

**Cluster of Competence**  
**The rehabilitation of war-torn societies**  
A Project co-ordinated by the  
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THE DEVELOPMENT  
OF KOSOVO INSTITUTIONS AND  
THE TRANSITION OF AUTHORITY  
FROM UNMIK  
TO LOCAL SELF-GOVERNMENT

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## **Abstract**

The paper outlines the institutional development of UNMIK and its evolving models of cooperation with provisional Kosovo bodies of governance. It provides a brief description of UNMIK's mandate, contained in UN Security Council Resolution 1244 of 10 June 1999, and the internal structure the international civilian presence has adopted on the ground. This structure, which, under the overall leadership of the SRSG, divides responsibilities among several international organisations, i.e. the UN itself, UNHCR, the OSCE, and the EU, has become known as the "four pillars".

Although UNMIK alone is authorized by resolution 1244 to provide the interim administration (pending a final political settlement of the status question), it has sought to cooperate with Kosovo population and political representatives. After six months of improvisation, in December 1999 an Agreement on a Joint Interim Administrative Structure was made which provided the basic model for governance in Kosovo until the transfer of responsibilities from UNMIK to elected Provisional Institutions of Self-Government (PISG) in 2002. The paper describes the various bodies established within the JIAS (the Interim Administrative Council, the Kosovo Transitional Council, the 20 Administrative Departments and the JIAS on municipal level in the form of Municipal Councils and Administrative Boards).

After the first municipal elections in October 2000, the JIAS structure began to be replaced by elected Municipal Assemblies and Presidents. Gradually, UNMIK withdrew from an active role in the administration to a more supervisory function. In May 2001, a Constitutional Framework on Provisional Self-Government was adopted by the SRSG. The document is not a constitution as such, as all legislative and executive authority remains with the SRSG himself, it provides rules for the creation and functioning of and interaction between provisional institutions, such as the Kosovo Assembly, the President of Kosovo and the Government, comprised of a Prime Minister and Ministers. General elections were held in November 2001, and the provisional institutions were formed accordingly.

As certain important administrative functions have been excluded from both the JIAS and the PISG, the paper also briefly mentions the basic structure and institutional relationships of the police (Kosovo Police Service and UNMIK Police) and the military in Kosovo, including KFOR and the Kosovo Protection Corps. Also, several salient "independent bodies and offices are included.

As this paper mainly focuses on the factual-historical aspects of institution-building in Kosovo under UNMIK's administration, the aspects of analysis and qualitative evaluation are kept rather on the margins. However, the purpose of the paper is to provide an independent and objective background for analytical observations to be made.



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## Introduction

There are many ways of telling the history of UNMIK's administration in Kosovo since summer 1999 and the gradual development of Kosovo institutions. This paper focuses on the establishment of governing structures as provided for by UN Security Council Resolution 1244, i.e. a form of improvised joint governance in an initial phase and the subsequent establishment of quasi state structures through democratic elections. It does not address economic issues, which nevertheless are vital for the development of stable governance in Kosovo.<sup>1</sup> Neither does this paper address important specific aspects of institution-building, such as the creation of political parties and several independent bodies, most saliently the judiciary.<sup>2</sup> It also does not specifically address the situation of women in Kosovo's society and their representation in various levels of institutions.<sup>3</sup> By the same token, the situation of Kosovo's ethnic minority groups is not amply addressed here.<sup>4</sup> In other words, this paper is limited to a description of politico-constitutional institutions, which form the backbone of state administration, i.e. the legislative and executive branches of government.

So far, elections have taken place at municipal (October 2000 and October 2002) and at central Kosovo level (November 2001). Accordingly municipal assemblies and municipal administrations have been formed on the local level, while a Kosovo Assembly and a Kosovo Government (the so-called "Provisional Institutions of Self-Government"), have been formed and are operational since early 2002. Yet, in order to provide a good basis for discussion of the development of institutions in Kosovo, the phase preceding the elected bodies has to be properly described and analyzed. Hence, this paper starts out by outlining the difficulties UNMIK faced in 1999, when several competing "parallel" institutions prevailed. The main focus of this analysis is, however, the creation and development of the Joint Interim Administrative Institutions (JIAs), which served as an interim solution until their bodies were replaced by elected institutions.

The most important characteristic of Kosovo's current institutional environment is the tension between the Kosovars' claim to govern with popular legitimacy, and UNMIK's continuing primacy over the provisional institutions and its acts according to Resolution 1244. The author concludes that these tensions lead to considerable friction and delays in implementing a workable reform and development agenda for Kosovo's society.

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<sup>1</sup> For these issues see the latest report by the Lessons Learned and Analysis Unit of the European Union Pillar of UNMIK: "The Ottoman Dilemma: Power and Property Relations under the United Nations Mission in Kosovo", available at [www.esiweb.org](http://www.esiweb.org).

<sup>2</sup> The regular reports of the OSCE Mission in Kosovo on democratisation and the development of an independent professional judiciary are a particularly valuable source on these issues. Available at [www.osce.org/kosovo](http://www.osce.org/kosovo).

<sup>3</sup> Apart from publications by various Kosovo women's groups, a good overview is provided by the Swedish NGO Kvinna till Kvinna in "Getting it Right: A Gender Approach to UNMIK Administration in Kosovo", available at [www.iktk.se](http://www.iktk.se).

<sup>4</sup> Most reports published by the UN and its agencies, as well as the OSCE and UNHCR, and many NGO reports on Kosovo focus on this issue.

## Mandate and structure of UNMIK

With its Resolution 1244 the UN Security Council laid down its objective to create “substantial autonomy and meaningful self-administration for Kosovo”.<sup>5</sup> It set up the UN Interim Administration Mission in Kosovo (UNMIK) “in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo”.<sup>6</sup>

Resolution 1244 is not explicit whether it transfers the right to exercise state sovereignty over the territory of Kosovo to UNMIK.<sup>7</sup> However, this is the most plausible interpretation of the Resolution, which lists a series of “main responsibilities”, but does not restrict the powers of the SRSG who is the sole legislative and executive authority in Kosovo.<sup>8</sup> The Secretary-General’s first report on UNMIK, presented already two days after Resolution 1244 on 12 June 1999, outlined the structure of the mission and assigned tasks to the different organisations participating under the umbrella of UNMIK. The report defined the responsibility of the mission’s Office for Civil Affairs as “overseeing and, where necessary, conducting a number of civil affairs functions, such as the civil service and economic and budgetary affairs, as well as supporting the restoration and provision in the short run of basic public services, such as public health, education, utilities, transport and telecommunications.”<sup>9</sup> The mission’s Office for Judicial Affairs would be “responsible for the organization and oversight of the judicial system, authenticating legal documentation and related activities.”<sup>10</sup> The report also mentioned that the tasks of reconstruction, to be led by the European Union, “could include near-term projects in the area of agriculture and markets, and activities relating to commerce; activities to re-establish essential public services and develop programmes for economic recovery; and longer-term capital projects in the areas of housing, utilities, transportation and communications.”<sup>11</sup>

Thus, according to its original mandate, in an initial phase the main tasks of UNMIK were to perform basic civilian administrative functions and maintain civil law and order. Then, it was to organise provisional institutions for democratic and autonomous self-government through elections, gradually establishing substantial autonomy and

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<sup>5</sup> UN Security Council Resolution 1244, of 10 June 1999

<sup>6</sup> *ibid.*

<sup>7</sup> A discussion of UNMIK’s exercise of powers normally attributed to sovereign power as well as a comparison with other internationalised territories can, for instance, be found in Julie Ringelholm, *The legal status of Kosovo*, in *Kosovo, 1999-2000, The Intractable Peace*, Report of the Balkans Working Group, European University Institute, published at [www.iue.it](http://www.iue.it).

<sup>8</sup> Note that the subsequent UN Resolution 1272 of 25 October 1999 (para.1) establishing UNTAET was much more explicit in this respect, as it included the wording of UNMIK’s first regulation already in the Security Council Resolution itself: “Decides to establish, [...] a United Nations Transitional Administration in East Timor (UNTAET), which will be endowed with overall responsibility for the administration of East Timor and will be empowered to exercise all legislative and executive authority, including the administration of justice”.

<sup>9</sup> *Report of the Secretary-General Pursuant to Paragraph 10 of Security Council Resolution 1244 (1999)*, S/1999/672 of 12 June 1999, al. 10.

<sup>10</sup> *ibid.*, al. 11

<sup>11</sup> *ibid.*, al. 14

self-government in Kosovo. As these provisional local institutions were established and consolidated, UNMIK would transfer its administrative responsibilities. In the meantime, UNMIK was also tasked with facilitating a political process designed to determine Kosovo's future status, to be determined in a political settlement. In a final stage, it would oversee the transfer of authority from Kosovo's provisional institutions to the institutions established under the political settlement.<sup>12</sup>

Only a month after the adoption of Resolution 1244, the Secretary-General further interpreted it in an extensive manner and confirmed the position UNMIK had adopted on the ground in Kosovo:

The Security Council, in its resolution 1244 (1999), has vested in the interim civil administration authority over the territory and people of Kosovo. All legislative and executive powers, including the administration of the judiciary, will, therefore, be vested in UNMIK.<sup>13</sup>

Subsequently, the SRSG has interpreted UNMIK's mandate extensively and issued legislative acts, which normally presuppose state sovereignty, especially the Regulation(s) on the Authority in Kosovo and the Applicable Law. "Basic civilian administrative functions" hence became to mean that *all* administrative functions (as basic as they may be under the given circumstances), are exercised by UNMIK alone. UNMIK is, therefore, the only legitimate authority in Kosovo.<sup>14</sup> The diplomatic representation of the Federal Republic of Yugoslavia (FRY) at the UN has frequently but to no avail protested against this practise, reminding of the Resolution's apparent confirmation of the FRY's sovereignty over Kosovo.

It probably has to be understood, that the drafters of the Resolution, as well as the brokers for the end of hostilities in June 1999, meant "autonomy within the FRY" as opposed to within Serbia. This, however, contradicts the Yugoslav/Serbian constitutional set-up, which only foresees the status of an autonomous province within Serbia, while the FRY constitution does not even mention Kosovo as a federal unit. This is in contrast to the earlier Yugoslav federation (SFRY) in which Kosovo was one of the eight federal units and was represented in all federal organs, while at the same time enjoying autonomy within the Socialist Republic of Serbia. Nevertheless, the understanding that UNMIK has no obligations or vertical institutional relations to the FRY (or Serbia), and can, therefore, exercise immediate authority normally attributed to a bearer of sovereignty, seems to have been accepted by the international community, and is therefore in line with international law.<sup>15</sup>

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<sup>12</sup> According to internal UNMIK strategic planning documents, the SRSG's office understands its mission in several stages and phases, which, however, do not quite seem to be consistent with the wording of the Resolution itself. These documents provide for a first stage of purely international "interim administration", a second stage of "transitional administration", with two distinct phases of "establishing" (JIAS) and "overseeing" (reform of the JIAS) and a third stage of "local provisional institutions" (elected officials at the central level).

<sup>13</sup> Report of the Secretary-General Pursuant to Paragraph 10 of Security Council Resolution 1244 (1999), S/1999/779 of 12 July 1999, para.35.

<sup>14</sup> Report of the Secretary General on the United Nations Interim Administration of Kosovo, UN Doc. 2/1999/1259 of 23 December 1999, para.35.

<sup>15</sup> The question of what this means for the fiction of FRY sovereignty over Kosovo, although formally confirmed by UNSCR 1244, has been raised already during the last period of negotiations before the eventual NATO intervention: What does it mean to say that borders have not been changed when the "state" that is supposedly defined by them has no governmental authority within what is putatively its

After the demise of Milošević in Belgrade, contacts between UNMIK and the FRY, which had been minimal until then, became more frequent and cooperative. The two sides began to address issues such as the Constitutional Framework or questions concerning taxation, customs regulations or voters' registration for the central elections. However, UNMIK insisted on labelling the dialogue "an exchange of information" as opposed to "negotiations". In the hectic preparation for the first parliamentary elections in November 2001, this relationship became more intensive and culminated in the signing of an agreement entitled "Common Document".<sup>16</sup> Its legal value is questionable, however, and it remained open in how far future SRSGs, or even Kosovar representatives, would consider themselves bound by it.

That the FRY has forfeited its ability to exercise sovereign jurisdiction over Kosovo through Resolution 1244 in combination with the regulations later adopted by UNMIK has in the meantime become established UN practise in Kosovo. The FRY has at least partially recognized this state of facts.<sup>17</sup> This situation, where UNMIK and KFOR exercise authority normally attributed to the sovereign, opens the question of who, then, is responsible in and for Kosovo in the context of state responsibility.<sup>18</sup> In particular KFOR's responsibility and accountability has been subject to much debate within the Kosovo legal and human rights community.<sup>19</sup>

Entrusted with the civil administration of Kosovo, UNMIK was constituted as a structure of "four pillars", each reporting to the SRSG: Pillar I (Humanitarian Affairs) in the responsibility of the UNHCR, mainly in charge of preparing for the enormous "winterisation" and humanitarian aid programme; Pillar II (Civil Administration), run by the UN itself, in charge of the actual day-to-day administrative management of public affairs; Pillar III (Democratisation and Institution Building) under the OSCE Mission in Kosovo; and Pillar IV (Economic Reconstruction)<sup>20</sup> for which the European Union was put in charge. Each "pillar's" head is at the same time a Deputy of the SRSG (DSRSG) within the UNMIK structure. In the meantime, UNHCR has left this structure in June 2000, although it still maintains a presence in Kosovo. For almost a year then, UNMIK had only three pillars (II, III and IV). Following the adoption of the Constitutional Framework in May 2001, a "new Pillar I" under the direct supervision of the SRSG was created. It is responsible for "Law Enforcement and Justice" and has taken over functions normally attributed to Ministries of Justice and the Interior/Home Affairs.<sup>21</sup>

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own sovereign territory? asks Robert. M. Hayden, *The State as Legal Fiction*, East European Constitutional Review, Fall 1998, pp.45-50.

<sup>16</sup> UNMIK – FRY Common Document, Belgrade, 5 November 2001.

<sup>17</sup> "Decisions with respect to duties, taxes and other revenues collected in Kosovo suspended the fiscal sovereignty of Yugoslavia over this territory." Letter of FRY Deputy Prime Minister Mirosljub Labus to SRSG Hans Haekkerup of 15 October 2001.

<sup>18</sup> See also EUI Report.

<sup>19</sup> See for instance, Cerone, 'Outlining KFOR Accountability in Post-Conflict Kosovo', [www.asil.org/insights](http://www.asil.org/insights), October 2000.

<sup>20</sup> The EU's own reconstruction efforts, however, are channelled through the European Agency for Reconstruction, which is based in Prishtina, but not formally integrated or connected to UNMIK.

<sup>21</sup> It is important to note that, with the establishment of the Joint Interim Administrative Structure (JIAS), as described below, UNMIK and the pillar structure have not ceased to exist, and have not been replaced by the JIAS. However, the bulk of the civilian-administrative work of the UN and the EU are henceforth conducted in the framework of JIAS. The concept of the "pillars" continues to exist in parallel to the joint administration run jointly with Kosovo representatives. Thereby, major policies continue to be conceived and elaborated without Kosovar participation.

This “pillar structure” was apparently chosen in an attempt to learn from the difficulties in coordinating international agencies in other comparable situations, such as post-Dayton Bosnia and Herzegovina. In practise, the “pillar structure” basically found its expression in daily executive meetings of the SRSG, his Principal Deputy (PDSRSG), COMKFOR and the pillar heads (the DSRSGs) as well as regular coordination meetings on the regional level. The day-to-day work, however, was carried out by each pillar separately, with little or no proper coordination at all. It is therefore hard to speak of UNMIK as one mission, except when one subsumes only the SRSG’s office and Pillar II, i.e. the UN Civil Administration, under the term UNMIK. At the same time, the UN and the SRSG’s office’s need to coordinate important decisions with the UN Secretariat in New York has often led to frustrating delays and factors for decisions which have little to do with Kosovo realities.<sup>22</sup>

### Struggling with parallel structures

Until the end of 1999, UNMIK continued to operate in the vague situation caused by the existence of a “provisional government” led by the Kosovo Liberation Army (UÇK) and the continued claims by Rugova’s parallel Republic of Kosova (RK) system to be invested with popular legitimacy. Important developments, such as waves of violent incidents against Serbs and other minorities and their possessions, the demilitarisation of the UÇK and the establishment of the Kosovo Protection Corps (TMK) fell into this period. The presence of several competing administrative-political authorities represented the prime challenge for the international mission in the first six months of its activity in Kosovo. Only one, UNMIK, was able to assert legitimacy through Resolution 1244, while the others benefited from real political and economic power and were recognised by parts of the population. Already during the initial phase, several voices promoted the idea of “Kosovarisation” and “co-optation”.<sup>23</sup>

Early on, UNMIK recognized the creation of a unified consultative forum as an issue of paramount importance. Only one day after the arrival of SRSG Kouchner in Kosovo did the Kosovo Transitional Council (KTC) have its first meeting. While both the UÇK and some Kosovo Serbs participated, the LDK (Rugova’s party) had not accepted the invitation. The LDK’s position was that it would refuse to participate unless the other parties represented in the RK Parliament were also invited.<sup>24</sup> After a massacre of 14 Kosovo Serbs on 23 July, the Serb representatives withdrew from the

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<sup>22</sup> For instance, all UNMIK Regulations need to be approved by the Secretariat in New York.

