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Country Specific Report: Kosova
The Role of Human and Minority Rights in the Process of Reconstruction and Reconciliation for State and Nation-Building: Kosova
This report was compiled in the frame of the FP6 project “Human and Minority Rights in the Life Cycle of Ethnic Conflicts”.
The authors were affiliated to the University of Prishtina (Kosova), one of the partners in this project.
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MIRICO: Human and Minority Rights in the Life Cycle of Ethnic Conflicts
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1. Introduction

In our previous reports we analyzed closely the historical, political, economic and cultural circumstances that eventually led to the armed conflict in Kosova. After WWII until 1974 Kosova gradually changed its autonomous status within the Socialist Republic of Serbia. When the SFRY Constitution of 1974 was drafted, Kosova gained the highest degree of autonomous status up to time. Nonetheless, while other republics formally enjoyed the right to self-determination including secession, this possibility was denied to two autonomous provinces - Kosova and Vojvodina.¹

Despite the fact that during this time Kosova experienced relative economic growth compared to previous decades, the pace of economic development compared to the other republics was very low. Popular dissatisfaction with the political and economic status of Kosova increased during the late ‘70s and led to huge demonstrations for the political and economic equality of Kosova with other republics of SFRY in 1981. Nine Albanians were killed as a result of brutal police intervention. On the other hand, the constitutional changes of 1974 expanded Kosova’s autonomy which, as a consequence, limited Serbian control over the province. These developments triggered a great wave of nationalism in Serbia, which culminated with the infamous Memorandum compiled by the Serbian Academy of Sciences and Arts (1986). Albanians were accused of deliberately raping Serbian girls and women for political aims and of committing “genocide” against local Serbs in order to force them to leave Kosova.

Out of this climate of Serbian nationalist hatred, Milosevic rose to power as a result of the political battles within Serbia.² The Republic of Serbia initiated republican constitutional changes to abolish Kosova’s autonomous status. On June 1989 the autonomous status of Kosova was officially abrogated by the Serbian republican apparatus. Reactions of the Albanian population began immediately once the Republic of Serbia initiated the debate about the necessity of constitutional changes in 1988.³ During 1988-1991 massive demonstrations against these steps occurred all across Kosova. According to the Council for the Defense of Human Rights and Freedoms (CDHRF) based in Prishtina, at least 100 people were killed by Serbian police during these demonstrations.

During the ‘90s, the political scene of Kosova was largely dominated by the Democratic League of Kosova, which initially numbered around 700,000 members. The DLK’s strategy ultimately did not manage to establish a political and legal framework to secure elementary collective and human rights for the Albanian population. While the economic, political and social situation was deteriorating, some Albanians sought alternative non-pacifistic strategies to fight Serbian oppression. The Kosova Liberation Army (KLA) launched more serious guerrilla attacks in 1996, a few weeks after the Dayton Agreement had been reached. The first public appearance of the KLA occurred on 28 November 1997, in the Drenica region. In February and March 1998, regular units of FRY army and police killed

¹ See WP2, 17-20 and 42-43.
² For more detailed analysis of ethno-mobilization in Serbia an Milosevic’s rise in power, see WP2, 20-23.
dozens of unarmed Albanian civilians, most of them women, children and elderly people, with the pretext of fighting and uprooting the KLA.4

The predominant political position of the international community regarding the conflict was to punish both sides - the Milosevic regime for ruling Albanians by cruel means, and the KLA for trying to achieve its aim (the independence of Kosova) with military tools. Stemming from this goal, the international community unconditionally requested that both sides reach a peaceful solution to the conflict. But peace could not prevail if it were not guaranteed and maintained by a strong international (even military) presence. In order to impose peace, the international community used the strategy of threatening force through NATO. The failure of the Holbrooke-Milosevic agreement of October 1998 convinced the international community that peace could not be achieved without meeting two irreducible preconditions:

- Both parties must be included and accept the agreement;
- This agreement must be secured by an international military presence.

As a consequence of direct international pressure followed by a serious military threat, both the representatives of Serbia and the Albanian political and military representatives agreed to participate in the Rambouillet Peace Conference held from 6-23 February 1999. Although the Albanian negotiating team gave some clear signs that it would accept the Agreement, the first round of negotiations ended without either the Albanians or the Serbs signing it. The second round of negotiations took place in Paris between from 15-18 March 1999. On March 18, the Albanian delegation officially signed the Rambouillet Agreement, called the Interim Agreement for Peace and Self-Government in Kosovo (hereinafter IAPSK). Nevertheless, the Serbian delegation refused to accept the peace terms contained in the Agreement. In order to force Milosevic to accept these terms, and to stop ethnic cleansing in Kosova and end the humanitarian disaster, NATO launched a 78 day military air campaign targeting FRY military forces and Serbia’s dual-use infrastructure. On 3 June 1999 the FRY Parliament ratified the Ahtisaari-Chernomyrdin Plan, which included a total (verifiable) withdrawal of FRY military forces from Kosova, the safe return of all refugees, and a UN-based civil mission to implement the Rambouillet Agreement’s peace plan, which would be secured by NATO troops.5

In order to secure the legal and political legitimacy of this future United Nations mission, UN Security Council (SC) Resolution 1244 was passed on 12 June 1999. This formed the legal basis of the United Nations Mission Interim in Kosovo (hereinafter UNMIK).

This report will carefully and deeply examine the structure and the political and legal basis of this mission, the peace plan it has implemented, the instruments it has applied, the development strategies it has adopted, the political agenda it has both offered and imposed, the human rights framework it tried to create, and the collective rights it failed to provide. Finally, by closely analyzing the results of UNMIK’s achievements and failures in Kosova, we will draw critical conclusions about its overall impact on Kosova as a society, a political entity, an economic reality and a cultural space during these eight years.

The research process involved the use of different sources. Dozens of books have been written about last war in Kosova, particularly in relation to the NATO military intervention against the FRY. There are, however, undoubtedly fewer books that deal with post-war reality in Kosova. Nevertheless, after the war different NGO’s around the world dealing with conflict-settlement issues in post-

4 For more detailed description of the events during this period of time, see WP3, 42-45.
5 Ibid, 28-30 and 69-74.
conflict societies published numerous reports and research findings about Kosova. This report examines many of these reports in detail and incorporates important points raised.

2. The Legal Basis for the International Presence in Kosova

The legal basis that regulates the international civilian and military presence in Kosova is UN SCR 1244, drafted on 10 June 1999. In its preamble, this Resolution adopts the general principles set forth by the G-8 summit in Petersburg on 6 May 1999. The first principle of this document calls for the “deployment in Kosovo of effective international civil and security presences, endorsed and adopted by the United Nations, capable of guaranteeing the achievement of the common objectives”. In this G-8 Foreign Ministers statement one finds the origin of the future international presence in Kosova: they requested the “establishment of an interim administration for Kosovo to be decided by the Security Council of the United Nations to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo”.

