

# **KOSOVO'S FRAGILE TRANSITION**

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## KOSOVO'S FRAGILE TRANSITION

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

Kosovo has taken first state-building steps, but the international community has not met its commitments to provide adequate support. A rule-of-law mission (EULEX), the EU's biggest ever European security and defence policy (ESDP) operation, was agreed in February 2008 but has only started to deploy. The International Civilian Office (ICO), projected to supervise independence, is a shell. The UN still functions in part as an interim administration, negotiating arrangements for Kosovo Serbs with Belgrade. The Ahtisaari plan, on the basis of which 47 states have recognised Kosovo, has been undermined by the international organisations meant to help implement it. The EU and U.S. are struggling to come to terms with Russia's attempts to portray its support for breakaway regions in Georgia as a mirror image of what they did in Kosovo. Most urgent now is for the EU to make EULEX fully operational before year's end and use its leverage with a Belgrade government that wants membership to begin to make pragmatic accommodations to Kosovo's new status.

Major violence has been avoided, €1.2 billion in aid pledged and the first tentative measures to produce effective statehood taken. But the calm surface is deceptive. Divisions between Albanian and Serb areas have widened, and prospects for a unitary state are evaporating. If a de facto partition hardens, the future of the two thirds of Kosovo's Serbs who live south of the River Ibar division line will be problematic, pressure to redraw borders on ethnic lines throughout the former Yugoslavia will mount, and perspectives for EU membership for countries in the region will further dim.

Serb defiance has entrenched north of the Ibar, where Kosovo courts, border and customs posts do not operate, and Kosovo Serbs continue to refuse to cooperate with Kosovo institutions or the EU. On 11 May Serbia held elections in Kosovo that introduced new municipal authorities in Serb areas, against the explicit instructions of the UN Special Representative. Pristina reacted with restraint, expecting the EU to roll back the developments, but its expectations are too high.

EULEX has only a quarter of its planned 2,000 international staffers on the ground. Unwilling to face hostility

in Serb areas, it has kept a low profile throughout Kosovo to avoid contributing to a geographic division of international operations. The EU and UN may have greater success brokering compromises with Belgrade's new, more EU-friendly government, but Kosovo Serb leaders are close to Serbia's now opposition DSS and Radical parties, and President Tadic has limited room for manoeuvre.

After months of indecision, Secretary-General Ban Ki-moon announced in June the start of the UN Mission in Kosovo's (UNMIK) reconfiguration, opening the way for a handover of UN assets and premises. On 23 July discussions began between UNMIK and Belgrade on six areas of governance in Serb areas of Kosovo, including police, courts and customs. The UN is somewhat optimistic about the talks, but there has already been too much delay. Now that UN/EU reconfiguration technicalities were agreed on 18 August, the EU needs to deploy fully into Kosovo and become operational by 1 December, start working in the north under the UN umbrella, and make Peter Feith, its special representative (EUSR), the authoritative international figure as ICO head.

The most sensitive area is north of the Ibar, where all sides should agree on transitional arrangements which would be reviewed no later than early 2010 when the International Civilian Representative's (ICR) powers are up for evaluation. This would amount in effect to temporary suspension of the constitution in part of Kosovo's territory, while EULEX works under a UN umbrella as an intermediary between Kosovo Serbs and Pristina; supports re-opening courts which would temporarily apply UNMIK law; continues UNMIK's policing model there; and oversees administration of customs without Kosovo symbols under a revenue-sharing arrangement between Pristina and the four northern municipalities that gives the latter an incentive to uphold the arrangements.

Since July Serbia has had a new government with conflicting priorities. President Tadic wishes to build upon the Stabilisation and Association Agreement (SAA) that the EU signed with him two weeks before

the May election to make quick progress towards membership candidacy status and visa liberalisation. But his government, while softer in tone and more inclined to diplomatic methods than its predecessor, may be equally determined not to lose Kosovo. It wants a UN rather than an EU presence in Serb areas of Kosovo, and has not adequately accepted, defined or controlled its southern border. It is pressing the UN General Assembly to request an advisory opinion from the International Court of Justice on the legality of Pristina's independence declaration. The contradictions are ultimately untenable. Belgrade and Brussels must address Kosovo soon if they are serious about Serbia's EU prospects. In those talks, the EU should make strategic use of Serbia's accession process to secure deployment of its field missions Kosovo-wide and prepare Serbia to accommodate itself to, if not formally recognise, its former territory's new status.

Kosovo is proving to be a difficult test for EU security and defence policy. The political will mustered before the February joint decision on the deployment of EULEX and a EUSR is dissipating. At a time when the EU is engaged in tough talks with Russia about the deployment of a new ESDP mission to Georgia, it would be dangerous to show lack of resolve so close to home.

The effects are not yet clear on Kosovo of recent events in Georgia, where Russia has cited western actions in Kosovo as part of its justification for unilaterally recognising the breakaway territories of South Ossetia and Abkhazia as independent. Moscow may be more ready than ever to demonstrate its blocking capacities in the UN and tempted to encourage territorial fragmentation in the EU's backyard; or it may be more ready to show its cooperative side after having demonstrated its new and troubling self-confidence. There is more need than ever for the EU to muster a strong foreign and security policy in its immediate neighbourhood.

## **RECOMMENDATIONS**

### **To European Union Member States:**

1. Deploy EULEX fully no later than 1 December.
2. Give the International Civilian Representative/EU Special Representative (ICR/EUSR) full political support, without distinguishing between the two roles.
3. Reaffirm commitment to implementation of the Ahtisaari plan's comprehensive proposal for Kosovo.

4. Insist that Kosovo is high on the agenda when discussing next steps with Serbia following the signature of the SAA.

### **To the UN Secretariat and UNMIK:**

5. Press in reconfiguration talks with Serbia for Kosovo-wide deployment of EULEX and bring EU representatives into the talks at the earliest opportunity.
6. Reduce UNMIK further, after its 70 per cent staff cutback planned for November 2008, to a small reporting, monitoring and liaison presence of less than 100 staffers by early 2009.
7. Offer Serbia only such compromises in the talks on special arrangements concerning Kosovo Serbs as are consistent with the mandate of the ICR/EUSR, contribute to EULEX deployment and provide practical interim solutions to be reviewed no later than in early 2010, and seek in particular to:
  - (a) replace the UNMIK Mitrovica regional police commander with one from EULEX, while offering Serb members of the Kosovo Police Service (KPS) in Serb-majority areas south of the Ibar a consultative structure of EULEX officers as an optional interface with their regional and Pristina KPS chain of command;
  - (b) re-open courts north of the Ibar with EULEX judges and prosecutors alongside local judiciary and applying UNMIK law; and
  - (c) arrange that EULEX oversees administration of commercial traffic through the two northern gates, with customs clearing depots set back from the border, and sharing of custom revenues according to an agreed formula between the Kosovo budget and the four municipalities north of the Ibar.

### **To the Government of Kosovo:**

8. Build and maintain state and public institutions as accountable, professional, impartial bodies independent of political party patronage and control.
9. Accommodate one-year transitional arrangements for police, courts and customs in Serb-majority areas as outlined above.
10. Engage with Kosovo Serbs on the design and implementation of decentralisation provisions.

**To the Government of Serbia and Kosovo  
Serb Representatives:**

11. Meet with the ICR/EUSR, EULEX and other EU representatives to arrange the full operationality of the two missions and secure Kosovo Serb acceptance of them.
12. Accept the transitional arrangements recommended above.
13. Accept the Ahtisaari plan's decentralisation provisions as "status neutral" and work with Pristina-based counterparts to secure their benefits for Kosovo Serbs.

**To NATO:**

14. Finalise the four technical agreements on KFOR cooperation with EULEX and offer strong support to that EU mission, in particular protection for its deployment and operations north of the Ibar.
15. Fully deploy the Military Civilian Advice (MCA) training team and fund and equip creation of the Kosovo Security Force.

**Pristina/Brussels, 25 September 2008**

## KOSOVO'S FRAGILE TRANSITION

### I. INTRODUCTION

Kosovo has been largely peaceful and stable since declaring independence on 17 February 2008, but the international community has not yet found its footing. Independence was supposed to be internationally supervised, based on the detailed "Comprehensive Proposal for the Kosovo Status Settlement" drafted by the UN Secretary-General's special representative, Martti Ahtisaari.<sup>1</sup> The Ahtisaari plan never obtained Security Council approval but is the authoritative blueprint for state building applied by Kosovo and its supporters. The government in Pristina pledged to implement it, and the 47 countries that have recognised the new state have done so largely based on that commitment. But Kosovo's supporters have so far failed to keep their own Ahtisaari plan pledges, because of Serbian and Russian opposition, but also because of insufficient political will and failure to coordinate fully.

A 120-day transition period was defined in the Ahtisaari plan, during which it was envisaged that:

- the Kosovo government would prepare the legal framework needed to govern;
- the eight-year-old interim UN administration (UNMIK) would transfer all legislative and executive authority to it;
- the European Union (EU) rule of law mission (EULEX) would deploy, providing vital security and governance support throughout Kosovo, with a 550-strong riot police force and a mandate to assume executive powers where necessary; and

- the International Civilian Representative (ICR, who heads the International Civilian Office, ICO, and is "double-hatted" as the EU Special Representative, EUSR) would begin monitoring Ahtisaari plan implementation.

From 17 February until 15 June, when this transition period ended with the coming into force of the Kosovo constitution, the government passed 41 key laws, but the UN did not pull out, the ICR did not take a leading role and EULEX did not fully deploy.

Much of the delay occurred because, soon after the independence declaration, Russia insisted that any change of UNMIK operations required a Security Council decision. The UN suspended the handover of responsibilities and assets it had agreed to with the EU. On the ground, the Serb majority area north of the Ibar River became too hostile for the EU to venture into. A clash between Serbs and international forces on 17 March 2008 around the north Mitrovica court house caused one UNMIK death and 64 UNMIK, 24 KFOR (the NATO-led force) and roughly 70 Serb injuries. The northern Kosovo Serbs refused to cooperate with EULEX and the ICO, which they saw as agents for Kosovo independence, while grudgingly accepting UNMIK and KFOR. Belgrade, caught up in 11 May elections and government formation until 7 July, instructed the two thirds of Kosovo Serbs who live in enclaves south of the Ibar to maintain a similar line. Unable to deploy in Serb areas, EULEX has avoided starting operations in the rest of the country so as to avoid a geographical division of its mission.

On the verge of a breakdown in international deployment and supervision, UN Secretary-General Ban Ki-moon circulated on 12 June a plan for UNMIK "reconfiguration". It was discussed at the Security Council eight days later. Based on instructions he sent to the field on 25 June and subsequent UN-EU talks, a second notional 120-day period – for a "reconfiguration" process, to replace the failed "transition" – began. A senior EU official explained: "We had to put

<sup>1</sup> Ahtisaari, the former Finnish president, presented two documents to the Secretary-General in mid-March 2007: the four-page "Report of the Special Envoy of the Secretary-General on Kosovo's Future Status" and the 60-page "Comprehensive Proposal for the Kosovo Status Settlement". The expressions "plan" and "Ahtisaari plan" are used throughout this report to refer to the overall scheme contained in the Ahtisaari Report and Ahtisaari Proposal, read together. Those two original documents can be found at [www.unosek.org/docref/report-english.pdf](http://www.unosek.org/docref/report-english.pdf) and [www.unosek.org/docref/Comprehensive\\_proposal-english.pdf](http://www.unosek.org/docref/Comprehensive_proposal-english.pdf).

the clock back to zero ... because we had to all agree on what 120 days we were talking about".<sup>2</sup>

That has not been easy. The UN considered it started with the 25 June instructions; the date for the EU was 26 July. The two organisations agreed only on 18 August to the modalities of a transfer of assets from UNMIK to EULEX, which now believes it can deploy all of its international staff to but not necessarily throughout Kosovo by late November or early December.<sup>3</sup> For Pristina 15 June and the coming into force of the constitution already marked the end of transition, while Serbs never recognised that the process had even started. The UN and EU now hope to obtain sufficient Serb buy-in, while retaining Pristina's support, to make the new notional 120-day reconfiguration more successful by the end of November.

Ban Ki-moon offered EULEX a "UN umbrella", a concept that has yet to be fully defined. He claimed that the EU still operates under Security Council Resolution 1244, the document that marked the end of the NATO-Serbia conflict in 1999 and began Kosovo's period of international tutelage. He also appointed a new special representative (SRSG), Lamberto Zannier, to oversee reconfiguration and offered the Serbian government to have him negotiate temporary arrangements for Kosovo Serb-majority areas in six fields: police, courts, customs, boundaries, Serbian patrimony, and transportation and infrastructure. Zannier is also to consult Kosovo's government and other international stakeholders.<sup>4</sup> The idea is that by the end of November, UNMIK should be significantly downscaled and EULEX deployed throughout Kosovo, though some officials admit that it may not be able to go north of the Ibar until at least early 2009.<sup>5</sup>

Pristina has largely accepted the reconfiguration delay, but many challenges remain. Russia argues that reconfiguration is illegal without Security Council approval and that Ban has overstepped his authority. The northern Kosovo Serbs show little more willingness to cooperate with the EU,<sup>6</sup> though some in the enclaves are

expressing interest.<sup>7</sup> Kosovo customs and courts do not function at all in the Serb north although there are plans to deploy UNMIK judiciary to north Mitrovica, and the police are ineffective there. Hundreds of Serb officers in the enclaves refuse to work in the Kosovo Police Service (KPS) chain of command, though their colleagues in the Serb-majority municipality of Strpce and many in Serb-minority areas do so. Only the pro-EU coalition government formed on 7 July – by the Democratic Party (DS) and Socialist Party of Serbia (SPS) – offers some hope that Belgrade may eventually become more flexible.

The UNMIK mission is hollow, having lost most of its legitimacy among Kosovo Albanians, and can no longer carry out most of its pre-independence executive functions. The security sector, rule-of-law institutions and customs service are fragile and in need of the monitoring, capacity building and support the ICO and EULEX are meant to provide. Coordination among the various international presences is problematic, missing the anticipated ICR leadership. Kosovo itself remains deeply divided between Albanians and Serbs, between its territories north and south of the Ibar. Ahtisaari plan decentralisation is still urgently needed to build trust in Kosovo institutions among Kosovo Serbs and prevent a solidification of partition.

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<sup>2</sup> Crisis Group interview, EULEX official, Brussels, May 2008.

<sup>3</sup> Crisis Group interview, Pristina, 26 August 2008.

<sup>4</sup> See Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo (UNMIK), S/2008/354, 12 June 2008, available at [www.un.org/Docs/sc/sgrep08.htm](http://www.un.org/Docs/sc/sgrep08.htm).

<sup>5</sup> Crisis Group interviews, EU officials, Pristina, August and September 2008.

<sup>6</sup> Although hardline leaders there continue to denounce EULEX, on 8 September, six Serb judges and prosecutors and four lawyers accepted to meet with EULEX officials at the Vushtri/Vucitrn courthouse. Crisis Group interview, judge Kapllan Baruti, head of Mitrovica regional court, Vushtri/

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Vucitrn, 17 September 2008. Nebojsa Jovic, a lieutenant of the hardline north Mitrovica leader Marko Jaksic, met with ICO representatives in May 2008.

<sup>7</sup> During the second half of August 2008, EULEX chief de Kermabon visited the isolated western Serb enclave of Gorazdevac (where in December 2007 Serbs gave the SRSG and KFOR commander a hostile reception), got endorsement of EULEX from Gracanica politician Rada Trajkovic, and claimed some interest in cooperation from Serbs in the eastern enclave of Kamenica. Television news reports and Crisis Group interview, EU officials, Pristina, 26 August 2008.

## II. FROM "TRANSITION" TO "RECONFIGURATION"

Major violence has been avoided since Kosovo declared independence, and the first tentative steps to effective statehood have been taken. But Serb refusal to accept the new situation and attempts to divide the country between Serb and Kosovo Albanian majority areas have undermined peaceful transition. Kosovo Serbs, supported by Belgrade, have where possible quit, disabled or seized key institutions – municipal authorities, police, courts, customs and railway – and strengthened their own parallel structures. They refuse to cooperate with the new EU presences, and the EU and UN have not yet defined an appropriate response.

The Ahtisaari plan outlined transitional arrangements (Art. 15) to regulate the role of the Kosovo Assembly, the UN and the ICR during the first 120 days.<sup>8</sup> Much, however, did not go as intended. The Assembly did pass a new constitution, which entered into force on 15 June, together with 41 laws, all approved by the ICR. But the UN did not hand over all its responsibilities to the government and other international presences, including the EU. The Ahtisaari plan, already undermined when the Security Council did not approve it in 2007, is now further weakened. The government has adopted it, making its strong minority protection provisions and extensive decentralisation part of the constitution and associated laws. However, the problem for Kosovo's international supporters is that it was designed for implementation in a consensual environment, with the authority of the UN Security Council behind it. The political situation on the ground and in New York are very different from that.

### A. THE UNFULFILLED TRANSITION

The Serb-majority territory north of the Ibar presents the greatest problem. Kosovo Serbs have disabled or taken control of strategic institutions and refuse to work under either Pristina or EU authority, arguing that "if we don't have our institutions, we cannot stay here".<sup>9</sup> There has been no serious challenge to Belgrade's strategy of creating an alternative reality in Serb areas so as both to divide Kosovo and defeat its independence project. This, coupled with the refusal of Serbia and Russia to accept any handover from the UN to the EU, largely froze transition during the first

120 days of independence. The process only slowly began to gain momentum in June, when Ban Ki-moon announced the start of reconfiguration. But in the negotiations with UNMIK, Belgrade is trying to formalise its hold on Serb majority areas by coaxing the UN into legitimising existing structures and allowing new ones under Serb authority.

#### 1. Kosovo Serb gains north of the Ibar

Since February 2008, Kosovo Serbs, with support from Belgrade, have wrested enough control of local municipalities, police, customs, the judiciary and 40km of railroad from UNMIK to prevent their handover to Kosovo Albanian control. More specifically, they have taken over north of the Ibar:

**Municipal authority.** In May Serbia conducted local elections in Kosovo for the first time since 1996, in 23 of the 30 municipalities where Kosovo Serbs live.<sup>10</sup> UNMIK called them illegal and in violation of its responsibility under Resolution 1244,<sup>11</sup> but they proceeded without any interference from UNMIK, KFOR or the EU. Radical Party (SRS) candidates did best; the Democratic Party of Serbia (DSS), former Prime Minister Kostunica's party, came in second.

The setting up of new municipalities loyal to the Serbian government has been most successful in the north Mitrovica administration, three municipalities north of the Ibar and the mountainous Strpce municipality far to the south. After Serbs boycotted Kosovo's November 2007 elections, then-SRSG Joachim Rucker extended the mandates of the existing authorities for six months in these municipalities, but they unilaterally stepped down before Serbia's 11 May election. UNMIK first termed the newly-elected municipal assemblies "illegal", then under Zannier "illegitimate", or merely "invalid", but they took over all local government staff and infrastructure north of the Ibar.

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<sup>10</sup> In 1996 they were boycotted by the Albanian majority.

<sup>11</sup> In a policy led by the DSS wing of government, Belgrade tried to persuade UNMIK to agree that Serbia could conduct the parliamentary and municipal elections and went ahead anyway when this failed. On 3 April 2008, Serbia's Kosovo minister, Samardzic, asked SRSG Rucker to confirm Belgrade's decision to hold elections in Kosovo. Rucker pointed out that a unilateral attempt to do so would be "a violation of my exclusive executive mandate under Resolution 1244". Samardzic responded that UNMIK should at least be neutral, equivalent to its stance on the "illegal" declaration of independence, but acknowledged "that the elections can only be called for by UNMIK, in accordance to the UNSC Resolution 1244 (1999)".<sup>11</sup> In effect, however, UNMIK acquiesced. When Kosovo Customs intercepted a truck with ballot material, UNMIK ordered it released.

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<sup>8</sup> See the Ahtisaari Comprehensive Proposal, *op. cit.*

<sup>9</sup> Crisis Group interview, political leader, north Mitrovica, May 2008.



UNMIK has subsequently softened its stance, acknowledging that “new parallel municipal authorities are now operating” and that “the Serbian Minister for Kosovo has noted publicly his expectation that UNMIK will eventually recognise them”.<sup>12</sup> Zannier met with several of their representatives but, he insists, only in their political party capacity, and has not met any of the mayors.<sup>13</sup>

The new north Mitrovica municipal authority flexed its muscles in July and tried to compel recognition from the (south) Mitrovica Albanian-majority municipality by obstructing its project to lay water pipes to the Albanian-majority village of Suhadoll/Suvi Dol, west of Mitrovica. In Strpce the new assembly occupied parts of one of the two municipal buildings on 2 July and manned a road barrier to prevent Albanians from unlicensed house-building by the Brezovica ski resort, but did not interfere with the municipality's multi-ethnic KPS, which still reports to Pristina.<sup>14</sup> It cohabits awkwardly with Kosovo Albanian rivals, elected in Kosovo's November 2007 municipal election. They scuffled twice in August, as well as on 1 September, when Serbs tried unsuccessfully to take over the municipal land and property registry.<sup>15</sup> Neither side is certain of the next step, nor wants to take responsibility for decisions each believes should come from higher up.<sup>16</sup> In other enclaves little has been done to make the parallel municipal authorities functional.<sup>17</sup>

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<sup>12</sup>SRSJ Lamberto Zannier's address to the Security Council, 25 July 2008.

<sup>13</sup>Press briefing by SRSJ Lamberto Zannier, Pristina, 20 August 2008.

<sup>14</sup>The previously UNMIK-mandated Serb mayor and councillors from the municipality's 30 per cent Albanian minority elected in Kosovo's November 2007 poll have not resigned and sit in the municipal building. The Organization for Security and Co-operation in Europe (OSCE) April 2008 municipal profile gives a population of 9,100 Serbs, 4,500 Albanians and 37 Roma.

<sup>15</sup>The Serb parallel municipality's lack of control over this registry is seen by most inhabitants as a major barrier to its effectiveness. Crisis Group telephone interviews, DSS official and Serb journalist, Strpce, August 2008. The same holds throughout the enclaves.

<sup>16</sup>Crisis Group interviews, international official working in the municipality, 13 August 2008, and Serb journalist and official, Strpce, 2 September 2008.

<sup>17</sup>The leader of a local Serb civic initiative that won the May poll in Novo Brdo complained that his municipal assembly has convened only once and no municipal government departments have been set up; the municipality “exists only on paper” and is ignored by Belgrade, Pristina and the ICO alike. He was oblivious to the ICO-organised visit of the International Steering Group to the municipality on 12 September. Crisis Group telephone interview, 16 September

A Kosovo Serb Assembly convened in north Mitrovica on 28 June to counter Pristina's new constitution and shore up DSS influence on Kosovo policy as the DS and SPS were edging toward a Serbia government coalition. The Assembly is the brainchild of DSS vice president Marko Jaksic, leader of the Serb National Council-North (SNC), which in effect runs the territory above the Ibar as a fiefdom.<sup>18</sup> Even amongst hardline Serbs in Jaksic's DSS there was hesitancy however to officially consolidate more legislative and executive powers with the new assembly. Only 30 of its 45 announced members attended; the DS stayed away. Once in government, the DS recognised the body, but sent only one delegate to the one session convened since.<sup>19</sup>

**Policing.** In February, UNMIK withdrew Albanian KPS officers from north of the Ibar. Serb KPS continued wearing the uniform but broke off contact with Albanian colleagues and the KPS chain of command and began reporting only to the UNMIK Regional Police Commander in Mitrovica. Serb KPS in the north have largely been controlled by Dragoljub Delibasic, the north Mitrovica-based regional chief of the Interior Ministry of Serbia (MUP), who instructed them to refuse salaries from the Kosovo budget and instead receive salaries he controls through the local Serb municipalities.<sup>20</sup> Delibasic also has authority over a plainclothes

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2008. In Gracanica all departments are created and staffed, yet can do little beyond correspondence with Belgrade since “99 per cent of the problems people have here require dealing with UNMIK, Pristina or other organisations”, which cannot happen at present because of mutual non-recognition. Crisis Group telephone interview, Serb journalist, Laplje Selo, 17 September 2008. In Kamenica most of the parallel municipality's departments have not been staffed, although “no one would know the difference” if they were. Although the parallel Gnjilane (Gjilan) municipality has opened for business in the village of Kusce, that business largely consists of issuing proclamations, calling for example on local Serbs employed by UNMIK or Pristina to quit after which nominal jobs on the Serbian state payroll can be found for them. There has been a sceptical response. Crisis Group telephone interview, Serb doctor and former DS official, Kamenica, 17 September 2008.