<sup>23</sup> *Filling the Local Power Vacuum in Kosovo*, Final Report from Joint Expert Mission 26 July – 6 August 1999 by OSCE and Council of Europe (Balducci, Fleers, Masters and Nordby), 7 August 1999; and *Waiting for UNMIK – Local Administration in Kosovo*, International Crisis Group, Balkans Report No.79, 17 October 1999.

<sup>24</sup> Rugova had come to visit Kosovo for the first time in months on 15 July, but left again after a few hours. The first KTC’s first meeting on 16 July was boycotted by Rugova and his LDK, who were unsatisfied with the allocation of places on the Council. Regarding UÇK and LBD as an alliance, they felt that more parties from the RK parliament, especially the Christian Democrats, should be included. They proposed an alternative, for example that the LBD should lose a seat and the Christian Democrats gain one. Nonetheless, the representatives invited to that first meeting of the KTC were: 2 UÇK (Thaçi and Haliti), 2 LBD (Qosja and Hajrizi), 2 LDK (Rugova and Tahiri, both absent), 2 independents (Shala and Surroi), 2 Serbs (Bishop Artemije and Momcilo Trajkovic), 2 other minorities (Bali, Bosniac SDA; Sezair Shaipi, Turkish People’s Party). Source: *Who’s Who in Kosovo*, ICG Balkans Report. No.76, 31 August 1999, p.10.

KTC in protest. Yet, they returned for a meeting on 21 August only to present a proposal for the “cantonisation” (i.e. ethnic division) of Kosovo, which was fiercely rejected by the Albanian KTC members. Only on 25 August did the KTC meet for the first time with the participation of all key leaders: Hashim Thaçi, Ibrahim Rugova, and the Kosovo Serb representatives Bishop Artemije and Momčilo Trajković. The establishment of the first KTC was described in the Secretary-General’s report of September 1999 as follows:

Since its deployment, UNMIK has made significant progress. It has established structures at various levels that allow the people of Kosovo to provide expertise and to share responsibility and accountability for the development and future of the province. Foremost amongst these structures is the Kosovo Transitional Council (KTC), which meets on a weekly basis under the leadership of [the SRSG]. This body brings together all major political parties and ethnic groups. Its establishment has given Kosovo residents an opportunity to have a direct input into the UNMIK decision-making process and to achieve consensus on a broad range of issues related to civil administration, institution-building and essential services, thereby creating a climate where participation in democratic processes is the norm.<sup>25</sup>

The KTC was, however, used rather as a platform for politicking for the various participants, than for any serious participation in UNMIK’s policy-making process. It was marred by permanent crises and ruptures, and never established a working agenda. On 15 November 1999, Hashim Thaçi announced that he would no longer be attending the KTC and named the continuing problems in Mitrovica, the choice of Alcatel as GSM provider for Kosovo and harassment of his security personnel as reasons. On 8 December, he appeared at a KTC meeting only to claim that the international community was responsible for the deteriorating security situation, not the Kosovo population.

It was clear that UNMIK could only gain recognition by the Kosovo population, in particular its political elite, if it shared administrative responsibility with local representatives. In the absence of any reliable data on the level of support for each political faction, the SRSG eventually decided to bring the various Kosovo Albanian political factions in on equal terms. On 13 December 1999, SRSG Kouchner succeeded in brokering the conclusion of an agreement between Hashim Thaçi, Ibrahim Rugova and Rexhep Qosja.<sup>26</sup> The draft agreement was then sent to the UN Secretariat for approval, which was immediately received. Eventually, on 15 December 1999, the “Agreement on a Kosovo-UNMIK Joint Interim Administrative Structure (JIAS)” was formally signed by the three Kosovo political leaders, who each signed “for” their respective political party, while the SRSG “witnessed and accepted the agreement”.<sup>27</sup> Immediately after the signing ceremony, the first session of the Interim Administrative Council (IAC) was held.

For all three Kosovo signatories UNMIK’s decision to give in to Kosovo’s interim judges and accept the 1989 law as the basis for the applicable law in Kosovo certainly

<sup>25</sup> *Secretary-General’s Report on UNMIK*, 6 September 1999.

<sup>26</sup> Rexhep Qosja, a well known Kosovo Albanian writer and professor of literature, had been a member of the LDK for some years, before he broke with Rugova and established his own political party. Subsequently he became the leader of a multi-party coalition (United Democratic Movement, *Lëvizja e Bashkuar Demokratike* or LBD), which for some time figured as the third political force next to the LDK and the UÇK. In the course of 2000, the LBD lost much of its appeal to voters in Kosovo, and support for Qosja shrank. He eventually withdrew from politics.

<sup>27</sup> According to the wording of the agreement, the three leaders agreed to “participate in the JIAS” which was to be “established by UNMIK.”

played a role in their motivation. The decision of the SRSG of 12 December 1999 – only three days before the JIAS Agreement was signed - to declare the 1989 Kosovo law the applicable law in Kosovo, was certainly an important factor in the political dynamics of the time. Whatever political horse-trading might have paved the way for the signing of the agreement, it then seemed to be the only possible way to ascertain UNMIK's authority in Kosovo.

### **The Joint Interim Administration in Kosovo (JIAS)**

Only about a month later, the agreement was finally transformed into a Regulation by the SRSG and thereby became applicable law in Kosovo.<sup>28</sup> Although the Regulation is almost identical with the agreement's contents, the regulation does not even mention the agreement concluded on 15 December 1999. Also, it specified that the establishment of JIAS shall start on 14 January, the date when the regulation was promulgated (which contradicts the agreement). This raises questions of ownership of the JIAS: Was it based on an agreement between the signatories, or an act by the only legitimate legislative authority – the SRSG? While politically, the appearance may have been that preference was given to the former interpretation, legally speaking, it was clear that only the latter was relevant. The Agreement as such has therefore never entered the legal sphere of Kosovo.

In return for the inclusion in the structures administering Kosovo, in particular in the Interim Administrative Council (IAC), the Kosovar leaders had to give up their earlier titles and claims, and dissolve all 'parallel structures' by a deadline set for 31 January 2000.<sup>29</sup> The agreement stipulated that "all Kosovo structures of executive, legislative and judicial nature shall cease to exist". It was open whether they would become inexistent automatically on that date (which is the more literal interpretation), or whether the signatories undertook to abolish them until that date (which is how it was later interpreted by all parties concerned).

It might look like hair-splitting detail, but is nevertheless interesting that the JIAS agreement did not abolish the parallel structures as such, but recognized their at least partial existence. The respective passage of the agreement clearly speaks of these institutions as existing ones:

Current Kosovo structures, be they executive, legislative or judicial (such as the "Provisional Government of Kosovo", "Presidency of the Republic of Kosovo") shall be transformed and progressively integrated, to the extent possible and in conformity with this agreement, into the Joint Interim Administrative Structure".

Although the signatories almost certainly did not intend to also include Serbian "parallel structures" into this formula, UNMIK's municipal administrators in Kosovo's Serb northern municipalities interpreted it in this way when they simply recognized the "existing" Serbian municipal assemblies and executives as the official JIAS ones in spring 2000. From the outset, the objective of participation of Kosovo Serbs was an integral element of the JIAS agreement, which stipulated that Kosovo

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<sup>28</sup> Regulation 1/2000 of 14 January 2000 (originally promulgated as Regulation 2000/28 due to misunderstandings about how to continue with the numbering after the new year!). Subsequently, all but one of the 20 Administrative Departments were established by Regulation in the course of 2000.

<sup>29</sup> This concerned in particular Hashim Thaçi as the "Prime Minister of the Provisional Government of Kosova", Ibrahim Rugova, as the "President of the Republic of Kosova", as well as the "Parliament of the Republic of Kosova" controlled by Rugova's LDK.

Serb representatives would be included at all levels of the joint administration. However, the Kosovo Serbs<sup>30</sup> were not ready to accede to the agreement, dismissed it as a violation of Resolution 1244, and instead demanded self-government for the remaining Serbs in Kosovo. Although a small part of the Kosovo Serb community later participated in certain JIAS structures as “observers”, Kosovo Serbs never formally acceded to the JIAS agreement.

In its operational plan for JIAS implementation, UNMIK specified which “parallel structures”, i.e. those seeking to “exercise public authority in Kosovo”, should end. They included the entire range of features of the respective quasi-state institutions which had emerged in Kosovo: “official internal meetings, such as Cabinet or Municipal Council meetings; executive activities and Kosovo-wide and municipal level, including official statements; issuing of decrees such as security clearances for ‘non-collaborators’ and eviction orders; issuance of ‘official documents’, certificates or registration plates; appointments of personnel for ‘official’ posts; collection of customs/taxes and license fees; policing/law and order activities; wearing of ‘official’ uniforms, carrying of ‘official identity cards, or otherwise impersonating officials’; ‘official’ contacts/negotiations with UNMIK and KFOR/international representatives; and occupying public buildings.”<sup>31</sup>

Importantly, and in particular due to pressure on behalf of Thaçi and his new party, the PPDK (claiming successorship to the UÇK, and the predecessor of the current PDK), the plan foresaw also the confiscation of funds collected by the RK government under ‘prime minister’ Bukoshi during the 1990s.<sup>32</sup> Bukoshi had never welcomed the JIAS Agreement nor expressed any interest in participating in JIAS himself. Nevertheless, he reluctantly gave in and accommodated with JIAS. When the Parliament of the RK met on 31 January in the Sports Palace in Prishtina, those present included Rugova, Bukoshi, members of the RK’s “government-in-exile” and 84 (out of 120) members of the RK parliament (just re-elected in 1998). Both Rugova and Bukoshi addressed the session. Rugova, as “President of the Republic of Kosova”, gave a short speech in which he complimented the Kosovar politicians for their co-operation with the international community in the JIAS. Bukoshi spoke as “Prime Minister of the Republic of Kosova”. His speech reflected details included in a report to the “Parliament”, copies of which were available at the session. After several hours of the plenary session, the Speaker decided to suspend the session for ten days to allow the delegates to digest the contents of Bukoshi’s report. The Speaker also asked the Government to come up with concrete proposals for this next session regarding the future of the Government and the Parliament and the future of the Kosovo funds. Thus, at its last meeting the RK parliament, which had not convened for years, did not formally dissolve itself, but suspended or ‘froze’ its functions.<sup>33</sup> This created strong reactions from the other two Kosovo JIAS members as well as from the international administration. At the meeting of the IAC on 1 February, PDSRSG Covey suspended both the IAC and the implementation of the JIAS until 4 February, by which time Rugova and Bukoshi were to have publicly renounced their respective titles. Consequently, on 2 February, Rugova and Idriz Ajeti, the President

<sup>30</sup> The Kosovo Serbs have been represented by a variety of institutions. The chosen one of the time was the Serb National Council of Gracanica under the leadership of Bishop Artemje Radosavljević.

<sup>31</sup> *Kosovo-UNMIK Joint Interim Administrative Structure – Implementation Plan*, 7 February 2000.

<sup>32</sup> The funds were to be transferred to the Kosovo Consolidated Budget.

<sup>33</sup> *Spot Report: Meeting of the Kosovo “Parliament”*, OSCE Mission in Kosovo, 1 February 2000.

of the RK parliament, issued a press statement confirming that the “Government, the Parliament and the Presidency of the Republic of Kosova with all its political, economic and security structures have ceased to exist as of 1 February 2000”. In the same declaration Rugova expressed his expectation that the SRSG make all necessary dispositions “to ensure that all the [RK] funds will be put at the disposition of the Kosova population through the JIAS.”<sup>34</sup> Although Bukoshi had duly presented a financial report to the parliament of the RK at its last session, he later refused to transfer any sums to UNMIK.

It is noteworthy that, with the establishment of the JIAS, UNMIK and the pillar structure, in particular its Pillar II responsible for Civil Administration did not cease to exist. They were not replaced by the JIAS, although the bulk of the work of the UN and the EU<sup>35</sup> in Kosovo were to take place in the framework of JIAS. They continued to exist, as it were, ‘in parallel’ to the joint administration run jointly with Kosovo representatives and major policies continued to be conceived and elaborated without Kosovar participation. No Kosovar within JIAS could take a valid decision without the approval of an international counterpart or supervisor. In the jargon in UNMIK at the time, some UNMIK officials merely received “a second hat” in their function as JIAS Co-Heads.

It is important to note that central government departments and municipal administrations were equally included in the JIAS Agreement and, therefore, underwent a certain degree of “Kosovarisation”. This often occurred with the method of setting up Co-Head positions for Kosovars. Yet, the regional level of UNMIK was completely unaffected by JIAS. Regional Administrations, therefore, continued to operate entirely as UN structures.<sup>36</sup> While EU Regional Offices are more or less integrated in these Regional Administrations, the OSCE, as the UNMIK Pillar responsible for institution building, has had its own independent regional and field structure.

The JIAS Agreement foresaw the establishment of joint institutions with which the SRSG was to share “provisional administrative management” with representatives from Kosovo, while at the same time retaining full legislative and executive authority. The annex to the Agreement outlined the structure of the JIAS and specified that it would consist of an enlarged Kosovo Transitional Council (KTC), the Interim Administrative Council (IAC), Administrative Departments (the annex included an ‘indicative list’ of 14 departments), Administrative Boards and Municipal Councils at the local administration level.

While the JIAS regulation provided a basis for the mechanism of the central institutions of the administrative structure, it would be a mistake to describe it as a constitution. The competences and inter-relations of the created institutions were kept largely vague, and underscored the political, rather than legal nature of the agreement and of the JIAS as a whole. Most importantly, the JIAS regulation failed to give Kosovo the status of legal subjectivity, i.e. legal personality as an entity of Kosovo

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<sup>34</sup> Press statement by the LDK President, Ibrahim Rugova, 2 February 2000

<sup>35</sup> Except through the European Agency for Reconstruction.

<sup>36</sup> After the creation of the JIAS, several of the new Departments (Health, Labour, Agriculture, BPK, CFA Tax Administration, Statistical Offices, etc.) set up “decentralized field units” in the regional capitals, although sometimes Gjakova and Ferizaj were given their own outlets.

law, which would normally represent the “state” in a legal order.<sup>37</sup> Furthermore, the JIAS did not affect the basic constitutional rule of UNMIK, as the SRSG retained the sole legislative and executive authority in Kosovo.

## **JIAS institutions and their evolution**

### **Interim Administrative Council**

As the most exclusive and therefore arguably the highest political body, the JIAS Agreement created the Interim Administrative Council (IAC). Under the chairmanship of the SRSG, the IAC was to comprise the three Kosovo Albanian signatories of the Agreement, Thaçi, Qosja and Rugova, as well as three of the four “pillar heads” or DSRSGs (UN, OSCE, EU).<sup>38</sup> Also, a Serb representative should have a seat and a vote on the IAC. The head of pillar I (UNHCR) would have observer status, as well as a representative of Kosovo civil society.<sup>39</sup> Although not foreseen in the original Agreement or the Regulation, the COMKFOR and the Chief Commissioner of UNMIK Police regularly attended the IAC as well.<sup>40</sup> Regularly, the IAC met twice weekly in the SRSG’s office and discussed current issues behind closed doors.<sup>41</sup>

As the KTC earlier, the IAC saw frequent attempts of blackmail and took over from the earlier KTC the role of reactive crisis management. In one of the IAC’s first meetings, Thaçi complained about what he perceived as continued harassment by UNMIK police, who “raided his party premises, targeted his family members for police inspections and created a general impression of personal prosecution.” Thaçi stressed that he considered such treatment “of a leading politician and member of the IAC by the international security presence unacceptable” and that in case it was not ended, he would withdraw from the IAC and act as an opposition. SRSG Kouchner apologised for the unauthorised police action and promised an immediate investigation into the background and motives. He also announced a directive that would instruct UNMIK police not to engage in intrusive action vis-à-vis public figures.<sup>42</sup>

<sup>37</sup> Only with the introduction of the Constitutional Framework in May 2001, Kosovo’s legal subjectivity was explicitly recognized. See below.

<sup>38</sup> The IAC was given a Kosovo Co-Chairmanship rotating on a bi-monthly basis. Thaçi had first insisted on a fixed Co-Chairmanship, but had to give this demand. He was, however, the only one who made the most of this purely ceremonial title, while Rugova and Qosja did not exploit the title for their own promotion. Before the question arose, whether the Serb observer Rada Trajković would take over the Co-Chairmanship in the IAC, the function had lost its appeal and was disregarded.

<sup>39</sup> Following a proposal by an NGO Council established by the OSCE, the SRSG nominated Feride Rushiti, the Medical Director of the Kosova Rehabilitation Centre for Torture Victims, as the Kosovo civil society observer for the IAC. Nazife Bala-Jonuzi, the President of the Women’s Rights Group called ‘Liria’, was nominated alternate observer. On 11 April 2000, Feride Rushiti participated for the first time. The civil society observers rarely spoke during IAC sessions, and hardly emerged as public figures.

<sup>40</sup> This made the establishment of the Special Expert Committee on Security (“composed of UNMIK and Kosovo experts”), foreseen in the Agreement and the JIAS Regulation, superfluous.

<sup>41</sup> In order to prepare its sessions, a Secretariat was established, where representatives of each IAC member prepared the agenda for each meeting.