The second principle of the G-8 document calls for the UN SC to “prepare elements” of the Resolution that will mandate a future UN interim mission in Kosova. It seems that the diplomatic efforts that took place during the period of the NATO bombings attempted to close the gap between NATO goals and Milosevic’s requests. Closing this gap meant shaping the nature of the future international mission that would govern Kosova until the definition of its final status, and which should necessarily operate under UN auspices. Milosevic had always sought to conclude all his political and military dealings with Kosova within the framework of the UN. The International Crisis Group noticed that:

In agreeing to allow Kosovo to be administered by the United Nations, instead of another organization such as the OSCE or NATO, the international community made a major move toward Milosevic. Having had considerable experience with the UN in Bosnia, Milosevic calculated that many of its characteristic traits - a political and bureaucratic culture which fosters caution and delay, chronic shortage of funds, and divisions among its leading members - would make it more difficult to overcome the climate of instability and turmoil on which Milosevic has always relied to advance his own objectives. Milosevic also knew he could count on sympathizers in the Security Council to prevent revisions to UNSC 1244 that would run counter to his interests in Kosovo.

Concerning UN SCR 1244, other authors, such as Fred L. Morrison, Professor at the University of Minnesota Law School, believe that:

Even a cursory reading shows that it was hastily drawn and that it contains concessions that were thought necessary both to satisfy Serbia and its allies, so that it could pass with the acquiescence of all of the permanent members of the Security Council.

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6 This document (UN Doc. S/1999/516) is referred as the Annex 1 of UN SCR 1244.
7 Ibid., 1.3.
8 Ibid. 1.4.
In order to achieve a sustainable agreement with the FRY, the G-8 mandated Marti Ahtisaari (then President of Finland) as a representative of the EU, and the Russian envoy, Viktor Chernomyrdin (Special Representative of the President of the Russian Federation), to negotiate with Milosevic. They prepared a document that was presented to him on 2 June 1999. The Government of the FRY and the Assembly of the Republic of Serbia accepted this document one day later. This document calls for:

Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.12

The final point of this agreement, also known as Ahtisaari-Chernomyrdin Document, foresaw a technical-military agreement to be reached between NATO and the FRY military forces concerning the exact strategy of Yugoslav army’s total withdrawal from Kosovo. This Technical Military Agreement was reached between the International Security Force (KFOR/Kosovo Forces) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia on 9 June 1999 in Kumanovo, Macedonia. The first article of the Technical Military Agreement refers to the second annex of UN SCR 1244 (Ahtisaari-Chernomyrdin Document)14. The sixth principle of this UN SCR 1244 second annex, secures FRY institutions by mandating that:

After withdrawal, an agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the following functions:

- Liaison with the international civil mission and the international security presence;
- Marking/clearing minefields;
- Maintaining a presence at Serb patrimonial sites;
- Maintaining a presence at key border crossings.15

This possible return of specified FRY personnel is defined by Article 4 of the UN SCR 1244. While the Ahtisaari-Chernomyrdin Document and the Demilitarization Agreement of the KLA did not specify the nature of this FRY personnel, UN SCR 1244 stated that “military and police personnel will be permitted to return to Kosovo to perform the functions in accordance with annex 2.”16

Concerning KLA and Albanian armed groups, UN SCR 1244:

[D]emands that the KLA and other armed Kosovo Albanian groups end immediately all offensive actions and comply with the requirements for demilitarization as laid down by the head of the international security presence in consultation with the Special Representative of the Secretary-General.17

11 This document (UN Doc. S/1999/649) is referred as the Annex 2 of the UN SCR 1244.
12 Ibid. 5.
13 Ibid. 10.
14 See UN SCR 1244, Annex 2; see also Enver Hasani, “Legal Situation of Kosovo According to the UN Resolution No. 1244 (1999)” (OSCE Institute for Civil Administration in Kosovo, 2000), 6.
15 Ibid.
16 UN SCR 1244, Art 4.
17 Ibid. Art. 15.
On 20 June 1999, NATO Forces signed another document with Albanian military representatives known as the Demilitarization Agreement, according to which the KLA accepted its demilitarization. This agreement states that:

This Undertaking provides for a ceasefire by the UCK, their disengagement from the zones of conflict, subsequent demilitarization and reintegration into civil society, in accordance with the terms of UNSCR 1244 and taking account of the obligations agreed to at Rambouillet and the public commitments made by the Kosovar Albanian Rambouillet delegation.18

What was referred to as the KLA in this agreement was transformed into the Kosovo Protection Corps (KPC), established by UNMIK Regulation 1999/8. KPC here is defined as “civilian emergency service agency”.19 Trying to avoid any possible conflict between the aforementioned FRY personnel and the KLA units transformed in KPC, the Demilitarization Agreement stated that “the UCK agrees not to interfere with those FRY personnel that return to Kosovo to conduct specific tasks as authorized and directed by COMKFOR.”20

Concerning territorial sovereignty, UN SCR 1244 preserves and reaffirms FRY sovereignty and territorial integrity, referencing the Helsinki Final Act of 1975.21 This was done in accordance with all previous UN SC Resolutions (1160 of 31 March 1998, 1199 of 23 September 1998, 1203 of 24 October 1998 and 1239 of 14 May 1999). The fundamental goal of UN SCR 1244 states that it:

Authors the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo.22

As Professor of Law at the Graz University (Austria), Wolfgang Benedek, notes, “in the case of the SC R1244 (1999) the main purpose was to end the violence and restore peace, to address the humanitarian tragedy and to ensure or secure environment for the return of refugees and displaced persons.”23

While defining the goals and functions of the international civilian presence, UN SCR 1244 also refers to the Rambouillet Accords. We can say that the relationship between the Rambouillet Accords and Ahtisaari-Chernomyrdin Document is as follows: the latter comprises the Rambouillet Accords minus the compromise reached between the FRY and the international community during the 78 days of the NATO military air campaign against the FRY. It seems that this compromise includes four important points that differ substantially from the Rambouillet Accords. These are:

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19 UNMIK Regulation No. 1999/8, Sec. 1, 1.1.

20 Demilitarization Agreement, 12.

21 UN SCR 1244, Preamble, Paragraph 10.

22 Ibid. Par. 10.

23 Wolfgang Benedek, “Functions of International Administration and the Case of Kosovo”, in Symposium, 11-17, at 13.
• NATO forces agreed to reduce their circulation to within the territory of Kosova, whereas according to Rambouillet Accords, NATO troops enjoyed the right to move throughout the entire territory of the FRY.  

• While according to the Rambouillet Accords, IAPSK (Implementation Mission) international implementing institutions were under OSCE and EU, the Ahtisaari-Chernomyrdin Document (2nd annex of UN SCR 1244) placed the future international military and civilian presence totally under UN auspices.

• No referendum for Kosova was mentioned in the G-8 statement of Petersburg (S/1999/516) of 6 May 1999, the Ahtisaari-Chernomyrdin Document or UN SCR 1244.