<sup>18</sup>See Crisis Group Europe Report N°165, *Bridging Kosovo's Mitrovica Divide*, 13 September 2005.

<sup>19</sup>See “Srpska skupstina KiM protiv Euleksa” [“Serb assembly of Kosovo and Metohija against EULEX”], B92, 13 September 2008. Attendance at the 13 September session was worse than at the June inauguration. Twenty six delegates came, with fewer on this occasion from the enclaves. The DS delegate did not speak and the anti-EULEX motion was carried unanimously. Crisis Group telephone interview, Serb journalist, north Mitrovica, 23 September 2008.

<sup>20</sup>Crisis Group interview, UNMIK police official, Mitrovica, 8 May 2008.

MUP presence of several dozen officers that has gained sufficient confidence to mount road checkpoints,<sup>21</sup> as well as a reservist militia that was established in mid-2006 and is also paid through the municipalities.<sup>22</sup> His power is now waning as his closeness to Jaksic leaves him out of step with Serbia's new government,<sup>23</sup> and Serb KPS in the north have begun receiving their Pristina salaries again.<sup>24</sup>

With KFOR present and patrolling, and two regionally-based UN riot police units to call upon, 185 UNMIK Police work in the north under a south Mitrovica-based Scottish commander. They tread carefully and work alongside 290 Serb KPS, whom they credit for maintaining their professionalism. EULEX middle-managers are discreetly working with UN counterparts at the UNMIK regional command in south Mitrovica.<sup>25</sup>

**Customs.** On 19 February 2008, an organised, armed Serb group destroyed the two boundary and customs posts (Gates One and 31) that divide the territory north of the Ibar from Serbia. Serb KPS, UNMIK Police and KFOR have maintained a reinforced presence at them since, but neither passport checks nor customs operations have restarted. Serb plainclothes monitors function on the roads leading there similarly to Mitrovica bridge-watchers,<sup>26</sup> following UN vehicles that have unfamiliar faces in them, lest they contain customs or EULEX officials.<sup>27</sup>

The 48 Serb officers north of the Ibar in the locally staffed UNMIK service stopped work on 19 February and formally resigned on 22 May. UNMIK Customs tried to fill the gap with mobile patrols, but only south of the Ibar. EULEX is slated to take over responsibility in the north but is concerned about doing so in a hostile environment where UNMIK has not been functioning.

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<sup>21</sup> See "Pjesetaret a MUP-it te Serbise legjitimojne neper rruget e veriut" ["Members of Serbia's interior ministry do document checks on the roads of the north"], *Koha Ditore*, 6 June 2008.

<sup>22</sup> See Crisis Group Europe Report N°174, *An Army for Kosovo?*, 28 July 2006.

<sup>23</sup> Crisis Group telephone interview, Serb journalist, north Mitrovica, 17 September 2008.

<sup>24</sup> Crisis Group interview, senior KPS official, Pristina, 12 September 2008.

<sup>25</sup> Crisis Group interview, UNMIK police, Mitrovica, 8 May 2008.

<sup>26</sup> The bridge-watchers were a local Serb-paid paramilitary force tasked from late 1999 to 2002 with defending the main Mitrovica bridge against incursions by Albanians from the south. See Crisis Group Report, *Bridging Kosovo's Mitrovica Divide*, op. cit.

<sup>27</sup> Crisis Group interview, international official, Pristina, 14 August 2008.

Serbia quietly favours gradual re-introduction of customs, but under UNMIK, not EULEX,<sup>28</sup> while the local Serb mayors are hostile.<sup>29</sup> Local Serbs could easily block the 40km-long valley road that leads from Mitrovica up to Gate One, and KFOR and UNMIK assess that reestablishing customs at the two gates without agreement would create a clash as intense as the north Mitrovica fighting of 17 March.<sup>30</sup> This would force the new Serbian government to back its hard-line political opponents in north Kosovo. UNMIK Police reinstalled video cameras at one of the gates in August, but after several hundred Serbs protested in nearby Zubin Potok, the UN reassured local mayors the information generated would not be shared with the customs service.<sup>31</sup>

The Serbian and UNMIK customs services previously enjoyed good cooperation and information-sharing and the former still sends weekly data, but UNMIK Customs has none to share.<sup>32</sup> Smuggling is booming due to the gap on the Kosovo side, lowering the revenues of both services. Many lorries still report voluntarily to the customs clearing depot in south Mitrovica, and net revenue is not far short of last year's, but "carousel" fraud has increased, in which goods relieved of VAT and excise duties because their destination allegedly is Kosovo illicitly re-enter or remain in Serbia.<sup>33</sup> The prices for fuel, which is traded in this scheme, have dropped as far away as central Serbia,<sup>34</sup> and many

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<sup>28</sup> State Secretary of the Ministry for Kosovo and Metohija Oliver Ivanovic, interviewed in Bukurie Bajraliu, "Ivanovic: Qeveria e Kosoves nuk do te kete autoritet ne veri" ["The Kosovo government will not have authority in the north"], *Koha Ditore*, 24 August 2008; and international official's account of recent talks with Minister Bogdanovic, Crisis Group interview, Pristina, 14 August 2008.

<sup>29</sup> Crisis Group interview, international official, Pristina, 14 August 2008. See "Protest Srba zbog video-nadzora" ["Serbs' protest about video surveillance"], B92, 25 August 2008.

<sup>30</sup> Crisis Group interviews, senior UNMIK and KFOR officials, Pristina, 28 May 2008.

<sup>31</sup> Crisis Group correspondence with senior UNMIK official, Pristina, 2 September 2008.

<sup>32</sup> A senior UNMIK official confided: "I am less than happy about the fact that UNMIK Customs get more info from their Serbian counterparts than UNMIK Police!" Crisis Group correspondence, 2 September 2008.

<sup>33</sup> Crisis Group interviews, UNMIK officials, Pristina and Mitrovica, 7-8 May and 14 August 2008.

<sup>34</sup> Although official Serbian petrol prices have risen to 110 dinars (€1.38) per litre since May, fuel smuggled back from north Kosovo has been available in Serbian towns such as Novi Pazar, Kraljevo and Cacak 20 per cent cheaper. Srbo Trifunovic, Enes Halilovic, "Svercovano gorivo sa Kosova stize u Srbiju" ["Smuggled fuel from Kosovo gets to Serbia"], *Blic*, 27 May 2008. In May petrol was on sale in bot-

Albanians now venture into north Kosovo to buy petrol.<sup>35</sup> Pending re-introduction of customs controls in north Kosovo, the two services are considering new technical measures to reduce the opportunities for fraud and smuggling.<sup>36</sup> Meanwhile, however, legitimate businesses complain smugglers are crowding them out.

**Judiciary.** Courts have not functioned north of the Ibar since 18-21 February, while the blockade of the north Mitrovica court complex also suspended many cases and appeals in Albanian-majority municipalities of south Mitrovica, Vushtrri/Vucitrn and Skenderaj/Srbica.<sup>37</sup> Parallel municipal courts notionally applying Serbian law exist in northern municipalities, as they did even before 17 February; so does a court for serious offences in Kraljevo, Serbia proper. None of these are regarded as seriously imposing the rule of law,<sup>38</sup> however, and local Serb KPS do not deal with them.

The area is a haven for Serbian and Kosovo fugitives alike.<sup>39</sup> The regional and municipal courts in north

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ties in the Serbia-Kosovo frontier town of Raska for only 68 dinars (€0.85). Crisis Group observation.

<sup>35</sup>Unofficial petrol stations have sprouted across northern Kosovo in recent months. Petrol prices per litre vary between 65 and 80 dinars. See Zija Miftari and Musa Mustafa, "Nafta bashkon shqiptaret e serbet ne veri" ["Fuel brings Albanians and Serbs together in the north"], *Koha Ditore*, 26 May 2008, Gazmend Sylja and Zija Miftari, "Lufta per naften e veriut" ["Battle for the north's fuel"], *Koha Ditore* 19 July 2008 and Srbo Trifunovic, *Ibid.* The deterioration of controls on the border with Kosovo has also abetted the import of unrefined fuel. Owners of illegal petrol stations across the north said that they were not selling smuggled fuel at a low price but were rather selling cheaper, unrefined petrol. Crisis Group interviews, May 2008.

<sup>36</sup>This could include re-introduction for the two gates of the "drawback" system dispensed with in 2005. Currently, Serbian exporters to Kosovo are free of duty and tax, on the basis of a certificate of departure issued by Serbia's customs and tax administration on its side of the boundary/border. Under the drawback system, which created cash-flow problems for many businesses, duty and tax were paid by the exporter in Serbia and then reclaimed on the basis of an arrival certificate issued by UNMIK Customs. Crisis Group interview, international official, Pristina, 14 August 2008.

<sup>37</sup>Monthly Report, OSCE Kosovo mission legal system monitoring section, March 2008.

<sup>38</sup>Crisis Group telephone interview, Serb journalist, north Mitrovica, 28 August 2008.

<sup>39</sup>Crisis Group interviews, UNMIK police, Mitrovica, 8 May 2008 and Goran Bogdanovic (now Serbia's minister for Kosovo and Metohija), north Mitrovica, 30 May 2008. Kosovo Albanian mobster and fugitive Enver Sekiraga was sighted in north Mitrovica in April 2008. In March 2008 the fugitive head of the Serbian Football Association, facing charges in Serbia and hiding in Montenegro, proposed holding the organisation's annual general meeting in north Mitrovica.

Mitrovica were forced to close after armed Serbs prevented their mostly Albanian staff from coming to work on 21 February.<sup>40</sup> Pre-1999 Serb judicial staff and other organised citizens started picketing that day and then occupied the regional court building on 14 March. UNMIK and KFOR reclaimed it in a 17 March operation that the SNC and MUP mobilised against and that left a Ukrainian policeman dead and scores wounded on both sides. KFOR still guards the empty building, and there are occasional Serb demonstrations. The regional court's officials conduct some procedural hearings at Vushtrri/Vucitrn court, south of the Ibar, and have started to clear a backlog of 33 cases involving 45 detainees, but have taken on no new ones since 21 February.<sup>41</sup> Police north of the Ibar have no justice system to deliver suspects to and therefore generally release them.<sup>42</sup>

New SRSZ Zannier has declared that re-establishing the rule of law in the north is a priority and suggested that international judicial staff applying UNMIK law should be introduced.<sup>43</sup> Kosovo Serbs want the courts to work with Serb staff under UNMIK and the mainly Albanian south Mitrovica municipal court to relocate below the Ibar, and are generally unhappy that the judiciary has been shut down since February.<sup>44</sup> Zannier's idea

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<sup>40</sup>The Serbian government circulated a briefing to the Security Council in which it claimed that Albanian court staff abandoned the building after 17 February. See "Comments on Technical Assessment of progress in the implementation of the standards for Kosovo, Prepared by the Special Representative of the Secretary-General for Kosovo", Republic of Serbia Ministry for Kosovo and Metohija, April 2008. In fact, UNMIK police stopped their shuttle bus from crossing the Mitrovica bridge on the morning of 21 February, because a large group of Serb men had prepared an obvious ambush for it on Ulica Kralja Petra [King Peter Street], which leads northward from the bridge to the court complex. Crisis Group interview, UNMIK Police, Mitrovica, 8 May 2008.

<sup>41</sup>Ten Albanian judges and prosecutors working at Vushtrri/Vucitrn (of the original 45 staff) have refused new cases claiming that they do not have adequate working conditions. The chief judge does not wish to build alternative facilities from those currently inaccessible in north Mitrovica. Four judges of the Mitrovica municipal minor offences court, also displaced from the north Mitrovica court complex, hear cases in Vushtrri/Vucitrn twice per week. Crisis Group interview, Judge Kapllan Baruti, Vushtrri/Vucitrn, 17 September 2008.

<sup>42</sup>On three occasions in recent months, using the UNMIK regional police commander as an intermediary, Serb KPS north of the Ibar have requested judicial assistance from officials of the Mitrovica court, resulting in two house arrests. *Ibid.*

<sup>43</sup>Izedin Krasniqi, "Zannier kerkon gjykate te UNMIK-ut ne veri" ["Zannier demands an UNMIK court in the north"], *Koha Ditore*, 17 July 2008.

<sup>44</sup>Crisis Group interview, local political leader, Mitrovica, 30 May 2008.

was seen by some as a way of introducing EULEX judges and prosecutors, though an initial re-opening is scheduled for early October using UNMIK judiciary.<sup>45</sup> The problem of Serb acceptance aside, EULEX is concerned about the repercussions for its mission profile and image of being drawn piecemeal into creating a special arrangement for the north.<sup>46</sup> Serb prison officers still maintain a north Mitrovica prison, with Serb inmates, as part of the nominally UNMIK-run Kosovo Corrections Service.<sup>47</sup>

**Railway.** Serbian Railways laid claim to the northern 40km of Kosovo's north-south line, including three stations, on 4 March 2008. Their director, Kostunica adviser Ristivojevic, rallied local Serb staff of UNMIK Railways, who switched allegiance en masse, and Serbia began running trains into north Kosovo. UNMIK Police turned back the Serbian trains at the northern boundary for a few days, then gave up. Serbia has since developed a twice daily service from the central Serbian town of Kraljevo to Zvecan. While Kosovo Serbs from the north can travel to Serbia, their ethnic kin in the south can no longer go to Mitrovica as they did before control of the line switched. UNMIK and KFOR could disable the line at the northern boundary but calculate that this would have the same security consequences as trying to reestablish customs at Gates One and 31.<sup>48</sup>

EU and UN planners did not fully anticipate such post-independence consolidation of inter-ethnic division by Serbia and Kosovo Serbs. Faced with Belgrade and northern Kosovo Serb refusal to engage with the EU and release their hold over institutions in Serb majority areas, international actors have not attempted to enforce

their authority since the 17 March UNMIK/KFOR operation at the north Mitrovica court. Unable to operate in the north, international civil deployment has stalled Kosovo-wide. Other logistical and mandate difficulties aside, the fear is of creating a de facto partition, with the EU in Kosovo Albanian areas and the UN in Kosovo Serb ones.

## 2. International civil deployment

According to the Ahtisaari plan, at the end of the transition "UNMIK's mandate shall expire and all legislative and executive authority vested in UNMIK shall be transferred en bloc to the governing authorities of Kosovo".<sup>49</sup> Limited remaining authority should be handed over to the international presences: the ICO, EU and NATO. During the transition period, UNMIK was to continue exercising its 1244 mandate, in consultation with the International Civilian Representative (ICR/EUSR). But lacking Security Council support for the Ahtisaari plan and Kosovo conditional independence, the UN never embarked on transition.<sup>50</sup>

For four months between Kosovo independence on 17 February and the coming into force of the constitution on 15 June, the UN froze, and no authority was transferred. On 20 June Secretary-General Ban Ki-moon presented his reconfiguration proposal to the Security Council. However, there is no prospect of the UN negotiating with the government and the ICR over which residual responsibilities it will keep,<sup>51</sup> and the UN and EU have left until later in the year the delicate task of agreeing the terms of the UN umbrella.

Some powers have already slipped from UNMIK's grasp. The EU withdrew funding for UNMIK's Pillar IV, responsible for the Kosovo Trust Agency (KTA) and public and socially-owned enterprises. Control of public and socially-owned property is shifting messily to the Privatisation Agency of Kosovo (PAK), which

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<sup>45</sup> "Fillimisht nderkombetare" ["Internationals for a start"], *Express*, 16 September 2008; and Crisis Group interview, senior UNMIK Department of Justice official, 16 September 2008. At UNMIK's regular press conference on 17 September spokesperson Alexander Ivanko said that the court would be ready two weeks after cleaning and re-equipping of the court commenced 19 September (later postponed to 22 September). Regional court chief Kapllan Baruti said that the decision was a capitulation to the Serbian agenda, a solely international-run court would operate too slowly, and international judiciary should instead be deployed to support national judges and prosecutors by taking sensitive and inter-ethnic cases only. Crisis Group interview, Vushtri/Vucitran, 17 September 2008; and Serbeze Haxhijaj, "Stafi vendor e kundershon UNMIK-un" ["National staff oppose UNMIK"], *Lajm*, 18 September 2008.

<sup>46</sup> Information made available to Crisis Group, officials, New York, August 2008.

<sup>47</sup> Albanian officers and inmates were transferred to other facilities prior to 17 February.

<sup>48</sup> Crisis Group interview, KFOR, Pristina, 28 May 2008.

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<sup>49</sup> Ahtisaari's Comprehensive Proposal, op. cit., General Principles, Art. 15.1 (g), available at [www.unosek.org/unosek/en/statusproposal.html](http://www.unosek.org/unosek/en/statusproposal.html).

<sup>50</sup> Until March 2008, UNMIK chiefs participated with ICO and Kosovo government officials in meetings of a Strategic Group on Transition which, as envisaged by the Ahtisaari plan, should formulate the details and modalities of the transfer of authority. By May, UNMIK was sending a lone observer. Crisis Group interview, Kosovo government official, Pristina, 20 May 2008. It suppressed eight draft regulations it had prepared as its contribution to the 41 laws associated with the Ahtisaari plan. Crisis Group interview, international official, Pristina, 30 April 2008.

<sup>51</sup> Or on the legal regime governing the resolution of all UNMIK residual responsibilities as called for in the Ahtisaari plan.

Pristina was due to create together with the ICR immediately after proclaiming the constitution on 15 June,<sup>52</sup> but did so two months late, thus complicating the takeover of KTA staff and facilities.<sup>53</sup> The loss-making intermittent electricity provider, KEK, the profitable and cash laden PTK telecommunications utility<sup>54</sup> and the scandal-ridden airport are now practically under Kosovo control, but the government has neglected to formalise its ownership.<sup>55</sup> The new interior ministry took over the civil registry from UNMIK and began issuing Kosovo's first passports on 30 July,<sup>56</sup> while UNMIK stopped issuing travel documents.

But the main challenge is to reconfigure UNMIK's major remaining pillar: police and justice. The handover of these responsibilities to the Kosovo government and EULEX, and EULEX's deployment Kosovo-wide, did not happen as planned by 15 June. It is now scheduled to begin by November or December, at least south of the Ibar. By mid-June only 300 of its planned 2,000 international personnel had joined EULEX in Kosovo;<sup>57</sup> the mission chief (a former KFOR com-

mander and French general), Yves de Kermabon, waited until early July to permanently assume his duties in Pristina. The technical agreement concluded between the UN and EU on 18 August at last allows the remaining 1,000 EULEX staff outside Kosovo to arrive, at a rate of up to 100 per week.

Unlike EULEX, the ICO positioned most of its staff in Kosovo during the first 120 days, but it did not gain the expected influence. The Ahtisaari plan envisaged that the ICR/EUSR would be Kosovo's premier international official, coordinating all international presences, running a 100-strong ICO, directing the 2,000-strong rule-of-law mission EULEX, enjoying the support of the 850-strong mission of the Organization for Security and Co-operation in Europe (OSCE)<sup>58</sup> and overseeing the fulfilment by Kosovo institutions of their Ahtisaari obligations.

The ICR/EUSR, Pieter Feith, helped Kosovo complete the Ahtisaari legislative program on time but did not gain the expected ascendancy over his peers. His ICO is "a bit of a bad word in Brussels", seen as "slightly illegal".<sup>59</sup> For the UN, a senior official in New York said, the Ahtisaari plan he is charged with implementing has "no more legal status than a Crisis Group report".<sup>60</sup>

Serbia's insistence that Feith lacks legitimacy makes it difficult for him to be an honest broker. His mandate to implement Ahtisaari's plan for a multi-ethnic Kosovo with strong guarantees for the Serb minority has made him be perceived as a Pristina ally rather than a universally accepted referee. The ICO was forced to evacuate its north Mitrovica office on 24 February 2008, and Belgrade's opposition has limited its subsequent contacts with Serb-majority areas. The ICO and EULEX are in Kosovo Albanian areas, but not Kosovo Serb ones. Feith has begun implementing his mandate with Kosovo Albanians – for example providing guidance on new legislation. But while his ICO and EULEX both claim to have contacts in Serb enclaves and the north, especially with civil society representatives and individuals closer to the DS, their activities remain discreet in Serb-majority areas.

The Ahtisaari plan stipulated that the ICR would derive his legitimacy from an International Steering Group (ISG) of "key international stakeholders", who would

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<sup>52</sup>The Secretary-General criticised the EU for ending funding of Pillar IV (economic reconstruction) on 30 June 2008, claiming that there had been no consultations with UN headquarters, and UNMIK was left without the technical capability or budgetary allocation to replace European Commission-funded experts. Secretary-General's report on UNMIK, 12 June 2008, p. 2. The ICR went ahead and recruited three international members for the PAK board, applying the provision in the Ahtisaari Comprehensive Proposal intended to govern the KTA but waited two months for the government to appoint their Kosovo counterparts.

<sup>53</sup>During the first half of September the government-friendly newspaper *Express* claimed that UNMIK and KTA officials had burned or otherwise destroyed the KTA archives. See "Monstrumet" ["Monsters"], *Express*, 8 September 2008 and similar articles.

<sup>54</sup>PTK's accumulated earnings of €250 million play an important role in maintaining the liquidity of Kosovo banks.

<sup>55</sup>The KTA remains the formal shareholder and UNMIK holds all incorporation documents. Pristina could issue new share certificates in its own name but has not. Crisis Group interview, UNMIK official, Pristina, 14 August 2008.

<sup>56</sup>"First Passports Issued in Kosovo", *Southeast European Times*, 31 July 2008. The government, however, neglected to send details of the new passports to other countries until a fortnight before the first ones were issued, which has caused delays in their acceptance.

<sup>57</sup>These included 80 per cent of its judiciary contingent, all its police middle-management and all its customs complement. Most of EULEX's projected 550 riot police are in Kosovo but still deployed as two UNMIK (Romanian and Polish) and two KFOR (French and Italian) units. These will transfer only when EULEX becomes operational. Up to 200 other UNMIK Police and justice officials (half U.S.) will also transfer to EULEX. Another 1,000 EU police, monitors and specialists are to be brought in.

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<sup>58</sup>The OSCE mission has served as UNMIK's "democratisation and institution-building" pillar and developed a large municipal-level field monitoring presence over the past two years.

<sup>59</sup>Crisis Group interviews, EU official, Pristina, 29 May and 2 September 2008.

<sup>60</sup>Crisis Group interview, senior UN official, New York, 24 March 2008.

appoint the EU's special representative as ICR, give him guidance, meet under his chairmanship and after two years adjust or phase out his tasks in accordance with Kosovo's progress in implementing the Ahtisaari settlement.<sup>61</sup> The ICR's appointment should have been endorsed by the Security Council,<sup>62</sup> but was not. The ISG was to comprise the six-state Contact Group (the Western "Quint" of the U.S., UK, France, Germany and Italy plus Russia), EU Council Secretariat, European Commission and NATO. Today it has 24 country members, including nineteen of the EU's 27 member states,<sup>63</sup> but no Russia, and the EU bodies and NATO only attend as observers. It convened on 28 February, appointed Feith, and has met five times since.<sup>64</sup> It has yet to show it has real political weight. It has tended to meet at the level of its foreign ministries' Western Balkans directors and takes decisions by consensus.<sup>65</sup> Its main success has been to fund a rapid build-up of ICO mission staff.<sup>66</sup>

The ICO, however, is just one international mission among several. EULEX is generally perceived as an equal body rather than subordinate, with a visibility in Brussels and member states which is greater than the ICO/EUSR's. EULEX accepts that it takes political guidance from Feith but is clear that its orders come from Brussels.<sup>67</sup> Ban Ki-moon's proposal to accommodate it under a "UN umbrella", reporting at least nominally to New York under Resolution 1244,<sup>68</sup> has contributed to its further separation from the ICR/EUSR. In an August drive to engage Serbs, EULEX mission chief de Kermabon emphasised the "technical", non-political character of his mission.<sup>69</sup> The OSCE mission has also distanced itself from the ICO,

to pre-empt Russian or Serbian vetoes.<sup>70</sup> Consequently, the ICO gave up plans to have the OSCE serve as its eyes and ears at municipal level. Instead, in April, the ISG approved giving it a field presence of 70-80 personnel.<sup>71</sup>

The Ahtisaari plan called on KFOR to maintain its existing mandate during the 120-day transition so as to ensure a "safe and secure environment" and defend Kosovo's boundaries under Resolution 1244. The 32-nation force has 14,750 troops, deployed in five regionally-based Multinational Task Forces (MNTFs). The French-commanded MNTF, covering Mitrovica and the territory north of the Ibar, is reinforced on a revolving basis by an additional NATO battalion, which covers the "Nothing Hill" base near Leposavic, re-opened in 2006 as KFOR's only garrison north of the Ibar. From day 121, the NATO-led force was to be renamed the International Military Presence (IMP), to help the ICR and Kosovo institutions implement the Ahtisaari plan, until the latter was capable of assuming the security tasks. The IMP would also take on UNMIK's executive authority over the Kosovo Protection Corps (KPC) and oversee its dissolution and the establishment and training of a Kosovo Security Force.<sup>72</sup>

KFOR has continued to provide security under its 1244 mandate, with varying determination and success, but has hesitated to align itself with the Ahtisaari plan.<sup>73</sup> Although the U.S. is the engine for NATO decision-making, members that have not recognised Kosovo, such as Spain, act as a brake, as does Turkey. This has prevented a revision of NATO's operations plan for Kosovo and formalisation of four technical agreements on KFOR cooperation with EULEX due to its difficul-

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<sup>61</sup> Ahtisaari Comprehensive Proposal, *op. cit.*, Annex IX International Civilian Representative.