<sup>42</sup> OSCE Mission in Kosovo *Spot Report: “IAC meeting”*, 7 January 2000. In a letter of 7 January 2000 to the Police Commissioner, the SRSG requested a precise report on police actions which led to Thaçi’s complaints and added that “before any actions are taken against members of IAC please notify the Head of Mission. This refers to private residence, working place and party centers of these persons

Much of the IAC's life has been characterised by the SRSG's endeavours to bring the Kosovo Serbs into the fold and make them participate fully in the JIAS. As mentioned above, the initial reaction of the Kosovo Serbs was hostile. Only gradually could the group around Bishop Artemije in Gračanica be convinced that Kosovo Serbs would be marginalized if they continued to exclude themselves from the decision making process. On 2 April 2000, the Serb National Council (SNC) in Gračanica decided to send observers to the IAC and the KTC for three months, and nominated two Serbs to take up the positions as Co-Heads for two Administrative Departments.<sup>43</sup> The "Agenda for Co-existence", a document prepared by UNMIK which set out a plan for creating Local Community Offices to ensure the equal availability of public services for Serbs in enclaves, was explicitly accepted in the SNC's decision.<sup>44</sup> The decision of Gračanica was received with relief among the international community in Kosovo, while the reactions of Kosovo Albanian politicians and the media were positive, but more cautious. Several criticized the conditionality and the 'observer status' of the Serb offer.<sup>45</sup>

From 11 April 2000 onwards, Rada Trajković<sup>46</sup> participated in IAC meetings. However, after a seemingly orchestrated wave of violence against Kosovo Serbs in May 2000, the SNC suspended its participation again. Only after far-reaching concessions laid down in a "Joint UNMIK-SNC Understanding" between SRSG Kouchner and Bishop Artemije, the Serbs decided to rejoin on 25 June 2000.<sup>47</sup> The Understanding specifically mentioned a "neighbourhood watch" scheme for Serb communities and promised the rapid implementation of up to 20 Local Community Offices for the public administration in Serb enclaves, which had already been promised in the "Agenda for Co-existence". Also, UNMIK now committed itself to increased efforts for Serb return projects and the protection of Serb religious and cultural heritage<sup>48</sup> as well as the appointment of international judges in each district

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too." On the same day, Police commissioner Frederiksen issued an "Order on procedures to be followed in cases of suspected illegal activity by political figures", requesting the seeking of prior operational approval of investigations "of suspected illegal activity on the part of well-known or senior ranking local political figures, or at their premises and workplaces". Any "delays or inaccuracies in passing complete information up the chain of command" would "not be tolerated. The safeguard clause that "nothing in this order shall be construed as suggesting that politically sensitive cases should not be investigated and pursued with the same diligence and objectivity applied to all cases of suspected illegal activity", could not prevent the widespread impression across UNMIK that political leaders are *de facto* off limits.

<sup>43</sup> The SNC nominated three representatives for the KTC: Father Sava Janjic, Dragan Velic and Randjel Nojkic. The latter simultaneously served as the Co-Head for the Department of Labour and Employment. Moreover, Dragan Nikolic was appointed to co-head the Department of Agriculture.

<sup>44</sup> SRSG Kouchner had launched the Agenda for Co-existence on 13 December 1999, the day before the JIAS agreement. The stated aim of the Agenda was to protect ethnic minorities by affording them greater security and improving their access to public facilities. A Steering Committee on Local Communities and Minorities was established and mandated *inter alia* to supervise the initiatives taken under the Agenda for Co-existence.

<sup>45</sup> Although the rival SNC in Mitrovica initially appeared to pursue a neutral position, now, a deep rift within the Serb community became apparent, as Oliver Ivanovic dismissed the Gračanica decision as a "historical mistake".

<sup>46</sup> A physician from Prishtina, not related to the other prominent Kosovo Serb leader Momčilo Trajković. Until 1998, she had been a deputy in the Yugoslav Parliament for Šešelj's Serb Radical Party.

<sup>47</sup> The Understanding was signed a few days after the SNC's decision, on 29 June 2000.

<sup>48</sup> As a consequence, also some representatives of the Turkish and Bosniac minorities requested an Understanding for their communities. These calls were not heeded, however.

court and an international prosecutor. These concessions were considered too far-reaching by Thaçi who left the IAC in protest, supported by a large number of Kosovo politicians. Only a renewed commitment by UNMIK to work on the hundreds of cases of persons missing since the war, guarantees for privileges for UÇK veterans and a firm exclusion of any developments leading to “cantonisation”, i.e. local self government for Serb enclaves, were able to bring Thaçi back into the fold.

While the original Agreement and the Regulation tasked the IAC with the “proposal of policy guidelines” for the administrative departments, as well as with “recommendations for new regulations and amendments to the applicable law”, the IAC never issued such texts. The only obligation of the SRSG to involve the IAC formally in the drafting of new regulations was contained in the original JIAS Regulation, which stated that the SRSG “shall consult with the IAC on the Administrative Departments to be set up and on their detailed competencies” which shall be established through the issue of regulations.”<sup>49</sup> Rather than limiting the IAC’s role to being consulted on regulations concerning Administrative Departments, it gradually evolved into a *de facto* legislative organ, as the SRSG chose to have practically all new regulations to be “endorsed” by the IAC. This *de facto* “legislative function” was never formalised but increased the political weight of the IAC vis-à-vis the other JIAS organs. A formalisation of the IAC’s real political clout would probably have contradicted the initial JIAS regulation, which reserved the legislative and executive authority to the SRSG. In practice, however, the Kosovo Albanian IAC members<sup>50</sup> became used to discuss new regulations and were able to make amendments to drafts. Although they never had a binding veto over regulations, and the SRSG pushed through certain regulations also against the openly expressed dissenting view of one or more of the IAC members, the impression among the Kosovo Albanian IAC members and the public was that the IAC was a sort of government, in charge of both the executive and legislative branch. The SG’s report of summer 2000 accordingly stated that “the IAC has endorsed a number of key regulations, including those establishing the JIAS Departments, implementing the tax administration and creating the Central Election commission, the Civil Registry and the Victim Recovery and Identification Commission.”<sup>51</sup> In an assessment of the JIAS, a political advisor of the SRSG also referred to the IAC’s “quasi-legislative capacity”.<sup>52</sup> Furthermore, the IAC did not refrain from discussing issues that were excluded from the sphere of JIAS by Regulation 1/2000 or other documents. In particular, issues concerning the sensitive issues of the Kosovo Police Service, the media and the preparation of municipal elections were frequently discussed at IAC meetings. It is a rather negligible although characteristic omission in this respect that the IAC never formalised any Rules of Procedure. The rather elaborate rule on voting, included in both the Agreement and Regulation 1/2000, was practically never used, as decisions in the IAC were made by consensus except where the SRSG chose to impose his own position.

<sup>49</sup> Regulation 2000/1 of 14 January 2000, Section 9 al. 1. and 2.

<sup>50</sup> Hashim Thaçi has been by far the most active IAC member in this respect. Followed by Rexhep Qosja and eventually Ibrahim Rugova who expressed his opinion in formal IAC meetings more infrequently.

<sup>51</sup> S/2000/538, Report of the Secretary General on UNMIK of 6 June 2000.

<sup>52</sup> Jose-Luis Herrero in Diplomatic Academy Vienna, *International Organisations in Kosovo: Finding the Path Through the Maze*, p.19.

Several times, the IAC attempted to lay down a working plan for a period of a month or more. These attempts, however, failed for the IAC became permanently seized by crises and hastily followed the precipitation of events. On many occasions, the IAC, upon the initiative of the SRSG, expressed its disapproval of violent acts and ethnically motivated crimes.<sup>53</sup> The SRSG also used the IAC as an instrument to promote tolerance and mutual understanding vis-à-vis Kosovo's minority groups. Thus, the IAC visited Roma camps on several occasions.

Despite all political prestige, the Kosovo IAC members frequently complained that the real decisions were made behind their backs and without them being consulted. This demonstrated unease illustrated their understanding of the IAC being the "Executive Committee" for Kosovo, *de facto* impersonating a government also controlling the legislative process. That might shed some light on their initial motivation for joining the body in the first place. As the text of the Agreement suggests an even more modest role for the IAC and its members than they eventually acquired, it is possible that Thaçi, Qosja and Rugova joined the IAC based on an understanding that they would get more real power and influence than was officially offered to them. (Similar frustrations have been uttered by Kosovo Co-Heads of Administrative Departments, see below.)

The lifespan of the IAC as an institution was limited to the day when a provisional government would emerge from general elections. Yet, already the municipal elections on 28 October 2000 shattered the underlying assumption of roughly equal political support for the three Kosovo Albanian IAC members. In those first democratic elections, Rugova received roughly 60 per cent support, Thaçi 27 per cent and Qosja less than one per cent. Instead, an upcoming politician and ex-UÇK commander, Ramush Haradinaj, had obtained considerable political support (seven per cent) with his newly established coalition, the Alliance for the Future of Kosovo (AAK, now transformed into a party). Consequently, he claimed some sort of representation in JIAS. The JIAS Regulation had merely stated that the IAC shall consist of eight members appointed by the SRSG, of whom four members shall be from Kosovo and four members shall be deployed from UNMIK. The four members from Kosovo shall consist of three members who shall be Kosovo Albanians and one member who shall be a Kosovo Serb.<sup>54</sup> Hence, nothing hindered the SRSG to appoint Haradinaj as a member of the IAC after Qosja had resigned and ended his political career.

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<sup>53</sup> Characteristically, on one such occasion, Thaçi requested the IAC, in return, to condemn criticism from the UN Human Rights Envoy for former Yugoslavia Jiří Dienstbier, the German magazine *Der Spiegel* and the analysis group ICG, who had sharply criticized Thaçi and the role of the UÇK in the post-war period (IAC meeting 4 April 2000). On 21 April 2000, the IAC released the following statement: "The IAC distances itself from the statement on Kosovo of Mr. Dienstbier, Special Rapporteur for Bosnia-Herzegovina, Croatia and the Federal Republic of Yugoslavia, to the United Nations Commission on Human Rights on 29 March, as well as the recent report of the International Crisis Group. We will answer substantively to them. The IAC also underlines that the recent article by "Der Spiegel" on the administrative and political situation and on individual political organizations in Kosovo does not accurately describe the reality on the ground. In this respect, the IAC notes that UNMIK Police deny the claim that they have underway criminal investigations against top-level Kosovar political leadership."

<sup>54</sup> Regulation 1/2000 on the JIAS of 15 January 2000, Section 4 (Composition of Interim Administrative Council).

### Kosovo Transitional Council

As mentioned above, the concept of the KTC goes back to the earliest consultative group of local representatives the SRSB created for himself soon after UNMIK's deployment in July 1999. In its initial phase, consisting only of twelve members, it was hampered by frequent boycotts and eventually lost its usefulness entirely. Yet, with the Agreement on JIAS, the idea of the KTC was revived and the body was substantially enlarged – to eventually comprise 36 members.<sup>55</sup> Also, its membership was to have a more pluralistic nature to duly reflect the character of Kosovo's population. The members were appointed by the SRSB upon informal recommendation by the OSCE Mission in Kosovo: eleven representatives<sup>56</sup> of all those political parties who are deemed to have at least some level of popular support, three representatives of religious groups (Muslims, Orthodox Christians and Catholics), eleven representatives of civil society and seven representatives of ethnic minorities (Serbs, Roma, Bosniacs, Turks).<sup>57</sup> The four Kosovo IAC members automatically had seats in the KTC, and were regular members of that body. The KTC met on a weekly basis and discussed issues of general political interest, often on an *ad hoc* basis. As its composition already showed, its purpose was to give everybody a voice and include a maximum number of organisations into some sort of information flow. The Kosovo participants used the forum as a platform to make proclamations, express complaints about UNMIK and KFOR, and to promote their particular interests. The KTC was regularly briefed on the security situation and invited Co-Heads of Administrative Departments for updates on their administrative work. In order to put the work of the KTC on firmer ground and make its voice more relevant, several KTC Working Groups were created. Also, attempts were made to give the KTC a long-term agenda. Unfortunately, the body continued to be driven by the events of the day and the working groups were hardly attended, although a small honorarium was offered for participation. Access of the public was originally foreseen, but meetings of the KTC were not public until 2001, when TV cameras were admitted. Rules of procedure were never adopted.

The KTC was frequently visited by foreign high-level visitors to Kosovo, who tended to send messages of warning against violence and encouraged reconciliation among the ethnic groups of Kosovo. Contrary to the IAC, the KTC was excluded from any form of legislative process, i.e. new regulations were not discussed in this forum. If the KTC was intended to be a parliament-like body *in statu nascendi*, it has definitely not come a long way to develop into a model for the later Kosovo Assembly. The weakness of the Kosovo Assembly during its first months of operation is due, among other factors, to the missed opportunities of professionalising the KTC and its procedures of policy shaping. The motivation to participate in the KTC actively and constructively was rather low given the feeling among Kosovar members that they have no influence on real decision making anyway.

The KTC, despite its weaknesses, was arguably the most 'democratic' representative of Kosovo's interim institutions until the municipal elections, which upset the assumed power balance justifying the IAC formula. As will be discussed below, it

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<sup>55</sup> The AAK was invited to join the KTC from 13 December 2000.

<sup>56</sup> With the resignation of the representative of the LKÇK, Shukri Klinaku, the number was later reduced to ten.

<sup>57</sup> The seats reserved for one representative of the Ashkali/Egyptian community and a further representative for the Turkish community remained vacant.

assumed a certain role in the consultative process leading to the creation of the Constitutional Framework and central level institutions.

### **Administrative Departments**

The “performance of provisional administrative tasks” was to be provided by the Administrative Departments on the central level, each “co-headed” by a “Kosovo co-head” and an “international co-head”.<sup>58</sup> The original JIAS Agreement tentatively foresaw 14 such departments. Later, the number increased to first 19 and then 20 due to the need to accommodate an increased number of political aspirations.<sup>59</sup> The posts of co-heads were assigned to political parties and minorities according to a formula of PDK (Thaçi) – five, LDK (Rugova) – five, LBD (Qosja) – five, Kosovo Serbs – two, Kosovo Turks – one, Kosovo Bosniacs – one, and one independent. The actual need for an administrative department was, therefore, overshadowed by the need to accommodate political pressures. The split of the originally foreseen Department of Sports and Youth into two separate departments was typical for such political horse-trading.<sup>60</sup> Each department reported to one DSRSG, whereby the head of pillar II (UN, Civil Administration) supervised 15 departments, pillar IV (EU, Economic Reconstruction) four and pillar III (OSCE, Institution Building) only one.

In practice, the establishment of these JIAS departments varied from the mere transformation of already existing departments within the UN’s Civil Administration pillars to the creation of entirely new institutions. In most cases, the Kosovar co-head was simply attached to the office of a head of a specific UN administrative unit, who now also became ‘international co-head’. The nature of cooperation also varied from almost complete sharing of information and the search for consensus on decisions on behalf of the international co-head, to virtually no interaction and mutual distrust. While the co-heads were to take their decisions jointly, the international co-head, who also preserved his or her role within the UN administration, was the decisive one. As was stated in the Secretary-General’s report of 3 March 2000,<sup>61</sup> “while the two co-heads share in the interim administrative responsibilities of each department, the UNMIK international co-head retains a unique and non-delegable responsibility to ensure that the provisions and policy of resolution 1244 (1999) are implemented throughout JIAS”.

In a typical European democratic state administration, ministers act as supreme executive organs within their areas of authority. They are not bound by any instructions, including those of the prime minister, president or chancellor, but they are bound by law and the constitution. Ministers are also accountable to Parliament, and are expected to provide full and frank disclosure of issues to Parliament. It is usually considered a very serious offence for a minister to mislead Parliament in a democratic system. Ministers can also be impeached (in a procedure often initiated by the Parliament or the constitutional court) for culpable violation of the law. Where

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<sup>58</sup> Regulation 1/2000 of 14 January 2000.

<sup>59</sup> Kosovo-UNMIK Joint Interim Administrative Structure – Implementation Plan, 7 February 2000, internal UNMIK document.

<sup>60</sup> A plan to create an Administrative Department of Women’s Affairs, which would have increased the total number to 21, should be seen in the context of the need to accommodate the pressure of another influential political group, the LDK Women’s Forum. Independent women’s rights activists and the Kosova Women’s Union, an alliance of women’s NGOs, consistently argued against such a Department, which gave UNMIK a good excuse not to establish it.

<sup>61</sup> S/2000/177, paragraph 8.

ministers enjoy any privilege or immunities, these can be lifted by Parliament, to ensure that ministers will be subject to the law. The co-heads of JIAS departments did not have the full range of powers typically entrusted with a minister of a government. It would, therefore, be more appropriate to regard the respective DSRSGs responsible for the department as of quasi-ministerial rank and the co-heads of department as “directors-general” of the respective bureaucracy in place. This is due to section 7.4 of Regulation 1/2000:

The Administrative Departments report to their respective Deputy Special Representatives of the Secretary-General who shall be responsible, in close co-operation with the Co-Heads of Departments, for the implementation of policy by the Administrative Departments and for the co-ordination between Departments.

The double-headed responsibility for the implementation of policy guidelines also speaks for a distinction between a minister in a government and the construction opted for in the JIAS. Technically, the departments reported to the respective DSRSGs, and not to the IAC, although the IAC was to develop policy guidelines for the work of the departments, but this distinction proved hard to gauge in practice. Especially, the relationship between individual Kosovo co-heads and the Kosovo IAC members who had nominated them was never clarified. The appointment of most Kosovo co-heads upon nomination by the Kosovo IAC members led to the difficult question, whether the co-heads had been appointed in their capacity as experts,<sup>62</sup> or as party representatives, i.e. whether the department ‘belonged’ to a party. In August 2000, the PDK (Thaçi) had lost confidence in the Kosovo Co-Head of the Department of Trade and Industry, Musa Limani, who had originally been proposed by the PDK.<sup>63</sup> The department had developed far-reaching plans of privatisation, restructuring, and the promotion of an economic climate conducive to foreign investment, which had apparently not been coordinated with Thaçi’s party. UNMIK on the other hand, in particular the DSRSG responsible for that department, was satisfied with the work of the co-head. Eventually, after the PDK considered that the co-head “illegally” continued to present himself as co-head and had attacked him openly in the press, Limani resigned and was replaced by a more loyal PDK member.