• Resolution 1244 did not foresee a Serbian police force to stay in Kosova and far fewer military forces were foreseen to come back into Kosova, but the KFOR Commander had the right to invite hundreds of Serbian troops back to Kosova. According to Rambouillet Accords, however, the Serbian Police forces and military forces would remain in Kosova but in reduced numbers.

After 12 June 1999, the international administration began to function within the territory of Kosova. Nonetheless it is difficult within existing literature and among scholars to define exactly what kind of status this UN international mission enjoys. Professor of International Law and Public Relations at the University of Prishtina and many European Universities, Blerim Reka, wrote that:

[...]

In the theory of international law, there is no unique approach and qualification of the nature of UNMIK. Although majority of them considered UNMIK as a new form of UN peacekeeping mission, which differed from classical type, some scholars considered UNMIK as a “trustee occupant”. Other authors qualified “UNMIK as a substitution of the state”, and some even called it, as a form of “new trusteeship”. (...). Lagrange, qualifying it as a “direct international administration”.

24 IAPSK, Appendix B, 8: NATO personnel shall enjoy, together with their vehicles, vessels, aircraft, and equipment, free and unrestricted passage and unimpeded access throughout the FR Yugoslavia including associated airspace and territorial waters. This shall include, but not be limited to, the right of bivouac, maneuver, billet, and utilization of any areas or facilities as required for support, training, and operations.

25 Ahtisaari-Chernomyrdin Document aims at “deployment in Kosovo under United Nations auspices of effective international civil and security presences, acting as may be decided under Chapter VII of the Charter, capable of guaranteeing the achievement of common objectives; S/1999/649, Art. 3.

26 IAPSK states that one of the elements to be considered on the process of solution of the final political status is the will of the people: “Three years after the entry into force of this Agreement, an international meeting shall be convened to determine a mechanism for a final settlement for Kosovo, on the basis of the will of the people, opinions of relevant authorities, each Party’s efforts regarding the implementation of this Agreement, and the Helsinki Final Act, and to undertake a comprehensive assessment of the implementation of this Agreement and to consider proposals by any Party for additional measures”; IAPSK, Chapter VIII, Art. 1, 3. Nevertheless, as we clarified in our second report, there is no specification to which “people” IAPSK is referring precisely. See MiRICO WP3, 52-53.

27 UN SC R1244, Annex 2.

28 IAPSK foresee to remain 2500 troops of Yugoslav Army (VJ) guarding the borders (see Chapter 7, Implementation II, Art. IV, 2 (a)); and 2500 other police (MUP) (Art. VI, 4 (d)).

29 Blerim Reka, UNMIK as an International Governance in Post-War Kosova: NATO’s Intervention, UN Administration and Kosovar Aspirations (Logos-A, Shkup, Prishtinë, Tiranë, 2003), 136-37.
UNMIK is composed of four pillars that deal with the most important fields of international administration in Kosova:

- I - Police and Justice (covered by UN)\(^{30}\);
- II - Civil Administration (UN);
- III - Democratization and Institution-Building (OSCE); and
- IV - Economic Development (EU)

3. A Short History of Human and Minority Rights in Kosova

The Albanian population in Kosova perceived their political situation under the SFRY as being largely unjust. Serbian repression during ‘50s and ‘60s was more direct, open and brutal. This oppression decreased during ‘70s, and became more latent. Dozens of Albanians were arrested and sentenced to many years in prison simply because they were caught writing graffiti like “Kosova Republic”. Even if these demands merely advocated egalitarianism, one might be punished immediately and mercilessly if he/she articulated such collective requests. After the peaceful mass demonstrations of 1981, in which police intervened brutally by killing 9 Albanian demonstrators, the Federal Government of the SFRY declared a state of emergency in Kosova. According to the CDHRF from that time until the moment fights between the FRY army and police and the KLA escalated into an open war, more than 750,000 Albanians in one way or another were subjected to police brutal mistreatment, were beaten, tortured, arrested or violently interrogated.\(^{31}\)

Within the legal framework of the SFRY constitution, Kosova Albanians were defined as a “nationality”. Other people who lived within the republics were considered “nations”. Nations enjoyed the right to self-determination including secession while nationalities did not.

After June 1989, when the Republic of Serbia abolished the autonomy Kosova had enjoyed since 1974, the Serbian government applied a strategy of apartheid against the Albanian population. Autonomous political institutions were wiped out; the education curriculum was completely subjugated to that of the Republic of Serbia; the national radio and television of Prishtina and Rilindje newspapers were banned violently; 400,000 students and secondary school pupils were expelled from school and university buildings; more than 300,000 public sector workers were expelled from their places of work.\(^{32}\)

During the war, FRY military forces and various Serbian paramilitary groups killed more than 12,000 unarmed civilians; destroyed more than 119,000 houses; and violently expelled more than 850,000 Albanians from Kosova. This humanitarian disaster occurred from February 1998 to February 1999, and pushed the international community to undertake concrete and threatening steps. The framework-solution international community offered in Rambouillet placed Kosova as an autonomy within the Republic of Serbia. As was described in detail in the previous report, the IASPK addressed the issue of national groups in Kosova in totally depoliticized manner. It purposely avoided the term “people” introducing

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\(^{30}\) This pillar was created on June 2001 since until that time the first pillar was performed by UNHCR and this was due to the initial emergency situation immediately after the war.

\(^{31}\) See WP2, 73-81.

instead the concept of “national communities”, and trying to neutralize any Albanian demands for self-determination. Although Albanians constituted 90% of the overall population, they were politically equated with Serbs, Turks, Bosniacs, Roma, Egyptians etc.

After June 1999, when Serbian military forces withdrew from Kosova, some minority groups (predominantly Serbs and Roma) were particularly vulnerable and were attacked by individual mobs consisting largely of Albanians. In the four months of UNMIK and KFOR administration in the summer and autumn of 1999, according to UNMIK figures 348 ethnically-motivated murders were reported.33 According to KFOR figures, in November 1999, murder victims included 145 ethnic Albanians, 135 Serbs and 99 others.34 In this period a number of Serbs also fled Kosova. There are different and contradicting figures regarding this issue. According to ICG figures that were taken from KFOR, 97,000 Serbs remained after the war in Kosova while around 100,000 fled. On the other hand, according to ESI, 130,000 Serbs are living in Kosova, which accounts for 2/3 of the total prewar Serbian population in Kosova.35 According to the CDHRF “during the period between April and June 2000, 97 persons were killed of whom 51 Albanians, 19 Serbs, 1 Roma, one Italian (a KFOR soldier) and 25 persons whose identity could not be confirmed.”36 While during July-September of that year, 62 persons were killed, 44 of whom were Albanians and 6 Serbs.37 The year 2001 began with a new tragedy: in February a bus carrying nearly 50 Serbs hit a mine, which exploded, leaving 10 Serbs dead. The following months showed a decrease in the number of people who fell victim to the inter-ethnic conflicts.38 The year 2002 marked a decrease in the level of offences in comparison with previous years.39 In the first year, this situation particularly affected restrictions on the freedom of movement of the Serbian population in Kosova. The Serbian population clustered in enclaves faced enormous difficulties in travelling from one part to another. Travel was done mainly through military KFOR escorts. Albanians living in northern part of Mitrovica faced the same situation.40