<sup>62</sup> *Ibid*, General Principles and Annex IX.

<sup>63</sup> The U.S., Turkey, Switzerland, Norway and Croatia are non-EU members. See document "Meeting of the International Steering Group (ISG) for Kosovo", 22 May 2008, Pristina. Sweden, in particular, expressed concerns that adding more members would reduce the ISG's ability to take decisions, relegating it to a rubber stamp for the Quint. Crisis Group interviews, diplomats, Pristina, May 2008.

<sup>64</sup> First in Vienna and since May in Pristina

<sup>65</sup> Rendering decisions vulnerable to blockage by one or two dissenter member states, Crisis Group interview, international official, Pristina, 31 July 2008.

<sup>66</sup> Crisis Group interview, ICO officials, Pristina, 29 May 2008.

<sup>67</sup> Crisis Group interview, EU officials, Pristina, 26 August 2008.

<sup>68</sup> In a similar loose arrangement to that enjoyed by UNMIK's OSCE pillar.

<sup>69</sup> In visits to Gracanica and Gorazdevac and an interview with Radio Free Europe.

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<sup>70</sup> From the beginning of 2008, Belgrade's and Moscow's stances within the consensus-based 55-member organisation have put the OSCE Kosovo mission on a "short leash" of monthly mandate renewals. Mission chief Tim Guldemann of Switzerland attempted to negotiate mandate compromises directly with Moscow and Belgrade, aiming to reposition the OSCE as a status neutral actor nevertheless able to support the consolidation of democratic institutions and decentralisation. His manoeuvres incurred the irritation of the Quint and Kosovo government, and Kosovo Albanian media launched a short-lived campaign of vilification against him in early 2008. Crisis Group interviews, international officials and diplomats, Pristina, February-March 2008.

<sup>71</sup> Crisis Group interview, ICO officials, Pristina, 29 May 2008.

<sup>72</sup> Ahtisaari Comprehensive Proposal, *op. cit.*, General Principles, Art. 14 and Annex XI.

<sup>73</sup> NATO's Bucharest summit, 2-4 April 2008, produced no new decision. See also Mark John, "NATO chiefs to grapple with new Kosovo snags", Reuters, 12 June 2008.

ties with the EU.<sup>74</sup> Only at a 12 June 2008 meeting of defence ministers did NATO agree to push ahead with “new tasks ... in building necessary, democratic security institutions”,<sup>75</sup> in order to enable the 80-strong training (Military Civilian Assistance, MCA) division to deploy by mid-September.<sup>76</sup> The division is now 40 per cent deployed and the €13 million KPC<sup>77</sup> dissolution fund largely pledged, but the €40 million needed to assist creation of the Kosovo Security Force has yet to materialise.<sup>78</sup> Otherwise, neither KFOR nor its name and 1244 tasks have changed. Two KFOR gendarmerie units (French and Italian), with some 300 troops, are earmarked to transfer to EULEX, but only when it is fully operational.

As the new UN SRSG, Zannier began by defining his role as a “facilitator ... at the disposal of the authorities” rather than as the top international official or Kosovo’s administrator.<sup>79</sup> He told the Security Council on 25 July that his “power to impose solutions has in practice disappeared throughout much of the territory” and that although “formally vested with executive authority”, he had “no tools” with which to enforce it.<sup>80</sup> The departure of his predecessor, Joachim Rucker, on 20 June heralded the end of UN enforcement powers. In response to challenges such as the parallel Serb municipal authority’s 2 July takeover of most of Strpce municipality’s main administrative building, Serb obstruction beginning 7 July of the laying of water-pipes to the mostly Albanian village Suhadoll/Suvi Dol (just north of the Ibar and west of Mitrovica) and the Albanian-majority Gjakova/Djakovica municipality’s levelling of the ruins of a destroyed Serb church to create a park,

UNMIK has offered at most to facilitate dialogue with all parties and “create a problem-solving environment, not a confrontational one”.<sup>81</sup>

The handover of governing authority from the UN to the Kosovo state, and to a lesser extent other international presences, was supposed to be transition’s key accomplishment. Because transition failed, no single real authority exists today in Kosovo. Kosovo’s government and the international presences still mostly cooperate, but whereas the government demands that the transition produce a single international counterpart, four Pristina-based international mission chiefs of equivalent weight co-habit: SRSG Lamberto Zannier, ICR/EUSR Pieter Feith, EULEX chief Yves de Kermabon and KFOR commander Giuseppe Emilio Gay. The compromise under which Kosovo’s government has continued to acknowledge interim UNMIK authority in policing, justice and customs is informal and already under strain.<sup>82</sup> After Zannier entered direct talks with Belgrade on the six fields of cooperation, the government’s attitude toward him and UNMIK significantly hardened.<sup>83</sup>

Vigorous Quint support, increased EU unity and a fast roll-out of EULEX might help the government and ICR stay on the Ahtisaari plan course. But the lack of international resolve, if replicated during this second notional 120 days, could fragment international authority, contribute to division of territorial control along ethnic lines and create conditions for violence.

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<sup>74</sup> Crisis Group interviews, NATO officials, Brussels and Pristina, 2007-2008. For details on the source of the problem, see Crisis Group Europe Report N°184, *Europe and Turkey: The Way Ahead*, 17 August 2007, pp. 5-6.

<sup>75</sup> See “Defence ministers meet at NATO headquarters”, [www.nato.int/docu/update/2008/06-june/e0612a.html](http://www.nato.int/docu/update/2008/06-june/e0612a.html).

<sup>76</sup> Crisis Group interview, KFOR, 28 May 2008. According to Serbia’s army chief, this “represents a step outside” the 1244 mandate and will change his army’s relations with KFOR from that of “partners” to merely “technical”. He did not envision breaking off joint commissions and patrols and acknowledged it was better for NATO to supervise new Kosovo security forces than for Kosovo to create them alone. “Ponos: NATO’s wrong decision”, *VIP Daily News Report*, 16 June 2008.

<sup>77</sup> See Crisis Group Report *An Army for Kosovo?*, op. cit., for background on the KPC.

<sup>78</sup> NATO plans a Brussels donor information conference on 8 October 2008. Crisis Group telephone interviews, NATO and UK military officials, Brussels and Pristina, 23 September 2008.

<sup>79</sup> Press conference, Pristina, 20 June 2008.

<sup>80</sup> See UN Security Council meeting record, S/PV.5944, 25 July 2008.

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<sup>81</sup> UNMIK spokesperson Russell Geekie, weekly press conference, Pristina, 9 July 2008.

<sup>82</sup> A senior UNMIK official acknowledged that UNMIK and the government use different legal bases, respectively UNSCR 1244 and the Kosovo constitution. Crisis Group interview, Pristina, 31 July 2008. Also see transcript of press briefing by Acting Principal Deputy SRSG Nicholas Hayson, Pristina, 15 August 2008 at [www.unmikonline.org](http://www.unmikonline.org).

<sup>83</sup> Prime Minister Thaci was reportedly infuriated by Zannier making public in late July proposals for special police, customs and courts arrangements for Kosovo Serbs that he had not coordinated or agreed with the government. Crisis Group interview, international official, Pristina, September 2008. Deputy Prime Minister Hajredin Kuci told the BBC: “We are staggered by Mr Zannier’s enthusiasm [for] dialogue with Serbia...even Mr Zannier should heed the constitution of the Republic of Kosovo”, see transcript in *Zeri*, 5 August 2008; and “Thaci: Jo negociata” [“Thaci: no to negotiations”], *Koha Ditore*, 6 August 2008.

## B. FADING POLITICAL WILL IN EUROPEAN CAPITALS?

The EU initially demonstrated remarkable resolve and unity, when despite some member states' hesitancy to recognise Kosovo, it committed to helping the new state<sup>84</sup> and authorised EULEX and the EUSR.<sup>85</sup> In December 2007 it explicitly pledged to "play a leading role in strengthening stability in the region and in implementing a settlement defining Kosovo's status ... [and] assist Kosovo in the path towards sustainable stability".<sup>86</sup> Member states clearly underestimated the challenges involved, however.

During the crucial transition period from mid-February to mid-June 2008, the EU failed to make any significant statements on Kosovo and EU deployments and looked to the UN to take the lead. Indicatively, on 11 May, when Serbia organised municipal elections for Serb majority areas of Kosovo in defiance of UNMIK, the EU expressed no criticism.<sup>87</sup> It supported plans to deploy the ICO/EUSR and EULEX but did little to push them through when they began to encounter obstacles in March, including the suspension of UN transfer of assets and responsibilities and Serb resistance to deployment in Serb-majority areas. Foreign affairs chief Javier Solana has not made one statement in support of the ICR/EUSR's work. The EU reasserted its commitment to play a leading role only in June,

when welcoming the UN Secretary-General's intention to reconfigure the international civil presence.<sup>88</sup>

Some Quint members had believed that after independence Moscow would have no option but to accept the *fait accompli*. They were caught off guard by the virulent Russian criticism of EU deployment and explicit statement to Ban Ki-moon that any UN reconfiguration required Security Council approval.<sup>89</sup> The EU had expected to deploy in a safe environment with KFOR protection. Few had anticipated the armed assaults in north Kosovo against border and customs posts on 19 February, the street violence against European interests in Belgrade on 21 February or the attacks on international police and troops outside the Mitrovica court on 17 March.

Brussels is hampered by several member states' reluctance to move forward with Ahtisaari plan implementation because they have not recognised Kosovo and prefer to act under UN authority. Initially member states had been satisfied that the missions' legal basis was secured under Resolution 1244.<sup>90</sup> But since independence, some have been seeking a more explicit invitation from the Secretary-General. Madrid has become a *de facto* leader of the non-recognising EU member states, pledging to participate in EULEX but pushing for it to be "status neutral", rather than support Kosovo in strengthening its governance capabilities.

An EU official described how the Spanish government lodged a formal complaint about a reference to Kosovo "legislation" in an ICR/EUSR document from Pristina.<sup>91</sup> Spain and a handful of other EU states are particularly unhappy that Feith also serves as the ICR and recognise him only as the EUSR, thus undermining his position. Madrid says that it will not compromise to save EU unity after its own basic national interests were ignored by other EU member states intent on moving Kosovo rapidly to independence.<sup>92</sup> Its arguments

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<sup>84</sup> Stating in the conclusions of its 18 February 2008 General Affairs and External Relations Council (GAERC) that the Council, "takes note" of the independence declaration and the principles contained therein, "asks the Commission to use community instruments to promote economic and political development" and considers that "Kosovo constitutes a *sui generis* case which does not call into question [the principles of the UN Charter, Helsinki Final Act, sovereignty, territorial integrity and all UN Security Council resolutions]."

<sup>85</sup> Council Joint Action 2008/124/CFSP and Council Joint Action 2008/123/CFSP, 4 February 2008.

<sup>86</sup> It went on to say that "the EU will also be ready to assist economic and political development through a clear European perspective, in line with the European perspective of the region". Presidency Conclusions, point 70, Brussels, 14 December 2007.

<sup>87</sup> Instead the Council conclusions on 26-27 May 2008 "expressed satisfaction with the peaceful and orderly conduct of the elections". EU High Representative for the Common Foreign and Security Policy Javier Solana welcomed the outcome, saying Serbia was "now well positioned to advance rapidly". The Slovenian Presidency welcomed the "clear victory" of the pro-European forces, hoping it would help Serbia "advance further on its EU path, including candidate status".

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<sup>88</sup> GAERC conclusions on Western Balkans, Brussels, 20 June 2008.

<sup>89</sup> Statement of the Russian foreign ministry (858-12-06-2008), 12 June 2008.

<sup>90</sup> As referred to in the Joint Action on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo, Brussels, 2008/124/CFSP, 4 February 2008.

<sup>91</sup> Crisis Group interview, EU official, Pristina, May 2008.

<sup>92</sup> Madrid claims it has sought inclusion in the Contact Group for over a decade, would have liked Serbia-Kosovo negotiations to have gone on longer, felt it was not sufficiently informed of developments and would have appreciated it if Kosovo independence had been proclaimed after its own March elections. Crisis Group interview, foreign ministry official, Madrid, May 2008. Allegedly, Spain had volunteered to join the first wave of recognising countries if the



have wide resonance, among political allies in Latin America and in North Africa.<sup>93</sup>

Rather than push Belgrade on Kosovo, the EU lent support to the pro-European forces that eventually won the May national elections by prioritising signature of a Stabilisation and Association Agreement (SAA),<sup>94</sup> in the hope a more cooperative government would result.<sup>95</sup> But EULEX and the ICO/EUSR still have no official interlocutors in Serbia, though discussions have taken place informally,<sup>96</sup> and the government that was formed in July says it will engage only with an EU deployment that has “adequate support from the UN Security Council”, not one done unilaterally.<sup>97</sup>

From March to June the EU negotiated reconfiguration with the UN but waited for Ban's political signal to move forward. It defined two red lines: EU elements should report directly to Brussels, and there should be “one mission for one Kosovo”.<sup>98</sup> Four EU member states – France, Germany, the UK and Italy – and the U.S. (the Quint) presented their ideas to Ban in writing in mid-May, saying the complete transfer of UNMIK's administrative responsibilities to Kosovo's government would be “a testament to the UN's success in establishing functional, democratic institutions of self-government”. Any residual UN presence should be low

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independence declaration were delayed after 9 March. Crisis Group interview, foreign ministry official, Paris, March 2008.

<sup>93</sup> From late February, Spain reportedly circulated a three-page brief to a range of countries, containing legal and political arguments against Kosovo independence. See Augustin Palokaj, “Spanja ndikon shume ne mosnjohjen e Kosoves” [“Spain has big influence on non-recognition of Kosovo”], *Koha Ditore*, 3 September 2008. On 12 September the newspaper published a facsimile of the brief, entitled “The Spanish Position on Kosovo” and signed by Bernardino Leon Gross, Secretary of State for Foreign Affairs.

<sup>94</sup> The EU and Serbia signed the SAA on 29 April 2008. For more on the link to the 11 May elections, see “Serbia and the SAA: A Bitter Pill to Swallow”, Pontis Foundation, 7 May 2008, available at [www.nadaciapontis.sk/tmp/assetcache/link/0000019051/080507\\_SerbiaEU\\_TheSigningOfTheSAA.pdf](http://www.nadaciapontis.sk/tmp/assetcache/link/0000019051/080507_SerbiaEU_TheSigningOfTheSAA.pdf).

<sup>95</sup> The European Council gave further encouragement to Serbia's pro-European politicians in June, expressing hope that Serbia would accelerate its progress towards EU candidate status. EU Council Conclusions, 19-20 June 2008 and 22 July 2008, Brussels.

<sup>96</sup> Crisis Group interviews, ICO and EULEX officials, Brussels and Pristina, May and June 2008.

<sup>97</sup> Foreign Minister Jeremic in “New govt. to cooperate on UNMIK reconfiguration”, B92, 6 July 2008.

<sup>98</sup> Crisis Group interviews, EU officials, Brussels, April-May 2008. The OSCE mission and KFOR, which have operated as Resolution 1244 institutions since 1999, are not under UN Secretariat control. KFOR operates under the NATO chain of command, with minimal reporting to New York.

profile and minimally staffed, and decrease over time. Unless asked, it should not govern or administer Kosovo, manage its economy, oppose or duplicate the ICO's work or negotiate new institutional arrangements. Rather, it should monitor and report developments to the Security Council, administer the half-million temporary travel documents it has issued and be available, on request, to facilitate Kosovo's participation in international forums and Pristina-Belgrade dialogue on “practical issues of mutual concern”.<sup>99</sup>

The Quint paper detailed what it wanted for EULEX: UN support and facilitation of its deployment; budgetary and operational independence; and a UN political “umbrella” which would not impinge on the EU chain of command. UN field staff should be instructed to cooperate on a staged deployment over an agreed timeframe, to be conducted in coordination with a residual UN operational role.<sup>100</sup> The UN “umbrella” would primarily assist EULEX's deployment into parts of Kosovo, the north especially, where “extremists have threatened non-cooperation and violence” against EU personnel.<sup>101</sup>

The EU could have taken a stronger stance and begun EULEX deployment without full UN cooperation in the spring. The political legitimacy of its operations would have been based on the mandate it conferred on itself (its “Joint Actions”) and the invitation included in Kosovo's declaration of independence,<sup>102</sup> as well, arguably, as Resolution 1244 (cited thrice in Kosovo's declaration). This would have required political will and unity, strong legal argumentation and significant financial commitments to procure substitutes, if necessary, for assets not handed over by the UN. According to EU estimates, acquisition of such new assets and rental premises would have cost an additional €68 million in 2008<sup>103</sup> and, due to internal procurement procedures, taken at least until the end of the year.<sup>104</sup> EU officials blamed others, especially the UN, for their mission's plight, and used the alleged lack of suitable alternative buildings in Pristina as an explanation for EULEX passivity.<sup>105</sup> In Kosovo, the EU's credibility was tarnished.<sup>106</sup>

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<sup>99</sup> Quint non-paper, May 2008, made available to Crisis Group.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Crisis Group interview, EULEX officials, Brussels, May 2008.

<sup>103</sup> Crisis Group interview, member state and EU officials, Brussels, May 2008.

<sup>104</sup> Crisis Group interviews, EU officials, April-June 2008.

<sup>105</sup> Crisis Group interviews, EU officials, Brussels and Pristina, April-July 2008. An UNMIK official said it was “immoral” for EULEX to claim that, since even the local Albi super-

The Kosovo donors conference, held in Brussels on 11 July, which pledged €1.2 billion in aid, was a welcome expression of EU unity and resolve in recent months.<sup>107</sup> All member states showed support by attending and “not opposing the large amount of money that was pledged to Kosovo from the EU budget”,<sup>108</sup> namely €508 million, including €358 million in pre-accession funds and €150 million in macro-economic assistance. Kosovo's development plan, as laid out by the government in its Medium Term Expenditure Framework (MTEF) for 2009-2011, is to be used for building capacity in the judicial system, enhancing the business climate and improving the education and energy systems. Donors emphasised that their pledges were conditional upon MTEF implementation.<sup>109</sup>

### C. OBSTACLES IN NEW YORK

The UN Secretariat in New York has been hampered by a divided Security Council. Ban Ki-moon offered Ahtisaari's plan “full support” when he transmitted it to the Council in March 2007.<sup>110</sup> But faced with significant opposition there, he became more cautious. On 18 February 2008 he stated: “It is my intention to act in an effective, realistic and concrete manner. In doing so, pending Security Council guidance, I might have to adjust to developments and changes on the ground”.<sup>111</sup> Until 12 June, he went no further.

During the first 120 days of Kosovo's independence, UN officials maintained the Ahtisaari plan as a reference point, aiming to get it “85-90 per cent” implemented and eventually to downsize UNMIK to a few

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market chain had more premises and vehicles than EULEX needed. Another UNMIK official expressed surprise that EULEX did not turn up to an auction of 100 UNMIK vehicles it had been tipped off about. Crisis Group interviews, Pristina, 26 June and 2 July 2008.

<sup>106</sup> A May 2008 opinion poll registered only 13 per cent satisfaction with EULEX, the lowest of any institution. See UNDP Early Warning Report Kosovo, Report #20/21 Special Edition January-June 2008, online at [www.ks.undp.org/](http://www.ks.undp.org/).

<sup>107</sup> Crisis Group interview, European Commission official, Brussels, 11 July 2008.

<sup>108</sup> Ibid.

<sup>109</sup> See [www.seerecon.org/kdc/](http://www.seerecon.org/kdc/) for the documentation of the donors conference.

<sup>110</sup> “Secretary-General, receiving report on Kosovo's future status, supports proposal”, UN Department of public Information, SG/SM/10923, 26 March 2007, available at [www.un.org/News/Press/docs/2007/sgsm10923.doc.htm](http://www.un.org/News/Press/docs/2007/sgsm10923.doc.htm).

<sup>111</sup> “Secretary-General in Security Council Statement says United Nations Aim in Kosovo Stable Political, Security Situation, Protection of Population, Minorities”, SG/SM/11426SC/9253, at [www.un.org/News/Press/docs/2008/sgsm11426.doc.htm](http://www.un.org/News/Press/docs/2008/sgsm11426.doc.htm).

hundred,<sup>112</sup> but suspending any handover of assets to the EU. Four waves of deployment and handover had been initially planned, the largest, of 1,000 EULEX personnel, in May 2008. UNMIK quietly helped train early comers, including some 130 judicial staff, and gave EULEX middle management access to its police counterparts and case files. But New York refused to go through with the large May handovers of equipment, buildings and vehicles. Russia criticised even UNMIK's modest assistance, accusing UN officials of “bypassing” and “deliberately concealing information from the Security Council”.<sup>113</sup>

Some thought was given within the Secretariat to a piecemeal “passive reconfiguration”: on the principle of “non-duplication of functions”,<sup>114</sup> UNMIK would retreat and put tasks into “hibernation” and “subtly draw down”<sup>115</sup> when other actors laid claim to tasks it had been running. Ultimately it was concluded “active reconfiguration”, with an overall plan, was preferable. Yet beyond the core rule-of-law competencies, UNMIK is effectively employing the passive reconfiguration approach, ceding powers and withdrawing wherever Kosovo's government claims and begins to exercise them.

Pristina and its supporters on the Security Council – especially Quint members – want UNMIK to close and make way for the government, the ICO and EULEX as soon as possible, while Russia is nearly alone even among non-recognising states in calling for UNMIK to maintain its strength and functions and demanding that any handover to the EU first obtain Council blessing.<sup>116</sup>

Moscow has taken a legalistic approach, which has been undermined by its August 2008 military actions in Georgia and unilateral recognition of Abkhazia and

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<sup>112</sup> Crisis Group interview, senior UN official, New York, 14 April 2008.

<sup>113</sup> Statement by Vitaly Churkin, Permanent Representative of the Russian Federation, at the UN Security Council Meeting on the Resolution of the Issue of Kosovo, New York, 20 June 2008.

<sup>114</sup> Crisis Group interview, senior UNMIK official, Pristina, 6 May 2008.

<sup>115</sup> Crisis Group interviews, UN officials, Pristina, 30 April and 6 May 2008. From April UNMIK accommodated and inducted 130 EULEX judges, prosecutors and other staff. Under “passive reconfiguration”, if EULEX took the further step of deploying them into courts across Kosovo, the UN would likely decide that its own international judges and prosecutors are redundant and withdraw them.

<sup>116</sup> Vietnam supported Russia's hard-line stance at the 20 June and 25 July UN Security Council sessions; China has been more ambiguous.