The Administrative Departments were intended to be up and running, i.e. staffed, housed, equipped and based on a regulation, initially by 17 April 2000,<sup>64</sup> but at the latest by early summer 2000. However, many Kosovo co-heads complained that the preparations were too slow and might have been delayed deliberately. Not all co-head positions were filled, and the last department was formally established by regulation on 7 December 2000.<sup>65</sup> The Department of Culture apparently never became established by regulation. Between their time of establishment and the moment when they were transferred to the Provisional government in 2002, most co-heads had changed at least once. Several Kosovo co-head positions, whose holders resigned, were never filled again. Not all Administrative Departments equipped with certain

<sup>62</sup> The JIAS Agreement and Regulation 1/2000 specify that the Co-Heads must have expertise in their area of competence. Lacking a procedure to test or quantify this “expertise” this rule did not seem to have much weight.

<sup>63</sup> Thaçi named Musa Limani as the then PDK Co-Head for the Department at the IAC of 18 January 2000.

<sup>64</sup> Kosovo-UNMIK Joint Interim Administrative Structure – Implementation Plan, 7 February 2000, internal UNMIK document.

<sup>65</sup> Regulation No. 2000/63 on the Establishment of the Administrative Department of Trade and Industry.

authority were established by Regulation. A Department of Agriculture, Forestry and Rural Development had been set up in April 2000. In May 2001, in an Administrative Direction, a Kosovo Forest Authority was created, and equipped with far reaching powers and competences, in particular the administration of “public forests”.<sup>66</sup>

#### **JIAS Administrative Departments as of 28 July 2000**

<b>Department</b>	<b>Party</b>	<b>DSRSG - Pillar</b>	<b>Date of Regulation</b>
Central Fiscal Authority	LDK	EU-IV	18 Feb 2000
Education & Science	LBD	UN-II	3 Mar 2000
Health & Social Welfare	PDK	UN-II	3 Mar 2000
Local Administration	PDK	UN-II	3 Mar 2000
General Public Services	LDK	UN-II	14 Mar 2000
Justice	LDK	UN-II	21 Mar 2000
Reconstruction	LBD	EU-IV	30 Mar 2000
Transport & Infrastructure	Turk.	UN-II	21 Apr 2000
Post & Telecommunications	PShDK LDK	UN-II	21 Apr 2000
Labor & Employment	Serb.	UN-II	21 Apr 2000
Agriculture, Forestry & Rural Development	Serb.	UN-II	28 Apr 2000
Environment	Bosn.	UN-II	24 May 2000
Democratic Governance & Civil Society Support	Indep.	OSCE-III	10 Jul 2000
Sports	LBD	UN-II	10 Jul 2000
Youth	PDK	UN-II	19 Aug 2000
Utilities	LBD	EU-IV	19 Aug 2000
Non-resident's affairs	LBD	UN-II	19 Oct 2000
Trade & Industry	PDK	EU-IV	7 Dec 2000
Culture	LDK	UN-II	-
Civil Security & Emergency Preparedness	PQK /PDK	UN-II	9 Nov 2000

<sup>66</sup> Regulation 2000/27 On the Establishment of the Administrative Department of Agriculture, Forestry and Rural Development of 28 April 2000 and the Administrative Direction 2001/6 Amending UNMIK Administrative Direction 2000/23 Implementing UNMIK Regulation 2000/27 of 24 May 2001.

Despite its weaknesses it would be wrong to say that the administrative work of the departments was a complete farce. To put the work of JIAS into proper perspective, it should be noted that roughly two thirds of the budget available for the departments (government expenditure) was spent by the Education Department and the Health and Social Welfare Department. Together with the expenditures of the Justice Department, their joint share was about three quarters.<sup>67</sup> It was also these three departments that employed the lion's share of civil servants in their respective sectors. Education (UNMIK counted roughly 400.000 schoolchildren in Kosovo) and health services simply could not wait, and the ensuing work has managed the emergency phase better than many had expected. The subsequent, not less formidable, task was to restructure these sectors and create a modern public administration for them.

One of the most crucial normal state functions is the collection of taxes and fees for the financing of public services. UNMIK had already tasked the Central Fiscal Authority (CFA) under pillar IV to elaborate a domestic revenue plan for Kosovo before the JIAS was in place. The CFA was then integrated into the structure as an Administrative Department. In the early phases, insufficient tax collection was one of the biggest worries of the JIAS and UNMIK.<sup>68</sup> In 1999, 2000 and 2001, most financial resources available in the Kosovo Consolidated Budget stemmed from third country donations, primarily from the EU and its member states. Comparatively, levying customs at the few entry points into Kosovo was easier, although loopholes remained. Even after the establishment of the JIAS, the tax administration lamented the continued existence of parallel taxation by actors not controlled by UNMIK or JIAS, often not much different from organised extortion. Although a financial police has been established within UNMIK Police, it is going to take some time until tax and customs evasion, as well as illegal taxation can be brought under control.

In order to increase the motivation of the respective co-heads, and in order to increase the level of coordination between the 20 departments, in late 2000 the SRSG invited all these co-heads (some forty!) to a regular briefing. This Council of Co-Heads was briefly referred to as Council of Ministers, which held its first meeting on 7 December 2000 under the chairmanship of SRSG Kouchner. Its concept was to "improve coordination of the administrative aspects of the interim administration, increased transparency between Departments and increased involvement in policy making". The Council would have been given a permanent secretariat and standing committees would have been formed.<sup>69</sup> Yet, the initiative was soon rejected so as to avoid giving these co-heads, who lacked democratic legitimacy, the appearance of a government. In addition, the international co-heads met separately to discuss policy in a more workable format.

The JIAS departments were intended to be structures, which should exist not only during the "transitional administration" phase but also after the departure of UNMIK, although the forms might change to some extent as a result of reorganisation. The JIAS departments were therefore designed to be based upon the principle of

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<sup>67</sup> The Kosovo Consolidated Budget for the year 2000 made a sum of DM 429.3 million available for general government expenses and the municipalities.

<sup>68</sup> The first tax collected inside Kosovo was the Hotel, Food and Beverage Tax, levied on just the biggest of catering businesses. As this first tax was rather intended to test the administrative structures for tax collection and accustom the population to the idea of tax paying, the sums collected were rather small. The average weekly total revenue of it was some DM 5 million in May 2000. The gradual introduction of more diversified taxes improved this situation.

<sup>69</sup> Concept paper of 6 December 2000.

“technical” capability, and supported by a professional civil service. In UNMIK’s planning, the JIAS Departments should be the backbone of the provisional administration at the central level, i.e. should be the core of what later became ministries of the provisional government. In order to better prepare for a process leading to local ownership of the institutions created by UNMIK, a transfer of administrative and managerial responsibilities was intensified during 2001. Following a strategy for “Kosovarisation” developed by an UNMIK Steering Group on Personnel Policies and Procedures, the JIAS Departments of Public Services and Local Administration, as well as the CFA took the lead in implementing this process, which basically foresaw the recruitment of Kosovars into senior and middle management positions. Only with the establishment of the Provisional Institutions of Self-Government, the Kosovo Civil Service was based on a comprehensive legal framework provided in the Regulation on the Kosovo Civil Service of 22 December 2001.

### **Municipal Councils and Administrative Boards**

When UNMIK began to deploy beyond Prishtina in summer 1999, the municipalities were soon recognised to be of central importance for the governance of the territory after the war. Remarkably, the parallel structures, in particular the “UÇK-led Provisional Government of Kosova” (QPK), were much faster to establish (or retain, in the case of the Serb-majority municipalities) effective authority where the UN administration lost much of its credibility by considerable delays.<sup>70</sup> In the immediate aftermath of the war and the massive return of Kosovo Albanians to their towns and villages, ‘self-appointed’ local structures, with the blessing of the UÇK, re-established the fundamental conditions for normal life on an emergency basis, i.e. infrastructure and services. Many Kosovo Albanians, who had been dismissed in the early 1990s, simply went back to their old work places. There was no uniform picture across Kosovo: in some places, local structures went as far as issuing car license plates (Gjakova), in others, the achievements and level of organisation were much lower.

Without the effective assistance and coordination by the central authority, UNMIK, these structures were, however, not able to emerge from their emergency stopgap nature. Since the ‘self-appointed’ mayors initially refused to recognise UNMIK’s supreme authority and rather expressed their loyalty to Thaçi’s QPK and his “Minister of Local Government”, Ramë Buja, UNMIK was unable to officially recognise them and normalise its business on the local level. Humanitarian agencies took a more pragmatic approach and often worked with whomever there was to get things on a local level done, which often included the unofficial, ‘self-appointed’ local administrations. In some areas, such as in Peja region, the regional UNMIK approach was not to compete, but to cooperate with these structures, and thereby indirectly legitimise them. In doing so, UNMIK sometimes succeeded in including representatives from other parties and minorities in local structures.

On 21 October 1999, UNMIK attempted to set its authority in the municipalities beyond doubt by adopting Regulation 1999/14 on the Appointment of Regional and Municipal Administrators. On the basis of that regulation, the SRSG appointed a Regional Administrator “for each of the five regions of Kosovo (Pristina, Pec,

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<sup>70</sup> See: *Filling the Local Power Vacuum in Kosovo*, Final Report from Joint Expert Mission 26 July – 6 August 1999 by OSCE and Council of Europe (Balducci, Fleers, Masters and Nordby), 7 August 1999; and *Waiting for UNMIK – Local Administration in Kosovo*, International Crisis Group, Balkans Report No.79, 17 October 1999.

Mitrovica, Prizren, and Gnjilane) to act on his behalf”.<sup>71</sup> The Regional Administrators report to the DSRSG for Civil Administration and have a far-reaching mandate as they “shall control, discharge or otherwise supervise the functions entrusted to public services and local government bodies in the respective regions and may require that those services or bodies seek his or her prior approval for specific decisions or initiatives.”<sup>72</sup> The Regional Administrators also supervise the Municipal Administrators for the municipalities in their respective regions.

The Municipal Administrators “control, discharge or otherwise supervise the functions entrusted to public services and local government bodies” in the respective municipalities and they may require that those services and bodies seek prior approval for specific decisions or initiatives. In particular, Municipal Administrators were tasked to:

- Reactivate or establish and oversee, as the case may be, administrative structures, institutions and enterprises, falling within the jurisdiction of the municipality, to carry out government activities at a municipal level, including revenue generating activities and systems of financial management and control;
- Reactivate or establish and oversee modalities for local participation in the decision making process pending elections; and
- Coordinate international assistance at the municipal level.

Otherwise, the ‘provisions of the applicable laws’,<sup>73</sup> i.e. Kosovo, Serbian and Yugoslav laws relating to regional and municipal administration regulation were supposed to apply.

Subsequently, Regional Administrations were set up in the five district capitals, and municipal administrators were deployed in all municipalities. Yet, it was not possible for all municipal administrators to take the municipal building into possession, as that was in some cases denied by the parallel local administration. Also, the provision of services and administrative decisions was not delivered by the Municipal Administrators, but by the local structures in place. The early months of UNMIK’s municipal administration had farcical traits in several places. Only the JIAS agreement and the decision to dissolve the parallel structures built up by the UÇK/QPK and the LDK put the supremacy of the UNMIK Municipal Administrators beyond doubt, at least on paper. For the local level, the JIAS regulation<sup>74</sup> included the following provisions:

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<sup>71</sup> Regulation 1999/14 on the Appointment of Regional and Municipal Administrators of 21 October 1999.

<sup>72</sup> With regard to the organization internally, the Regional Administrators oversee and coordinate the activities of UNMIK staff in their regions, although this is rather limited to the staff actually employed by the UN, as both the EU and the OSCE have their own regional structures.

<sup>73</sup> The regulation says “laws”! At the time, this meant the law applicable in Kosovo up until March 1999.

<sup>74</sup> Regulation 1/2000.

### Section 8 - Local Administration

8.1 The administration in a municipality shall be performed by a Municipal Administrative Board headed by the UNMIK Municipal Administrator.

8.2 Municipal Administrative Boards shall be composed of the UNMIK Municipal Administrator (or his or her representative), and of other members appointed by him or her: a President, if one is appointed by the Municipal Administrator, one or more Vice-Presidents, Heads of Department, and such other persons who may be designated by the Municipal Administrator. The Administrative Boards shall, to the extent possible, incorporate members of the current Kosovo municipal structures.

8.3 The Municipal Administrator shall assign administrative functions to members of the Municipal Administrative Board and shall set out policies and monitor their implementation by the municipal services.

8.4 The Municipal Administrator shall also temporarily administer Municipal property and assets directly.

8.5 The Municipal Administrative Board shall consult with a Municipal Council, to be chaired by the Municipal Administrator. The members of the Municipal Council shall represent the citizens of the municipality and be appointed by the Municipal Administrator.

8.6 The Municipal Council shall be a consultative body and shall make recommendations to the Municipal Administrator on any matter within his or her competence.

Although JIAS did provide for guidance for the structure on municipal level, it failed to give clarity with regard to the organisation, competencies of municipalities and their relations to the central authority. As stipulated in the agreement, UNMIK now extended the “Peć model” all across the territory, i.e. it nominated a Municipal Council as a consultative body to the UN Municipal Administrator and appointed an Administrative Board to run the actual local administration.<sup>75</sup> In the implementation of the JIAS agreement on municipal level, there was much confusion about the details of how the structure should look like. Although obviously different municipalities needed specific structures to cater for local needs (they vary significantly in area, population size and ethnic make-up, geography, economic development, level of urbanisation), the lack of consistency in the approach followed has not contributed to the development of a rational, compatible public service conducive to good governance and democratic control. The lack of transparency accompanying the procedure has also not allowed for an independent outside control for instance by the OSCE or the Council of Europe, or of the local constituencies.

Since the agreement called for the incorporation “to the extent possible” of the existing parallel structures, many UNMIK Administrators opted for the easiest solution of simply appointing the same personalities and using the structures of the previous unofficial municipal government. In many municipalities the Administrative Boards were a product of party allegiances, with most of the new appointees largely affiliated to Thaci’s PDK. In the majority Serb municipalities in the north, the old Serbian municipal administration was thus incorporated in JIAS, although the officials there never gave up their ties to the Belgrade regime. Indeed, most former “mayors” were co-opted to be Presidents or Vice-Presidents of the Administrative Boards under the new JIAS system. In some municipalities, the Municipal Administrator sought to

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<sup>75</sup> In Peja region, not much needed to be done, as Kosovar municipal administrations were in place in all five municipalities, and the structure of a handpicked advisory municipal council and an executive administrative board were modelled after what Peja region had already implemented before the JIAS Agreement. Changes in the composition of these bodies were however necessary in order to fulfil the JIAS Agreement’s principle of maximum inclusiveness of political factions and national minorities.

accommodate political pressure from various groups by extending the number of positions available.<sup>76</sup> Only gradually were individual Municipal Administrators able to expand the representation of other political groupings and minorities, but also of women.

The resulting structure of the Administrative Boards can be characterised as heavily politicised. The essential criterion in the majority of appointed directors was their political affiliation and backing, rather than their professional background and qualification. This is not to say that individual senior staff members were not well suited for the job they were appointed to, but that the determining principle in their recruitment process was their political background and their support by influential local groups and individuals. In most cases, the Kosovo heads of the Administrative Boards (in some places referred to as president, others as vice-president, others as mayor) were the same persons who also headed the municipal administration under the QPK. The Municipal Councils were, as consultative bodies, more pluralistic in nature, but had much less clout vis-à-vis the Administrative Board and especially the President and his entourage. Interestingly, on the whole, the consultative Municipal Councils had fewer members than the executive Administrative Boards.

In general, there was a lack of coherence and methodology in the establishment of municipal JIAS structures. Guidance from the central level was not always available, and many a Municipal Administrator, often completely inexperienced in how to run a municipality, improvised and shaped the municipality according to their own plans. Nevertheless, basic administrative work slowly developed. Priority tasks were to organise garbage collection, sewage systems, provide basic health services, the provision of public utilities, the issuing of civil documents, etc. Public servants were offered training courses, in the use of information technology as well as in administrative techniques.

### **Living with JIAS**

As mentioned above, Resolution 1244 outlines the gradual development of state authority in Kosovo. In an initial phase the main tasks of UNMIK were to perform basic civilian administrative functions and maintain civil law and order. It turned out, as we have seen, that this was very difficult in the presence of several competing parallel structures which, for themselves and without UNMIK's approval, tried to perform basic civilian administrative functions and maintain civil law and order. JIAS was UNMIK's recipe to master the challenge of this initial phase in a more efficient and politically palatable manner. Only then was UNMIK able to approach the next phase which was to organise provisional institutions for democratic and autonomous self-government through elections, with the purpose of gradually establishing substantial autonomy and self-government in Kosovo, as provided for in Resolution 1244.

