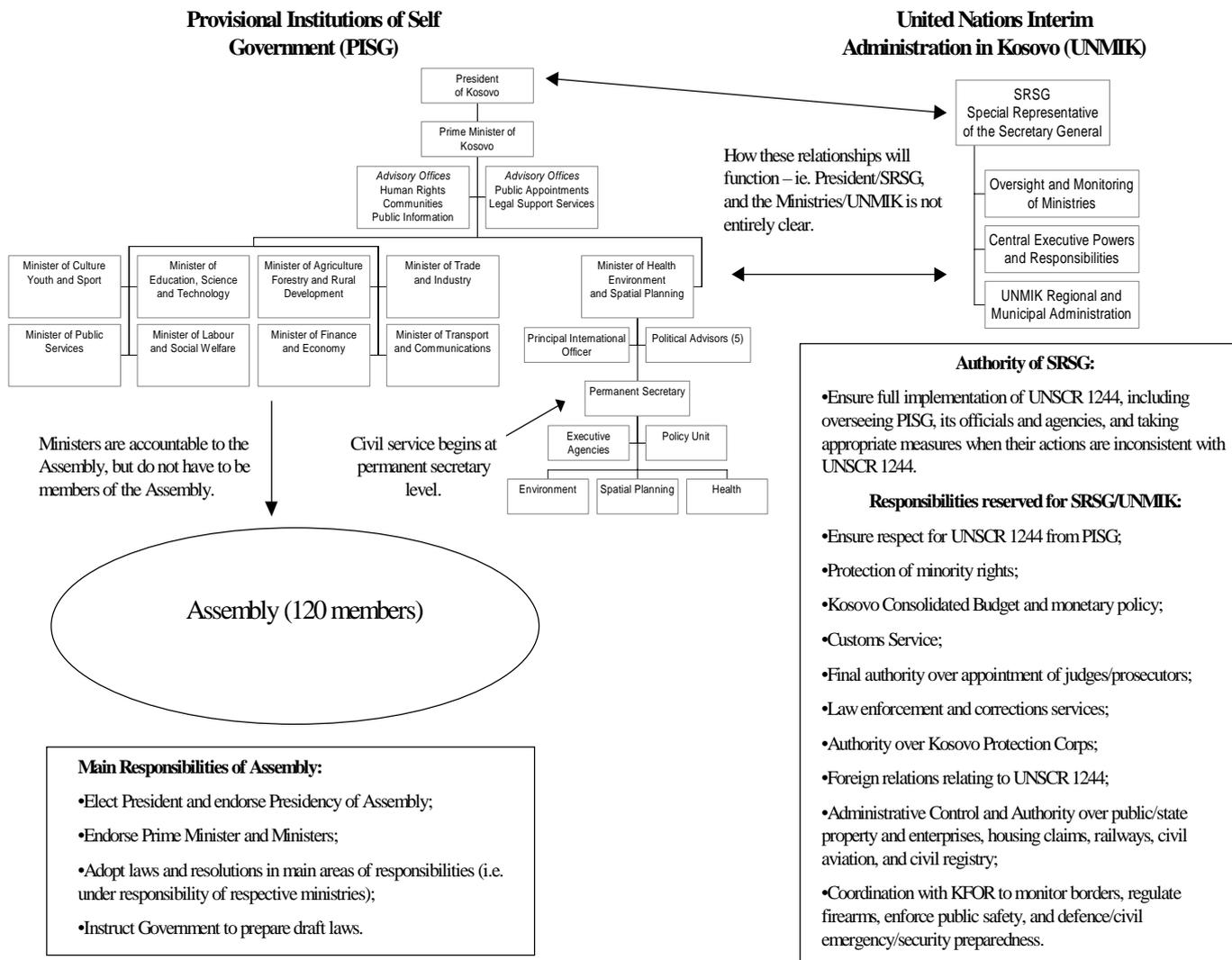
### MAP OF KOSOVO



Map No. 4069 UNITED NATIONS  
 October 1998

## APPENDIX B

### PISG AND UNMIK



## APPENDIX C

### GLOSSARY

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AAK	Alliance for the Future of Kosova
CFA	Central Fiscal Authority
EU	European Union
FRY	Federal Republic of Yugoslavia
G-8	Informal grouping of major industrialised countries: U.S.A., United Kingdom, France, Germany, Italy, Canada, Japan, Russia
HPCC	Housing and Property Claims Commission
HPD	Housing and Property Directorate
IAC	Interim Administrative Council
IDP	Internally displaced person
JIAS	Joint Interim Administrative Structure
KFOR	Kosovo Force
KLA	Kosovo Liberation Army
KPC	Kosovo Protection Corps
KPS	Kosovo Police Service
LCO	Local Community Office
LDK	Democratic League of Kosova
NATO	North Atlantic Treaty Organisation
NDI	National Democratic Institute
OSCE	Organisation for Security and Cooperation in Europe
PDK	Democratic Party of Kosova
PIO	Principal International Officer
SAP	Stabilisation and Association Process
SRSG	Special Representative of the [UN] Secretary-General
UNMIK	UN Interim Administration in Kosovo
UNSCR	United Nations Security Council Resolution
WTO	World Trade Organisation