The CFPSK, the legal framework upon which the PISGs’ work in Kosova is based, regulates human rights and minority rights in accordance with the highest European and international standards. In this respect, the CFPSK includes some of the most important European legal and international documents on human and minority rights, with the exception of the International Covenant on Social and Economic Rights. The third chapter of the CFPSK is dedicated to human rights. This chapter states that the PISGs shall observe and ensure these internationally recognized documents:

- The Universal Declaration on Human Rights
- The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols
- The International Covenant on Civil and Political Rights and the Protocols thereto

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35 See ESI, The Lausanne Principle: Multiethnicity, Territory and the Future of Kosovo’s Serbs (Berlin/Pristina, 7 June 2004), 2.
37 CDHRF Bulletin (July-September 2000), Year X, No. 16, 21.
38 KMDLNJ Buletini (Janar-Mars 2002), Viti XII, Nr. 22, 6.
39 KMDLNJ Buletini (Prill-Qershor 2002), Viti XII, Nr. 23, 5.
40 See King and Mason, op.cit. 111-112.
• The Convention on the Elimination of All Forms of Racial Discrimination
• The Convention on the Elimination of All Forms of Discrimination Against Women
• The Convention on the Rights of the Child
• The European Charter for Regional or Minority Languages; and
• The Council of Europe’s Framework Convention for the Protection of National Minorities  

The CFPSK states that “the provisions on rights and freedoms set forth in these instruments shall be directly applicable in Kosovo as part of this Constitutional Framework.”  

Markku Suksi, Professor of International Law and Director of the Institute of Human Rights at Åbo Akademy University (Finland), emphasized that “these rights and freedoms, that is, apparently the rights and freedoms of the ECHR and those enacted into law by the Kosovo Assembly, shall have priority over all other laws.”  

While the CFPSK includes a wide range of the most important international and European legal instruments for human and minority rights protection, many Albanian experts who directly participated in drafting process criticized the CFPSK for lacking any reference to the political will of the majority and avoiding the topic of resolving Kosovo’s status through a referendum. The Democratic Party of Kosovo, the self-proclaimed political successor to the KLA, initially opposed the CFPSK. “In the course of drafting the CFPSK, adopted in May 2001, these tensions in the governance structures put UNMIK officials in the odd position of having to resist Albanian attempt to include reference to the “will of the people”.”  

The omission of the International Covenant for Economic, Social and Cultural Rights and of the European Social Charter from the list of documents that are part of Kosovo’s legislation is also astonishing. Many debates have been held concerning why these two documents were excluded from Kosovo’s legislation. The most reasonable explanation is that these kinds of rights imply positive steps of the state with financial (for internationals) and budged (for Kosovo government) implications. Neither the international community nor the Kosovo government were or are currently (all indications are that the new Kosova Constitution drawn from the Ahtisaari Plan will also exclude these documents) ready to make these commitments. Nevertheless, taking into consideration the progressive nature of the application of these rights, the absence of these documents in Kosova legislation is one of the biggest failures of the international community in Kosova. It is important to note that also the way UNMIK shaped and conducted the process of privatization in Kosova, with massive disregard for the rights of workers, may also be compelling reason for the exclusion of the aforementioned documents.  

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41 CFPSK, Chapter III, 3.2.
42 Ibid. Chapter III, 3.3.
3.1. Key Concepts, Processes and Developments: Pluralism, Diversities and Asymmetries, Multiculturalism and Inter-Culturalism

After the cessation of hostilities in 1999, many Serbs left Kosova. Even though Serbian authorities purposely exaggerate the number of those who left (more than 200,000), the European Stability Initiative (ESI) argues that approximately 65,000 refugees from Kosovo are in Serbia, “and from this number one should also deduct the numbers of those who have sold property they owned in Kosovo and have fully integrated in Serbia proper.” Many of them sold their properties, while a few of them returned. One of the priorities listed by the PISG is the safe return of all those who want to return to live in Kosova.

Since the international community perceived the war as an ethnic conflict, “multiethnicity” was one of the basic goals of the international presence in Kosova. While UNMIK always asked for tolerance and mutual respect between different communities in Kosova, in reality the international administration strategy led to more segregation between them. After 12 June 1999, fearing that Albanians might undertake revenge acts against Serbs, KFOR and UNMIK followed the strategy of deepening the segregation. The French troops who were responsible for security in the northern part of Kosova were deployed near the Ibër River, in the center of the town of Mitrovica. Serbs were concentrated mainly in northern part of the city, while Albanians were largely in the south. From 2-3 February 2000, organized Serbs in a paramilitary group called Bridgewatchers, triggered the violent expulsion of more than 12,000 Albanians from northern Mitrovica. Eleven Albanians lost their lives.

After eight years it is clear that UNMIK’s strategy of multiethnicity has failed as an approach to reconcile these communities. As was noted in the first report, even before the armed conflict, Kosova society was largely divided between Serbs and Albanians. This is not simply something that can be analyzed from the perspective of a deficit in cultural, ethnic and religious interaction. This division cannot be perceived merely as being naturally rooted in the character of the two nations and as inspired from the bottom. On the contrary, it has always been imposed from the top, i.e. by Serbian political elites with the clear aim of maintaining control over Kosova under the justification of protecting the Serbian minority there. Maintaining a division along ethnic, religious and cultural lines was always an effective tool in the hands of this elite in its efforts to preserve control over Kosova. Kosova, being rich with minerals, was in essence economically important for Serbia. UNMIK unfortunately supported this division, and de facto divided Kosova into an Albanian part governed by UNMIK and Serbian part into which UNMIK purposely did not extend its control. Serbs concentrated in enclaves and in the northern part of Kosova regulate their communal life almost outside of international institutional realm. They were allowed to develop greater institutional links with Belgrade than with Prishtina. This contributed to the further partition of Kosova, since Belgrade denies the political will of the majority and almost all local Serbs recognize neither UNMIK nor Prishtina as a political authority.