UNMIK did so in two steps, first on the local level, in the municipalities, and only then on a Kosovo-wide level. While municipal provisional institutions were established, JIAS continued to function on the central level. As these institutions were established and consolidated, UNMIK was to gradually transfer its administrative responsibilities. However, no criteria or a timetable for the transfer of authority was

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<sup>76</sup> In the case of Gjakova, this inflated the number of Directors in the Administrative Board and other well-paid positions to a point where it became unsustainable for the municipal budget available.

indicated by the Resolution. In practise, UNMIK intends to transfer authority to Kosovo institutions only after it will have determined that Kosovo political forces are sufficiently “mature” for being entrusted with such authority. It should be noted that whatever institutions (laws and institutional structures) are being established until an eventual transfer of authority from Kosovo’s provisional institutions to the institutions established under the political settlement, have interim character and can, therefore, be undone at any moment by the SRSG, or by the permanent institutions after the (complete and irrevocable) transfer of authority.

### **Municipal elections and the transfer of authority to local self-government**

The municipal level of administration was affected drastically by the first municipal elections and the subsequent implementation of the municipal law of 11 August 2000.<sup>77</sup> The regulation regulates the work of the elected municipal assemblies, which elected a president, upon whose proposal it then appointed a board of directors and a chief executive officer to run the administration for a period of two years. After the municipal elections, the UNMIK Municipal Administrators and the SRSG were to retain extraordinary powers and would only gradually transfer administrative power to the municipality as the local structure proved “capacity and capability to implement effective financial procedures and controls.”

Although in October 2000 elections took place in 27 of Kosovo’s thirty municipalities,<sup>78</sup> the establishment of democratic local self-government proved to be difficult and took much more time than generally expected. Kosovo’s first democratically elected municipal assemblies, the highest representative bodies at the municipal level, were sworn-in on 11 November 2000 in more than two dozen simultaneous ceremonies held throughout Kosovo.<sup>79</sup> In municipalities with substantial minorities, SRSG appointed additional minorities’ representatives. The municipal law already foresaw the precise steps to be taken in the days and weeks following the elections.<sup>80</sup> Political sensitivities, and especially the position of previously self-appointed, UÇK-blessed local administrations which were initially loyal to Thaçi’s provisional government and then incorporated into JIAS local structures, were far from friction free.

The municipal assemblies elected presidents, usually from the biggest political factions in the assemblies (at times in coalition with smaller parties or individual representatives), which, in 22 municipalities out of 27, was the LDK, which had won

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<sup>77</sup> Regulation (2000/45) on Self-Government of Municipalities in Kosovo.

<sup>78</sup> Technically, elections were also held in the Serb dominated northern three municipalities. Serbs, however, boycotted the vote. Due to insignificant turnout in these municipalities, the results there were not certified by the Central Election Commission.

<sup>79</sup> During the ceremony, each member pronounced a solemn oath, or declaration of office, to perform their duties honourably, faithfully and impartially in order to ensure conditions for a peaceful life for all. See *UNMIK Regulation No 2000/45 on Self-Government of Municipalities in Kosovo*, of 11 August 2000.

<sup>80</sup> According to the municipal law, the assemblies had to be gathered not later than two weeks after the Central Election Commission announced the final results. Until a president was elected, the UNMIK Municipal Administrator presided the assembly. The assembly also had to adopt its own rules of procedure and a statute for the municipality, upon which its further administrative and legislative work would be based. These texts were approved by the UNMIK Municipal Administrators after they were found to be in line with UNMIK’s directions.

an absolute majority of votes in most municipalities. The PDK was able to muster presidents in the other five municipalities. The presidents proposed a chief executive officer who was put in charge of heading the local civil service and chair the local board of directors.

The SRSG appointed the members of the municipal assemblies and the presidents of the three northern municipalities Leposavić, Zubin Potok and Zvečan, where the results of the municipal elections had not been certified because of the insignificant voter turn-out. The appointed members have been carrying out many of the same tasks as their elected counterparts in the rest of Kosovo. The main difference was that when it came to financial issues and by-laws the Municipal Administrator had to countersign decisions. Originally, the SRSG underlined the temporary nature of the new assemblies and announced that there would be by-elections in 2001 in these predominately Serb municipalities. However, probably due to political preferences in these municipalities, which were expressed during the Yugoslav and Serbian elections in September and December 2000, UNMIK refrained from putting its appointees to the test of a public endorsement. Voters in these municipalities and in northern Mitrovica showed a strong backing for Milošević's Socialist Party and Šešelj's Radical Party, hardly the partners the international presence in Kosovo wanted to deal with.<sup>81</sup> It was far more convenient for UNMIK to appoint cooperative Serb politicians than risking a radicalisation of positions through elections.

### **A Constitutional Framework for Provisional Self-Government**

The unease with the concentration of powers and the lack of accountability had been felt by many inside UNMIK from the outset. SRSG Bernard Kouchner and others, including many Kosovar political analysts, had been urging for the promulgation of an interim constitution, providing a clear legal framework for the governance of Kosovo. Works on a "pact", as Kouchner used to refer to the project, proceeded in Prishtina as well as in diplomatic circles on high level such as the Contact Group<sup>82</sup> the Quint,<sup>83</sup> and the G-8<sup>84</sup> throughout 2000.<sup>85</sup> The Secretary General's report on UNMIK of 6 June 2000 referred to it as a "contract", which was to be built on the existing basis of the JIAS "including IAC and the KTC" and was to "incorporate all the principles of

<sup>81</sup> In the Serbian presidential elections of 29 September 2002, Vojislav Šešelj received a staggering 57,2% of the votes in Kosovo. Source: Centar za slobodne izbore i demokratiju (CeSID).

<sup>82</sup> The Contact Group is constituted of diplomatic representatives of the United States, the United Kingdom, Germany, France, Italy, Russia. A representative of the EU usually also participates in meetings.

<sup>83</sup> The Contact Group minus Russia.

<sup>84</sup> The countries represented in the Contact Group plus Canada and Japan. A G8 Working Group Paper endorsed by the G8 Meeting on 13 May 2000 in Tokyo stated that: "it is understood that under UNSCR 1244 the responsibility for its implementation remains with the SRSG and there is to be no prejudice to Kosovo's future status. Within these parameters, on the basis of a dialogue with the Kosovars, including the Serbs and other minorities, and keeping informed FRY representatives in Pristina, the SRSG should develop a framework for provisional self-government in Kosovo during the period of interim administration" based on principles such as full respect for resolution 1244, respect for democratic standards, human rights, equality of all citizens and national communities and the rule of law.

<sup>85</sup> According to UNMIK press releases, the pact would consist of a number of Regulations that would supplement the one on local self-governance, ranging from laws on the Judiciary and Human Rights to the Rights of Communities and eventually a central assembly and executive body.

Rambouillet and Resolution 1244”.<sup>86</sup> The Kosovar public and political elites were promised to be properly consulted on the developments, but the public meetings that took place were few and superficial.<sup>87</sup> Many Kosovo political representatives (politicians and independent individuals) were calling for a constitution to build a generally accepted legal and institutional framework for Kosovo. Kosovo, in as much as it can express itself through political parties and independent opinion leaders, was requesting a constitution in order to base its institutional political development on a firm legal basis, a prerequisite for the rule of law.

The idea of the “pact” was to define which institutions should exist at central level Kosovo, while the international drafters insisted that the process should be completed without prejudice to the outside relationship to the federal level in Belgrade. Resolution 1244 reserves that question to a political settlement which must include the Yugoslav side. In the meantime, however, Kosovo needed to consolidate its institutions from within, in particular to get a parliament and a government. While the international status or the status within the Yugoslav constitution might still be undefined for some time to come, in order to be called ‘democratic’, Kosovo needed to develop democratic state institutions based on constitutionality, legality, transparency, accountability, a system of checks and balances and a separation of powers. Kouchner’s “pact” was, however, never concluded.

In the meantime, an interesting, but predictable rift between the Kosovars and the international administration had emerged. While Kosovars were calling for a constitution ever more loudly, the international community has been shying away from the notion or the concept of a constitution, as this would presumably prejudice the outcome of the political process determining the final status of Kosovo. The international community therefore preferred to speak of a “legal framework” instead. Seemingly, the dispute was about semantics and symbolism.

As pressure grew to hold central level elections in Kosovo in order to determine a primary negotiating partner, the need arose for defining what body with what competences would be created by such elections. Initial thinking varied from a complete constitutional text (as the texts included in the Rambouillet draft agreement or a draft developed by a team of Swiss academics<sup>88</sup>) to a mere inflated version of the regulation on Kosovo’s recently established municipal assemblies.<sup>89</sup> In any case, the text elaborated was intended to fall short of both Rambouillet and the 1974 provincial constitution. Before SRSK Kouchner left UNMIK he had instituted a joint international and Kosovar “Working Group” to work out a draft regulation for creating a central consultative/legislative body. The Kosovar experts were appointed by the Kosovo IAC members.

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<sup>86</sup> S/2000/538, Secretary General’s Report on UNMIK of 6 June 2000.

<sup>87</sup> In contrast, during June and July 2001 more than 38,000 East Timorese turned out at 212 constitutional public hearings that solicited the views of the population on what should be considered by the country’s Constituent Assembly when drafting East Timor’s first Constitution. The SRSK presented the reports to the Constituent Assembly on 18 September. Among the prevalent issues discussed at the Constitutional public hearings were the political system, currency, and flag East Timor should adopt; punishments for serious crimes; the educational system; laws for foreign investors; how the revenue from the Timor Sea Arrangement should be distributed; and the official language.

<sup>88</sup> Walter Kälin, Wolf Linder, Jörg P. Müller, Jörg Kunzli, *Model for an Interim Constitutional Framework for Autonomy and Self-Government of Kosovo*, unpublished manuscript, University of Bern, Switzerland, 30 August 2000.

<sup>89</sup> See Regulation 2000/45.

The preparatory work was taken up by the Joint Working Group on the Legal Framework under the new SRSG Hans Haekkerup in January 2001.<sup>90</sup> With the arrival of the new SRSG, the drafting was again reserved to a small group of internal international advisers, who were tasked to prepare a set of regulations determining the structure, competencies and the relationship of the central assembly to other institutions. Among the priorities outlined by the new SRSG, the highest was the establishment of a legal framework for provisional self-government on a Kosovo-wide level. During 2000, the Contact Group had discretely discussed drafts for the new legal framework. A draft thus elaborated already contained all the essential aspects, which were later formally incorporated into the legal framework.<sup>91</sup> The only critical issues at the time were the extent to which the FRY's sovereignty would be explicitly stressed in the document and whether the FRY should be formally involved in the elaboration of the legal framework, an aspect that Russia in particular was insisting on, and the nature of the advice the Contact Group would give to UNMIK.

In late February 2001, a draft of the "legal framework" was adopted by the Quint only, which avoided any explicit institutional links which could have given Belgrade pretexts to interfere with Kosovo's Provisional Self-Government and which included no obligation for UNMIK to adhere to the provisions contained therein.<sup>92</sup> After endorsement by the UN Secretariat, a reinstated joint international-Kosovo working group discussed this draft for the first time on 5 March 2001. The Working Group, whose task was to work out the details and the precise legal formulations of the framework, met regularly and tended to report progress, while issues of principle remained open until the very end. The Working Group eventually could not agree on a text version, and dispersed in disagreement over the presence of an envoy of the FRY government to represent the Kosovo Serbs.

In the meantime, Kosovo constitutional experts, many of whom had already been involved in the drafting of the Kaçanik Constitution of the never-recognized "Republic of Kosova" in 1991, went ahead in preparing their own comprehensive draft proposal for a constitution. These efforts enjoyed the broad support of the Kosovo public, political parties across the spectrum, and the influential media. UNMIK, predictably enough, dismissed attempts to move beyond the outer limits of Resolution 1244 and thus disregarded this project.

On 15 May 2001, SRSG Haekkerup signed the Constitutional Framework for Provisional Self-Government ('Constitutional Framework') in the form of a regulation, which outlines the establishment and functioning of institutions following elections in November 2001.<sup>93</sup> Strangely, the document was also formally signed by two of the four Kosovo representatives in the IAC (Rugova and Haradinaj) although this was untypical (to say the least) for an UNMIK regulation, as the IAC did officially not possess any legislative powers. Taçi refused to put his signature to the text as, in his view, it did not go far enough towards the establishment of statehood for Kosovo.

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<sup>90</sup> Former Danish Minister of Defence.

<sup>91</sup> The process was remarkably reminiscent of practices of the late 19<sup>th</sup> century, when the Great Powers developed "constitutions" or "statutes" for breakaway regions of the disintegrating Ottoman Empire.

<sup>92</sup> Russia had apparently not been able to push its position through and thus preferred to dissociate itself from the further elaboration of the text. It had continued to assert that it was up to the Contact Group to issue binding instructions to UNMIK on the interim legal framework.

<sup>93</sup> Regulation 9/2001 of 15 May 2001.

Crucially for the acknowledgment of Kosovo's identity and statehood, the Constitutional Framework explicitly recognized Kosovo's legal subjectivity, as it acknowledged Kosovo's tradition of partial statehood by reference to Kosovo's "historical, legal and constitutional development" and by setting out Kosovo as an "undivided territory", with a "people" and democratic self-government on the municipal and central level.<sup>94</sup> Yet, while the Constitutional Framework eventually goes quite far in undermining FRY sovereignty over Kosovo, it carefully protects UNMIK's own ultimate authority, steering clear of procedural or substantive limits to the exercise of its authority, or even allowing any subordination under its own laws or standards.

The Constitutional Framework does not contain all specific rules on how the provisional institutions of self-government are to be organised. It mainly focuses on the most prominent of these institutions, which was to be established first: the Assembly, representing the legislative branch of government. The rules concerning the establishment and the functioning of the administrative institutions (the "executive branch") were provided in subsequent regulations. Also, the Constitutional Framework has itself been amended in the meantime. The substantive "constitution", i.e. the rules governing the work of the provisional institutions, is thus contained in the Constitutional Framework and the following legislative texts:

On the Assembly, i.e. legislative branch:

- ❑ Regulation 2001/33 on Elections for the Assembly of Kosovo of 15 November 2001.
- ❑ Regulation No. 2002/9 on an Amendment to the Constitutional Framework for Provisional Self-Government of 3 May 2002.<sup>95</sup>
- ❑ Administrative Direction No. 2001/13 Implementing Regulation No. 1999/1 on the Authority of the Interim Administration in Kosovo and Regulation No. 2000/21 As Amended on the Establishment of the Central Election Commission of 21 September 2001.<sup>96</sup>

On the "executive branch":

- ❑ Regulation 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo of 13 September 2001.
- ❑ Regulation No. 2001/36 on the Kosovo Civil Service of 22 December 2001.
- ❑ Regulation No. 2002/5 Amending UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo of 4 March 2002, establishing the Ministry of Health (Annex I) and the Ministry of Environment and Spatial Planning (Annex II).
- ❑ Administrative Direction No.2002/10 Implementing UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo of 31 May 2002.

<sup>94</sup> See Chapter 1, paragraphs 1.1. to 1.3 (General Provisions) of Regulation 9/2001. Before the long-awaited clarification by the Constitutional Framework, Kosovo had an international administration, but no legal personality. Before 1989, Kosovo was one of the eight federal units of the later disintegrated SFRY, and enjoyed autonomy both within the Socialist Republic of Serbia and within the federal state. It had its own constitution and state institutions, such as a judicial system including a constitutional court, police, legislative assembly, executive government and representatives in federal organs.

<sup>95</sup> Adopted after a motion by the Assembly for amendment of section 9.1.7 of the Constitutional Framework concerning the selection of members of the Presidency of the Assembly.

<sup>96</sup> A person may not hold more than one directly elected public office at any one time.

- ❑ Administrative Direction No.2002/11 Implementing UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo of 31 May 2002.
- ❑ Regulation No. 2002/10 on the Establishment of the Economic and Fiscal Council of 6 May 2002.

While the Constitutional Framework gives wide competencies to the institutions of self-government (the elected Assembly, the President of Kosovo, the Government, etc.) it nevertheless reserves ultimate authority for UNMIK alone. After a long list of “powers and responsibilities” which are reserved expressly for the SRSG in Chapter 8, Chapter 12 (Authority of the SRSG) provides a general clause with which the SRSG and UNMIK is able to override practically every decision of the elected institutions:

“The exercise of the responsibilities of the Provisional Institutions of Self-Government under this Constitutional Framework shall not affect or diminish the authority of the SRSG to ensure full implementation of UNSCR 1244 (1999), including overseeing the Provisional Institutions of Self-Government, its officials and its agencies, and taking appropriate measures whenever their actions are inconsistent with UNSCR 1244 (1999) or this Constitutional Framework.”<sup>97</sup>

Chapter 13 (Authority of KFOR) contains an even more far-reaching exemption for the international security presence as “nothing in this Constitutional Framework shall affect the authority of the International Security Presence (KFOR) to fulfil all aspects of its mandate under UNSCR 1244 (1999) and the Military Technical Agreement (Kumanovo Agreement).”

Regulation 2001/19 on the Executive Branch goes into the same direction. Section 6 of that Regulation reserves for the SRSG the power to “take such measures as may be required to enhance the effectiveness” of the Government, the Ministries and agencies. He may also “assign international and other personnel to Ministries and Executive Agencies to perform such functions as he judges appropriate and necessary.” Furthermore, the SRSG can “instruct the Ministries and Executive Agencies to carry out such functions and duties” as he may require.