South Ossetia.<sup>117</sup> It says it will veto any proposal that would supersede Resolution 1244, which mandated the interim UN administration. In July 2007, the Quint gave up attempts to secure a resolution endorsing the Ahtisaari plan and now argues, with ample justification, that 1244 is sufficiently broad to legitimise independence and the EU missions.<sup>118</sup>

During the first 120 days Russia indicated it could accept ICO and EULEX becoming “status neutral” pillars under UNMIK, with 1244 remaining operative, the Ahtisaari plan discarded and a new UN SRSG being appointed and serving simultaneously as ICR.<sup>119</sup> However, it characterises dispatch of the EU missions and the independence declaration as unilateral acts precluded by 1244.<sup>120</sup> It claims that an EU takeover from the UN in these circumstances undermines Security Council authority and would make the EU’s behaviour comparable to Eritrea’s, which recently forced out UNMEE.<sup>121</sup> Its officials have talked of vetoing a second term for the Secretary-General if he implements reconfiguration without Council authorisation,<sup>122</sup> and if he were to do so, it could at least complicate the work of other UN missions.

Ban Ki-moon’s room for manoeuvre has also been influenced by the relative strength each side enjoys among the non-permanent members of the Council. The January 2008 rotation of five of the fifteen members eroded the ten-strong pro-Ahtisaari plan majority of 2007. Only 47 of the UN’s 193 member states have recognised Kosovo so far, but the balance shifted back

in Kosovo’s favour within the UNSC at the Council’s session of 18 April, when a majority condemned Belgrade-backed violence against UNMIK and appeared to accept that the UN would need to adapt.<sup>123</sup> On 20 June at least ten Council members favoured the Secretary-General’s plan to give the EU an “enhanced operational role” in a reconfigured UN presence.<sup>124</sup> Support consolidated at the 25 July session.<sup>125</sup>

Serbia’s then Kosovo minister, Slobodan Samardzic (DSS), proposed on 15 March that UNMIK co-govern Serb-majority parts of Kosovo in six functional areas: policing, judiciary, customs, transport, control of the Serbia-Kosovo boundary (border), and Serbian religious, historical and cultural heritage.<sup>126</sup> Taking this as a starting point and in an effort to obtain Serb cooperation, the Secretariat first instructed its Belgrade office to explore an outline agreement, then sent Jean-Marie Guehenno, then Under Secretary-General for Peacekeeping Operations, to Serbia and Kosovo in early May to explore the room for compromise.

Serbia introduced a motion at the General Assembly on 17 September requesting an advisory opinion from the International Court of Justice (ICJ) on the legality of Kosovo’s independence declaration.<sup>127</sup> Officials have

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<sup>117</sup> See Crisis Group Europe Report N°195, *Russia vs. Georgia: The Fallout*, 22 August 2008.

<sup>118</sup> See arguments for such a re-evaluation of UNSCR 1244 in Crisis Group Europe Report N°188, *Kosovo Countdown: A Blueprint for Transition*, 6 December 2007, pp. 14-16. In late 2007 the UK submitted a legal opinion to Quint and EU partners which argued inter alia that 1244’s reference to Federal Republic of Yugoslavia sovereignty over Kosovo was, as part of the pre-ambles, not prescriptive.

<sup>119</sup> This person would have to be more “neutral” than the current ICR, Pieter Feith. Security Council approval for the arrangement could be formalised in a presidential statement. Crisis Group interview, senior Russian diplomat, New York, 15 May 2008.

<sup>120</sup> Russia has stated that it will only vote in favour of reconfiguration if Belgrade consents. Statement by Vitaly Churkin, Permanent Representative, at the UN Security Council Meeting on the Resolution of the Issue of Kosovo, New York, 20 June 2008.

<sup>121</sup> Crisis Group interview, senior Russian official, New York, 15 May 2008. For background on UNMEE, see Crisis Group Africa Report N°141, *Beyond the Fragile Peace between Ethiopia and Eritrea: Averting New War*, 17 June 2008.

<sup>122</sup> Crisis Group interview, Russian diplomat, Brussels, June 2008.

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<sup>123</sup> Crisis Group interview, UN official present at the closed session, 2 July 2008.

<sup>124</sup> At the 20 June 2008 session, only Vietnam supported Russia. China hedged. Two other non-recognisers, Panama and Indonesia, gave support to the Secretary-General’s reconfiguration proposal. South Africa did not speak. Meeting record available at [www.un.org/Depts/dhl/resguide/scact2008.htm](http://www.un.org/Depts/dhl/resguide/scact2008.htm).

<sup>125</sup> Meeting record available at [www.un.org/Depts/dhl/resguide/scact2008.htm](http://www.un.org/Depts/dhl/resguide/scact2008.htm).

<sup>126</sup> Proposal “on Joint Implementation of UNSCR 1244 after the Illegal Proclamation of Independence by the PISG”. This proposal would have cut the Kosovo government (formerly Provisional Institutions of Self-Government, PISG) and EU out of Serbia-UN cooperation, since both were guilty of “illegal acts”, recognise the north Mitrovica office of Serbia’s Kosovo ministry, generally recognise “Kosovo Serb legitimate authorities” and commit to maintaining UNMIK presence and authority under Resolution 1244. UNMIK and Serbia would establish joint cooperation bodies by 1 May 2008 to oversee the six policy areas.

<sup>127</sup> The draft motion poses the ICJ a simply-worded question: “Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?” Deputy Prime Minister Bozidar Djelic described Serbia’s intentions at the UN General Assembly in “For the Good of Europe Give Serbia A Chance”, *Financial Times*, 3 August 2008. In an interview, President Tadic said, “everyone knows what we want: to have the countries of the world hear the position of the highest international judicial institution and have that position

dismissed calls from France's foreign minister, Bernard Kouchner,<sup>128</sup> and the UK's Belgrade ambassador, Stephen Wordsworth,<sup>129</sup> to stay away from the ICJ lest it damage EU accession prospects with the 21 members who have recognised Kosovo.<sup>130</sup> Belgrade is betting it can win support in New York from many countries that have not recognised. Foreign Minister Vuk Jeremic told the Ministerial Conference of the Non-Aligned Movement in Tehran, "I hope that the members will recognise the full consistency of Serbia's position on the Kosovo issue with the principles of the Movement and that you will rally to our cause as if we were still fully one of your own".<sup>131</sup> India pledged support.<sup>132</sup> The motion passed initial hurdles on 18 and 19 September when the UN General Committee forwarded it for inclusion in the General Assembly agenda.

Since Moscow's recognition of Abkhazia and South Ossetia as independent states from Georgia on 26 August, Belgrade can no longer be certain of its strong support for seeking a legal judgement, especially since Georgia has opened a case against Russian actions during the recent conflict.<sup>133</sup> Yet, there are good chances that the request for an ICJ opinion will pass. Some have speculated that this move by the new Serbian government to hand the issue over to the ICJ for the several years it is likely to take the tribunal to render that opinion, will give some breathing space on Kosovo domestically and slow the pace of recognitions of Kosovo in the interim.

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reflect on their decisions". President Tadic in "Samo pomirenjem branimo naciju" ["Only with reconciliation can we defend the nation"], *Vecernje Novosti*, 6 July 2008.

<sup>128</sup> See "EU 'Can't Accept' Serbia's World Court Move", *Balkan Insight*, 28 August 2008; and "Serbia warned not to play against EU camp", *Euractiv*, 20 August 2008.

<sup>129</sup> "Vordsvort protiv inicijative Srbije" ["Wordsworth against Serbia's Initiative"], B92, 3 August 2008.

<sup>130</sup> Foreign minister Jeremic in BBC World's "Hardtalk", 1 August 2008; and "Sta Srbija trazi", *Standard Magazine*, op. cit.

<sup>131</sup> "Jeremic seeks support of Non-Aligned", B92, 31 July 2008.

<sup>132</sup> The Indian Ambassador to Belgrade, Ajay Swarup, said, "India abides by the principles of international law and does not recognise Kosovo's secession... India will remain true to its principles in future and at the UN General Assembly session later this year. "India to Back UNGA bid", B92, 31 July 2008. Serbia also claimed Singapore's support: "Jeremic: Podrska Singapura" ["Jeremic: Singapore's support"], B92, 12 August 2008, and went on to lobby at the Arab League foreign ministers meeting, Cairo, in the second week of September.

<sup>133</sup> Georgia may seek a similar General Assembly vote regarding Russia's recognition of South Ossetia and Abkhazia. It will also encourage countries to be very cautious on the question of self determination.

## D. BAN KI-MOON'S RECONFIGURATION PROPOSAL

Five days after the Security Council discussed the Secretary-General's reconfiguration plan on 20 June, instructions for its implementation were transmitted to UNMIK in Pristina. This marked, in effect, the opening of a second 120-day transition period, although confusion persisted for two months thereafter over its operational start date.<sup>134</sup> The plan was a compromise, taking into account the conflicting preferences of the Quint on one side, and Russia and Serbia on the other. Kosovo authorities were the least consulted, but though the plan provided that the UN would not hand over its mandates for at least another four months and gave Belgrade some influence in shaping the reconfiguration, they still welcomed it as a step forward.<sup>135</sup>

In his report the Secretary-General explained that "conditions on the ground, require a practical adjustment to the structure and profile of UNMIK"<sup>136</sup> since there is a "pressing need for a solution...[t]o reduce tension and safeguard stability in Kosovo and the wider region".<sup>137</sup> Ban welcomed the EU's offer of new civil presences as "a key development" to "usefully complement" the UN's work and help preserve its "positive legacy" in Kosovo. Therefore, he announced, "I intend to reconfigure the international civil presence in Kosovo ... to enable the European Union to enhance its operational role in the area of the rule of law".<sup>138</sup> The EU is gradually to assume responsibilities in international policing, justice and customs throughout Kosovo, while the UN's operational role is to shrink toward that of a rapporteur, liaison and facilitator of dialogue. EULEX is to operate under "the overall authority of the United Nations" and Resolution 1244. Ban further specified that EULEX will work "under a UN 'umbrella' headed by my Special Representative".<sup>139</sup>

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<sup>134</sup> The 18 August UN-EU asset transfer agreement appears to have marked an end to the confusion.

<sup>135</sup> See Bukurije Bajraliu, "Sejdiu: Kerkova qe Rikonfigurimi te kryhet se me shpejt" ["Sejdiu: I called for reconfiguration to be completed as soon as possible"], *Koha Ditore*, 23 June 2008.

<sup>136</sup> The conditions cited included Kosovo's "Declaration on Independence", the Serbia and Kosovo Serb reaction, violent confrontations in February-March, the coming into force of the Kosovo constitution, the EU's readiness to play an enhanced role and European Commission termination of funding for UNMIK Pillar IV. Report of the Secretary-General on UNMIK, 12 June 2008, op. cit.

<sup>137</sup> Ibid.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

How this will function in practice is unclear. For example, will the SRSG or the head of EULEX be in charge of police? In early July EULEX chief de Kermabon made clear his view that his main mandate is provided by the EU Joint Actions and he is answerable to Brussels.<sup>140</sup> Other EU officials view the UN umbrella, to the extent it exists, solely as a mechanism to enable EULEX to deploy, after which it will act without reference to New York.<sup>141</sup> Russia insists that the logic of the Secretary-General's report is that UNMIK stays in charge, and reconfiguration cannot proceed if EULEX does not understand this and abuses the foothold the UN has given it in Kosovo. During August, EU officials were quieter, but the EULEX chief's earlier statements have made it more difficult for the UN Secretariat to defend reconfiguration against Russia's objections.<sup>142</sup> Meanwhile, the ICO has no place under the UN umbrella and is not mentioned in Ban's 12 June report.

Ban outlined the second component of his plan in a letter to Serbia's President Tadic, copied to Kosovo's President Fatmir Sejdiu. It appeared to hold out to Belgrade partial implementation of Samardzic's 15 March proposal for formalising the separation of Kosovo Serb majority areas from administration by Pristina and their co-governance instead by UNMIK and Belgrade, as compensation for accepting the Quint-influenced reconfiguration formula. Ban offered Tadic a dialogue with Zannier, his new SRSG, on adjusting governance arrangements in the six fields broached by Samardzic.

This in effect legitimised Samardzic's agenda of ethnic division and introduced into UN parlance the concept of "Serb-majority areas" on the calculation that Serbian buy-in on reconfiguration would be worth some corrosion of the UN's "positive legacy" of multi-ethnic institution building. Yet the substance of what Ban offered for agreement in the six fields was much less than Samardzic had envisaged; the SRSG would also "consult with other relevant stakeholders" (ie, Pristina and the EU), and the resulting "temporary arrangements" would "apply for a limited duration and without prejudice to the status of Kosovo".<sup>143</sup>

The Secretary-General proposed that with regard to the six fields, the Kosovo Police Service (KPS), operating in "relevant" Serb-majority areas, should report to international police "under the overall authority of

my Special Representative". New courts could be created in Serb areas but would function "within a Kosovo court system under the applicable law within the framework of Resolution 1244". A negotiated reorganisation of customs would reintroduce international officers at the northern gates and, as a bottom line, permit Kosovo "to continue to function as a single customs area". Serbia was offered participation in an SRSG-chaired technical coordination committee on transport and infrastructure. NATO would continue to guarantee Kosovo's boundaries. International protection was offered to the Serbian Orthodox Church, which would have exclusive jurisdiction over its Kosovo sites.<sup>144</sup>

Thus, Ban's proposal mainly aimed to retain Kosovo as a common functioning political and administrative entity, but with some deviations and additional safeguards for its Serbs. Some provisions, such as that on patrimony, could be seen as rough and ready stand-ins for those of the Ahtisaari plan. Others threatened to cut across it. Allowing Serb KPS to operate within a UN rather than Kosovo government chain of command would pose a challenge to the unified police chain of command throughout Kosovo under the interior ministry envisaged by Ahtisaari<sup>145</sup> and Kosovo legislation.

Ban's report gave no timeframe for reconfiguration, though 120 days was informally understood, and late November or December 2008 is now the working assumption in Pristina for handover to EULEX. It also left vague whether this handover can proceed more or less automatically or is contingent upon the SRSG's dialogue with Belgrade on temporary arrangements in the six fields. In the preceding weeks, officials had indicated the former to Pristina and the latter to Belgrade. Although Ban stipulated that his SRSG would merely "consult with other stakeholders", President Sejdiu emphasized in his 16 June reply that the UN should only perform duties for a "limited duration" and asserted a right of veto for Pristina: "We appreciate your commitment to consult closely with us, as no such arrangements can be viable without the participation and approval of the Government of Kosovo".<sup>146</sup> The new Serbian government says it is ready to talk but believes it is the side that holds a veto, saying recon-

<sup>140</sup> Statements to Kosovo media, 7 July 2008; and Crisis Group interview, EU official, Brussels, June 2008.

<sup>141</sup> Crisis Group interview, Pristina, 30 July 2008.

<sup>142</sup> Crisis Group interviews, officials, New York, August 2008.

<sup>143</sup> Report of the Secretary-General on UNMIK, 12 June 2008, op. cit.

<sup>144</sup> Ibid.

<sup>145</sup> Ahtisaari's Comprehensive Proposal, op. cit. Annex VIII, Art. 2.

<sup>146</sup> Letter from President Sejdiu to UN Secretary-General Ban Ki-moon, 16 June 2008.

figuration “cannot take place unilaterally”<sup>147</sup> and “cannot be valid without Belgrade’s agreement”.<sup>148</sup>

The reconfiguration plan allows the UN to remain in Kosovo longer than planned by Ahtisaari and to prolong its influence at least in the six fields. Zannier plans for UNMIK to be reduced by 70 per cent after this second 120-day period,<sup>149</sup> but the specific structure that will remain is not yet fixed and depends partly upon EULEX’s success in deploying.<sup>150</sup> Ban’s letters did not request the parties’ support to ensure that the EU can deploy and operate Kosovo-wide. The degree to which EULEX’s deployment and scope of operations will be circumscribed by UN-Belgrade agreements remains an open question. Although EULEX chief de Kermabon wants technical cooperation with Belgrade,<sup>151</sup> Serbia’s Prime Minister Mirko Cvetkovic wants Belgrade to help establish and shape EULEX.<sup>152</sup> While the UN wants to hand over police, justice and customs responsibility to the EU mission, EULEX is not participating in the UNMIK-Belgrade talks.<sup>153</sup>

The Quint was broadly satisfied with Ban’s ideas, though it wanted more certainty on the diminishing role of the UN.<sup>154</sup> Russia reacted negatively. Ambassador Churkin informed the Secretary-General that Moscow expected he “will refrain from independent actions, without ... sanction from the Security Council, on reconfiguration of UNMIK”, and “the current discussion is only the initial stage of development of possible decisions of the Security Council on the given theme”.<sup>155</sup> After Ban sent his instruction to UNMIK on 25 June, the Russian foreign ministry followed up with a statement accusing him of having “exceeded [his] own power of authority through making a decision that lies within

the Security Council’s authority”.<sup>156</sup> On 8 July Churkin demanded that reconfiguration activity cease, as it was allowing EULEX’s “completely different” agenda to usurp UNMIK’s 1244 mandate.<sup>157</sup>

President Tadic responded to Ban that reconfiguration is the Security Council’s prerogative but Serbia was ready to discuss the six priority fields with the UN.<sup>158</sup> On the eve of the formation of the new government in Belgrade, he expressed relief that Ban’s plan leaves UNMIK in Kosovo, acknowledged that a clear majority on the Council supported the plan and said that in the new circumstances Serbia should reach agreement with the international community.<sup>159</sup> While Serbia’s new government has since stuck to the position that EULEX is unacceptable if Belgrade has no role in shaping it and if not agreed by the Security Council, it may well be satisfied with a presidential statement rather than a new Security Council resolution.<sup>160</sup> It also says, “we keep on stressing that we want to be included.”<sup>161</sup>

Ultimately, however, the Secretary-General’s proposal is but a starting point for a transition that lacks clarity, and is far from a fixed blueprint. Zannier admitted to the press: “There is no set agenda, and we will see where we are at the end of this reconfiguration process”.<sup>162</sup> EULEX concedes that its deployment may require at least two iterations, or “jolts”, perhaps months apart, to be fully operational.<sup>163</sup> A further UNMIK drawdown and successful EULEX deployment are interdependent. Discussions on the six areas of practical arrangements with Belgrade started on 23 July and were followed by more meetings on 30 July, 25 August and 12 September.

In New York, meanwhile, the Russians keep a close watch on reconfiguration planning. According to a UN insider, at least before August’s Georgia crisis, Russian diplomats were visiting the Secretariat’s peacekeeping division (DPKO) several times a week to monitor and to apply implicit pressure.<sup>164</sup> Moscow

<sup>147</sup> Jeremic in “New govt. to cooperate on UNMIK reconfiguration”, op. cit.

<sup>148</sup> Tadic, *Vecernje Novosti*, op. cit.

<sup>149</sup> Statement by UNMIK spokesperson Alexander Ivanko, 11 August 2008. This is more likely a stage rather than an end point of downscaling. Crisis Group interview, senior UNMIK official, Pristina, 31 July 2008.

<sup>150</sup> Ibid.

<sup>151</sup> “EULEX ready for technical cooperation”, B92, 26 August 2008.

<sup>152</sup> See his interview, “Kosovo izazvalo domino efekat” [“Kosovo provoked a domino effect”], *Politika*, 28 August 2008.

<sup>153</sup> Crisis Group interview, EU officials, Pristina, 26 August 2008.

<sup>154</sup> U.S. Ambassador Khalilzad noted this and the lack of specific reference to the need for discussions to be informed by the agreement of Kosovo’s government as deficiencies, in his media remarks after the 20 June 2008 Security Council session.

<sup>155</sup> Speech to the Security Council, New York, 25 July 2008.

<sup>156</sup> Russian foreign ministry press statement, 27 June 2008.

<sup>157</sup> Ambassador Churkin’s media remarks, New York, 8 July 2008.

<sup>158</sup> Tadic, response to Ban Ki-moon, 12 June 2008 reprinted in *Zeri*, 16 June 2008.

<sup>159</sup> Tadic, *Vecernje Novosti*, op. cit.

<sup>160</sup> Crisis Group interview, senior EU official, Brussels, September 2008.

<sup>161</sup> Prime Minister Cvetkovic interview, *Politika*, 28 August 2008, op. cit.

<sup>162</sup> Press briefing by SRSG Ambassador Lamberto Zannier, Pristina, 25 June 2008.

<sup>163</sup> Crisis Group interviews, EU officials, Pristina, 30 July and 26 August 2008.

<sup>164</sup> Crisis Group interview, UN staff, New York, July 2008.

demarched the division after its 18 August technical arrangement with the EU but lacks leverage to block it. The transfer of all UNMIK assets to the EU would have to go through General Assembly committees, where the Russians could rally support to stop the process if they wished, but the 18 August arrangement only provides for sale of mission assets that cannot usefully be transferred to other UN missions and is considered an internal document. With Serbia now signalling some interest in reconfiguration and much of Russia's diplomatic energy absorbed by Georgia, there is a chance that Moscow will put less effort into blocking reconfiguration.<sup>165</sup>

### III. THE SITUATION ON THE GROUND

#### A. PRISTINA'S FIRST STATE-BUILDING STEPS

During the first 120 days, the PDK/LDK coalition government under Hashim Thaci was disciplined and improved Kosovo's image abroad. It eschewed nationalist rhetoric or harsh responses to Belgrade or Kosovo Serb provocations, while keeping up its multi-ethnicity pledges and passing 41 new laws so that a near-complete, Ahtisaari plan-compliant legal framework was in place when the constitution came into force on 15 June 2008. To a large extent, this progress was possible because the government followed U.S. and ICO directions. Its own penchant for symbolism suited it well to the tasks of the first 120 days, but its ability to govern is uneven, its outlook limited, and its capacity to strike political compromises necessary to minimally accommodate Serbs and thereby avoid partition uncertain.

##### 1. Lawmaking

Many of Kosovo's 90 per cent Albanian majority judge the constitution, which seeks to strike a balance between the rights of individuals and of communities,<sup>166</sup> "too modern" and indulgent of multi-ethnicity.<sup>167</sup> It extends and adapts for statehood the operations of most of the provisional institutions<sup>168</sup> and creates a few new ones. Minority communities are given extra protection, such as a mechanism to prevent them from being outvoted in the Assembly on "vital interest" issues. Other issues, such as the creation of new Serb-majority municipalities and the right of all Serb majority areas to receive technical assistance from Belgrade, are in a package of accompanying laws, not the constitution itself.

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<sup>166</sup> Article 3 of the constitution, available at [www.gazetazyrtare.com](http://www.gazetazyrtare.com).

<sup>167</sup> Crisis Group interview, Foreign Minister Skender Hyseni, Pristina, 29 May 2008. Although Kosovo's traditional mores and the threat of violence keep homosexuality underground, the constitution allows same-sex civil partnerships. The original draft of Article 3 stated: "The Republic of Kosovo is a multi-ethnic society". It was changed to "The Republic of Kosovo is a multi-ethnic society consisting of Albanian and other communities". Despite the criticism, the government insists it will promote and defend the concept. Crisis Group interview, Deputy Prime Minister Hajredin Kuci, Pristina, 28 May 2008.

<sup>168</sup> Enshrined in UNMIK's 2001 Constitutional Framework, see [www.unmikonline.org/constframework.htm](http://www.unmikonline.org/constframework.htm).

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<sup>165</sup> Crisis Group interview, UN staff, New York, September 2008.

The constitution proclaims that Kosovo's sovereignty "stems from" and "belongs to" the people, but also that international agreements and customary international law take precedence over domestic law, and certain powers may be delegated to international organisations. A court is to be established as the final authority for constitutional interpretation. The final two chapters of the constitution, which describe transitional arrangements, delegate the real authority for the duration of his mandate to the ICR,<sup>169</sup> whose decisions cannot be challenged by a Kosovo institution. The Ahtisaari plan is given precedence over the constitution if inconsistencies between them arise.<sup>170</sup>

The 41 state-forming laws were passed in several packages in an extraordinary procedure, without the usual Assembly debate.<sup>171</sup> Most stemmed from the Ahtisaari plan, and all were filtered by the ICO. They include a law on the protection and promotion of the rights of communities and other minority-oriented legislation to enable decentralisation and create special protective zones. Laws to establish new state institutions, such as a security force, intelligence agency and diplomatic service, and to modify existing ones, such as the police, central bank, railways and the pensions trust fund, are included, as is legislation regulating matters such as state symbols, citizenship, civil aviation and telecommunications. Only the law on official holidays caused significant controversy and a close vote. In its original form, it excluded three days dear to the Kosovo Albanians, commemorating Albanian flag day (28 November 1912), NATO's entry into Kosovo (12 June 1999) and Kosovo Liberation Army martyrs (the Jashari siege, 6 March 1998).<sup>172</sup>

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<sup>169</sup>The end of the mandate is to be decided by the ICR and the ISG.