47 Bejtullahu, op. cit.
48 Indeed on July 1999 in immediately aftermath, in Grackë village, 14 Serbs were killed. UNMIK thinks that suspected for committing this criminal act is one Albanian who is detained.
49 Intermarriage index was lowest in whole SFRY; see WP2, 58 and 81-82.
3.2. **Majorities and vs. Minorities, the Ethnic Dimension and Multiculturalism**

In its analysis of the IAPSK, the previous report notes that one of the most important negotiating battles between the Serbian Negotiating Team (SNT) and the Albanian Negotiating Team (ATN) concerned what legal status national groups living inside Kosova might enjoy. The SNT concept can be said to have prevailed, since the IAPSK politically equated all of the national groups who live in Kosova. The IAPSK referred to all national groups living in Kosova as “national communities.” This political framework was also brought into the Constitutional Framework on Provisional Self-Government in Kosova (CFPSK). Like the IAPSK, the CFSPK defined Albanians, Serbs, Turks, Bosniacs, Roma, and Egyptians as “national communities.” So, there is no qualitative (political) dimension defining the majority and minorities but just a quantitative (depoliticized) one. This is why whenever one finds the term “minority”, it is used in this quantitative sense. “The legal documents governing Kosova today do not use term national minorities but that of community. Thus based on the current legal documents, the Kosovan population comprises different communities, which means groups of inhabitants belonging to the same ethnic or religious and linguistic group.”

According to Gjylbehare Murati who worked in the Ombudsperson’s Office, there are nine ethnic minority groups mentioned in the official documents in Kosova: Serbs, Montenegrins, Turks, Bosniaks, Roma, Ashkali, Egyptians, Gorani, Croats and Cerkezi. Hugest minority in Kosova is Serbian minority. Serbs are mainly concentrated in the north of Kosova, especially in the municipalities of Zvečan, Zubin Potok, Leposaviq and in the north of the city of Mitrovica. The Serb minority also inhabits some parts of central and eastern Kosova (Anamorava Region) in Novo Brdo, Gjilan and Kamenica municipalities. Gračanica and Çagllavica which actually belong to Prishtina municipality are the biggest centers of the Sebian minority in central Kosova. Approximately 12,000 Serbs live in Gračanica. Ranillug and Partesh are the biggest villages containing Serbs in eastern Kosova. All of the Serbs are Orthodox.

The Roma community is divided in two groups: Albanian-speaking Roma and Serbian-speaking Roma. Ashkali are similar to Roma, while Egyptians claim that they originated in Egypt. They are all Muslims. Bosniaks, who are also Muslim, live in Peja and Mitrovica. The Gorani minority is concentrated mainly in the southern corner of Kosova, in the municipality of Dragash. Even though almost all of them belong to the Islamic religion, some feel close to the Serbs and others closer to the Bosniaks. Gorani speak a specific form of the Slavic language related to Serbian and Bosniaks speak the Bosnian language, which is basically the same as the Serbian language. Even though these minorities, like the majority population, face many problems in their daily lives, they maintain good relations with the majority (Albanians).

One of the main obstacles in establishing good interethnic relations between Albanians and Serbs in Kosova still remains official politics of Belgrade. Albanians still feel insecure about their future, as various Serbian officials still

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50 WP3, 52-53 and 61-62.
51 CFPSK, Chapter 4.
52 Ibid.
54 Ibid., 211.
threaten war if the majority in Kosova realizes its political will by achieving independence. At the same time local, Serbs are largely controlled by Belgrade through its “parallel structures”. According to the OSCE:

[TT]he general term parallel structures is used to define bodies that have been or are operational in Kosovo after 10 June 1999 and that are not mandated for under UN Security Council Resolution 1244. In majority of cases, these institutions operate under the de facto authority of the Serbian government and assume jurisdiction over Kosovo from Serbia proper, or operate in the territory of Kosovo.55

The absolute majority of Serbs perceive themselves as citizens of Serbia, not Kosova. UNMIK politics played a role in this divisive environment and eventually contributed to strengthening these ethnic divisions instead of overcoming them. UNMIK tolerated Belgrade obstructions of the integration process of local Serbs within Kosova society. UNMIK tolerated (even encouraged) parliamentary and presidential elections of Serbia to take place within Kosova. The only spaces in which one could observe good interethnic relations and close co-operation between Serbs and Albanians are in those few places in which they can see the prospect of any common economic prosperity. But UNMIK failed to secure any sustainable economic development in Kosova. Furthermore, it failed to provide any reasonable economic strategy for the future with the prospect of overcoming the deep underdevelopment of Kosova.

The OSCE Mission in Kosovo concluded that “parallel structures are highly politicized issue. By continuing to finance these structures the government of Serbia continues to exert control over parts of Kosovo.”56 “The influence of Serbia authorities is present in all Serbian enclaves throughout Kosova/o, and as such constitutes a stumbling block to the process of integration of minorities into domestic institutions of Kosova/o.”57

On the other hand, there were also signs of discrimination taking place against minorities in Kosova in the aftermath of the war. This discrimination was directed mainly against the Roma and Serbian minority. Nevertheless:

[TT]he roots of the disrespect of community rights can be in part explained by Kosova’s past. The fact that the Albanian community was for many years a politically dominated minority in the region, caught in an often conflictual relationship with the Serbian community, bares its mark on today’s relations between the Albanian majority and the Serbian minority within Kosovo. The difficulty for today’s majority to recognize the rights to the minorities is in part due to this political heritage.58

3.3. Collective Identities

While UNMIK’s approaches to overcome ethic divisions in Kosova have only deepened them, the international community always promoted the final goal of building one civic, not ethnic society. For this reason the official institutions of the international community are promoting one civic identity which might eventually overcome the ethnic one. Now there are many NGOs and politicians who advocate

55 OSCE Mission in Kosovo, “Parallel Structures in Kosovo” (October 2003), 5.
56 Ibid. 44.
57 B. Murati, note 36, 223.
58 Aleksandra Dimitijević, Të Drejtat e Minoriteteve në Kontekst të Kosovës/Prava Manjina na Kontekstu Kosova/Minority Rights in Context of Kosovo, Human Rights Monograph No. 6 (Finnish Human Rights Support Programme Kosovo and Human Rights Centre of University of Prishtina, LEOPRINT, Prishtinë, 2004), 103-104.
for one new collective identity — the “Kosovar” national identity. None of the Serbs could perceive themselves as Albanian and similarly, Albanians could not perceive themselves as Serbs, but both could identify as “Kosovars”. Whenever they live, in enclaves or in the northern part of Kosovo, Serbs always apply to get their identity documents from institutional branches of Serbia inside Kosovo.