### **General elections and the establishment of provisional institutions**

After the adoption of the Constitutional Framework and the Regulation on the Executive Branch, the JIAS Departments were reorganized into Transitional Departments on 4 October 2001. The JIAS structure, i.e. the mandate of co-heads, ended with that date. It is remarkable that such an important reorganisation of the administration was done through an administrative direction, a legal instrument below the level of a regulation. The number of departments was reduced to a total of ten, whereby each new Transitional Department was to “perform responsibilities and functions” of one or more Administrative Departments. Not all responsibilities and functions carried out by the Administrative Departments were transferred to Transitional Departments, those not transferred presumably fell back to UNMIK’s direct administration, without the Administrative Direction or any other legal instrument specifying that. During the transitional period the responsibilities of co-heads of the Administrative Departments were discharged by the Principal International Officers (PIOs) appointed by the SRSG to head the respective Transitional Departments. The position of Kosovo co-heads was not replaced. This

<sup>97</sup> Compare this with the “Bonn powers” of the High Representative in Bosnia and Herzegovina.

structure remained in effect until the establishment of provisional self-government through the assumption of administrative responsibilities and functions by the Executive Branch as set out in Regulation 2001/19.

1. Transitional Department of Good Governance, Human Rights, Equal Opportunity and Gender
2. Transitional Department of Finance and Economy
3. Transitional Department of Trade and Industry
4. Transitional Department of Education, Science and Technology
5. Transitional Department of Culture, Youth and Sports
6. Transitional Department of Health, Environment and Spatial Planning
7. Transitional Department of Labour and Social Welfare
8. Transitional Department of Transport and Communications
9. Transitional Department of Public Services
10. Transitional Department of Agriculture, Forestry and Rural Development

The Provisional Institutions of Self-Government have responsibilities in the fields listed in Chapter 5 of the Constitutional Framework: Economic and financial policy; Fiscal and budgetary issues; Administrative and operational customs activities; Domestic and foreign trade, industry and investments; Education, science and technology; Youth and sport; Culture; Health; Environmental protection; Labour and social welfare; Family, gender and minors; Transport, post, telecommunications and information technologies; Public administration services; Agriculture, forestry and rural development; Statistics; Spatial planning; Tourism; Good governance, human rights and equal opportunity; and Non-resident affairs. In these fields (listed in section 5.1), the Provisional Institutions seem to have complete responsibility and competence, while in others (in the fields of local administration, judicial affairs, mass media, emergency preparedness, and external relations)<sup>98</sup> these competences include only several listed responsibilities, while the main responsibility still lies with UNMIK itself.

The Provisional Institutions of Self-Government are:

- (a) Assembly
- (b) President of Kosovo
- (c) Government
- (d) Courts
- (e) Other bodies and institutions set forth by the Constitutional Framework

The elections to the Kosovo Assembly were held on 17 November 2001. The LDK, although suffering a ten per cent decline in votes received in comparison to the 2000 municipal elections, still won an impressive plurality of votes, and 47 of the 120 seats in the assembly. The PDK came in second, followed by the Serb Koalicija Povratak (Coalition "Return") and the AAK. Ten other political entities won seats in the

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<sup>98</sup> sections 5.2 to 5.6.

Assembly. Not least due to a gender quota, 28 per cent of the deputies are women. The Assembly was constituted on 10 December 2001.<sup>99</sup>

**Results of the 17 November 2001 elections in per cent (in seats):**

LDK	45.7 % (47)
PDK	25.7 % (26)
Koalicija Povratak	11.3 % (22 = 12 + 10 set aside)
AAK	7.8 % (8)
VATAN (Bosniac/ Gorani coalition)	1.2 % (4 = 1 + 3 set aside)
KDTP (Turkish Democratic Party)	1.0 % (3 = 1 + 2 set aside)
IRDK (New Democratic Initiative of Kosovo)	0.5 % (2 = 1 + 1 set aside) <sup>100</sup>
PDASHK (Ashkanli Albanian Democratic Party of K.)	0.43 % (2 set aside)
LKÇK (National Movement for Liberation of Kosovo)	1.1 % (1)
PShDK (Albanian Christian Democratic Party)	1 % (1)
LPK (People's Movement of Kosovo)	0.6 % (1)
PD (Party of Justice)	0.6 % (1)
PREBK (United Roma Party of Kosovo)	0.3 % (1 set aside)
BSDAK (Bosniac Party of Democratic Action)	0.4 % (1)

According to the Constitutional Framework, the Assembly is the highest representative and legislative Provisional Institution of Self-Government of Kosovo. Seats are held personally by the elected candidate and not by the political entity.<sup>101</sup> The first thing the Assembly did was to elect its Presidency consisting of seven Assembly members.<sup>102</sup> The Constitutional Framework foresees two mandatory 'main' committees: a Budget Committee and a Committee on Rights and Interests of Communities. Other 'Functional' Committees have been established.

<sup>99</sup> After hearing a message from the UN Secretary-General, the Assembly voted to seat five members of the seven-member Presidency of the Assembly. The 26 members of the PDK staged a brief walkout, with its leader Hashim Thaci complaining that he had not been allowed to speak. They returned after the newly-elected President of the Assembly, Nexhet Daci took the floor. Daci adjourned the session, and scheduled the Assembly to reconvene some days later to elect a President of Kosovo.

<sup>100</sup> The IRDK received one of the four seats set aside for the Roma, Ashkali and Egyptian Communities.

<sup>101</sup> Regulation 2001/33 On Elections for the Assembly of Kosovo of 15 November 2001, section 4.8.

<sup>102</sup> The Presidency of the Assembly shall have the following responsibilities: Making recommendations to the Assembly on all organizational matters of Assembly business, including the agenda; Maintaining appropriate external parliamentary contacts, in coordination with the SRSG.

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### Kosovo Assembly committees

Budget	Judicial, legislative and constitutional issues
Rights and interests of the communities	Education, science and technology
Foreign affairs	Complaints and public petitions
Public services	Trade and industry
Emergency and security	Environment and urban planning
Transport and telecommunication	Finance and economy
Culture, youth and sports	Work and social welfare
Agriculture, forestry and rural development	Health

The Assembly has the following responsibilities:<sup>103</sup>

- (a) Adopting laws and resolutions in the areas of responsibility of the Provisional Institutions of Self-Government as set out in Chapter 5;
- (b) Endorsing the Presidency of the Assembly;
- (c) Electing the President of Kosovo;
- (d) Endorsing or rejecting the Prime Minister candidate together with the list of Ministers of the Government proposed by the Prime Minister candidate;
- (e) Making decisions on other appointments as specified in this Constitutional Framework;
- (f) Considering and endorsing proposed international agreements within the scope of its responsibilities;
- (g) Deciding on motions of no-confidence in the Government;
- (h) Instructing the Government to prepare draft laws;
- (i) Adopting the Rules of Procedure of the Assembly and its committees; and
- (j) Other responsibilities specified herein or in other legal instruments.

Before it could even start to tackle legislative issues the assembly ran into a major crisis as it turned out impossible to elect the representative of another of the main provisional institutions: the President of Kosovo. In the months leading to the elections international drafters had obviously expected Ibrahim Rugova to be elected to his long-cherished office. The rather limited powers of the President, whose role is rather ceremonial and representational,<sup>104</sup> were tailored for Rugova's personality and political role in Kosovo: The President of Kosovo exercises only two important duties, namely that he can, in coordination with the SRSG, take action in the field of external relations and that he can, following consultations with the political parties, propose the Prime Minister to the Assembly.<sup>105</sup>

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<sup>103</sup> Regulation 2001/09, 9.1.26.

<sup>104</sup> Hans Haekkerup said that president of Kosovo would have a function similar to the Danish queen (Source: VIP, 28 May 2001).

<sup>105</sup> Regulation 2001/09, 9.2.4.

According to the Constitutional Framework, the President of Kosovo was to be elected by the Assembly by secret ballot<sup>106</sup> and by a two-thirds majority of the members of the Assembly. In its second session, the new Kosovo Assembly failed to elect a President when Rugova, as the sole candidate being voted on, did not receive the required approval of two-thirds of the 120 members.<sup>107</sup> The LDK was not able to garner enough votes to elect Rugova, they needed the support of other parties. The Constitutional Framework also provided for the possibility that two-thirds majority could not be obtained, and made a simple majority of the votes of all members suffice for the subsequent votes.<sup>108</sup> Yet after a month's recess, when the Assembly reconvened on 10 January 2002, Rugova failed again to attain the majority despite two rounds of voting.<sup>109</sup> While the deadlock in forming a coalition government and electing a president of Kosovo persisted, UNMIK, the representatives of interested countries in Prishtina and even the UN Security Council continued to encourage a quick solution to the stalemate.<sup>110</sup>

Eventually the deadlock was broken by breaking the constitutional rules. The Constitutional Framework lays down a precise procedure for the establishment of a Government: Following Assembly elections the President of Kosovo shall consult with the parties, coalitions or groups represented in the Assembly. Then, he is to propose a candidate for Prime Minister to the Assembly. The proposed candidate, in turn, shall present a list of proposed Ministers to the Assembly. The Prime Minister shall be elected together with the Ministers by a majority of the members of the Assembly.<sup>111</sup>

After months of haggling, the newly arrived SRSG Steiner was able to strike a power sharing agreement among the three major Kosovo Albanian parties, the LDK, the PDK and the AAK. The 'Agreement on the President and the Government of Kosovo' of 28 February 2002 contained a package deal, according to which Bajram Rexhepi of the PDK would become Prime Minister, and the PDK in turn would support Rugova's election for President. It also included an eight point list of priorities for the new government and a coalition formula (LDK – four ministers, PDK and AAK – two ministers each).<sup>112</sup> On 4 March, the Kosovo Assembly voted in the President and the

<sup>106</sup> A nomination for the post of President of Kosovo shall require the support of the party having the largest number of seats in the Assembly or of at least 25 members.

<sup>107</sup> In that first vote, Ibrahim Rugova received 49 of the 70 votes cast but 50 Assembly members did not vote.

<sup>108</sup> Regulation 2001/09, 9.2.8: "If after two ballots a two-thirds majority is not obtained, in the following ballots a majority of the votes of all members of the Assembly shall be required for election."

<sup>109</sup> In the first round, Rugova received only 50 votes. In the second round, which required only a simple majority of 61 votes, he received 51 votes. After that round – which was the third since voting was first held in December – the President of the Assembly, Nexhet Daci, adjourned the session and said he would later inform members of a new date for their next meeting.

<sup>110</sup> In a Presidential Statement on UNMIK of 13 February 2002, the Security Council called on Kosovo's elected representatives "to resolve the deadlock over the formation of executive structures of the provisional self-governing institutions and to allow the functioning of those institutions, in accordance with the Constitutional Framework and the outcome of the elections which expressed the will of the voters."

<sup>111</sup> Regulation 2001/09, 9.3.8.

<sup>112</sup> The text had been drafted by UNMIK. This was evident from the clause that the English version would prevail over the Albanian in case of conflict, and that no minister could be dismissed without prior approval of the SRSG. The SRSG "witnessed" the agreement, a formula used already in the JIAS agreement.

Government, which had just been presented, in a single, open ballot.<sup>113</sup> Nine ministers were appointed. In order to accommodate the political aspirations of all coalition partners (two ministries were reserved for minorities) the originally foreseen Ministry of Health, Spatial Planning and the Environment was divided in two separate ministries.<sup>114</sup> The candidate for the post of Minister of Agriculture, Forestry and Rural Development, which was reserved for a Serb of the Coalition Return, was not confirmed. Finally, on 15 March 2002, the new government under Bajram Rexhepi had its first ordinary meeting.

### **The Government of Kosovo**

Bajram Rexhepi (PDK) - Prime Minister

Ali Sadriju (LDK) - Minister of Finance and Economy

Rexhep Osmani (LDK) - Minister of Education, Science and Technology

Bexhet Brajšhori (LDK) - Minister of Culture, Youth, Sports and Non-Residents' Affairs

Zef Morina (LDK) - Minister of Transport and Communications

Ali Jakupi (PDK) - Minister of Trade and Industry

Jakup Krasniqi (PDK) - Minister of Public Services

Ahmet Isufi (AAK) - Minister of Labor and Social Welfare

Ethem Çeku (AAK) - Minister of Environment and Spatial Planning

Numan Balić (Vatan) - Minister of Health

Goran Bogdanović (Povratak)<sup>115</sup> - Minister of Agriculture, Forestry and Rural Development

The responsibilities of the Government are limited mainly by those areas, which UNMIK reserved for its own immediate involvement.<sup>116</sup> Otherwise, i.e. within the scope of responsibilities of the Provisional Institutions of Self-Government established by this Constitutional Framework, the Government "shall implement Assembly laws and other laws".<sup>117</sup> The Government can propose draft laws to the Assembly at its own initiative and at the request of the Assembly.<sup>118</sup>

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<sup>113</sup> Of the Assembly's 120 members, 112 were present at the 4 March session, with 88 voting in favour of the proposed coalition package. Three voted against the proposal and 15 abstained. The PDK members of the Assembly Presidency, Xhavit Haliti and Hydajet Hyseni, were also confirmed.

<sup>114</sup> See Regulation 2002/5 Amending Regulation 2001/19, of 4 March 2002 (!).

<sup>115</sup> Following an agreement on the participation of Serb representatives in Kosovo's provisional institutions between president Kostunica, Serbian deputy Prime Minister Covic and representatives of the Kosovo Serb Povratak coalition of 21 May 2002.

<sup>116</sup> Chapter 8 of the Constitutional Framework lists certain reserved powers and responsibilities, which will remain exclusively in the hands of the SRSG, which the powers and responsibilities of the Provisional Institutions of Self-Government shall not include. The government's powers are further limited by Chapter 12, which states that the exercise of the responsibilities of the Provisional Institutions of Self-Government shall not affect or diminish the authority of the SRSG to ensure full implementation of UNSCR 1244(1999).

<sup>117</sup> Regulation 2001/09, 9.3.1.

<sup>118</sup> Regulation 2001/09, 9.3.2.

The following Executive Agencies established by law shall operate within the Ministries to which they are attached, under the authority of the Minister concerned:<sup>119</sup>

- ❑ Kosovo Drug Regulatory Authority (Ministry of Health, Environment and Spatial Planning)
- ❑ Kosovo Statistical Office (Ministry of Public Services)
- ❑ Kosovo Cadastral Agency (Ministry of Public Services)

It was clear from the beginning of this post-JIAS phase that UNMIK would transfer its “administrative (not political) responsibilities” or “functions”, but not “authority.”<sup>120</sup> It is therefore confusing that the Constitutional Framework specifies that “the Government shall exercise the executive authority”.<sup>121</sup> While many functions will be included in the transition phase, a number of functions cannot be “transferred to full control by the local population.” UNMIK further maintains that, “as mandated by Resolution 1244, the SRSG remains as the ultimate authority in all aspects of local self-government throughout all stages of UNMIK’s presence in Kosovo”. This statement does not explain, however, how Resolution 1244 mandates precisely that interpretation, and what could be understood as “local self-government”, as opposed to “non-local” government or self-government. In the period after the assembly elections, UNMIK gradually transformed the JIAS departments to provisional institutions whereby “interim administrative responsibility (not authority, in accordance with resolution 1244)” devolved “from international or joint control to local control, with international oversight in an advisory capacity, as well as control over certain functions.” Under the condition that the provisional institutions fulfil certain criteria of “graduation”, “full responsibility for the interim administration in technical functions” in the determined areas will rest with Kosovo experts.

In order to assure the continued overall authority of UNMIK and the SRSG, far-reaching safeguard clauses were built into the Constitutional Framework. They are so vague that everything else said in the Framework becomes highly relative and open to very subjective interpretation on behalf of UNMIK. The Regulation on the Executive Branch, which is functionally part of the Constitutional Framework, includes even more far-reaching formulations. The SRSG may, for instance, “take such measures as may be required to enhance the effectiveness of the Executive Branch of the Provisional Institutions of Self-Government” and “may assign international and other personnel to Ministries and Executive Agencies to perform such functions as he judges appropriate and necessary”.<sup>122</sup> He even has the explicit power to “instruct the Ministries and Executive Agencies to carry out such functions and duties as [he] may require” if only “after consultations with the Prime Minister and relevant members of the Government”.<sup>123</sup> If these provisions do not suffice, the SRSG can always fall back to the general clauses of the Constitutional Framework (Chapter 12) and the Regulation on the Executive Branch (Section 7), which say that the exercise of the responsibilities conferred upon the Provisional Institutions “shall not in any way affect or diminish the ultimate authority” of the SRSG for the implementation of Resolution 1244.

<sup>119</sup> Regulation 2001/19, section 3.

<sup>120</sup> The quotations in this paragraph are from an UNMIK Discussion Paper “*Transition: International to Transitional Administration in Kosovo*” of November 2000.

<sup>121</sup> Regulation 2001/09, 9.3.1.

<sup>122</sup> Regulation 2001/19 on the Executive Branch, articles 6.1. and 6.2.

<sup>123</sup> *ibid.* article 6.3.

While minutely distinguishing between transferred and reserved powers, UNMIK itself has been thoroughly rearranged and its departments and sections reorganised. Internationals who have so far been working in JIAS departments have, in case their department has been transferred, become advisors, while other JIAS Departments or areas that have never even been introduced into JIAS, have been transformed into directorates or units (civil protection, administrative affairs, infrastructure affairs, rural affairs). The five regional administrations and the 30 municipal administrations have remained intact and inside the civil administration pillar of UNMIK. In addition to the Kosovo Ministry of Finance and Economy, UNMIK retains, in its reconstruction pillar run by the EU, a Central Fiscal Authority, responsible for tax and customs. The Kosovo Trust Agency has been equipped with a wide range of powers and responsibilities and remains in the exclusive control of internationals.<sup>124</sup> Pillar One, UNMIK's police and justice arm, retains a Department of Justice, while the transferred Ministry of Public Services includes a Department of Judicial Administration. The system is in the process of being built and is affected, as its predecessors, by constant changes. It can, therefore, not yet be presented in all its complexity.