<sup>170</sup>See Chapter XIII Final Provisions, Art. 143, Para. 2: "The provisions of the Comprehensive Proposal for the Kosovo Status Settlement dated 26 March 2007 shall take precedence over all other legal provisions in Kosovo", available at [www.gazetazyrtare.com](http://www.gazetazyrtare.com).

<sup>171</sup>Some civil society representatives and media resented the curtailing of usual democratic procedure and debate. Crisis Group interviews, Pristina, May-June 2008.

<sup>172</sup>This draft was opposed both by opposition and many government deputies. It was reformulated to include an additional ten "memorial days", without the status of official holidays (a distinction missed by most Kosovo Albanians) that included these three Albanian-oriented days, rebranded respectively as the day of Albanians, peace day and the day of commemoration and respect for veterans. The other memorial days included one for Turks (23 April), Roma (8 April), Ashkalis (15 February), Bosniaks (28 September), Goranis (6 May) and two to be determined by Serbs in conjunction with Kosovo's president. If Serbs were to engage, they would likely nominate St Vitus Day (Vidovdan, 28

Two bills called for in the Ahtisaari plan have not yet been introduced. One on property restitution is unpopular with Kosovo Albanians, who believe it would disproportionately benefit Serbs and the Serbian Orthodox Church.<sup>173</sup> The law on the constitutional court is also delayed, at least partially because until the end of the supervisory period, the ICR will appoint three international judges out of nine and be able to overrule the court. On 29 July Arsim Bajrami, the public affairs minister, announced a government task force "consisting of legal experts including representatives of constitutional courts of other countries and diplomatic missions in Pristina" to draft the constitutional court law.<sup>174</sup>

## 2. Governance

Prime Minister Thaci and his small inner circle are determined to exercise top-down control, unlike previous coalition governments in which a figurehead prime minister presided impotently over ministers who set their own agendas.<sup>175</sup> Overall, the administration has exuded a greater sense of purpose than its predecessor and remains popular,<sup>176</sup> but centralisation of decision-making in a very narrow circle around the prime minister is causing delays and poor intra-governmental communication. The government has trumpeted trans-

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June), which since 1988 has been associated with Slobodan Milosevic's revocation of Kosovo's autonomy and crack-down on Albanians, a choice Kosovo Albanian leaders would likely veto. See Agron Halitaj, "Kosova shtet multifestiv" ["Kosovo, the multifestive state"], *Koha Ditore*, 24 May 2008; and Artan Bajrami, "Per hajr Vidovdani" ["Happy Vidovdan"], *Express*, 27 May 2008. Kosovo's Egyptians, one of the three "gypsy" ethnic groups, were not designated a memorial day. See "law on official holidays in Republic of Kosovo", available at [www.gazetazyrtare.com](http://www.gazetazyrtare.com).

<sup>173</sup>Especially if it only concerned property lost after World War II.

<sup>174</sup>"Kosovo to Create Constitutional Court", *Balkan Insight*, Pristina, 29 July 2008.

<sup>175</sup>Three of the previous four prime ministers were in this predicament: Bajram Rexhepi, Bajram Kosumi and Agim Ceku. Only Ramush Haradinaj, in his brief premiership from December 2004 to March 2005, appeared to control and coordinate the direction of government. In June 2008 Prime Minister Thaci dismissed Deputy Trade Minister Naser Osmani, a member of his LDK coalition partner, after Osmani engaged in a public dispute with Transport and Telecommunications Minister Limaj, from Thaci's PDK. This set a new tone; previous prime ministers never had the clout to peremptorily dismiss ministers, especially if not of their own party. After initially challenging the decision, the LDK became reconciled to it.

<sup>176</sup>A May 2008 opinion poll gave the prime minister and president approval ratings of over 70 per cent, and the government 47 percent. See UNDP Early Warning Report, op. cit.



parency as a virtue, but its decision-making is opaque.<sup>177</sup> Thaci and his chief of staff rely heavily upon U.S. embassy guidance. The Office of the Prime Minister tends to perceive civil servants as corrupt and sympathetic to its political opponents.<sup>178</sup> Some progress made in the last three years toward consolidating the civil service is being undone.<sup>179</sup> Partisans of the PDK are replacing technocrats and the previous government's political appointees at the helm of public institutions and companies.

The prime minister was slow to appoint ministers and other key officials. A defence minister was named only on 3 August, three deputy minister posts are unfilled, and no chief of the Kosovo Intelligence Agency has been appointed because the government is having difficulty identifying a candidate trusted by Thaci and acceptable to the Quint and NATO. Appointments to the boards of the public enterprises have lagged and the successor to UNMIK's Kosovo Trust Agency botched. Thaci and Sejdiu dragged out the first ten ambassadorial appointments for over two months, agreeing them on 28 August.<sup>180</sup>

The government has not turned to civil society for help in policy formulation or to experienced independent or opposition figures to lobby for more international recognitions.<sup>181</sup> The government expects the Quint, and the U.S. in particular, to do that work. Opposition figures and the NGO "Forum 2015" have, therefore, lobbied independently of the government. In August the Forum brought civic activists and intellectuals from Arab countries to a conference in Pristina, which Thaci failed to fully embrace.<sup>182</sup> The foreign ministry, formally established after 15 June under Skender Hy-

seni from the LDK (the junior coalition partner), was created two months before with a staff of only ten. It has done little lobbying and was slow even to develop a website.<sup>183</sup> Thaci also considers the pre-independence, all-party Unity Team no longer necessary, and it has stopped meeting.<sup>184</sup>

Kosovo's rudimentary economy is growing at roughly 6 per cent annually,<sup>185</sup> and the government's "flagship" PDK-run education and transport ministries have launched energetically into school- and road-building.<sup>186</sup> The government's summer 2008 budget revisions gave them respectively €16 and €28 million more. The energy and health ministries have not fared as well. Electricity shortages have worsened, with more frequent breakdowns of the mainstay, 1980s-built, coal-

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<sup>177</sup> Some ministers are uncomfortable that Thaci has made government sessions open to the media, since this inhibits free discussion and other opportunities to exchange views with the prime minister are few. Crisis Group interview, senior member of the government, Pristina, 14 May 2008.

<sup>178</sup> Crisis Group interviews, government official, Pristina, 20 May 2008, and Quint country official, Pristina, 20 June 2008.

<sup>179</sup> Crisis Group interviews, international officials, Pristina, June 2008.

<sup>180</sup> All ten are men.

<sup>181</sup> A group was set up in July 2008 with backing from the Kosovo Foundation for an Open Society, funded by the financier and Crisis Group Board member George Soros, to lobby independently of the government.

<sup>182</sup> He declined to appear at the conference but did attend a dinner in honour of its guests that evening, at which he lectured an adviser to Lebanon's prime minister on Kosovo's plans to boost its relations with Israel. Crisis Group interview, witness, 2 September 2008. The next day Thaci announced that Kosovo's road to more recognitions lay "through Washington and Brussels, and not through dubious addresses", RTK television evening news, 26 August 2008.

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<sup>183</sup> A topic of particular criticism in Henry Perritt, "It's Time to Get to Work on Kosovo's Image", *New Kosova Report*, 1 July 2008: "The first thing a foreign reporter does when he is writing a story is to check for Web resources. When he finds empty pages on the Kosovo Government website, he is not likely to write favourably about Kosovo's progress". A Kosovo newspaper also highlighted the ministry's tardy web presence, in Gazmend Syla, "Ministria "Coming Soon", *Koha Ditore*, 4 September 2008.

<sup>184</sup> A body created in October 2005 comprising the then president, prime minister, assembly president and two parliamentary opposition leaders that defined Kosovo's positions in the Ahtisaari-managed future status talks of 2006 and early 2007.

<sup>185</sup> Crisis Group interview, IMF official, Pristina, 29 May 2008. See also "Aide-Memoire, IMF Staff Visit to Kosovo, April 21-29 2008", available at [www.unmikonline.org/docs/2008/reports/IMF-Aide\\_Memoire\\_Final-April-2008.pdf](http://www.unmikonline.org/docs/2008/reports/IMF-Aide_Memoire_Final-April-2008.pdf); and "Kosovo-Assessment Letter to the European Commission, July 11, 2008", available at [www.seerecon.org/kdc/](http://www.seerecon.org/kdc/). The IMF positively acknowledged and undertook to process Kosovo's 10 July 2008 application for membership, stating "In the context of this application, it has been determined that Kosovo has seceded from Serbia as a new independent state". "Statement on Membership of the Republic of Kosovo in the IMF", press release no. 08/179, 15 July 2008, available at [www.imf.org/external/np/sec/pr/2008/pr08179.htm](http://www.imf.org/external/np/sec/pr/2008/pr08179.htm). Success of the application depends upon a simple majority and a quorum of 55 per cent. Given that EU members, the U.S. and other industrialised countries hold the majority of the voting rights and these countries have for the most part recognised Kosovo, membership is expected in 2009. IMF membership is a prerequisite for World Bank membership.

<sup>186</sup> Post-1999 Kosovo's most convincing education minister to date, Enver Hoxhaj, has also set a high bar for the school-leaving examination, refusing accreditation to the burgeoning private universities until and unless they reach certain standards (though he has been slow to delineate these standards and has not subjected the also problematic public University of Pristina to the same treatment), introducing computers into schools, making more free textbooks available and raising teachers' pay.

fired "Kosovo B" generators. The government has kept its distance from the sector and delayed purchase of equipment essential for opening a new opencast coal mine before coal supplies run out around 2010, wary that arrangements inherited from the previous government, including plans for a new electricity plant, were to the benefit of the PDK's rival, former Prime Minister Ramush Haradinaj's AAK.<sup>187</sup> Healthcare has remained disorganised, the ministry's large and opaquely-run pharmaceuticals budget seen as a prize by competing groups in government.

In several key fiscal and economic areas, the government initially left UNMIK-created institutions with their safeguards intact, such as the KTA privatisation and pension trust funds. It has cut wasteful spending,<sup>188</sup> and Kosovo's anti-corruption agency assessed that only €6 million was embezzled from the budget during the first half of 2008, compared with €30 million in the first half of 2007 under the previous government.<sup>189</sup> But it appointed unqualified PDK partisans to lead the PTK public telecommunications utility<sup>190</sup> and the tax administration,<sup>191</sup> pushed through

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<sup>187</sup> In an 8 September 2008 memo leaked to newspaper *Koha Ditore*, the ICO expressed concern about "the absence of policy initiatives in the energy sector... and plans on KEK". Memorandum made available to Crisis Group, Pristina, September 2008.

<sup>188</sup> On cars, petrol, meals and phone calls. See Sami Kastrati, "Qeveria Thaci thote se ka shpenzuar gati €2 milione me pak se ajo Ceku" ["The Thaci government said it has spent a full €2 million less than the Ceku government"], *Koha Ditore*, 29 July 2008.

<sup>189</sup> See Lavdim Hamidi's report on the agency chief, Hasan Preteni's, press conference on the first half of the year, "Per gjashte muaj, korrupsioni demton 6 milione buxhetin e Kosoves" ["Over six months, corruption damages the Kosovo budget by €6 million"], *Zeri*, 18 July 2008.

<sup>190</sup> See Arbana Xharra, "ICO-ja kerkon sqarime rreth emerimit te drejtorit te PTK-se" ["The ICO demands explanations about the appointment of the PTK director"], *Koha Ditore*, 31 July 2008. The local international community pressure appeared to bear fruit, when newly appointed PTK director Adnan Merovci resigned on 5 September 2008. A former bodyguard to President Rugova who later joined the PDK, Merovci was in recent years obliged to resign first a managerial post in the PTK and then the leadership of Kosovo's election commission after allegations of abuses. He was strongly backed for the post of PTK chief by the PDK transport and telecommunications minister, Fatmir Limaj.

<sup>191</sup> Under the Ahtisaari Comprehensive Proposal, the ICO has the power to vet this appointment, but the government made it during the 120-day transition period before the ICO assumed this power. UNMIK accepted the appointee, former PDK Podujevo municipal branch leader Naim Fetahu, on a temporary three-month basis. In September the ICO asked the government to re-advertise the post. See Lavdim Hamidi "Pieter Feith kerkon qe drejtori i ATK-se te zgjidhet me

a mid-year budget revision with €32 million of extra spending and a confusing reallocation of €62 million with minimal consultation of international partners three weeks after the Brussels donors conference, and, like the previous government, is not curbing the influence of big smugglers.<sup>192</sup> Government-friendly media began undermining the UNMIK-appointed management of the €300 million pension fund,<sup>193</sup> while the government announced plans to spend PTK's €250 million savings as the ICO expressed concerns.<sup>194</sup> PDK party control of public companies and procurement procedures does not bode well, and the ICO and European Commission are quietly expressing concern.<sup>195</sup>

The government concedes that the security and rule-of-law sectors still belong to the UN and EU and says it will respect whatever formula they agree upon.<sup>196</sup> It has not taken formal control over the KPS, and UNMIK Police remains in place, even though this goes against the new constitution and police law, and it is dissatisfied with the latter's reluctance to confront Serb parallel structures. It has talked of invoking the constitution to appoint its own police chief soon.<sup>197</sup> On 8 July a joint government, EULEX and UNMIK coordinating council on law and order was formed, under the chairmanship of Deputy Prime Minister Hajredin Kuci.<sup>198</sup> Thaci gave it new impetus by gathering it on the day of the fifth ISG meeting, announcing creation of a joint government-EULEX coordinating body.<sup>199</sup>

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konkurs" ["Pieter Feith asks for the Director of Tax Administration to be chosen by competition"], *Zeri*, 17 September 2008.

<sup>192</sup> Crisis Group interviews, customs service, Pristina, April-May 2008.

<sup>193</sup> Victor Buhala, "Vazhdon trusja" ["The slide continues"], *Express*, 30 August 2008.

<sup>194</sup> See Arbana Xharra, "Parate e PTK-se do te shfrytezohen ne ruge, shendetesi e arsimit" ["The PTK money will be used on roads, health and education"], *Koha Ditore*, 16 September 2008. The ICO's 8 September memo outlined its concerns, *op. cit.*

<sup>195</sup> Crisis Group interviews, EU officials, Pristina, August-September 2008; the ICO memo, *op. cit.*, which noted "the absence of a clear and coherent direction in economic policy"; and the communiqué of the ISG's fifth meeting, 12 September 2008, available at [www.ico-kos.org/](http://www.ico-kos.org/), which cited "the management of publicly owned enterprises... as [an area] deserving particular attention from the government".

<sup>196</sup> Crisis Group interview, Deputy Prime Minister Hajredin Kuci, Pristina, 28 May 2008.

<sup>197</sup> See Jeton Musliu, "Ne radhe policia" ["Police next in line"], *Express*, 1 September 2008.

<sup>198</sup> "Qeveria, EULEX-i dhe UNMIK-u formuan Keshillin per sundimin e ligjit" ["Government, EULEX and UNMIK form a Council for rule of law"], *Koha Ditore*, 9 July 2008.

<sup>199</sup> See Visar Fetaj "Qeveria dhe EULEX bashkepunojne per forcimin e sundimit te ligjit" ["Government and EULEX cooperate to enforce rule of law"], *Zeri*, 13 September 2008.

The KPS took command of the police operations department, regional crowd control (“Operational Support”) units and the close protection, demining and KPS commando unit from UNMIK Police on 3 July.<sup>200</sup> UNMIK Police retains some presence in the KPS,<sup>201</sup> and the national service formally remains under increasingly inert UNMIK Police leadership,<sup>202</sup> yet there are now regular KPS-EULEX contacts. Earlier KPS complaints that UNMIK withholds important information on what is happening in the north are fading in favour of pragmatic recognition that internationals are needed there as an intermediary.<sup>203</sup> The KPS has stated that it will execute government instructions,<sup>204</sup> but so far the government has preferred to increase its influence over the KPS informally, while continuing to respect UNMIK Police authority. Although it has no formal power to do so, the interior ministry created a task force to investigate what government representatives called an assassination attempt on the prime minister.<sup>205</sup> Similarly, the government suspended the customs service director, Naim Huruglica, on 28 July; he was reinstated in mid-September after international lobbying.

The government has taken over some broader home affairs responsibilities, for example control of the civil register, introduced its own border stamps and begun issuing licenses to flight operators and, on 30 July, passports.

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<sup>200</sup> Zija Miftari, “Njesit elite per nderhyrje te pare kalon ne pergjegjesi te Policise se Kosoves” [“The elite unit for first intervention passes under the responsibility of the Kosovo Police”], *Koha Ditore*, 4 July 2008; and Crisis Group interview, senior KPS official, 12 September 2008.

<sup>201</sup> The Mitrovica regional commander and some prerogatives in the border police and crime department.

<sup>202</sup> A succession of UNMIK Police commissioners left during the first half of 2008. A sergeant led UNMIK Police for several weeks.

<sup>203</sup> Crisis Group interview, senior KPS official, Pristina, 12 September 2008.

<sup>204</sup> KPS spokesperson Veton Elshani, UNMIK weekly press conference, Pristina, 9 July 2008.

<sup>205</sup> A twenty-year old petty thief was shot in the arm by Thaci’s entourage and later turned over to police by his father. A court ordered several months of pre-trial detention on a charge of attempted murder, although police sources indicate there is no evidence that he was armed and none of Thaci’s family and guards have consented to give statements. He was released pending trial on 13 August. KPS commanders were relieved when an international UNMIK policeman was designated to join the task force. Crisis Group interviews, June and September 2008.

### 3. Maintaining stability

Thaci has not maintained the unity of the Kosovo Albanian political class, which existed from late 2005 to 2008.<sup>206</sup> The political scene is increasingly dominated by his rivalry with another ex-Kosovo Liberation Army commander, former Prime Minister Haradinaj.<sup>207</sup> Neither camp offers wholly convincing development-oriented politics. Haradinaj is trying to unite the three Kosovo Albanian parliamentary opposition parties,<sup>208</sup> while Thaci seeks to marginalise Haradinaj’s AAK and co-opt the two others.<sup>209</sup> His recipe for social peace appears to be long-term political and institutional dominance by the PDK and its allied K-SHIK intelligence structure.<sup>210</sup> Since the PDK-led government took office, appearances around Kosovo of masked ethnic Albanian paramilitaries have stopped.

An incident on 6 June at Thaci’s home, in which a member of his entourage shot a burglar in the arm, after which the prime minister implicitly accused the AAK of trying to assassinate him, exposed the ten-

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<sup>206</sup> The two and a half years from Martti Ahtisaari’s first visit to Kosovo as UN special envoy for its future status until Kosovo’s declaration of independence in February 2008 brought the Kosovo Albanian political spectrum together in a joint effort, smoothing divisions that had previously run to internecine killings in 1998 to 2003. See Crisis Group Europe Report N°163, *Kosovo After Haradinaj*, 26 May 2005, for background.

<sup>207</sup> Their rivalry is now mirrored in the fierce and occasionally violent rivalry between Macedonia’s Albanian parties. Thaci’s PDK and Haradinaj’s AAK have each partnered with one of the two warring Macedonian parties. Ali Ahmeti’s BDI has found common cause with the PDK and Menduh Thaci’s PDSH with the AAK.

<sup>208</sup> He invited the two other leaders to a dinner on 31 August; only one came. See Besnik Ramadanaj, “Bisedime pa konkluzione” [“Talks without conclusion”], *Express*, 1 September 2008.

<sup>209</sup> See Faik Hoti “Tenderi 15-milionesh i Behgjet Pacollit ve ne dyshim krijimin e bllokut opozitar” [“Behgjet Pacolli’s 15 million tender puts creation of opposition bloc in doubt”], *Zeri*, 15 September 2008.

<sup>210</sup> Established in 1998 with help from Albania’s SHIK intelligence service, K-SHIK served as the KLA’s intelligence wing. After June 1999 it deployed to Pristina, becoming a wing of Thaci’s provisional government. It continued to operate even after Thaci’s provisional administration dissolved in January 2000. In a recorded address broadcast by RTK evening news on 14 June 2008, its chief, Kadri Veseli, declared K-SHIK’s mission accomplished and that it would dissolve in deference to the new Kosovo Intelligence Agency. K-SHIK insists it is a legal structure, as do PDK officials. Others see no such basis, pointing out that it is unaccountable. See Zija Miftari, “SHIK legal vetem per PDK-ne” [“SHIK is legal only for the PDK”], *Koha Ditore*, 17 June 2008.

sions.<sup>211</sup> Thaci thanked the LDD and AKR “democratic opposition” for their support, but omitted Haradinaj’s party, telling the BBC, “Kosovo knows who the attackers of the night are”.<sup>212</sup> Since his return from The Hague Tribunal, which acquitted him of war crimes in April 2008, Haradinaj has sharply criticised the government for its meagre lobbying to obtain more recognitions, lack of strategy to integrate Serbs in the north in particular, toleration of UNMIK’s post-15 June presence, and corruption.<sup>213</sup> He also alleges that through K-SHIK, whose officers have taken a range of government posts, “a KGB state” is forming,<sup>214</sup> and demands elections well before the end of this government’s three-year term, arguing that the Ahtisaari plan stipulated that they be held within nine months of independence.<sup>215</sup>

Haradinaj and AAK officials were absent from the 15 June constitution inauguration ceremony; K-SHIK chief Kadri Veseli was prominent. Furious with Haradinaj’s criticism, officials have suggested he be careful lest he be charged with corruption.<sup>216</sup> Thaci welcomed suggestions on diplomatic appointments from “the democratic part of the opposition”<sup>217</sup> and invited the LDD and AKR leaders to accompany the government to the donors conference, while snubbing the AAK.<sup>218</sup>

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<sup>211</sup> Their feud threatens to open a “spiral of paranoia...where fear of political violence will create more fear, and so more potential violence; where lack of faith in the institutions of law and order will create distrust leading to paralysis of these institutions”. Veton Surroi, “Tri fatet e Fazli Sejdiut” [“The three fates of Fazli Sejdiu”], *Koha Ditore*, 12 June 2008.

<sup>212</sup> In an 8 June 2008 press release devoted to the incident, the government stated its commitment “to continuing the struggle against evil, for the good of the country and all citizens”.

<sup>213</sup> Two larger parliamentary opposition parties created in 2007, LDD and AKR, have not leveled such criticism. Many consider Haradinaj ill-qualified to make corruption charges. The 2004-2007 government he at one stage led and subsequently dominated from behind the scenes was deficient in this respect. The AAK-led trade and industry ministry and the fund set up to collect money for Haradinaj’s legal defence in The Hague attracted particular controversy.

<sup>214</sup> Crisis Group interview, Ramush Haradinaj and AAK officials, Pristina, May 2008.

<sup>215</sup> The ICR has the prerogative to decide when elections are held if Kosovo’s politicians do not agree this themselves. He is likely to call them in late 2009. Crisis Group interview, senior international official, Pristina, 2 September 2008.

<sup>216</sup> Another threat has been that the headquarters building bequeathed to the AAK by K-SHIK in 2000 might be sequestered. Crisis Group interview, K-SHIK, Pristina, May 2008.

<sup>217</sup> Interview, Artan Mustafa, “Nuk ngutemi me emrat” [“We are not hurrying with names”], *Express*, 7 July 2008.

<sup>218</sup> Sami Kastrati and Zekirja Shabani “AAK-ja, e vetmja qe nuk merr ftese per konferencen e Donatoreve” [“AAK alone

Thaci has given the cold shoulder to the NGO “Forum 2015” lobbying initiative since Haradinaj publicised a letter he wrote to the government in April, proposing it engage some of the Forum’s people in the recognition effort.<sup>219</sup> Government-friendly media have since sniped at the initiative.<sup>220</sup>

Thaci’s fierce ostracism of the AAK risks bringing violence back into Kosovo Albanian politics, skewing institutions, entrenching international presences as guarantors of social peace, further repelling Kosovo Serbs and thereby hindering Kosovo’s ability to work its way toward full independence.