Muhamedin Kullashi, Kosova Albanian Professor of Philosophy at the University Paris VIII wrote that:

In order to cultivate a fruitful communication within the European democratic tradition, Kosovo must undertake some efforts as well as toward respecting minority freedoms and rights. This implies dissociation from the practices which dominated for a while in Balkans and abroad, through which state was treated as an instrument of the majority to oppress the minority, whereas the affirmation of one identity was reached through repressing and denying others’ identity.59

3.4. Democratization, the Political Process and Participation

The political system of the international administration imposed in Kosovo does not fit with the elementary paradigm of a democratic society. The most essential condition for a democratic political system is the fundamental principle of power-sharing, which UNMIK does not fulfill. Legislative, executive and judicial powers are concentrated within the highest political authority of UNMIK i.e. lie in the Special Representative of Secretary-General (SRSG) which some scholars call an absolute authority:

The authority of the SRSG according to the Resolution 1244 and the Constitutional Framework is very broad in the three branches of the state governance: the Legislative, the Executive and the Judiciary. Such competencies surpass the political powers even of the President in the presidential state. If we were to compare the expansion of the authority of the SRSG with the authority of the Chief of State, we may conclude that it is found somewhere in the middle of the absolute and constitutional monarch. Many of the SRSG’s powers are of a royal character, given that he exercises final authority over many issues. The SRSG is eligible to use such mechanisms and the absolute right of veto towards the laws of the Assembly of Kosovo and other bodies of self-governance, the right to dissolve the Assembly of Kosovo, as well as series of other powers of a discretionary character, which are typical for absolute monarchies.60

This authority directly derives from UN SCR 1244 which:

[R]equests the Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence, and further requests the Secretary-General to instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner.61

Various scholars underline the undemocratic manner through which Kosovo is governed:

60 Arsim Bajrami, “Resolution 1244 - Current Situation and Necessity to Change It (Dilemmas and Contradictions)”, in Symposium, 71-92, at 76.
61 UN SCR 1244, Art. 6
The functioning of PISG notwithstanding, the Special Representative retains the ultimate power in many areas. To the reserved powers and responsibilities of the SRSG belongs inter alia: the approval of Kosovo's budget, monetary policy, authority over law enforcement including the Kosovo Protection Corps, external relations and the conclusion of international agreements. In addition to the long list of SRSG powers, the Constitutional Framework sets forth a general clause rendering the SRSG and UNMIK almost complete veto power on all decisions adopted by the Provisional Institutions. (...) In Contrast to his extensive powers to supervise PISG, the Special Representative himself is not accountable to the Kosovo institutions or subject to any control exercised by them. Consequently, the enlarged transfer of powers to Kosovars remains incomplete by preserving the unrestrained powers of the Special Representative. This concentration of powers within the hand of one institution is hardly compatible with the principles of democratic governance and rule of law which are essential for the reconstruction of war-torn territories.62

The Regulation 2001/9 of 15 May 2001 (CFPSK) defines the legal and political framework of Provisional Institutions of Self-Government in Kosovo (PISG): Kosovo is an undivided territory throughout which the Provisional Institutions of Self-Government established by this Constitutional Framework for Provisional Self-Government (Constitutional Framework) shall exercise their responsibilities.63

SRSG remains the higher political, legislative, executive and judicial authority in Kosova since “the exercise of the responsibilities of the Provisional Institutions of Self-Government in Kosovo shall not in any way affect or diminish the ultimate authority of the SRSG for the implementation of UNSCR 1244(1999)”64 even though the CFPSK aims to “Promote and respect the principle of the division of powers between the legislature, the executive and the judiciary”.65 The most sensitive aspect that lacks this elementary democratic principle is the dependency of the judiciary on UNMIK’s power, as the CFPSK “does not provide for an individual complaints procedure to review legislative acts of the local administration at the Supreme Court as the precondition for the independent judiciary.”66 Moreover, “Kosova is missing the highest act, the Constitution and the constitutional Court, required as the basic elements of the independent judiciary.”67 Remzije Istrefi who worked as a senior legal assistant in OSCE noted that:

For the time being there is no Constitutional Court in Kosova or any equivalent body, as other instance in the current legal system that would test the legitimacy of any legislative or executive act of UNMIK. The Special Chamber for Constitutional matters foreseen to be created by the CFPSK in the Chapter 9.4.11 as a body that would possibly have competence to determine the legality of SRSG’s decisions for detentions under executive orders or any other decision in question has not been established yet. The established Supreme Court Chamber according the CFPSK has authority to

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63 CFPSK, Chapter 1, Art. 1.2.
64 Ibid. Preamble, Paragraph 9.
65 Ibid. Chapter II (c).
67 Ibid. 57.
preside only over the inter institutional disputes concerning the CFPSK and it does not have any authority over UNMIK or KFOR.\(^{68}\)

This is the reason why some scholars such as Iliriana Islami, Lecturer at the Law Faculty of the University of Prishtina and once Senior Officer in the Department of Protection of Human Rights at the OSCE Mission in Kosovo, perceive the serious threat for human rights in this respect:

The main defect of the International Administration deriving from unlimited legislative and executive power leads to the violation of human rights in Kosova. The United Nations charter ‘reaffirms human rights’. The resolution has set two primary objectives: protection of human rights and protection of minorities. UNMIK’s Regulations though, decelerate the full self-governing process, as one of the objectives provided for in the Resolution. On the other hand, however, they create legal gaps, given that the legal system created by UNMIK is insufficient to respond to the many demands. In this context it is worth emphasizing the violation of human rights by UNMIK officials or even by KFOR troops, whereas the efficient instruments that the citizen of Kosova is provided with to realize his/her rights based on these Regulations, are either too complicated or can hardly be attained. The complication of procedures for the realization of rights, on the other hand, raises issues of violation of the European Convention on Human Rights (Article 51 of the Convention which based on Regulation 99/24 is applicable law in the territory of Kosova.\(^{69}\)

This is the reason some scholars pointed out that:

[7]his mandate doesn't guarantee also the accountability of administration when alleged human rights violations occur. Even though R1244 did provide that human rights protection is one of the main responsibilities of the UNMIK it did not establish any mechanism for enforcing human rights against the acts of its personnel or any NATO led security presence.\(^{70}\)

This makes the international administration in Kosova one of the main violators of human rights. UNMIK can also issue executive orders to keep individuals in detention without court procedures:

The practice of issuing executive orders for extending detention is in a breach with the European Convention on Human Rights and Fundamental Freedoms (ECHR): articles 5(1), (3), (4) and (5) and also with International Covenant on Civil and Political Right, article 9.\(^{71}\)

Blerim Reka, Professor of Public International Law, argued that PISG acted in full disagreement with the competences of SRSG only once, when the Assembly of Kosova sought to challenge the agreement between the FRY and FYROM in February 2001.\(^{72}\) Even though the Presidency of UN SC warned\(^{73}\) the Assembly to constrain itself from any undertakings against UN SCR 1244 and the CFPSK, on 23 May 2002 a majority of the deputies adopted the Resolution on the Protection of the Territorial Integrity of Kosovo. Then SRSG, Michael Steiner, abrogated this resolution the same day it was ratified. The Presidency of UN SC in the 4543rd meeting of the SC backed the SRSG decision stating that the Kosova Assembly


\(^{69}\) Iliriana Islami, “Missions of International Governance of Territorial Administration and the Case of Kosova, in Symposium, 161-174, at 171-172.

\(^{70}\) Istrefi, 269.

\(^{71}\) Ibid., 270.