### **The October 2002 municipal elections**

On 26 October 2002, the second municipal elections took place and thus concluded the first electoral cycle of an elected institution in Kosovo. The newly elected municipal presidents and assembly members are to retain their offices for a period of four years. The elections resulted in a pluralisation of the political scene in Kosovo's municipalities, as the LDK lost its absolute majority of votes in most places, although it still came out as the overall winner of votes (with some 46 per cent) and of majorities in municipalities. It was forced to engage in coalition building in several places, and even lost the municipality to opposing coalitions of smaller parties. The PDK did well, increasing its total number of votes by some 2 per cent (now holding some 30 per cent of the electorate) and gained the majority in several new municipalities. The AAK again increased its share in its Dukagjin heartland, and has almost caught up with the LDK in Peja, Gjakova and Decan. In several places, local lists (Gjakova) or minority parties (Prizren) did well.

The October 2002 municipal elections had very interesting features among the Kosovo Serb electorate as well. Most importantly, Serbs won in all five municipalities where they represent a majority of the local population (Leposavić, Zubin Potok and Zvečan in the north, as well as in Novo Brdo and Strpce). However, Serbs boycotted the vote in Mitrovica, and their turnout was extremely poor in most other places as well. Their overall turnout fell by about 57 per cent compared with the November 2001 assembly elections, when Kosovo Serbs supported the only Serb group, Koalicija Povratak ("Return Coalition"). Since then, a striking fragmentation has occurred among Kosovo Serbs: In the October 2002 municipal elections, a total number of 31 political entities competed. The Return Coalition, which since 2001 represents Kosovo Serbs in Kosovo's provisional institutions (see below), received about 37 per cent of the votes cast, while the Democratic Party of Serbia (Vojislav Kostunica's DSS) received some 23 per cent. Almost forty per cent of the votes cast were in support of groups receiving less than five per cent of the overall Serb votes.

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<sup>124</sup> Established by Regulation 2002/12 of 4 July 2002.

Interestingly, the DSS managed to win 29 per cent of the 93 Serb seats on municipal assemblies, while the Return Coalition will only have 25 of these seats.

### **Other institutions, excluded from the JIAS or the Provisional Institutions**

An analysis of UNMIK's institution building efforts and the gradual creation of state structures in Kosovo is not complete if limited to JIAS and the Constitutional Framework and the highest political bodies of decision-making thereby created. JIAS provided the possibility for UNMIK to organise an interim administration of the territory, which was generally accepted and respected. However, significant aspects of emerging state authority, as exercised under the responsibility of UNMIK, have been organised outside the ambit of joint administration. The method of co-optation was not applied in all areas of governance, therefore. Most importantly, all security related aspects of the administration, such as the police and the transformation of the UÇK into a civil emergency body, were explicitly excluded from the ambit of JIAS in order to protect the police and the TMK from political interference. Equally, the Constitutional Framework exempts security related matters from the competences of the provisional institutions.

The maintenance of security and "law and order" is completely in the hands of international military and civil presence, i.e. KFOR and UNMIK. One of the first tasks of KFOR was to ascertain that all Yugoslav forces had abandoned the territory and to organise the demilitarisation of the guerrilla force UÇK, which included its police arms. Subsequently, the dismantling of parallel "policing structures" operating under the QPK, was one of the primary objectives of the establishment of the JIAS. Simultaneously, a Kosovo Police Service (KPS) has been built from scratch, using recruits many of who have never served as police, and many of who had never had any job before. The core of the UÇK was transformed into a civil protection body called Kosovo Protection Corps, or *Trupat e Mbrojtje e Kosovës* (TMK). Both the new Kosovo Police Service and the TMK operate under the supervision of UNMIK or KFOR. While the former is entirely excluded from any formal political influence by Kosovars and is practically incorporated into UNMIK Police, the latter is supervised by KFOR in the field but administered by UNMIK, which had created a separate JIAS Department for that purpose. In practise, the TMK has largely been left to its own devices and it is more difficult to nail any UNMIK or KFOR responsibility to its actions than to those of the KPS.

### **Police**

Policing in Kosovo was initially a task assigned to KFOR, which was vested with an overall security mandate by Resolution 1244. As it took the UN several months to deploy and organise enough civil police and make UNMIK Police an operational force, KFOR only gradually transferred the policing authority to the regional commands of UNMIK Police. In some sectors (MNB(W))-Italian command and MNB(S)-American command), the policing authority has not yet been transferred from KFOR Military Police to UNMIK Police, which also does not make the picture any clearer. Some major countries contributing to KFOR maintain their own police operations in the territory of Kosovo, which are neither incorporated in the chain of command of KFOR nor into UNMIK Police.

Although KFOR helped out the UN in the early phases, according to Resolution 1244, UNMIK police has the primary policing authority in Kosovo, meaning that they are armed and have the power to arrest and detain. No local police force, neither the Yugoslav/Serbian, nor any other, i.e. Kosovo Albanian controlled force, is allowed to carry out police functions. This power is almost unique for UN peacekeeping missions, matched only by UN CIVPOL in East Timor. With an authorized strength of almost 4800, UNMIK Police is also the largest UN police force ever mounted.<sup>125</sup> Most UN CIVPOL operations monitor only and do not have the power to arrest. Most are not usually armed. This was the case in Rwanda and is the case in Bosnia, Angola and Sierra Leone.<sup>126</sup> UNMIK's roughly 4000 actual international police officers operate under the command of the Police Commissioner, who reports to the SRSG.

UNMIK has used the term "law enforcement authority" in several of its regulations. In UNMIK's second regulation "relevant law enforcement authorities" were permitted to temporarily detain, remove or prevent access by a person from a location, "if this is necessary in the opinion of the law enforcement authorities" to prevent a threat to public peace and order.<sup>127</sup> Although not defined, at the time this concerned KFOR and UNMIK Police. In later regulations, "law enforcement authority" has been defined as "the international security presence in Kosovo, known as KFOR and the Civilian Police of UNMIK",<sup>128</sup> or as "the Civilian Police of the United Nations Interim Administration Mission in Kosovo, also known as the United Nations International Police or as UNMIK Police, and the Kosovo Police Service."<sup>129</sup>

UNMIK Police has been facing a series of particularly difficult challenges. To police a foreign place, without being familiar with the environment and the population, without knowing the local languages, and with an understaffed pool of police officers from an often quite diverse geographical and cultural background, is not easy anywhere in the world. Most problematically, UNMIK Police Officers rarely know the Applicable Law, if at all it is available in a language they command. In the beginning, officers literally did not know what criminal procedure to apply, so many just applied what they knew from home, if any.<sup>130</sup> In the meantime, UNMIK Police has become a more professional and coherent force, and legal and operational guidelines have been developed. Most of these internal rules have been laid down in UNMIK Police Operational Bulletins, which, unfortunately, have not been published or officially promulgated in the Official Gazette. Although UNMIK Police is supposed to observe the law, i.e. the applicable law in Kosovo, the legality of UNMIK police operations has been affected by, first, the unclarity about the applicable law itself, and second, the frequent occurrence of misbehaviour of individual police officers. The two most frequent problems cited in disciplinary proceedings are sexual

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<sup>125</sup> Other substantial UN police missions have been deployed to Haiti, Cambodia, East Timor and Bosnia-Herzegovina.

<sup>126</sup> O'Neill, *Kosovo: An Unfinished Peace*, p. 41.

<sup>127</sup> Regulation 1999/2 On the Prevention of Access by Individuals and Their Removal to Secure Public Peace and Order of 12 August 1999.

<sup>128</sup> Regulation 2000/62 On the Exclusion of Persons for a Limited Duration to Secure Public Peace, Safety and Order of 30 November 2000.

<sup>129</sup> Regulation 2002/6 on Covert and Technical Measures of Surveillance and Investigation. However the definition is used "only for the purposes of this regulation."

<sup>130</sup> O'Neill, *Kosovo: an Unfinished Peace*, p.109. While this problem was particularly acute in the earlier stages, it has recently improved somewhat, as UNMIK provided a short guide to applicable criminal procedure in September 2000.

harassment and the excessive use of force. Indeed, UNMIK Police has taken action against police for using excessive force and involvement in prostitution, and some officers have been sent home to face proceedings, while others have been suspended or transferred. Whether this is sufficient for a police force to be perceived as bound by the rule of law, and whether such a structure, allowing for removal and judicial control back home in the country of origin of the respective officer, is doubtful and will be discussed further below. Another problem is that a court in the sending country of the respective police officer has to judge whether the officer complied with that country's own laws, or the applicable laws in Kosovo, which might be quite different. To make matters worse, UNMIK Police's relations to the local Kosovo courts are not always friction free, to say the least.

Especially during 1999 and 2000, the existence and operation of illegal policing structures was one of the most challenging aspects of UNMIK's governance in Kosovo. Many of those carrying out illegal policing activities were former members of the UÇK, and included both Kosovo Albanian and Kosovo Serb paramilitary groups. The extent of involvement by former UÇK police members (PU)<sup>131</sup> appeared to be considerable. Illegal police activities ranged from anodyne offences, such as unauthorised traffic control at improvised checkpoints and the organisation and management of demonstrations, to grave acts of violence and intimidation.<sup>132</sup> According to the OSCE, illegal policing led to serious human rights violations, in particular extortion, illegal detention, torture and murder. Its continued existence discredited official attempts at policing, whether by KFOR, UNMIK Police or the Kosovo Police Service. There also appeared to be heavy involvement of the TMK in many illegal policing activities. The extent of illegal policing varied widely from municipality to municipality and from urban to rural areas. The prevalence of these unofficial police structures was mainly due to the fact that official policing was "almost non-existent" for well into 2000. In February 2000, only seven active UNMIK Police officers served in Gjakova with a population of some 120,000. As a result, the local population believed it had no alternative but to turn to the unofficial policing channels. Since the entry into force of JIAS on 1 February 2000, all parallel policing structures were supposed to be dismantled, although in practice, this has not been the case.<sup>133</sup> In some municipalities, the former PU were co-opted by the local UNMIK structures. In Skenderaj, the UNMIK Municipal Administrator, appointed five former UÇK fighters to the municipal Department of Civil Defence, Mobilisation and Public Order<sup>134</sup>, which was, in fact, headed by the former commander of the PU. In Prishtina, British KFOR transformed certain illegal policing structures into a Neighbourhood Watch Scheme, the *Kujdesi Fqinesor* (KF) in January 2000, which was to function purely as an information-gathering organisation.<sup>135</sup>

<sup>131</sup> *Policia Ushtarake*: former military police of the UÇK, formed from March 1998 onwards.

<sup>132</sup> OSCE Mission in Kosovo, Background Report, *Illegal Policing in Kosovo*, 10 March 2000.

<sup>133</sup> *ibid.*

<sup>134</sup> The existence of such departments, although in line with pre-1989 Yugoslav law, was another example of some departments springing up at the municipal level that is not compatible with the JIAS Agreement, exacerbated by the fact that there was not a blueprint for the JIAS at the municipal level.

<sup>135</sup> To become a member of the KF, each former PU member had to apply for the Kosovo Police Service (KPS). As the KF, the PU agreed to a solely information-providing role without performing any executive function. Their new "mandate" had to be completely separate from that of the TMK and it was understood that any violation of this agreement would trigger their exclusion from the KPS.

In addition to normal policing functions, UNMIK Police Officers have the task to train local cadets of the Kosovo Police Service (KPS). The development of the Kosovo Police Service and the Kosovo Police Service School has been one of the few outright successes of the international presence in Kosovo so far, due mainly to the efforts of the OSCE-run police school in Vushtrri and the professional attitude of the local cadets.<sup>136</sup> Although the actual handover of all police functions will not be possible for some time to come, the inclusion of all minorities, including Serbs, in the programme and the high percentage of female cadets (around 20%) are encouraging signs.<sup>137</sup> By summer 2002, Kosovo Police had taken over simple policing tasks like car checks and traffic control, and now also participate in certain investigations. Kosovo's politicians have tried repeatedly to gain influence over the recruiting and training of police cadets. Ex-UÇK fighters have finally been offered a quota of some 50% of the new recruits, which is higher than their share according to professional qualification.<sup>138</sup> Despite the intentional separation of JIAS and police matters, it is impossible for the international trainers and supervisors to assess the level of improper outside influence the new Kosovo Police is exposed to once they are deployed to their areas of responsibility.

It seems peculiar that contrary to most other public or "state" institutions created by UNMIK, such as the JIAS, the judiciary and several independent agencies, neither UNMIK Police nor the Kosovo Police Service have been addressed in a Regulation. As said, these police forces are to observe the applicable law, which, in this case, is contained in law relevant to the police as in force in Kosovo in March 1989. As that is far too cumbersome to apply, the rules the police actually apply are those contained in Police Operational Bulletins, adopted by the Police Commissioner. These, however, are not included in Regulations or Administrative Directions and it is therefore questionable whether they constitute secondary UNMIK legislation.

The Constitutional Framework includes a clause, which leaves the relationship between the provisional institutions and the police open:

### **Chapter 6: Law and Order**

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

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<sup>136</sup> O'Neill even describes the Kosovo Police Service as "the crown jewel of the international community's initiatives in Kosovo". *ibid.*, p.114.

<sup>137</sup> The latest figures are available at [www.osce.org/kosovo/police](http://www.osce.org/kosovo/police)

<sup>138</sup> This preferential treatment was agreed in the Undertaking of demilitarisation and transformation by the UÇK of 20 June 1999: Paragraph 25 stipulates that "the UÇK intends to comply with the terms of the United Nations Security Council Resolution 1244, and [it is] in this context that the international community should take due and full account of the contribution of the UÇK during the Kosovo crisis and accordingly give due consideration to: (a) Recognition that, while the UÇK and its structures are in the process of transformation, it is committed to propose individual current members to participate in the administration and police forces of Kosovo, enjoying special consideration in view of the expertise they have developed."

Exercising authority over law enforcement institutions and the correctional service is a power and responsibility reserved for the SRSG according to the Constitutional Framework.<sup>139</sup>

#### **UNMIK Regulations in the field of security, law and order, and police matters**

- Regulation 2/1999 On the prevention of access by individuals and their removal to secure public peace and order
- Regulation 4/2000 On the prohibition against inciting to national, racial, religious, or ethnic hatred, disorder or intolerance
- Regulation 62/2000 On the Exclusion of Persons for a Limited Duration to Secure Public Peace, Safety and Order
- Regulation 4/2001 On the Prohibition of Trafficking in Persons in Kosovo
- Regulation 7/2001 On the Authorization of Possession of Weapons in Kosovo
- Regulation 10/2001 On the Prohibition of Unauthorized Border/Boundary Crossings
- Regulation 12/2001 On the Prohibition of Terrorism and Related Offences
- Regulation 22/2001 On Measures Against Organized Crime
- Regulation 2002/6 On Covert and Technical Measures of Surveillance and Investigation
- Regulation 2002/7 On the Use in Criminal Proceedings of Written Records of Interviews Conducted by Law Enforcement Authorities

#### **The military in Kosovo: international security presence (KFOR)**

The international security force in Kosovo was created by NATO and deployed in Kosovo following the Military Technical Agreement between NATO and the FRY concluded in Kumanovo on 9 June 1999. A day later, Resolution 1244 endorsed that decision and gave KFOR the Security Council's mandate as an international security presence in Kosovo, which remains outside of UNMIK itself but was to coordinate extensively with the international civil administration.<sup>140</sup> KFOR does, therefore, not operate under the authority of or report to the SRSG. The Commander of KFOR (COMKFOR), rotating among NATO countries on a six-months basis, reports to the Commander-in-Chief, Allied Forces Southern Europe (CINCSOUTH) in Naples and through him to NATO's headquarters in Brussels.<sup>141</sup> NATO itself, through its Secretary General, periodically reports on the security situation in Kosovo to the UN Security Council. On a central political level, the COMKFOR fulfils the coordinating role with the SRSG. The COMKFORs have taken a very active role in the process of institution building and have been participating in IAC meetings from the very beginning, where they often briefed on the security situation in Kosovo, but also sought to use their authority and influence over the various Kosovar

<sup>139</sup> Regulation 2001/9 of 15 May 2001, section 8.1.j.

<sup>140</sup> According to the Resolution KFOR is charged with deterring renewed hostilities, maintaining and, where necessary, enforcing a ceasefire, and ensuring the withdrawal [...] of Yugoslav forces; demilitarising the Kosovo Liberation Army (UÇK) and other armed Kosovo Albanian groups; establishing a secure environment; ensuring public safety and order until the international civil presence can take responsibility for this task; supporting, as appropriate, and coordinating closely with the work of the international civil presence.