#### 4. Dealing with the Serbs

Pristina expects that if it cooperates, the international civilian presences will gradually help it secure sovereignty over Kosovo’s entire territory. It argues that Kosovo Serbs should respect the “new reality”, but it overestimates the forces that can be brought to bear on them. The government has repeatedly requested UNMIK and KFOR to restore control on its behalf in the north over customs, the railway and the Mitrovica court and has rhetorically insisted that its authority be established countrywide. It was encouraged by UNMIK’s and KFOR’s 17 March court operation and expected more enforcement after 15 June, especially the restoration of customs at Gates One and 31 or their closure to commercial traffic.<sup>221</sup>

Since 15 June, however, Pristina has lowered its expectations and become increasingly distrustful of UNMIK. After the UN report on the 17 March violence in Mitrovica appeared to vindicate the Serb assailants, and Zannier seemed ready to concede an ethnic Serb substructure within the KPS and began talking to the leaders of parallel Serb municipalities the UN had earlier deemed illegal, Pristina media criticised the UNMIK chief.<sup>222</sup> On 10 July, Mitrovica mayor Rex-

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is not invited to the donors conference”, *Koha Ditore*, 10 July 2008.

<sup>219</sup> In a 28 July press conference. See Jeton Llapashtica, “Ramush Haradinaj: Keshtu nuk qeveriset vendi” [“Ramush Haradinaj: this is not the way to govern the country”], *Koha Ditore*, 29 July 2008.

<sup>220</sup> Particularly the newspaper *Express*, in several August 2008 articles.

<sup>221</sup> See Bukurije Baraliju, “Prishtina preferon mbylljen e pikave doganore” [“Prishtina prefers the closing of the gates”], *Koha Ditore*, 1 June 2008; also Crisis Group interviews, government official and PDK MP, Pristina, May-June 2008.

<sup>222</sup> See Gazmend Syla, “Zannieri zemerom Kosovaret” [“Zannier angers Kosovars”], *Koha Ditore*, 2 August 2008 and Mufail Limani “Zannieri jashte Kosoves!” [“Zannier out of Kosovo!”], *Express*, 6 August 2008.

hepi gave UNMIK a five-day deadline to respond to local Serbs resisting the laying of a water pipe to Suhadoll/Suvi Dol village by his municipal authority.<sup>223</sup> UNMIK and KFOR declined to confront them on his behalf. UNMIK offered to become the pipe's sponsor instead, then KFOR stepped in, but the problem has still to be solved. UNMIK has likewise done nothing to prevent the parallel Serb authority in Strpce from extending its power over the municipality.

Pristina leaders claim to internationals that they will incorporate Serb areas into Kosovo by "attraction" and not by force.<sup>224</sup> But the government has so far invested little energy or political capital in this effort and makes provocative statements like: "Those who oppose law and order will face the force of the state".<sup>225</sup> Albanian KPS officers began reprimanding Serbs with Serbian rather than Kosovo licence plates after 15 June,<sup>226</sup> but they sensitively policed the traditionally confrontational 28 June Serb St Vitus Day (anniversary of the 1389 Battle of Kosovo, associated since 1989 with Milosevic's reassertion of Serbian power in Kosovo).<sup>227</sup>

The government did not fire or stop paying the salaries of hundreds of enclave Serbs who resigned from UNMIK and Kosovo institution jobs after the 17 February,<sup>228</sup> but it has failed to engage with them<sup>229</sup> and has allowed Serbs' mistrust to fester.<sup>230</sup> For several

weeks, many Kosovo Serbs were disappointed with Belgrade's inability to deliver on promises of alternative salaries, but Pristina missed an opportunity to provide face-saving, status-neutral formulas for people to keep their jobs. It still needs to widen its Kosovo Serb partners beyond the tiny Independent Liberal Party (SLS).<sup>231</sup>

Pristina does not recognise the parallel Serb municipal authorities formed after 11 May and insists it will control implementation of decentralisation. In mid-June, at ICO prompting, it extended for three months the mandates of four former Serb mayors elected in 2002, but this has had no impact on the ground, where these UNMIK municipalities have in effect been replaced by parallel Serb municipalities.<sup>232</sup> The government rejected the ICO's proposal for UNMIK to legalise the new parallel Serb municipality in north Mitrovica,<sup>233</sup> and its overall approach is handicapped by wariness of all Serbs involved in parallel municipalities.<sup>234</sup>

Decentralisation, widely seen as tailored to the interests of Serbs in Kosovo, will be difficult to implement. During the first six months of independence, it was not a government priority – Thaci gave the brief to a minister from the junior coalition partner, LDK – though, notably, Serbs were unlikely to have engaged even with a vigorous Pristina effort. The government has created an inter-ministerial decentralisation working group, co-chaired with the ICO, and has for several months claimed that it plans to start a six-month campaign to explain the policy to the public – underlining how decentralisation will not only benefit Kosovo Serbs, but also bring more resource-allocation

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<sup>223</sup> Fatmir Aliu and Izedin Krasniqi "Rexhepi i jep ultimatum UNMIK-ut", ["Rexhepi gives UNMIK an ultimatum"], *Koha Ditore*, 10 July 2008.

<sup>224</sup> Crisis Group interview, Deputy Prime Minister Hajredin Kuci, Pristina, 28 May 2008.

<sup>225</sup> Deputy Prime Minister Hajredin Kuci, quoted in Shpend Limoni, "Edhe Pertej Ibrit?" ["On the other side of the Ibar too?"], *Express*, 2 June 2008.

<sup>226</sup> Crisis Group interviews, Gracanica, north Mitrovica, April 2008.

<sup>227</sup> Crisis Group observation, Gracanica, 28 June 2008.

<sup>228</sup> Thaci publicly rebuked KPS Assistant Commissioner, General Sheremet Ahmeti for his late May decision to cease paying Serb KPS officers unless they return to work and ordered that suspension with pay continue. See Dafina Myrtja, "Flakaresha per Gjeneralin" ["Slaps in the face for the General"], *Express*, 31 May 2008.

<sup>229</sup> Other opportunities for outreach have been missed. The government failed to deliver a robust reply on behalf of the enclave Serbs to former Russian premier Yevgeny Primakov's suggestion that: "The best solution would be now for Serbs to move out of southern parts to northern parts, which are closer to Serbia, and then to join Serbia". "Yevgeny Primakov, former prime minister of Russia, supports partition of Kosovo", Associated Press in the *International Herald Tribune*, 26 March 2008.

<sup>230</sup> In several enclaves, Serbs claim that Pristina is engineering changes to local demography under the pretence of multi-

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ethnicity leading to Serbs becoming outnumbered and marginalised even in municipalities designated by Ahtisaari as "Serb-majority". Albanian purchases of land between the villages of Preoce and Lepina have created rumours among Serbs of a new town for 3,000 Albanians that will bisect the territory of the proposed Ahtisaari municipality of Gracanica. Gracanica Serbs also see the deployment of replacements for suspended Serb KPS officers from the KLA heartland of Drenica as deliberately provocative. Crisis Group interviews, Gracanica, Novo Brdo, April-May 2008.

<sup>231</sup> Its two ministers "froze" their positions upon independence but felt confident enough to return on 21 March 2008.

<sup>232</sup> Only the former Strpce mayor, Stanko Jakovlevic, has expressed interest in Pristina's mandate, but he is unpopular in his community and has no leverage.

<sup>233</sup> Arguing that it did not include the joint city board stipulated in the Ahtisaari plan. The ICO saw making a start as more important and considered that the board could be added later. Crisis Group interview, international official, Pristina, 31 July 2008.

<sup>234</sup> Crisis Group interview, international official, Pristina, 16 September 2008.

and decision-making powers to municipalities country-wide. Ministers' attendance in the working group has been poor, but on 11 September Thaci co-chaired it, making supportive public statements to re-invigorate it.<sup>235</sup>

Implementation is likely to be a challenge in most Albanian-majority municipalities too, where administrative capacity may be insufficient. Ultimately, ministries in Pristina may balk at relinquishing their centralised budgets. Making the policy more ambitious makes it slower to roll out. With no ability to implement decentralisation north of the Ibar, the government and ICO plan to start at least in the enclaves, by appointing municipal preparation teams with willing Serb collaborators. Pristina hopes that those involved in parallel municipalities will gradually join the process.<sup>236</sup>

In public at least, the government insists that the constitution is to be applied uniformly across Kosovo. In August Thaci refuted any possibility of negotiating special arrangements with Belgrade for police, courts and customs in Kosovo Serb areas and dismissed Zannier's talks with the Serbian government on these topics as invalid.<sup>237</sup> Seeking to out-manoeuvre Pristina, Belgrade started calling for its involvement in the talks precisely after Thaci voiced this rigid position.<sup>238</sup> But Thaci's hard-line approach is starting to bend. To its credit, the government announced 3 September that spreading its authority north of the Ibar will not happen quickly and ruled out violence to achieve it.<sup>239</sup> Thaci has become more attentive to diplomats' arguments that temporary compromises in the

north, such as courts using UNMIK law, may be an essential alternative to partition.

## 5. Kosovo Serb enclaves

While Northern Serbs have used force or its threat to expel or reshape Kosovo institutions and block EULEX, Serbs in the non-contiguous enclaves south of the river have been more cautious. Most self-proclaimed new municipalities on the basis of the 11 May elections and await Belgrade's money, but without Pristina's or international's recognition their power is limited.<sup>240</sup> In Gracanica and the eastern enclaves, after 300 Serbs refused to continue working in the KPS under Pristina, Albanian officers have patrolled in their place.<sup>241</sup> In the southern, mountainous Strpce municipality, Serb KPS have continued to respect the KPS chain of command and work alongside Albanian colleagues even as a parallel Serb municipal authority asserted itself after the 11 May elections.

Many in the enclaves also quit UNMIK and Kosovo government jobs, believing the promise of Serbia's former Kosovo minister, Samardzic, that Belgrade would put them on its payroll. The 90 Serbs who left jobs in the Lipjan/Lipljan prison initially found that Serbia's Kosovo ministry had no money to pay them and that the DS-controlled justice ministry in Belgrade had no plans to employ them. They picketed the Kosovo ministry's office in Gracanica for weeks. Radio Gracanica staff saw an opportunity to get onto the Serbian state payroll and went on a hunger strike. Under pressure and afraid of being labelled traitors, ministries and public companies in Serbia eventually did take on Kosovo Serbs, although they had no use for them. By late May 2008, the justice ministry had hired 59 of the Lipjan/Lipljan prison officers and fifteen from the Gjilan/Gnjilane prison.<sup>242</sup> Only a minority of Serb KPS, municipal and judicial employees who left their jobs after 17 February have returned to their posts.

The enclaves are unsure about how to respond to the EU. Many see EULEX deployment as inevitable after Ban's "reconfiguration" report but still hope UNMIK

<sup>235</sup> Crisis Group interview, government official, Pristina, 16 September 2008; also communiqué of the fifth ISG meeting, 12 September 2008, available at [www.ico-kos.org/](http://www.ico-kos.org/).

<sup>236</sup> Crisis Group interviews, ICO and government officials, Pristina, September 2008. This approach risks creating new divisions among Kosovo Serbs, alienating rather than drawing in the majority. An alternative approach, to increase chances of acceptance and participation among Kosovo Serbs, would be for Pristina and the ICO to emphasise to them the technical, non-status side of decentralisation and find ways to bridge the divide between its own strictly Ahtisaari-plan approach and Serbs' current "anything but Ahtisaari" stance on decentralisation. This might stretch to creation of a stand-alone decentralisation agency, which could implement government policy, yet claim the role of a status neutral intermediary, so that Serbs could begin to cooperate without at first being seen to deal directly with Pristina.

<sup>237</sup> See his interview in Sami Kastrati, "Thaci: Jo negociata" ["Thaci: no to negotiations"], *Koha Ditore*, 6 August 2008.

<sup>238</sup> See the interview of the state secretary in Serbia's Kosovo ministry, Oliver Ivanovic, in Besnik Ramadanaj, "Serbet ftojne shqiptaret" ["Serbs invite Albanians"], *Express*, 2 September 2008.

<sup>239</sup> Statement by Deputy Prime Minister Hajredin Kuci, TV news broadcasts, 3 September 2008.

<sup>240</sup> Only Strpce has recognised municipal borders that contain a Serb majority; elsewhere new municipalities were proclaimed within the borders of existing Albanian-majority units.

<sup>241</sup> A handful have returned to work. Local Serbs complain that the replacement Albanian KPS are drawn from Drenica, central Kosovo, rather than from more developed or mixed areas, and are aggressive. KPS allegedly beat up a Serb teenager in May. Yet, the Albanian officers mixed with and marshaled Serb crowds without incident as they took over Gracanica's main street on St Vitus Day, 28 June 2008.

<sup>242</sup> "Kosovo Corrections Officers Fired", B92, 30 May 2008.

will stop a complete Pristina takeover.<sup>243</sup> During the first 120 days, two prominent but not particularly popular Kosovo Serb politicians close to the DS, Oliver Ivanovic and Rada Trajkovic, argued that Kosovo's constitution is a reality for the enclaves, and Belgrade should not prevent their cooperation with EULEX and the Ahtisaari plan's decentralisation provisions, even if most inhabitants equate the overall Ahtisaari plan with an Albanian takeover of their institutions and localities.<sup>244</sup> In July Ivanovic joined the new Serbian government as state secretary in the ministry for Kosovo and now says there will be no cooperation with EULEX or the Ahtisaari plan.<sup>245</sup> Trajkovic, however, met with EULEX chief de Kermabon on 22 August, to voice her support for that mission.<sup>246</sup>

Until Serbia's new government was formed in July, there was confusion over who represented Belgrade in the enclaves. Its coordination centre for Kosovo (CCK) had been taken over by the new Kosovo ministry in April 2007 and was dominated by DSS cadres, even though some DS personnel became prominent after their appointment in December 2007. Young, ambitious DS coordinators made an impact in the Gracanica-based central "Kosovo county" and the eastern Vitina/Vitia area,<sup>247</sup> though Samardzic did not recognise them while he was minister.<sup>248</sup> In July, the new Kosovo minister, Goran Bogdanovic, dismissed all municipal-level CCK coordinators, ordering them to hand over to the newly elected authorities.<sup>249</sup> In mid-September he moved his ministry's main field office from north

Mitrovica to Gracanica, to signal the new government's concern for the enclaves.

## B. THE NEW SERBIAN GOVERNMENT'S TACTICS

President Tadic's new "pro-Europe" DS-SPS coalition government, sworn in on 7 July 2008, may devote less energy to Kosovo and be less confrontational than its predecessor, but the DSS and SRS opposition will try to hold it to a hard line. In its first statements, the government hinted at the possibility of accommodation with EULEX and future normalisation of relations with countries that have recognised Kosovo, while proclaiming at the same time that it would continue the previous government's Kosovo policy and calling on the nationalist opposition to support maintenance of a "single state policy". Prime Minister Cvetkovic restated that Serbia will never recognise Kosovo, and the government introduced a parliamentary resolution "for the absolute and unquestionable continuity of state policy towards Kosovo".<sup>250</sup> The government withdrew the motion on 8 September, since the opposition intended to vote against it, but resumed talks in September with the DSS and the now split Radicals to try to harmonise the text.<sup>251</sup>

Tadic, nevertheless, may have signalled a shift on EULEX and UNMIK reconfiguration, when he acknowledged that a majority on the Security Council supports Ban's reconfiguration plan and that the international presence can no longer maintain its previous form. Yet, Serbia's DS leaders insist that EULEX deployment is still dependent on Belgrade and Security Council consent and can have no link to the Ahtisaari plan,<sup>252</sup>

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<sup>243</sup> Crisis Group interviews, Rada Trajkovic, Gracanica, April, May, July 2008, and "Strah Srba sa Kosova zbog ustava" ["The fear of Serbs from Kosovo about the constitution"], B92, 16 June 2008.

<sup>244</sup> Crisis Group interviews, Rada Trajkovic, Gracanica, April, May, July 2008; Oliver Ivanovic interviewed by B92 television, see "Metafizika Koegzistenza" ["The metaphysics of co-existence"] and *ibid*.

<sup>245</sup> See his interview in Bukurie Bajraliu, "Ivanoviq: Qeveria e Kosoves nuk do te kete autoritet ne veri" ["Ivanovic: the Kosovo government will not have authority in the north"], *Koha Ditore*, 24 August 2008.

<sup>246</sup> "Kosovo Serb rep meets Kermabon", B92, 23 August 2008.

<sup>247</sup> Respectively Goran Arsic and Zoran Krckmarevic.

<sup>248</sup> Leading to local DS-DSS stand-offs over premises and vehicles in some enclaves. Similar conflicts occurred after the 11 May elections, as elected officials demanded that CCK coordinators make way for them. In one odd incident, SRS men brawled with the Gracanica CCK coordinator, who is from the DSS's ally, the NS, when they tried to take over his office on 19 June. B. Mitrinovic, "Tuca funkcionera SRS-a i Nove Srbije", ["Fight between SRS and New Serbia official"], *Politika*, 20 June 2008

<sup>249</sup> See "Ministar Bogdanovic na Kosovu" ["Minister Bogdanovic in Kosovo"], B92, 18 July 2008.

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<sup>250</sup> "Jeremic wants unity over Kosovo", B92, 15 July 2008. The DSS viewed this as "tricking", insisted that the EU mission is a tool of Kosovo independence that must be rejected and refused to back the resolution because it did not condemn EULEX. Samardzic press conference, Belgrade, 14 July 2008.

<sup>251</sup> "Minister for Kosovo urges unity over resolution", B92, 15 September 2008. The DSS demanded that three principles be written into the resolution: 1) rejection and invalidation of the Kosovo constitution, 2) rejection of EULEX, and 3) lawsuits to be pursued against all countries that recognise Kosovo's independence. The rump caucus of the SRS has not expressed a position, though its former deputy leader Tomislav Nikolic's breakaway group has called for amendments to include consideration of missing and kidnapped persons and an investigation into former ICTY Chief Prosecutor Carla del Ponte's claims of trade in their organs.

<sup>252</sup> Tadic in interview to *Vecernje Novosti*, Dusica Radeka, "Samo pomirenjem branimo naciju" ["Only with reconcilia-

and Premier Cvetkovic recently conditioned deployment on Serbia being admitted to partnership in decision-making on EULEX.<sup>253</sup>

The new government has dismissed pressure from some EU member states to drop its intention of asking the UN General Assembly to refer Kosovo's independence declaration to the ICJ for an advisory opinion. The policy is the flagship of the DS's emphasis on resisting Kosovo's independence through diplomacy. Pursuing it vigorously, as Foreign Minister Jeremic has done in recent weeks, allows the DS greater political space domestically in which to steer a softer policy on the ground in Kosovo than the DSS did.

Tadic and his new Kosovo minister, the Kosovo Serb Goran Bogdanovic, have said that the everyday problems and welfare of Kosovo Serbs will be as important as state integrity. "Until now, the state principle was sometimes placed higher".<sup>254</sup> The ministry will henceforth be "much more on the ground than in Belgrade",<sup>255</sup> its motto "to live in Kosovo, not off Kosovo".<sup>256</sup> Nevertheless, the DS has fewer levers with which to operate Kosovo policy and control the Kosovo Serbs than the DSS had, would struggle to implement a radically different Kosovo agenda and has for the time being accommodated the nationalists on the ground.

The Kosovo portfolio is not easy for the DS, which lacks a strong local network. Its SPS partner's ruling network of the 1990s has all but vanished from Kosovo, though some Kosovo Serbs are dusting off their party cards in the hope of jobs after SPS member Zvonimir Stevic was appointed the new government's CCK chief.<sup>257</sup> The DSS still controls much of Serb Kosovo through the post-11 May municipal assemblies.<sup>258</sup> Even though the SRS won in most locations,

it lacks competent personnel to govern locally, and the DSS and SNC hope that it will have to rely on their experience. In some places the SRS has preferred to ally with local civic initiatives or "silently" with the DS, such as in the northern municipality of Leposavic. Although the municipal assemblies are dominated by the government's opponents, the 11 May elections gave them much fiscal independence. Minister Bogdanovic plans to appoint regional- or "county"-level CCK coordinators, likely to be government supporters, to oversee the new structures.

While Samardzic forbade all contact with the EU missions and Pristina, enclave moderates want Belgrade to give them more freedom to take EU and Kosovo budget benefits while retaining the Serbian government as their mainstay.<sup>259</sup> Many Kosovo Serbs assume the DS will ultimately strike a deal leading to their integration into Kosovo institutions, which they dread.<sup>260</sup> But in the enclaves there is also relief that Samardzic's bullying is ended, and now more people than before are prepared to give Pristina and the EU missions at least a hearing.<sup>261</sup> Kosovo ministry state secretary Oliver Ivanovic outlined a bottom-up approach, offering the government's support to any elected Kosovo Serb municipal assemblies that want to cooperate with UNMIK on decentralisation, so long as the Ahtisaari plan is not used.<sup>262</sup> Since Ivanovic knows UNMIK is in no position to make such an offer, his approach is highly strategic and makes cooperation with Pristina and the

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tion can we defend the nation"], 6 July 2008; Jeremic in "New govt. to cooperate on UNMIK reconfiguration", op. cit.

<sup>253</sup> Interview, *Politika*, 28 August 2008, op. cit.

<sup>254</sup> Tadic in interview to *Vecernje Novosti*, 6 July 2008, op. cit.

<sup>255</sup> Minister Bogdanovic remarks to FoNet news agency, 8 July 2008.

<sup>256</sup> Bogdanovic's remarks reported by Tanjug, 8 July 2008.

<sup>257</sup> Crisis Group telephone interview, former DS official, Kamenica, 17 September 2008. He expressed concern that SPS members will take over the majority of positions. The SPS reportedly rejected a proposed split of 50 per cent DS, 25 per cent SPS, 25 per cent G17+.

<sup>258</sup> Minister Samardzic empowered the assemblies elected in May 2008, to the detriment of the CCK coordinators, in order to protect the DSS establishment in Kosovo against further emasculation by the incoming DS-led government. He announced that the assemblies would form executive boards and as the "highest bodies in municipalities" subsume CCK functions. *VIP Daily News Report*, 20 May 2008 (from 19 May Tanjug report).

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<sup>259</sup> Crisis Group interviews, local politicians, Gracanica and Novo Brdo, April-May 2008.

<sup>260</sup> While most independent-minded Kosovo Serbs saw DSS tactics as counter-productive and thuggish, they believe the DS lacks the necessary infrastructure on the ground, and that will result in weakness and indecision. Many, therefore, expect DS policies will lead to acceptance of the key demands of the Quint and EU on EULEX and even integration into Kosovo institutions. Crisis Group interviews, Serb entrepreneur, Leposavic, 25 June 2008; Serb journalist Laplje Selo, 2 July 2008. The government, however, says it will not change Kosovo policy. "Serb Minister: No Shift on Kosovo", FoNet, 6 June 2008.

<sup>261</sup> An official of the Kosovo government's Ministry for Local Government Administration reported that local Serbs turned out in reasonable numbers to briefing meetings on Ahtisaari decentralisation plans arranged in the eastern enclaves in September for the ministry by a Gracanica-based NGO. Meetings went well but did not occur in the hardline enclave of Ranilug. "Since late July and early August more Serbs are talking to us" and criticising the parallel municipalities for "failing to deliver". Crisis Group interview, Pristina, 16 September 2008.

<sup>262</sup> Interview in Bukurie Bajraliu, "Ivanovic: Qeveria e Kosoves nuk do te kete autoritet ne veri" ["Ivanovic: the Kosovo government will not have authority in the north"], *Koha Ditore*, 24 August 2008, op. cit.



ICO on creation of recognised new Serb-majority municipalities more feasible.

Hardliners hostile to the new Serbian government still dominate Serb north Kosovo, and the SNC will try to prevent the government exercising any power there except on its terms. Yet, SNC leader Jaksic is more vulnerable today.<sup>263</sup> In May he claimed that Serbs would leave Kosovo if the DS came to power.<sup>264</sup> During the election campaign, he exchanged sharp barbs with DS politicians and used weekly rallies to attack them. DS-aligned politicians started talking of launching financial probes into how he has run the north,<sup>265</sup> and initially distanced themselves from his Kosovo Serb Assembly.<sup>266</sup> But upon assuming office, the DS avoided immediate confrontation with the SNC and made a tactical retreat: on 10 July the new DS Kosovo minister, Bogdanovic, announced support for the Kosovo Serb Assembly saying his party members would participate.<sup>267</sup>

In the coming months, the government will try to undermine its hard-line opponents in Kosovo and bring spending on the territory under control. As a reaction to Kosovo independence, the previous Serbian coalition significantly increased state funding for Kosovo Serbs. Its DS finance minister, Cvetkovic (now prime minister), named a yearly figure of €500 million,<sup>268</sup> partly to try to cap and rationalise spending, but so many funding channels existed that quantification was difficult, and the DSS-run Kosovo ministry refused to discuss how much Serbia's defence of its sovereignty and loyal citizens in Kosovo might be costing. Samardzic argued that kinsmen in dangerous areas like Mitrovica have first say on what Belgrade does about Kosovo and how much it spends.<sup>269</sup>

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<sup>263</sup> Even the DSS did not give Jaksic a parliamentary seat after the May elections. His still-loyal SNC lieutenants have nevertheless sought reserve options; Milan Ivanovic has joined the Radicals, and Nebojsa Jovic has talked discreetly to the ICO.