\(^{73}\) SC/7407 of 22 May 2002.
violated UN SCR 1244. The unlimited authority of the SRSG also seriously affected the executive domain by invalidating certain decisions of the Kosova Government such as the Free Trade Agreement between Kosova and Albania. For this reason:

Compared by Frac尼克’s definition of democracy, as “the role of people in governance and its right to be consulted and to participate in the process by which political values are reconciled and choice made”. UNMIK did not fulfill this achievement. Even, in some cases, especially in the practice of issuing “executive orders”, there were some violations of these principles by the SRSG, especially the violation of general principles of democratic governance, such as the division of power, and one of the basic principle of the rule of law, such is the independency of judiciary, as well as the violation of international human rights law.

According to Blerim Reka, this violated principle of democracy and should be understood in terms of non-accountability:

Non-accountability of UNMIK comes from the fact that SRSG is not accountable to the self-government institutions of Kosova, which were elected in a democratic way. He could take any decision and any measures without the consensus of the PISG of Kosova.

Other scholars also pointed out that “the concentration of legislative, executive and judicial powers, which exist in hands of SRSG does not give a good example of accountability and democratic government, which is characterized by a balance of powers.” Islami wrote that this is the reason UNMIK’s total political control is in contradiction with the frequently proclaimed concept of “self-government”:

How can self-governance be fully realized when, the SRSG of the UN himself exercises the right of veto with regard to the laws adopted by the Assembly of Kosova. Each law adopted by the Assembly of Kosova must be submitted to the SRSG for enactment. Moreover, the Ombudsperson is the sole authority to review requests regarding administrative issues, rather than the court.

Many scholars who are familiar with this problem emphasized the insufficient role and competencies of Ombudsperson. The institution of the Ombudsperson is defined by the CFPSK, according to which:

[N]atural and legal persons in Kosovo shall have the right, without threat of reprisal, to make complaints to an independent Office concerning human rights violations or actions constituting abuse of authority by any public authority in Kosovo.

Nevertheless, to date the Ombudsperson’s competencies have remained very limited, as he only has the competence of giving recommendations to UNMIK. Chesterman noted that “during or following an investigation, the Ombudsperson’s powers were essentially limited to making recommendations, including recommendations that disciplinary or criminal proceedings be instituted against person.” Benedek concluded: “the existence of an Ombudsperson-Institution with

75 Reka, op. cit. 177.
76 Reka, 147.
77 Ibid., 150.
78 Benedek, 15.
79 Islami, 171.
80 CFPSK, Sec. 4, Chapter 10, 10.1.
81 Chesterman, 147.
limited powers is not a sufficient alternative."82 The Ombudsperson himself83 declared that the:

[H]uman rights situation in Kosovo for time-being is below international standards and that Kosovar citizens are discriminated in different forms. He emphasizes that there is lack of legal protection for human rights and also lack of mechanisms where citizens could appeal regarding the discrimination that is conducted against them.84

Kosova inhabitants often feel as being neglected by the top-down processes imposed on them without consultation. There is no major process currently being implemented in Kosova which the citizens supported through a referendum or using other legal means of expressing their will. Two years ago, a poll showed that 54% of the population is against the process of decentralization in the manner that UNMIK and PISG’s are designing it.85 But these processes are continuing.

On the other hand, civil society as one of the most important preconditions of democracy in Kosova is largely fragile because after the conflict it functioned as one of the most beneficial sectors of self-employment while depending completely on foreign international policymaker-donors:

The biggest problems within Kosova society according to the majority of NGOs and citizens are unemployment and the grave economic conditions, corruption, the status of Kosova, lack of security, improper infrastructure, an inadequate education system, drugs alcohol, poor medical services, refugee returns, conditions of people with limited abilities etc. On the other hand, one may notice inconsistencies between official missions of NGOs in Kosova and theirs activities on the ground. This is due to their dependency on the international donors which shape domestic NGOs policies in accordance to their interests and policies.86

This led to a network of thousands of NGOs raising funds for causes international donors are ready to pay for, which most of the time did not fit the elementary needs of the society and population. Thus many citizens:

[A]ssociate the name NGO with small groups of individuals driving a jeep and carrying home a fat paycheck, spending most of the time chasing donors whose funds they embezzle by organizing largely meaningless trainings, conferences, and roundtables. Furthermore, NGOs negative image in the wider public is captured by an array of surveys, which consistently show civil society institutions ranked much lower than political parties and the authorities in terms of trustworthiness.87

The number of registered NGOs in Kosova in the early 2006 totaled roughly 3,643. This represents an enormous increase, as before the war there were only 65 NGOs

82 Benedek, 15.
83 Between July 2000 and December 2006 the position of Ombudsperson in Kosova was exercised by Marek Antoni Nowicki. Actually this position is exercised by his deputy, Hilmi Jashari.
84 Berisha, Zeka, 195.
functioning within Kosova. Nevertheless, according to all estimates only about 500 are active or semi-active. Therefore the impact of civil society on the political process in Kosova, though increasing over the years, is still insignificant and weak.

3.5. Governance

After the deployment of the international presence in Kosova, UNMIK faced two different Albanian governments: DLK’s shadow government in exile, which claimed to posses legitimacy as a direct continuation of the parallel political institutions of Kosova; the other was “the so-called “Provisional Government of Kosova”, led by Hashim Thaçi, which claimed governmental authority in Kosovo. Backed by the armed forces of the KLA, the “Provisional Government” assumed the authority to issue decrees, appoint enterprise managers, and change the names of towns and streets. It also established its own municipal authorities throughout the Albanian inhabited towns and countryside of Kosovo”. Both of these alleged governmental authorities were dismissed by UNMIK. On 15 December 1999 it created the Joint Interim Administrative Structures (JIAS), which consist of four bodies:

- Interim Administrative Council (IAC);
- Kosovo Transitional Council (KTC);
- Administrative Departments; and
- Municipal Administrators;

As Simon Chesterman pointed out:

From February 2000, the JIAS began to replace the parallel governance structures established by Kosovar Albanians that had, for some years, collected revenue and provided basic public services. The executive board of the new body was called the Interim Administrative Council, comprising the three Kosovar Albanian political leaders who were parties to the Rambouillet Accords of June 1999 (Rexhep Qosja, Ibrahim Rugova, and Hashim Thaçi), a Kosovar Serb observer (Rada Trajkovic), and four representatives of UNMIK. The Council was empowered to make recommendations to the Special Representative, who could either accept these or advise in writing seven days of ‘the reasons for his differing decision’.

The KTC included 35 members, including representatives of different political parties, human rights and civil society activists, and ethnic and religious community representatives. The IAC and KTC did not enjoy any independent decision making capacity. While the KTC had a totally advisory nature, in the IAC real authority always remained with the SRSG, which had the right to veto decisions adopted by the IAC.

One of the aims of the international administration in Kosova is “organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections”. To date, six elections have been held in Kosova: three municipal elections and three parliamentary. In the October 2000 municipal elections, DLK won 58% of the overall votes and won in the majority of Kosova municipalities.