<sup>141</sup> The Commanders of KFOR have so far come from the UK, Germany, Spain, Italy, Norway and France respectively. The current commander of KFOR, is Marcel Valentin of France. For updates on structure and other relevant information, see: [www.nato.int/kfor](http://www.nato.int/kfor)

representatives.<sup>142</sup> Within KFOR he exercises supreme authority related to security matters in Kosovo and is assisted by KFOR Headquarters in Prishtina.<sup>143</sup>

The international security force ("KFOR") commander shall have the authority, without interference or permission, to do all that he judges necessary and proper, including the use of military force, to protect the international security force ("KFOR"), the international civil implementation presence, and to carry out the responsibilities inherent in this Military Technical Agreement and the Peace Settlement which it supports.<sup>144</sup>

In the field, KFOR has constituted itself in five Multinational Brigades (MNBs), each one assigned to an MNB commander.<sup>145</sup> KFOR reached its full strength at 50,000 men and women. Nearly 40,000 troops from over 30 countries were deployed in Kosovo and another 7,500 provided rear support through contingents based in Macedonia, Albania and Greece. All nineteen NATO countries, as well as 18 non-NATO countries contributed troops to KFOR. Although brigades are responsible for a specific area of operations, they all fall under a single chain of command under the authority of COMKFOR. In practise, it is not always possible to speak of KFOR as one coherent military force, as the COMKFOR's command over it is conditional to some extent. O'Neill points out that "major contingent commanders check with commanding officers back in their capitals and then inform Commander KFOR if they can or will follow his orders."<sup>146</sup>

### Kosovo Protection Corps

One of the first great challenges to the international presence in Kosovo after June 1999 was the demilitarisation of the UÇK, as foreseen in Resolution 1244 and the preceding diplomatic agreements. The demilitarisation of the UÇK included its partial transformation into a civilian emergency corps, organised according to military structures and procedures, but under civilian administration and with a strictly civil emergency mandate. On 20 June 1999, the then political leader of the UÇK and Prime Minister of the QPK, Hashim Thaçi, and Agim Çeku, Chief of General Staff, signed an "Undertaking of demilitarisation and transformation of the UÇK" with COMKFOR, which provided "for a ceasefire by the UÇK, their disengagement from the zones of conflict, subsequent demilitarisation and reintegration into civil society."<sup>147</sup> With the Undertaking, the UÇK agreed to comply with the directions of COMKFOR. More specifically, the UÇK agreed to a timetable for its demilitarisation, which foresaw the storage of weapons and ammunition at registered sites within 90 days which eventually fell under KFOR control, the clearance of its minefields, the

<sup>142</sup> See for instance, the very interesting account of COMKFOR Reinhardt in Reinhardt, *KFOR – Streitkräfte für den Frieden*. Reinhardt describes how he used his own personal influence to persuade Kosovar leaders into accepting joint governance in preparation for the JIAS agreement.

<sup>143</sup> The staff is comprised of some 600 personnel.

<sup>144</sup> Military Technical Agreement between the International Security Force ("KFOR") and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia concluded at Kumanovo (Macedonia) on 9 June 1999.

<sup>145</sup> The five MNBs are under British, American, German, French and Italian command respectively.

<sup>146</sup> O'Neill, *Kosovo: An Unfinished Peace*, p. 43.

<sup>147</sup> For the purposes of that agreement "the UÇK includes all personnel and organisations within Kosovo, currently under UÇK control, with a military or paramilitary capability and any other groups or individuals so designated by COMKFOR." Given that the UÇK leadership had only limited "control" over the various formations operating under the acronym, this formulation opened the opportunity for some to not consider themselves bound by it.

transfer to agreed assembly areas and the withdrawal of all UÇK personnel who are not of local origin, and to cease wearing either military uniforms or insignia of the UÇK. After 90 days passed, and the UÇK had held a grandiose fare-well parade, the UÇK was declared demilitarised. Demilitarisation did not mean dissolution. The “contribution of the UÇK during the Kosovo crisis” was duly recognised and the eventual perspective of an Army of Kosovo was introduced:

The UÇK intends to comply with the terms of the United Nations Security Council Resolution 1244, and [it is] in this context that the international community should take due and full account of the contribution of the UÇK during the Kosovo crisis and accordingly give due consideration to:

The formation of an Army in Kosovo on the lines of the US National Guard in due course as part of a political process designed to determine Kosovo's future status, taking into account the Rambouillet Accord.<sup>148</sup>

In September 1999, the Kosovo Protection Corps (TMK) was formally established by UNMIK Regulation as a “civilian emergency service agency”, as an entirely new agency. It was given the tasks to: “provide disaster response services; perform search and rescue; provide a capacity for humanitarian assistance in isolated areas; assist in demining; and contribute to rebuilding infrastructure and communities.”<sup>149</sup> It shall not have any role in law enforcement or the maintenance of law and order. It has an authorised membership of 5000<sup>150</sup> and is composed almost entirely of former UÇK guerrilla fighters. Its emblem is almost identical to that of the UÇK, and the corps sees itself as the rightful army-in-waiting of Kosovo.<sup>151</sup> After a transition period of several months, during which some 18,500 applicants were screened and tested, the first 44 Corps leaders were sworn in in January 2000.

The TMK has become known for the frequent involvement of its members in criminal activities, several have been arrested for a variety of abuses, including extortion and intimidation. O'Neill says that is “impossible for even the TMK's apologists in UNMIK and KFOR to deny the mushrooming evidence of the corps' participation in premeditated violence against minorities and in organised crime (smuggling, trafficking in women, extortion, illegal seizure of apartments, prostitution).”<sup>152</sup> According to its regulation, the TMK operates under the authority of the SRSG, while KFOR provides day-to-day operational direction to the Kosovo Corps in accordance with policies and priorities established by the SRSG.<sup>153</sup> In practise, the TMK was treated as an independent actor in a way the KPS never was.

Rather awkwardly, Chapter 7 of the Constitutional Framework<sup>154</sup> addresses the Kosovo Protection Corps, without specifying whether the TMK is part of the

<sup>148</sup> Undertaking of demilitarisation and transformation by the UÇK of 20 June 1999, para 25.b.

<sup>149</sup> UNMIK Regulation 1999/8 of 20 September 1999.

<sup>150</sup> The Kosovo Corps shall consist of active members, up to maximum of three thousand, as well as reserve members, up to a maximum of two thousand, who may be called upon when required.

<sup>151</sup> The International Crisis Group provided a detailed survey of the UÇK and its successor organisation in ICG Report No.88, *What Happened to the KLA?*, of 3 March 2000. The ICG also maintains that the TMK is basically a “military-style organisation”, and points to the fact that its Albanian name can also be translated with “defence corps”, and that it took over Kosovo's territorial division in six Regional Task Groups (RTGs) from the UÇK's zone's, headed initially by the former UÇK zone commanders.

<sup>152</sup> O'Neill, *Kosovo: An Unfinished Peace*, p. 121.

<sup>153</sup> UNMIK Regulation 1999/8 of 20 September 1999.

<sup>154</sup> Regulation 2001/09.

Provisional Institutions or not: “The Kosovo Protection Corps is a civilian emergency organisation, established under the law, which carries out in Kosovo rapid disaster response tasks for public safety in times of emergency and humanitarian assistance.” Exercising authority and control over the Kosovo Protection Corps service is a power and responsibility reserved for the SRSG according to the Constitutional Framework. However, exercising authority and control over the management of the administration and financing of civil security and emergency preparedness, also a reserved responsibility, shall be gradually assumed by the Provisional Institutions of Self-Government<sup>155</sup>, more concretely an Emergency Management Department within the Ministry of Public Services.

### “Independent” bodies and offices

According to the Constitutional Framework, the following bodies and offices shall carry out their functions independently of the Provisional Institutions of Self-Government:<sup>156</sup>

- Central Election Commission
- Kosovo Judicial and Prosecutorial Council<sup>157</sup>
- Office of the Auditor-General
- Banking and Payments Authority of Kosovo<sup>158</sup>
- Independent Media Commission
- Board of the Public Broadcaster
- Housing and Property Directorate and Housing Claims Commission

Also in this category, although not mentioned by the Constitutional Framework are the

- Kosovo Trust Agency<sup>159</sup>
- Economic and Fiscal Council<sup>160</sup>

As mentioned above, the Kosovo Police Service and the TMK, both arguably “Kosovo institutions”, are mentioned separately from these independent bodies and offices. The difference seems to be that while the latter are supposed to be truly independent, also in regard to the SRSG and the international presence in Kosovo on the whole, the Kosovo Police Service and the TMK are supposed to operate under the immediate authority and direction of UNMIK or KFOR.

<sup>155</sup> Regulation 2001/9 of 15 May 2001, section 8.1.k and l.

<sup>156</sup> Regulation 2001/09, 11.1.

<sup>157</sup> See Regulation No. 2001/8 on the Establishment of the Kosovo Judicial and Prosecutorial Council of 6 April 2001.

<sup>158</sup> Established by Regulation 1999/20 of November 1999, it enjoys operational and administrative autonomy. It is accountable to its Governing Board (appointed entirely by the SRSG) and ultimately to the SRSG, to whom it reports. The BPK fulfils all the functions of a central bank except that of issuing a currency.

<sup>159</sup> See Regulation 2002/12 On the Establishment of the Kosovo Trust Agency and Regulation 2002/13 On the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters of 4 July 2002.

<sup>160</sup> Regulation 2002/6 On the Establishment of the Economic and Fiscal Council of 6 May 2002.

### **Developing benchmarks for institution-building**

The overall goal or intended outcome of UNMIK's institution building efforts with respect to what it calls the executive branch (central and municipal) are the creation of effective and sustainable institutions, a situation where authority of the Provisional Institutions of Self-Government is exercised throughout Kosovo and the efficient delivery of public services. For this purpose the following "benchmarks" have been developed, against which progress in this field will be measured.

- Government Framework ensures effective and non-discriminatory operational functioning of Cabinet and Ministries
- PISG have capacity to propose, research and draft legislation and take policy decisions; decisions and legislation incorporate interests of minorities, women & civil society
- Recruitment and appointments are completed in transparent and non-discriminatory manner
- PISG/UNMIK authority throughout Kosovo
- Increased financial transparency and management capacity; Independent Auditing capacity
- Efficient delivery of public services

For the legislative branch (central and municipal), the overall goals have been defined as effective, representative, and functioning institutions of governmental authority, minority political participation as well as the recognition of the authority of the Provisional Institutions of Self-Government throughout Kosovo. The benchmarks in this sector of government are

- Qualitative legislative processes, with minority participation
- Effective Assembly oversight over ten Ministries/municipal government through democratic checks and balances

In line with the existence of UNMIK's Pillar One and the exclusion of issues related to the police and the judiciary from the responsibilities of the provisional institutions, the "rule of law" (police/judiciary) has been dealt with separately from the two preceding governmental sectors, i.e. the executive and the legislative branch. The stated objective here are the overall goals of achieving public respect for police and the judiciary, the impartiality of judges and the KPS, prosecution of all suspected criminals, and fair trial guarantees as well as sufficient minority and gender representation in police and judiciary. The benchmarks in this sector are more inclusive and elaborate than in the other government-related areas:

- Government institutions and mechanisms respecting and protecting human rights
  - Adequate judicial and administrative procedures responding to human rights complaints against UNMIK Police/KPS.
  - Adequate government response to trafficking.
  - Presence and public awareness of effective remedies for human rights violations; effectiveness local human rights groups that issue reports on Kosovo.
- Equal access to independent, impartial and functioning justice system
  - Equal access by all citizens
  - Independence and impartiality of judges
  - Functioning justice system

- Professionalisation of judges and prosecutors and improved management and administrative capacity
  - Promotions in the justice/police sector in accordance with objective, merit-based criteria
  - Administration of the Bar/Judicial Exam that has dealt with the backlog; Transformation of the Kosovo Judicial Institute into a Magistrates' School
  - KPS internationally recognised as reliable, effective partner, accountable to PISGs
  - Professional standards among Kosovo Police Service Officers
  - Ability to provide courts with legally sufficient evidence to base judgement
  - Community policing institutionalised
  - Sustainable gender and minority participation in KPS; full KPS presence in the north.

Reforms programmes such as these would be a complex and difficult undertaking in any state, requiring a robust policy process, considerable resources and a strong executive capable of overcoming resistance from vested interests. Without the use of the SRSG's powers, it is unlikely that much progress would be made on any of them. UNMIK is likely to be constantly tempted to bypass the slow process of negotiation and compromise in the Assembly and other political fora and simply impose what it considers to be the most technically appropriate solution. Precisely this phenomenon has been observed and described in Bosnia and Herzegovina over the past few years. Marcus Cox has studied how the Bosnian "international protectorate" has become a substitute for a weak state, inhibiting its development.<sup>161</sup> The High Representative is clearly aware of this risk. In October 1999, he reported to the PIC Steering Board:

I have identified what I call the 'dependency syndrome': this means that every piece of legislation that I impose with my authority as the High Representative, gives politicians in Bosnia and Herzegovina a perfect excuse not to do their job properly. And every dollar of aid has encouraged some to believe that the International Community will pay for everything – and for ever.<sup>162</sup>

What is different in the Kosovo context is that UNMIK will not even be inclined to let the Kosovo institutions get a hand on the sensitive issues. Despite the aforementioned benchmarks, UNMIK has refrained from labelling its institution-building efforts as "state building". At the same time, it refrains from being labelled the state itself. Rather, UNMIK and the international community with an interest in Kosovo has preferred to stay away from definitions, and muddle through with some vague concept of building an entity that might end up being a federal unit in whatever form of future regional federation, or an independent state. For the time being, however, it should be neither. Traditional categories of international public law and constitutional law all fail to describe adequately how what is traditionally referred to as "state power" is exercised in Kosovo. At best, one should stick with the terminology of resolution 1244, which has Kosovo as a "territory" under international administration. The fact that this international administration has availed itself of the assistance of locally elected, staffed and funded institutions changes nothing in the basic underlying assumption – namely that the territory is under international administration. How such quality standards such as those listed in the benchmarks, which are not less than those

<sup>161</sup> Cox, *The Making of a Bosnian State*, p.157.

<sup>162</sup> High Representative, "Report to the PIC Steering Board meeting in Brussels", October 1999.

required of a state to apply for membership in the Council of Europe, can be fulfilled in a state-less scenario, remains to be seen. Whether that international administration itself can be seen as “the state” is an open question.

### **Conclusion**

As this paper mainly focuses on the historical aspects of institution-building in Kosovo under UNMIK’s administration, the aspects of analysis and evaluation are kept rather on the margins. This prioritisation is due to the division of tasks in the debate during which this paper is to be presented. Probably, Kosovo residents, i.e. the “subjects” of the emerging “state” of Kosovo, are much better able to assess and evaluate the performance of UNMIK and the Kosovo institutions that have emerged under its umbrella. This paper therefore concludes with several observations:

- ❑ There had been no blueprint for the development of institutions in Kosovo when UNMIK took over its tasks of governing the territory in summer 1999.
- ❑ The vagueness of its mandate, coupled with continuing uncertainty concerning Kosovo’s future status and relationship to its neighbours and the existence of “parallel” structures, forced UNMIK to several unforeseen compromises and delayed necessary policy measures considerably.
- ❑ The JIAS formula which stabilised the political scene and therefore allowed the first steps towards the development of Kosovo institutions had serious weaknesses, which continue to affect the current situation. JIAS remained primarily what it was intended to be in the first place: a political compromise rather than a basis for good governance.
- ❑ The elections at both local and central levels of government have led to the emergence of “legitimate” public representatives and a plurality of political organisations and actors. Yet, the gap between this legitimacy and the actual political power, which lies either in the hands of the international bodies or with unaccountable non-official interest groups in society, has led to considerable disillusionment with these bodies. Without investing these elected bodies with real political power to promote change in Kosovo’s society, their weakness will affect their stability and respect among the population.

## Acronyms

- AAK* Alliance for the future of Kosovo
- CFA* Central Fiscal Authority
- BPK* Banking and Payment Authority of Kosovo
- CFK* Constitutional Framework of Kosovo
- CINSOUTH* Commander-in-Chief, Allied Forces in Southern Europe (NATO)
- CIVPOL* UNMIK Police
- COMKFOR* Commander KFOR
- DSRSG* Deputy Special Representative of the U.N. Secretary General
- DSS* Democratic Party of Serbia
- EU* European Union
- EUMIK* European Union Mission in Kosovo
- FRY* Federal Republic of Yugoslavia
- FYROM* Former Yugoslav Republic of Macedonia
- IAC* Interim Administrative Council
- ICG* International Crisis Group
- JIAS* Joint Interim Administrative Structures (joint UNMIK/Kosovar structures serving as interim ministerial functions)
- KFOR* Kosovo Force (NATO)
- KLA* Ushtria Çlirimtare e Kosovës (Kosovo Liberation Army)
- KTC* Kosovo Transitional Council
- OSCE* Organization for Security and Cooperation in Europe
- OSRSG* Office of the Special Representative of the Secretary-General
- IC* International Community
- ICG* International Crisis Group
- KF* Kujolesi Fqinesor (Neighbourhood Watch Scheme)
- KPS* Kosovo Police Service
- KPSS* Kosovo Police Service School
- LBD* Unitd Democratic Movement, Lëvizja e Bashkuar Demokratike
- LDK* Democratic League of Kosova
- MNB* Multinational Brigades
- NGO* Non-governmental organisation
- PDSRSG* Principal Deputy Special Representative of the U.N. Secretary General
- PISG* Provisional Institutions of Self-Government
- PDK* Democratic Party of Kosova
- PPDK* Party of Democratic Progress in Kosovo
- PU* Policia Ushtarake (Former military police of UCK)
- “*RAE* communities” is used to denote Roma-Ashkali-Egyptian communities under one heading as they share most problems.
- RK* Republic of Kosovo
- RTG* Regional Task Groups
- SKP* Serb Koalicija Povratak (Coalition Return)
- SNC* Serb National Council

*TMK* Kosova Protection Corps (Trupat e Mbrojtje e Kosovës)

*SRS* Special Representative of the Secretary-General of the UN

*UNCIVPOL* U.N. Civil Police in East Timor

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

*UNHCR* United Nations High Commissioner for Refugees

*UNMIK* United Nations Interim Administration Mission in Kosovo

*UNSC* United Nations Security Council

*UNTAET* U.N. Transitional Administration in East Timor