<sup>264</sup> Interview, B92 television, *Poligraf*, 29 May 2008.

<sup>265</sup> Crisis Group interviews, DS official, Mitrovica, 30 May 2008, and Kosovo Serb politician, Gracanica, April 2008.

<sup>266</sup> President Tadic told FoNet news agency that although Kosovo Serbs are entitled to their own institutions, they should be established in a way that does not threaten their own or local Albanians' security, or detract from Serbia's Kosovo policy. See *VIP Daily News Report*, 30 June 2008.

<sup>267</sup> "DS: Ucesce u 'srpskoj skupstini'" ["DS: to take part in 'Serb assembly'"], B92, 11 July 2008.

<sup>268</sup> "Cvetkovic says Government will find jobs", *Tanjug*, 10 April 2008.

<sup>269</sup> Interview, Dragana Matovic, "Nije vazno sta misli 'krug dvojke'" ["It's not important what the 'second circle' thinks"], *Politika*, 26 April 2008.

Previous CCK chiefs reportedly fell afoul of Jaksic, the DSS and the SNC over the control of funding.<sup>270</sup> In the 2008 election campaign, DS and G17+ ministers alleged that the ministry favoured cronies in north Kosovo, leaving enclave Serbs to "live in mud".<sup>271</sup> Cvetkovic proposed in April to stop paying double salaries to northern Kosovo Serbs and to use the money instead to compensate enclave Serbs who left their Kosovo government jobs after 17 February, but he has been unable to implement the idea.<sup>272</sup> In late August, the new CCK chief, Zvonimir Stevic, also proposed ending double salaries.<sup>273</sup>

The DS-led government's lower key, less aggressive approach on Kosovo compared with its DSS predecessor's has already helped Serbian public opinion to focus less on the issue. In an opinion poll conducted in late August, only 12 per cent considered Kosovo the country's number one problem – unemployment, poverty, criminality and corruption were more important.<sup>274</sup> Government-friendly media, moreover, is preparing public opinion for changes in the way the state deals with Kosovo's Serbs.<sup>275</sup>

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<sup>270</sup> Crisis Group interviews, Serb official, Strpce, April and June 2008; Serb journalist, Laplje Selo, July 2008; and businessman, north Mitrovica, December 2007.

<sup>271</sup> Dragan Sutanovac and Mladjan Dinkic on "Pres Pretres" ["Press shake down"], TV Pink, 17 April 2008.

<sup>272</sup> "Duple plate samo za enclave" ["Double salaries only for the enclaves"], B92, 2 April 2008.

<sup>273</sup> Nedeljko Zejak, "Ukinuti duple plate" ["Abolish double salaries"], *Blic*, 31 August 2008.

<sup>274</sup> A Strategic Marketing poll, summarised in "SPS pao ispod cenzusa!" ["SPS fell below the election threshold!"], *Press*, 4 September 2008.

<sup>275</sup> In late July *Blic* newspaper published an expose of abuses of Serbia's state budget in Kosovo, of high salaries paid for phantom workers and workplaces, nepotism and people holding multiple jobs. Nedeljko Zejak, "I Umrlji na Platnim Spiskovima" ["Dead People too on the Payrolls"], *Blic*, 27 July 2008. A further article revealed Serbian Ministry of Finance data that 8,127 double salaries are paid in Kosovo, with many receiving multiple double salaries. Nedeljko Zejak and I. Radissavljevic, "Bogacenje na kosovskim mukama" ["Getting rich on Kosovo's torments"], *Blic*, 21 September 2008. B92 television's "Insajder" program is preparing investigative documentaries on the same theme. *Vreme* magazine alleged that the hardline Bishop Artemije of Gracanica ran a private construction and import-export firm that received contracts for reconstruction of Serbian churches in Kosovo and avoided taxes. "Pune sake brada" ["A fistful of beard"], *Vreme*, 28 August 2008.

## IV. MAKING RECONFIGURATION WORK

The coming months are a crucial test for the credibility of EU foreign policy and for EULEX as its biggest security and defence (ESDP) mission to date. The decision to deploy EULEX and the EUSR was made in February, but the two have not yet taken up their full functions. The EU must now co-pilot reconfiguration rather than rely relatively passively on the UN to take the lead.

After nine years in Kosovo, the UN does not want to lose the gains made at great cost and effort in establishing functioning, and, at times at least, multi-ethnic institutions. But in his 15 July 2008 report to the Security Council Secretary-General Ban Ki-moon sounded less committed than previously to those accomplishments. The UN needs to tread carefully to avoid becoming the patron of Serbs' institutional separation from the Albanian majority. There is no "status neutral" option if Pristina wants UNMIK to go and Belgrade wants it to stay, if one side is trying to build upon and the other is trying to tear down the UN's institutional legacy.

### A. RECONFIGURATION EFFORTS

There are two key aspects to reconfiguration: UNMIK's downsizing and handover to the EU; and the finalization of talks with Serbia in the six functional areas. Belgrade has a legitimate say on the latter but not the former.<sup>276</sup>

#### 1. The UN's role

The UN has great difficulty divesting operations to the EU while retaining political responsibility for Kosovo under Resolution 1244. Ban has said, "it is understood that the international responsibility of the United Nations will be limited to the extent of its effective operational control".<sup>277</sup> Neither the UN nor EU envisages "double-hatting" of mission personnel. The EU desires a procedurally and legally seamless handover. It wanted a memorandum of understanding with the UN to clarify EULEX's chain of command and

provide it UN privileges and immunities<sup>278</sup> but did not want the memorandum so formal as to require EU member-state consensus for approval in Brussels.<sup>279</sup>

From early July, an UNMIK task force began planning a substantial downscaling of the mission's staff and tasks, and a process leading to a 70 per cent staff reduction was announced on 11 August.<sup>280</sup> Leaving its 2,000-strong police contingent aside, UNMIK's current budget could accommodate a civil staff of 775 internationals (including 162 UN volunteers) and 2,038 nationals, but in the past months it has allowed many posts to remain vacant, so that pre-reconfiguration strength is approximately 2,500, of whom 600 are international and 1,900 national staff.

The Secretary-General's June 2008 report pledged the disposal of all capacity other than that needed for monitoring and reporting; facilitation, where required, of Kosovo's engagement in international agreements; facilitation of Pristina-Belgrade dialogue on issues of practical concern; and dialogue on implementation of practical arrangements in the six fields. But Ban also left room for the UN presence to perform functions "to be defined",<sup>281</sup> and his reconfiguration instructions to UNMIK on 25 June allowed room for creation of new UNMIK departments.<sup>282</sup>

SRSZ Zannier is recasting himself as a mediator and implementer of practical compromises between Kosovo Albanians and Serbs. This fits with his mandate to clinch "temporary arrangements", compromises with Belgrade. However, there is a risk that UNMIK may so embed itself between Kosovo Albanians and Serbs that it freezes out the ICO/EUSR. The lack of a clear executive – neither the SRSZ, the ICO nor the Kosovo government plays this role – encourages local Serb challenges to Kosovo institutions, which in turn create a market for UNMIK mediation, a role which could also be taken up by the "status neutral" OSCE

<sup>276</sup> UNMIK deputy spokesperson Russell Geekie, quoted in Bekim Greicevci "Fillimisht policia dhe gjyqesia" ["At first police and courts"], *Express*, 24 July 2008.

<sup>277</sup> Report of the Secretary-General on UNMIK, 12 June 2008, op. cit.

<sup>278</sup> EULEX personnel from states which have not recognised Kosovo cannot use privileges and immunities offered by Pristina. Nevertheless, by August EU officials considered them "sufficient for the moment". Crisis Group interview, Pristina, 26 August 2008.

<sup>279</sup> Crisis Group interview, EU Council official, Brussels, 1 July 2008.

<sup>280</sup> UNMIK spokesperson Alexander Ivanko announced it to local media. The planned reduction is to a staff total of 600.

<sup>281</sup> Report of the Secretary-General on UNMIK, 12 June 2008, op. cit.

<sup>282</sup> Information made available to Crisis Group, international officials, Pristina, 23 July 2008.

mission, whose municipal-level field presence lacks a defined role.<sup>283</sup>

On 23 July, Belgrade began discussing the temporary arrangements with Zannier, underlining as it did so that “the reconfiguration process started without the consent of Belgrade, and we believe that this was wrong. This process must not be finished without the consent of Belgrade and without explicit confirmation in the UN Security Council”.<sup>284</sup> It continues to reject EULEX, but the UN, EU and Quint should insist that Feith, the ICR/EUSR, takes part in the talks. Zannier reportedly proposed that the talks first focus on returning customs to the two northern gates. His Serbian interlocutors<sup>285</sup> insisted that police and courts be addressed first,<sup>286</sup> They added expropriated Serb property, kidnapped and missing persons, and humanitarian aid transport to the agenda of 11 September talks, without mentioning customs.<sup>287</sup>

Zannier's involvement in these talks has done nothing to endear him to Pristina authorities or media. In late July he publicly recommended re-opening the Mitrovica regional court with international judges, and appeared to suggest that Serb KPS have special autonomous “ethnic police” arrangements only nominally within the usual KPS chain of command and a separate district customs be created in the north (based on the ill-defined Hong Kong model). In the second half of August he appeared to backtrack.<sup>288</sup> While he claims

to be a facilitator, he is also retaining, at least formally, the right to impose decisions.<sup>289</sup>

In the 30 July round on police and courts, the demands of Serbia's new Kosovo minister, Bogdanovic, differed little from his predecessor's. Police in Serb-majority areas, he insisted, should be run by the relevant Serbian municipality, be connected to Belgrade and report not to Pristina but to an UNMIK Police chain of command. Courts in Serb-majority areas should function with Serbian law, with the justice ministry participating in the appointment of judges and UNMIK judiciary playing a role. His demands were not as specific for the enclaves as they were for the north.<sup>290</sup> Bogdanovic's deputy, Oliver Ivanovic, signalled more flexibility after his chief's August talks with UNMIK's temporary deputy chief, Nicholas Haysom, and stressed the need for UNMIK to bring Pristina into the process. He said that a separate “ethnic police” was undesirable, and that a solution was needed for Serbs to continue working in the police and customs without them representing independent Kosovo: “To satisfy the wolf, while leaving the sheep untouched”.<sup>291</sup> In September, Ivanovic added that enclave Serbs' February walk-out from the KPS had been “ill-advised....We had to stay inside”.<sup>292</sup>

The EU has not been involved in the talks to date. Pristina is wary of them, and the Serbian government is unlikely to commit to more inclusive talks until after it has created sufficient breathing space from the nationalist opposition by passing an assembly resolution on a single state policy for Kosovo with their support and bringing its motion regarding the ICJ to the UN General Assembly. Neither can be expected until mid October.

## 2. The EU's role

EU member states and the EU Council Secretariat had originally been content to ground the EULEX mandate in the Council's own Joint Action, Kosovo's

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<sup>283</sup>In an address to the OSCE Permanent Council, SRSG Zannier proposed that the OSCE Kosovo mission use its field presence to take up the “soft intervention” role in the field of civil administration. “UNMIK downsizing gives OSCE opportunity for larger role in Kosovo, UNMIK head says”, OSCE press release, Vienna, 4 September 2008.

<sup>284</sup>Foreign minister Vuk Jeremic, quoted in *VIP Daily News Report*, 21 July 2008.

<sup>285</sup>Foreign Minister Jeremic and Kosovo Minister Bogdanovic.

<sup>286</sup>In the order they were listed in Secretary-General Ban's letter. “A mund te arrihet Marreveshja midis PSSP-se Zannier dhe Qeverise se Serbise?”, [“Can agreement be reached between SRSG Zannier and the Serbian government?”], *Zeri*, 25 July 2008.

<sup>287</sup>Serbian government press release, “Minister for Kosovo and Metohija Bogdanovic meets with the Head of UNMIK Zannier”, 12 September 2008.

<sup>288</sup>Notably, at a press conference, Pristina, 20 August 2008. One newspaper tartly republished his pre-vacation interview in both the original English and Albanian translations for comparison. See Fatmir Aliu, “Zannier kunder Zannierit” [“Zannier against Zannier”], *Koha Ditore*, 21 August 2008.

<sup>289</sup>Fatmir Aliu, “Zannier: Negociata po, madje te zorshme” [“Zannier: Yes there will be negotiations, moreover hard ones”], *Koha Ditore*, 1 August 2008.

<sup>290</sup>Crisis Group interview, international official, Pristina, 31 July 2008.

<sup>291</sup>Ivanovic interviews in *Express*, 2 September 2008, and in *Koha Ditore*, 24 August 2008, both op. cit.

<sup>292</sup>He suggested that instead of leaving, Serb officers should have removed their KPS badges and put on UNMIK badges. “But there was simply no thought there. Sometimes I get the feeling that the previous government tried to make the situation as bad as possible....We now have to do everything to rectify those mistakes if at all possible.” See “KPS problems ‘fault of previous govt’”, B92, 10 September 2008.

sovereign invitation, the Ahtisaari plan and the authority of the ICR/EUSR. However, because the legitimacy of the EU missions has been so fiercely contested by Russia and Serbia, and several EU member states have refused to recognise Kosovo, they now want the UN to provide EULEX with international legitimacy. But a status-neutral UN delegation risks pulling EULEX away from its formerly clear role of supporting Kosovo's government, the constitution and the ICR and making it partially dependant on the UN for policy.

The EU is also bound to the UN because it needs to inherit UNMIK logistics, equipment and premises, unless it is prepared to bear much greater costs, which it has shown no sign of. Both organisations need a tightly choreographed handover. UNMIK reconfiguration thus far has been internally designed, with the EU not taking part in the planning.<sup>293</sup> Since the EU cannot yet say when and how it is prepared to deploy north of the Ibar, UNMIK cannot yet plan to withdraw.<sup>294</sup> In this environment there is plenty of scope for duplications and gaps to arise.

EULEX now says it will become operational by late November or early December 2008.<sup>295</sup> Until the second 120 days are over and reconfiguration is complete, EULEX plans to prepare staff, develop local contacts and begin mentoring and advising.<sup>296</sup> It does not want to take up its full mandate or be seen as operating only in Kosovo Albanian areas,<sup>297</sup> so it awaits the end of reconfiguration. Consequently, time is again running short to complete training and deployment of the 1,000 staff not yet in country.

EU deployment to the north – even in small numbers – is the main challenge. The ICO expected to have an office in north Mitrovica and a limited field monitoring presence. EULEX considers a 75-strong group of police and customs officials sufficient. There is con-

tingency planning for up to 330 more police should EULEX need to substitute for Serb KPS who refuse to serve in the north.<sup>298</sup> EULEX planners are unsure whether to build this capacity now or only if there is a northern Serb KPS meltdown.<sup>299</sup> A minority of EU member states want EULEX to stay out of the north. Sweden recommended in late 2007 and again in July 2008 a division at the Ibar between EULEX and UNMIK.<sup>300</sup> Among member states that do not recognise Kosovo, Spain insists it is lobbying Belgrade to accept EULEX Kosovo-wide, so as to dampen partition pressures,<sup>301</sup> while Cyprus says EULEX should deploy “respecting Serbia's territorial integrity and sovereignty and in line with UN Security Council Resolution 1244”.<sup>302</sup>

### 3. Dealing with Belgrade

Serbia's EU integration process is unlikely to move forward without any linkage to Kosovo. Even though the EU has made no formal connection so far,<sup>303</sup> France at least, has said Serbia cannot join the bloc without first recognising Kosovo.<sup>304</sup> In fact, this is the essential leverage for normalising Serbia-Kosovo relations and must be used. Ultimately, Serbia needs as part of its EU candidacy to “take a constructive approach towards the EU's efforts to contribute to peace and stability in the Balkan region”,<sup>305</sup> as well as align its foreign policy more generally to that of the EU (as is normally expected of candidate countries). It also needs to define and control its borders and shore up

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<sup>293</sup> Information made available to Crisis Group on the reconfiguration proposal from the UNMIK task force and internal debate on it, international officials, Pristina, 23 July 2008.

<sup>294</sup> Crisis Group interview, EU Council Secretariat, Brussels, 2 July 2008.

<sup>295</sup> Crisis Group interviews, EU officials, Pristina, 26 August 2008. This fits with SRSG Zannier's earlier estimate. See his interview, Fatmir Aliu, “Zannier paralajmëron vonesa” [“Zannier warns of delay”], *Koha Ditore*, 30 July 2008; and Crisis Group interview, senior UNMIK official, Pristina, 31 July 2008.

<sup>296</sup> Crisis Group interview, EULEX senior staff, Brussels, June 2008.

<sup>297</sup> “We want EULEX deployed throughout Kosovo. Whatever we do in one part [of Kosovo] will affect perceptions elsewhere”, Crisis Group interview, EULEX staff, Brussels, June 2008.

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<sup>298</sup> The budget is approved but not recruitment.

<sup>299</sup> Crisis Group interview, EU official, Brussels, June 2008.

<sup>300</sup> Crisis Group phone interview, Swedish foreign ministry official, July 2008.

<sup>301</sup> Crisis Group interview, senior official, Madrid, 30 May 2008.

<sup>302</sup> Remarks by Foreign Minister Marcos Kyprianou in Belgrade, “EULEX only with Belgrade's agreement”, B92, 23 July 2008.

<sup>303</sup> During Serbian government leaders' 3 September visit to Brussels, European Commission President Jose Manuel Barroso raised Kosovo but only vaguely. See [http://ec.europa.eu/commission\\_barroso/president/archives/2008/index\\_en.htm](http://ec.europa.eu/commission_barroso/president/archives/2008/index_en.htm).

<sup>304</sup> France's President Sarkozy stated in December 2007 that recognition of Kosovo independence was a condition for Serbia's EU membership. See “EU offering Serbia early membership, with strings attached”, B92, 15 December 2007. Pristina media cited a similar statement from Germany's Europe minister Gunter Glosner when he visited Kosovo in July 2008, but the German embassy later explained that he talked of accommodation not recognition. Crisis Group telephone interview, Pristina, September 2008.

<sup>305</sup> Council Conclusions on the Western Balkans, 22 July 2008, Brussels. The specific reference was to the Stabilisation and Association Process (SAP) underway with Serbia.

its own customs – which it no longer does, as it does not control Kosovo's external borders<sup>306</sup> and the customs regime between it and Kosovo has partially broken down. It has poor arguments to refuse dialogue with a European Union Special Representative (EUSR). A positive step was taken in July, when it sent back its ambassadors to European countries that recognised Kosovo.

In talks with Serbia on its integration, the EU, including the European Commission, should not sidestep the Kosovo issue. Until now there has been a tendency to do so to support pro-European forces in Belgrade against the Radicals and not challenge DS leaders who argued Serbia could have both the EU and Kosovo. The DS's diplomacy against Kosovo independence is better than the DSS's aggressive approach, but it too will challenge the EU.

Now that the Radicals and DSS are consigned to opposition for what is likely to be at least several years,<sup>307</sup> President Tadic cannot keep claiming that Kosovo compromises will bring down his stable government. The EU should not try to force Serbia into a precipitous climb-down, but should first look for areas where Belgrade has an interest to cooperate and promote solutions that can help it save face. Member states that have not recognised Kosovo but plan to be active in EULEX and are traditionally supportive of a strong ESDP, such as Spain, can play a special bilateral role in this.<sup>308</sup> In parallel, the 21 EU member states that have recognised Kosovo should make it ever more explicit to Serbia that its progression to membership depends upon accommodating Kosovo. All should insist that Serbia allow EULEX north of the Ibar.

The EU should pressure Belgrade to accept portions of the Ahtisaari plan, especially its decentralisation

provisions, as "status neutral" and cooperate on their implementation. It should insist that Serbia create and gradually broaden scope for dealing with Kosovo's government and accept for practical purposes the documents it issues, such as passports and driving licences,<sup>309</sup> even without formally recognising the state.<sup>310</sup> Eventually, and prior to EU membership, Belgrade and Pristina should conclude an agreement that regulates their relations and guarantees that Serbia will not hinder Kosovo's EU accession if it joins first, yet allows Serbia room, if this is still deemed politically necessary, to withhold recognition of Kosovo as a state.<sup>311</sup>

There is merit in the argument that to avoid a domestic outcry, the Tadic government should not be pushed too fast, but if the EU and UN are not to fall farther behind in reconfiguring their presences, risking a second transition failure and Kosovo Albanian patience, the EU needs to start deploying in Kosovo Serb areas soon. Even if the DS-led Serbian government agrees to a formula for this, northern Kosovo Serbs may not accept it, as they are led locally by the SNC, mostly support the DSS and SRS nationalist opposition par-

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<sup>306</sup> Although Serbia in fact maintains full border and customs checks at its own boundary with Kosovo. Serbia's path to full visa liberalisation with the EU will be complicated if it continues to claim Kosovo Albanians as its citizens and issue them Serbian passports.

<sup>307</sup> The Radical Party split between supporters of its ultra-hardline leader Seselj, on trial in The Hague for war crimes, and deputy leader Nikolic, who resigned on 6 September 2008 after Seselj scuttled his agreement with the DS-led government on a formula for Radicals' support of SAA ratification. Of the SRS's former 77 deputies, eighteen joined Nikolic in a separate parliamentary group, which he plans to form into a new party, "Napred Srbijo!" ["Forward Serbia!"] on 21 October. The agreement was to unilaterally append an annex to the SAA stating that Kosovo remained part of Serbia. Parliament ratified the SAA without it on 9 September 2008.

<sup>308</sup> Spain insists that it is doing this. Crisis Group interview, senior Spanish diplomat, Madrid, 30 May 2008.

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<sup>309</sup> At present, Serbia refuses not only Kosovo passports and other passports stamped by the Republic of Kosovo, but also UNMIK travel documents.

<sup>310</sup> After lobbying by the regional NGO Youth Initiative for Human Rights, the Serbian interior ministry (MUP) has in recent years instituted a special procedure by which UNMIK travel documents can, upon processing of a letter of invitation, be accepted for entry into Serbia proper. This should initially be extended to Kosovo passports as a preliminary to introducing a more widespread and simplified regime, such as stamping them as valid by exception for multiple entry into Serbia for a limited period, that is, a visa by another name.

<sup>311</sup> As chair of the late-2007 "Troika" talks with Pristina and Belgrade, German diplomat Wolfgang Ischinger suggested the 1972 Basic Treaty between the two German states as a useful precedent for the Balkan capitals to adapt to their needs. That treaty was a cornerstone of the Ostpolitik that brought Willy Brandt the Nobel Peace Prize and ushered in the détente era, committed West (the Federal Republic) and East (the German Democratic Republic, GDR) Germany to normalised relations and opened the way for both to become UN members in 1973 without the Bonn government acknowledging that the communist state was foreign to it or that separation was permanent, and without the GDR giving up its position that it was a fully independent state. A key element was the GDR's acceptance, without response, of a "letter...on German unity" from the Federal Republic, including the statement that "this Treaty does not conflict with the political aim of the Federal Republic of Germany to work for a state of peace in Europe in which the German nation will regain its unity through free self-determination". An English translation of the text of the Basic Treaty, 21 December 1972, is available at [http://germanhistorydocs.ghi-dc.org/sub\\_document.cfm?document\\_id=172](http://germanhistorydocs.ghi-dc.org/sub_document.cfm?document_id=172).

ties and have repeatedly shown readiness to resort to bullying tactics or violence. Although one of the bolder member states considers that EULEX must soon establish facts on the ground in the north,<sup>312</sup> most are cautious. They particularly fear EULEX getting into a fight with Serbs and being forced into an occupier role,<sup>313</sup> so that the pro-EU government in Belgrade then finds itself with no option but to support northern Kosovo Serb resistance.