## APPENDIX D

### ABOUT THE INTERNATIONAL CRISIS GROUP

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The International Crisis Group (ICG) is a private, multinational organisation committed to strengthening the capacity of the international community to anticipate, understand and act to prevent and contain conflict.

ICG's approach is grounded in field research. Teams of political analysts, based on the ground in countries at risk of conflict, gather information from a wide range of sources, assess local conditions and produce regular analytical reports containing practical recommendations targeted at key international decision-takers.

ICG's reports are distributed widely to officials in foreign ministries and international organisations and made generally available at the same time via the organisation's Internet site, [www.crisisweb.org](http://www.crisisweb.org). ICG works closely with governments and those who influence them, including the media, to highlight its crisis analysis and to generate support for its policy prescriptions. The ICG Board - which includes prominent figures from the fields of politics, diplomacy, business and the media - is directly involved in helping to bring ICG reports and recommendations to the attention of senior policy-makers around the world. ICG is chaired by former Finnish President Martti Ahtisaari; former Australian Foreign Minister Gareth Evans has been President and Chief Executive since January 2000.

ICG's international headquarters are at Brussels, with advocacy offices in Washington DC, New York and Paris. The organisation currently operates field projects in more than a score of crisis-affected countries and regions across four continents, including Algeria, Burundi, Rwanda, the Democratic Republic of Congo, Sierra Leone, Sudan and Zimbabwe in Africa; Myanmar, Indonesia, Kyrgyzstan, Tajikistan, and Uzbekistan in Asia; Albania, Bosnia, Kosovo, Macedonia, Montenegro and Serbia in Europe; and Colombia in Latin America.

ICG also undertakes and publishes original research on general issues related to conflict prevention and management. After the attacks against the United States on 11 September 2001, ICG launched a major new project on global terrorism, designed both to bring together ICG's work in existing program areas and establish a new geographical focus on the Middle East (with a regional field office in Amman) and Pakistan/Afghanistan (with a field office in Islamabad). The new offices became operational in December 2001.

ICG raises funds from governments, charitable foundations, companies and individual donors. The following governments currently provide funding: Australia, Canada, Denmark, Finland, France, Germany, Ireland, Japan, Luxembourg, the Netherlands, Norway, the Republic of China (Taiwan), Sweden, Switzerland and the United Kingdom. Foundation and private sector donors include the Ansary Foundation, the Carnegie Corporation of New York, the Ford Foundation, the William and Flora Hewlett Foundation, the Charles Stewart Mott Foundation, the Open Society Institute, the Ploughshares Fund and the Sasakawa Peace Foundation.

March 2002

## APPENDIX E

### ICG REPORTS AND BRIEFING PAPER

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#### AFRICA

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##### ALGERIA

*The Algerian Crisis: Not Over Yet*, Africa Report N°24, 20 October 2000 (also available in French)

*The Civil Concord: A Peace Initiative Wasted*, Africa Report N°31, 9 July 2001 (also available in French)

*Algeria's Economy: A Vicious Circle of Oil and Violence*, Africa Report N° 36, 26 October 2001 (also available in French)

##### BURUNDI

*The Mandela Effect: Evaluation and Perspectives of the Peace Process in Burundi*, Africa Report N°20, 18 April 2000 (also available in French)

*Unblocking Burundi's Peace Process: Political Parties, Political Prisoners, and Freedom of the Press*, Africa Briefing, 22 June 2000

*Burundi: The Issues at Stake. Political Parties, Freedom of the Press and Political Prisoners*, Africa Report N°23, 12 July 2000 (also available in French)

*Burundi Peace Process: Tough Challenges Ahead*, Africa Briefing, 27 August 2000

*Burundi: Neither War, nor Peace*, Africa Report N°25, 1 December 2000 (also available in French)

*Burundi: Breaking the Deadlock, The Urgent Need for a New Negotiating Framework*, Africa Report N°29, 14 May 2001 (also available in French)

*Burundi: 100 Days to put the Peace Process back on Track*, Africa Report N°33, 14 August 2001 (also available in French)

##### DEMOCRATIC REPUBLIC OF CONGO

*Scramble for the Congo: Anatomy of an Ugly War*, Africa Report N°26, 20 December 2000 (also available in French)

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