## B. DEPLOYMENT CHALLENGES

If mishandled, policing, court and customs arrangements will handicap EULEX and even more the ICO, which seems to have little input to or control over what the UN proposes to Belgrade. The EU has two poles between which to approach how to deploy "Kosovo-wide". It can either act boldly, relying on its own authority as an organisation Serbia aspires to join, or hold back, relying on the UN to negotiate its northern presence. So far, it has chosen the latter approach. In exchange for a "UN umbrella", EULEX expects eventually to be able to deploy Kosovo-wide. However, it is unclear how long Pristina will cooperate if it cannot assert authority in the four northern municipalities and the enclaves. It will not accept division of Kosovo into EU and UN zones: EULEX for Albanians, UNMIK for Serbs.<sup>314</sup>

### 1. Courts

SRSRG Zannier suggested on 16 July 2008 in north Mitrovica that the court there should re-open, with international judges applying UNMIK law.<sup>315</sup> The practical arguments in favour of such a deal are that it could restore a functioning judiciary and prevent the consolidation of Serbian courts. Zannier did not specify whether the judges and prosecutors would be UNMIK or EULEX, but the latter cautiously supported his initiative as a way to get its personnel into the north. Belgrade now appears to have accepted UNMIK's initiative for its judges to start work in north Mitrovica.<sup>316</sup> In any final form, the initiative would also have to create space for local judges to resume

work alongside international counterparts. This could include some restructuring of the Mitrovica court and more Kosovo Serb judges. Pristina might swallow this arrangement if EULEX is part of it, but it is averse to expanding the UNMIK judiciary. A review date should be set for revision of any agreement on northern courts. This could be incorporated into the first scheduled review of the ICR's powers, two years after independence, in early 2010.<sup>317</sup> Belgrade and northern Kosovo Serbs will not accept the area's simple inclusion in the Kosovo judicial system but may prefer the ambiguity of a transitional arrangement. They might by the end of 2008 accept an EULEX-run system, with a special EULEX-run appeals chamber in the Kosovo Supreme Court.

UNMIK initially gave the impression it was considering opening new municipal courts in the Serb enclaves, with a new regional court to serve them.<sup>318</sup> This idea has now been dropped.<sup>319</sup> But the problem goes beyond physical courts to deciding what laws apply, under which jurisdiction they serve, and the relationship with higher courts. Because Kosovo Serbs refuse to recognise Kosovo law, the UN has suggested applying UNMIK law in their majority areas.<sup>320</sup> Special bridging legislation might be required and getting the Kosovo Assembly to approve it would be very difficult.

### 2. Police

Who will have ultimate authority over police remains unclear. Ban Ki-moon's proposal that Serb KPS should report to international police "under overall authority" of the UN SRSRG is extremely vague and could signify that EULEX is directly answerable to that official or at least to UN headquarters.<sup>321</sup> Nevertheless, police

<sup>312</sup> Crisis Group interview, official, Brussels, 9 July 2008.

<sup>313</sup> Crisis Group interviews, officials, Brussels, July 2008.

<sup>314</sup> Crisis Group interview, senior Kosovo official, Pristina, May 2008.

<sup>315</sup> Izedin Krasniqi, "Zannier kerkon gjykate te UNMIK-ut ne veri" ["Zannier seeks UNMIK courts in the north"], *Koha Ditore*, 17 July 2008.

<sup>316</sup> See interview with Principal Deputy SRSRG David Harland, "Kthehet rendi" ["Order returns"], *Express*, 23 September 2008.

<sup>317</sup> See the Ahtisaari Comprehensive Proposal, op. cit., Annex IX International Civilian Representative, Article 5.

<sup>318</sup> Crisis Group interview, Deputy Prime Minister Rame Manaj, 18 July 2008.

<sup>319</sup> For good reasons: they would cut across the procedure for establishing courts specified in a draft Kosovo law, and the courts themselves would be inconsistent with the body of legislation that entered into force on 15 June 2008. They would prolong the enclaves' non-cooperation with Pristina and the ICO and obstruct unitary administration and the Ahtisaari plan implementation that should produce more Serb-majority municipalities and local, Serb-run Kosovo courts.

<sup>320</sup> At least in criminal matters, there are few differences between UNMIK and Kosovo law, but civil law is more complex, especially given that Serbian civil courts, applying Serbian law, have continued to operate north of the Ibar since 1999.

<sup>321</sup> The language of the Secretary-General's 12 June 2008 report on continuing UN oversight was more specific with

work is an area where the UN was clearly meant to hand over to EULEX. The UN wants to divest the responsibility, yet must be careful to protect the image of the reconfiguration and UN umbrella, particularly to a hostile Russia. It could also find itself still saddled with police duties it does not want if efforts to secure EULEX's deployment north of the Ibar fail.

According to the Kosovo constitution, the police are to have a unified chain of command throughout the country,<sup>322</sup> answerable to the Kosovo Police Director General. The constitution, new police law and Ahtisaari plan do not provide for a higher international authority. EULEX is mandated to "monitor, mentor and advise" but exercise only limited executive authority.<sup>323</sup> Because of its Resolution 1244 responsibility, some expect the UN at least initially to retain a prerogative to instruct, guide and have the last word over policing, although the EU will provide most or all of the international police resources after reconfiguration, and Kosovo's government will continue, as now, to resource the 7,000-strong domestic force. In fact, the government, EULEX or UNMIK could still lead policing and appoint the police chief after the reconfiguration. Ambiguity over who has final authority is anathema to police, who require a clear chain of command.

Although the reconfiguration plan implies that UNMIK Police will make way everywhere for EULEX,<sup>324</sup> it is unlikely that it will have left entirely by the end of the process, ideally by 1 December 2008. If security threatens EULEX deployment to the north or the enclaves, it will remain in place. UNMIK has provisionally planned to retain 450, as well as its police commissioner and two regional commanders, in case EULEX cannot deploy everywhere. Even in that circumstance it does not want to get boxed into policing only the north. Any plans to balance retention of its Mitrovica regional police commander with reintroduction of one in the Pristina region are unrealistic.<sup>325</sup> If the KPS falls into a situation where police in Serb-

majority areas stay under UNMIK authority and the rest work under Pristina and EULEX, years of nurturing the service into a relatively effective cornerstone of multi-ethnic institutions will be undone.

The UN and EU must still decide together whether any special arrangement for Serb-majority areas applies Kosovo-wide, or only in the north. UNMIK could place Serb KPS under international command in "relevant Serb-majority areas", but levels of pre-independence cooperation between Pristina and police in the enclaves should be built upon rather than undermined. The special reporting mechanism for KPS in northern Serb-majority areas should not extend south unless that is the only way to retain a unified Kosovo police.

At least for the interim, an international commander north of the Ibar is essential. Without this the semi-detached Serb KPS would break its last links with Pristina. The northern commander should be an EULEX appointee, but this should be reviewed after a year with the expectation of transferring the post to a national officer. As the Mitrovica police region has not yet been transferred to national command, this would not disturb the existing KPS structure but would hamper its development. EULEX should conclude a memorandum of understanding with Kosovo's government defining the international commander's role. This would add a Kosovo mandate to the Mitrovica commander's existing 1244 mandate and align it, however approximately, with Kosovo's police law.<sup>326</sup>

The enclaves present a harder call. The bulk of Serb KPS in the central enclave of Gračanica and in the eastern enclaves, 300 of the 800 Serbs in the KPS overall, have been boycotting since February 2008, demanding to report to a UN chain of command, though these police regions (Pristina and Gjilan/Gnjilane) were transferred to the national KPS chain of command several years ago and functioned well until independence. Even if these Serb officers consent to report to EULEX superiors and apply Kosovo rather than UNMIK law, re-installing an international chain of command here would set the KPS back from what it had attained pre-17 February.

It would be better to retain these Serb officers than to dismiss them, but a precedent should not be created

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regard to policing than any other area. His appended letter to Tadic said, "Kosovo Police Service operating in relevant Serb-majority areas should report to international police under the overall authority of my Special Representative".

<sup>322</sup> Kosovo constitution, Art. 128.

<sup>323</sup> See Art. 3 (a) of EU Council Joint Action, on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo, Brussels, 2008/124/CFSP, 4 February 2008.

<sup>324</sup> SRSZ Zannier does not want Kosovo divided territorially between UNMIK and EULEX police, north and south of the Ibar.

<sup>325</sup> A contingency provision of UNMIK's early reconfiguration planning. Information made available to Crisis Group and interviews, international officials, Pristina, July 2008.

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<sup>326</sup> The law clearly defines the police command structure, leaving no space for international commanders outside the KPS command chain, but Article 9, on "international cooperation", gives the police opportunity to "cooperate with international police organisations ... in accordance ... with international agreements to which the state of Kosovo is a signatory".

that Serb KPS in less troubled areas such as Strpce could utilise. Allowing police stations in those areas to bypass their KPS superiors and report to internationals would fragment the service and worsen security, especially in the enclaves. Replacing national with EULEX commanders in the two affected regions, Pristina and Gjilan/Gnjilane, could be even less politically palatable for the government, since it would also put many more Albanians back under international command, while distorting EULEX's monitoring and mentoring mission.

The most feasible compromise is for EULEX to build a dedicated consultation structure for Serb KPS in Gracanica, the eastern enclaves and Strpce, to act for an initial period of up to a year as their optional interface both with their regional KPS commanders and EULEX leadership. It would not be a command structure as such, but could save Serb officers enough face to enable them to return to or continue in the service.

### 3. Customs

The UN has shied away from dealing with the two destroyed northern customs posts since 19 February, while Kosovo and Serbia haemorrhage lost revenue. Both control of the border and stopping revenue loss are important to Pristina, which draws 70 per cent of its state budget from customs fees. For Serbia a functioning border that divides it from Kosovo and from the compact Serb population above the Ibar is abhorrent, although treating Kosovo as a separate customs space is practical (and is recognised as such by the EU),<sup>327</sup> and the loss of customs control in north Kosovo now damages Serbia itself. The new DS-led government will be more sensitive to this downside than was its DSS-led predecessor. North Kosovo Serbs reject any Pristina interposition between them and Serbia but perhaps could compromise: no customs posts at the northern boundaries, but at key points within north Kosovo; most revenue to be disbursed to the local municipalities, not Pristina.<sup>328</sup>

Ban's reconfiguration plan tasked SRSG Zannier to "determine ... an organisational structure allowing Kosovo to continue to function as a single customs area", getting the buy-in of "relevant stakeholders". It envisaged international customs officers "at relevant customs points."<sup>329</sup> Zannier's apparent suggestion in

late July of making the north a separate Hong Kong-like customs zone did not benefit from consultation with either UNMIK's own customs experts or other stakeholders, including the EU and the Central European Free Trade Agreement (CEFTA), and he has since re-interpreted his earlier statement to reaffirm the need for Kosovo to continue functioning as a single customs zone.<sup>330</sup>

Pristina and the UN expect EULEX to take over customs in the north at the end of reconfiguration, but EU officials admit that "it will be very difficult to do something that UNMIK can't do".<sup>331</sup> UNMIK has paid only lip service to redeploying customs staff with KFOR protection. During the first 120 days NATO and KFOR pledged to prepare a plan within eight weeks to reassert customs control and budget for the necessary troops, equipment and installations to ensure security for the transport and activities of three daily shifts of international customs officers. They remain in principle prepared to do this, but fear the consequence would be violence, followed by EULEX evacuation.<sup>332</sup> Most EU member states believe returning Kosovo to a single customs area is "a very long-term priority....No one, not even the British, are ready to put lives at risk for customs in Kosovo".<sup>333</sup> But the new Serbian government is also not willing to lose lives over the custom posts, and at least talks about the possibility of their re-establishment.<sup>334</sup>

In these circumstances, the UN-Belgrade talks could evolve toward brokering a compromise for EULEX customs monitors to oversee Serb officers recruited

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and remain seconded to UNMIK but have not been deployed. Crisis Group interviews, international officials, Pristina, May-July 2008.

<sup>330</sup> Press conference, Pristina, 20 August 2008.

<sup>331</sup> Crisis Group interview, EU official, Brussels, July 2008.

<sup>332</sup> Crisis Group interviews, KFOR and NATO officials, May-July 2008. KFOR has no mandate from the NATO Council to take on police or customs duties but has quietly begun contingency planning for the eventuality that UNMIK simply departs the north, which would likely cause a collapse of the KPS there. In that case KFOR would at least provide some rudimentary public order policing.

<sup>333</sup> Crisis Group interview, EU member state Committee on the Western Balkans (COWEB) representative, Brussels, 8 July 2008. The UK is virtually isolated among EU member states as an advocate of sending international customs officers to the two northern gates with KFOR backing and without seeking the prior consent of either Belgrade or the northern Kosovo Serbs.

<sup>334</sup> Ivanovic interview in *Koha Ditore*, 24 August 2008, op. cit. But the Serbian government asks privately for time to defuse the hostility and possible overreactions of the SNC and local Serbs. Crisis Group interview, international official, Pristina, 14 August 2008.

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<sup>327</sup> Such an arrangement existed before Kosovo independence.

<sup>328</sup> Crisis Group interview, Nebojsa Minic, DSS branch leader, north Mitrovica, 30 May 2008.

<sup>329</sup> Report of the Secretary-General on UNMIK, 12 June 2008, op. cit. During the first 120 days of independence, UNMIK asked EULEX to provide these officers. Six were contracted



into a new unit of the Kosovo customs service under EULEX command, administering commercial traffic through the two gates. The customs regime in the north could emphasise the use of customs depots set back from the border (in Zubin Potok and Leposavic, as UNMIK proposed to local mayors in 2006), and collect duties under the Kosovo customs code for distribution by an agreed formula to the Kosovo budget and the four municipalities north of the Ibar. This arrangement could be reviewed in early 2010 (when the first review of the ICR's powers is scheduled), so that it might eventually conform completely to a single customs area. The share due the four municipalities should be subject to a cap or sliding scale and be set against the block grants due them from Pristina, which they refuse.<sup>335</sup>

This compromise would obliquely reconnect the northern municipalities to the Kosovo budget, while minimising the potential for the arrangement to distort that budget, should the volume of commercial traffic rise or the reliance on customs fees change over the next few years. It could satisfy northern Serbs by keeping Pristina at arm's length and giving them a stake in customs collection, Belgrade by closing the customs black hole that is blowing back into Serbia while not obviously conceding symbolic ground to independent Kosovo, and Pristina by stemming the revenue haemorrhage and holding open the prospect of binding the north tighter into the Kosovo customs system after a short period.

#### 4. Civilian administration

The task force UNMIK created on 2 July 2008 asked department and regional chiefs to justify staff they wished to retain and submitted a plan to New York in mid-July that proposed dispensing with 40 to 70 per cent of non-police staff, perhaps as early as October. The UN now expects to downsize UNMIK 70 per cent by November, or at least the end of 2008.<sup>336</sup> By then the current 2,000 UNMIK Police should draw down to 450. A more definite drawdown of UNMIK's justice department is foreseen, from 177 staff to fourteen by the end of the notional 120 days, but that could be changed if the SRSG strikes a deal with Belgrade to re-open courts in the north under UNMIK

auspices. UNMIK also expects both its police and justice draw-downs to be revised as it deepens dialogue with EULEX.<sup>337</sup>

The task force's proposed cutback and subordination of UNMIK's civil administration department (DCA) to its political affairs office created lively internal debate. DCA was formerly UNMIK's "Pillar Two" and maintains structures in each of Kosovo's five former administrative regions. Mostly withdrawn from its previous role guiding municipal administration all over Kosovo, it has kept presences in areas with minority populations – mostly Serbs but also Albanians in a few places – monitors their situation and acts as an intermediary between them and the majority. SRSG Zannier's "problem-solving" concept influenced the task force's recommendation that UNMIK's future role might extend beyond monitoring and reporting to good offices on problem-solving.<sup>338</sup> While UNMIK will retain field offices in Peja/Pec, Gracanica and Strpce, and regional representation in Mitrovica, he has now proposed that the OSCE mission's field structure take on the bulk of this task.<sup>339</sup> It would be better for the ICO's field presence to occupy this space, but it still lacks the necessary political support.

UNMIK DCA's Mitrovica regional representation is its largest field presence. It has provided (mostly local Serb-staffed) temporary administration in north Mitrovica, and its head, former U.S. diplomat Gerard Gallucci, fought political battles with UNMIK's chiefs, Joachim Rucker and Larry Rossin, during the first 120 days of independence. He opposed the use of international forces to maintain or impose Kosovo institutions rejected by local Serbs. The UN Secretariat removed Gallucci's "pro-Pristina" foes in mid-June and kept him on in Mitrovica, to the deep discomfort of the Quint and EU officials. His relations with the ICO's Mitrovica office are strained and he declined to present a reconfiguration plan to the task force.<sup>340</sup> The task force did not propose shrinking the 50-strong staff but recommended that the SRSG appoint a panel

<sup>335</sup> Funds could be collected and deposited exactly as at other gates and the northern municipalities' share calculated and paid through a status neutral intermediary account, either UNMIK's Kosovo Consolidated Fund or a new EU-run account.

<sup>336</sup> Statement by UNMIK spokesperson Alexander Ivanko, Pristina, 11 August 2008, and UNMIK press release, "SRSG on UNMIK's reconfiguration", 19 September 2008.

<sup>337</sup> Information on UNMIK's reconfiguration plans made available to Crisis Group, international officials, Pristina, 23 July 2008.

<sup>338</sup> Before being overruled, DCA resisted some of the proposed cuts and recommended that its mediation and soft intervention role be enshrined in the reconfigured UNMIK and it be kept independent of the political affairs office so that its field-based "honest broker" work would remain untainted by political agendas. Ibid. This would have frozen out the ICO and itself been political, since the DCA assumed its mediation would operate without reference to or recognition of Kosovo's government.

<sup>339</sup> See "UNMIK downsizing", OSCE press release, op. cit.

<sup>340</sup> Crisis Group interview, diplomat, Pristina, 22 July 2008.

halfway through the reconfiguration period, reinforced by a DPKO representative from New York, to review its functions and staffing levels.<sup>341</sup> This may now occur, since a senior DPKO official was appointed UNMIK's temporary deputy chief in early September.<sup>342</sup>

Although the SRSB wants to keep the two processes separate, he may have to adjust the draw-down programmed by the task force to accommodate the result of his negotiations with Belgrade. Serbia wants UNMIK to stay large, and insists that it is the only acceptable civil international interlocutor and partner in Kosovo at least until the UN Security Council decides otherwise. It will especially favour keeping a status neutral operator in charge of the "soft intervention" role, so that no space is opened up for the ICO. In negotiations with the EU, the UN refused to hand over its logistical base just west of Pristina, thus indicating it expects UNMIK to retain at least some of its staff.

Ultimately the real challenge will be in the north and in the southern Serb majority enclaves where the UN and EULEX will initially at least be working closely together. The sooner the EU can be included in the UN's talks with Belgrade on the six fields the better, to avoid the EU being locked into deployment and operating arrangements it never negotiated. Over-reliance on the UN was one of the main causes for EULEX's deployment delay. Allowing the UN to take the lead in negotiations with Serbia risks hampering EULEX's room for manoeuvre in Kosovo Serb majority areas for many more years to come.

**Pristina/Brussels, 25 September 2008**

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<sup>341</sup> Information on UNMIK reconfiguration plans made available to Crisis Group, Pristina, 23 July 2008, *op. cit.*

<sup>342</sup> David Harland, head of the Europe and Latin American Directorate.

## APPENDIX A

### MAP OF KOSOVO AND ENVIRONS



## APPENDIX B

### LIST OF ABBREVIATIONS AND ACRONYMS

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AAK	Alliance for the Future of Kosovo, Kosovo Albanian political party led by former KLA commander and former PISG Prime Minister Ramush Haradinaj
AKR	Alliance for a New Kosovo, new Kosovo Albanian political party created by construction magnate Behgjet Pacolli
BBC	British Broadcasting Service
BDI	Democratic Union for Integration (DUI), Macedonian Albanian political party led by Ali Ahmeti
CCK	Coordination Centre for Kosovo and Metohija, an arm of the Serbian government in Kosovo
CEFTA	Central European Free Trade Agreement
CFSP	EU Common Foreign and Security Policy
Contact Group	A six-nation group guiding Balkans policy: France, Germany, Italy, Russia, the UK and U.S.
COWEB	EU Council Committee on the Western Balkans
DCA	UNMIK's Civil Administration Department
DS	Democratic Party, led by Serbia's President Boris Tadic
DSS	Democratic Party of Serbia, led by former Prime Minister Vojislav Kostunica
DPKO	UN Department of Peacekeeping Operations
ESDP	European Security and Defence Policy
EUSR	European Union Special Representative
EU	European Union
EULEX	EU Rule of Law Mission to Kosovo
G17+	Serbian political party in alliance with the DS, led by Mladjan Dinkic
GAERC	EU General Affairs and External Relations Council
GDR	German Democratic Republic, the former East Germany
ICO	International Civilian Office
ICR	International Civilian Representative, the ICO chief
ICJ	International Court of Justice
ICTY	International Criminal Tribunal for the former Yugoslavia
ISG	International Steering Group, guides the work of the ICR
IMF	International Monetary Fund
IMP	International Military Presence, the new name the Ahtisaari plan proposed for KFOR, which was not adopted
KPC	Kosovo Protection Corps, quasi-military civil emergency body derived from the KLA
KEK	Kosovo Energy Corporation, the publicly owned electricity utility
KFOR	(NATO's) Kosovo Force
KGB	Former Soviet Secret Service
KLA	Kosovo Liberation Army
KPS	Kosovo Police Service
KSF	Kosovo Security Force, to be established under the Ahtisaari plan
K-SHIK	Unofficial Kosovo Albanian intelligence agency, associated with the PDK
KTA	Kosovo Trust Agency
LDD	Democratic League of Dardania, a Kosovo Albanian party formed by Nexhat Daci in a 2007 breakaway from the LDK
LDK	Democratic League of Kosovo, Kosovo Albanian party led by President Ibrahim Rugova until his death in 2006, now by President Fatmir Sejdiu
MNTF	Multinational Task Force, KFOR's five regional brigades
MCA	Military Civilian Advice, a new division of KFOR that will oversee dissolution of the KPC and creation of the KSF

MTEF	Medium Term Expenditure Framework, adopted by Kosovo's government
MUP	Serbian Ministry of Interior
NATO	North Atlantic Treaty Organization
NS	New Serbia, a political party allied to Kostunica's DSS, led by Velimir Ilic
OSCE	Organization for Security and Co-operation in Europe
PAK	Privatisation Agency of Kosovo, the successor to the KTA
PDK	Democratic Party of Kosovo, Kosovo Albanian political party led by former KLA commander and current prime minister Hashim Thaci
PDSH	Democratic Party of Albanians (DPA), Macedonian Albanian political party led by Menduh Thaci
PISG	Provisional Institutions of Self-Government, Kosovo's government in the UNMIK system, prior to independence
PTK	Post and Telecom of Kosovo
Quint	The Contact Group minus Russia
SAA	Stabilisation and Association Agreement, a bilateral treaty between the EU and a country seeking membership, preliminary to candidate status
RTK	Radio Television of Kosovo, public broadcaster
SAP	Stabilisation and Association Process, leading to conclusion of an SAA
SRS	Special Representative of the UN Secretary-General
SNC	Serb National Council-North, a hardline Kosovo Serb political group led by Dr Marko Jaksic, closely associated with Serbia's DSS
SPS	Socialist Party of Serbia, formerly led by Slobodan Milosevic, now the junior government coalition partner of the DS
SRS	Serbian Radical Party, hardline nationalist party founded by Vojislav Seselj
SLS	Serbian Liberal Party, a small Kosovo Serb party that joined Kosovo's government
"Troika"	Trio of U.S., EU and Russian diplomats who attempted to mediate between Kosovo and Serbia in the second half of 2007
UN	United Nations
UNDP	UN Development Programme
UNGA	UN General Assembly
UNSC	UN Security Council
UNSCR	UN Security Council Resolution
UNSCR 1244	UN Security Council Resolution 1244, 10 June 1999
UNSG	UN Secretary-General
UNMIK	UN Interim Administration Mission in Kosovo
UNMEE	United Nations Mission in Ethiopia and Eritrea
VAT	Value added tax

## APPENDIX C

### ABOUT THE INTERNATIONAL CRISIS GROUP

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**September 2008**

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