88 See V. Murati, 85.
90 Korhonen et. al. note 30, 139-140.
91 Chesterman, 133.
92 UN SCR 1244, 11 (c).
After the CFPSK was compiled on May 2001, the political framework of the central institutions was created. This secured the necessary conditions to hold parliamentary elections in November of that year. DLK won 45.65%, DPK 25.7% and AAK 7.83% of the votes. DLK, DPK and AFK established what they wanted public opinion to perceive as co-governance. In reality this was a fragile coalition that enabled DPK to have the Prime Minister while DLK kept the position of President of Kosova for its leader Ibrahim Rugova. Nevertheless, it seems that the DLK didn’t agree to support DPK’s leader, Hashim Thaçi for Prime Minister. There are also some indications that international diplomatic offices put some pressure on the DPK to exclude Thaçi from the competition. As a result, DPK’s proposal for Prime Minister became Bajram Rexhepi, a well-known doctor in the KLA and the first Albanian mayor of Mitrovica appointed by the KLA Provisional Government immediately after the war. Rugova became President while Rexhepi took the position of Prime Minister. In 2003, municipal elections were held a second time. DLK again won 46% of the votes while DPK won 30%.

The second parliamentary elections took place in October 2004. DLK won 45.42% followed by the DPK, which won 28.85% of the votes. This time one coalition established between DLK and the Alliance for the Future of Kosova (AFK) run by the former KLA commander in the Dukagjini region, Ramush Haradinaj, ran in opposition to the DPK. Even though the AFK won just 8.39%, it took the position of Prime Minister and formed the government together with the DLK, which still held the office of the President and with some other small political groups. But on March 8, after hundred days of governance, Prime Minister Haradinaj was indicted by the International Criminal Tribunal for Yugoslavia and was accused of committing war crimes during the war in Kosova. He resigned from the position of Prime Minister and voluntarily surrendered to The Hague authorities. He is currently still at The Hague, waiting for the final decision to be brought against him in the March of this year.

After Haradinaj’s resignation, Bajram Kosumi, deputy chief of AFK, became the Prime Minister of Kosova. He resigned in June 2006, giving no substantial reasons to justify his decision. It seems that during this time the government was experiencing a difficult period that was accompanied by a decreasing level of trust on the part of Kosova citizens. This may be the reason that the AFK and the international community looked toward one person who enjoyed high authority among the majority of the population. Because the KPC was, and still is, one the most respectable institutions in Kosova, it is understandable that the KPC’s Chief Commander, Lieutenant Agim Çeku was proposed to substitute Kosumi. He accepted the invitation and left KPC.

Both parliamentary and municipal elections took place in Kosova in November 2007. After more than three years in opposition without having won the elections, this time the DPK finally won the parliamentary elections with 34.3% of the votes, while the DLK experienced a great loss of votes, winning just 22.6%. Compared to the number of votes DLK won in the first municipal elections in 2000, the percentage of voters DLK attracted fell by more than 250%! It seems that DLK still cannot manage to compensate for the loss of its charismatic leader, Ibrahim Rugova who died of lung cancer in January 2006, at age of 61. At the beginning of 2008, the DPK, DLK and minority parties reached a coalition. The New Assembly was established and the government was created. Hashim Thaçi (DPK) was elected Prime Minister and Fatmir Sejdiu (DLK) President. DPK also took the Head of the Assembly and 7 ministries, while DLK took 5 ministries. This government offered the Serbs two ministries: the Ministry of Communities and Return and the Ministry of Labor and Social Welfare.

In relation to the PISG, UN SCR 1244 aims at “transferring, as these institutions are established, its administrative responsibilities while overseeing and
supporting the consolidation of Kosovo’s local provisional institutions and other peace-building activities.” ⁹³ After the parliamentary elections of 2004, this transference of competencies seemed to go faster, although PISG’s powers are still very limited and are under the supervision of international authorities. After 2004, five new ministries were created: the Ministry of Local Government Administration, the Ministry of Energy and Mining, the Ministry of Communities and Return, Ministry of the Interior, and the Ministry of Justice. ⁹⁴

In December 2003, UNMIK and PISG imposed a strategy of “standards before status”, alternately known also as “standards for Kosova”. The PISG were asked to fulfill these standards and to meet the criteria set by UNMIK so as to enter a new political stage that would lead to negotiations with the Serbian delegation to determine Kosova’s final status. “Standards for Kosovo,” a document prepared by international community, was composed of a set of benchmarks to be fulfilled by Kosovar institutions by the middle of 2005. ⁹⁵ These standards were ⁹⁶:

- Functioning democratic institutions;
- Rule of law;
- Freedom of movement;
- Sustainable returns and the rights of communities and their members;
- Economy;
- Property rights;
- Dialogue; and
- The Kosovo Protection Corps (KPC)

On 23 May 2005, the UN Secretary General appointed the Permanent Representative of Norway to the North Atlantic Treaty Organization as his Special Envoy to carry out a comprehensive review of Kosovo’s fulfillment of these standards. ⁹⁷ After three months, Ambassador Eide compiled his report, which was attached as an annex to the UN SG’s regular address to the UN President. ⁹⁸ Eide’s reports evaluates that:

Particular progress has been made in the development of new institutional frameworks. After the end of the conflict in 1999, there was a total institutional vacuum in Kosovo. Today, a comprehensive set of institutions has been established which includes executive, legislative and judicial bodies at the central as well as the local levels. Much progress has also been achieved in the development of a sustainable legal framework. The legislative work of the Assembly, the Government and UNMIK has been ambitious, covering essential areas of public life and the economy. Systems providing public services have been put in place across most of Kosovo. A civil service is taking shape. Over the recent period, a significant transfer of

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⁹³ UN SCR 1244, 11 (d).
⁹⁴ Actually there are 15 ministries. Except five aforementioned ministries there are also: Ministry of Finance and Economy; Ministry of Trade and Industry; Ministry of Agriculture, Forestry and Rural Development; Ministry of Education, Science and Technology; Ministry of Environment and Spatial Planning; Ministry of Culture, Youth and Sports; Ministry of Labor and Social Welfare; Ministry of Transport and Communications; Ministry of Public Services; and Ministry of Health.
⁹⁵ CPSR, note 37, 7.
⁹⁶ For detailed explanation of each of these standards and concrete tasks directed toward UNMIK, PISG and civil society, read 117 page-long “Kosovo Standards Implementation Plan” of 31 March 2004 at http://www.unmikonline.org/pub/misc/ksip_eng.pdf.
⁹⁸ S/2005/635.
competences has occurred. The local leaders have gradually assumed ownership of their own institutions. The development of new institutions is undermined by a strong tendency among politicians to see themselves as accountable to their political parties rather than to the public they serve.99

Although Eide’s report stated that the question of opening a new political era to address Kosova’s political status requires more than the implementation of the aforementioned standards, it asks that the status be resolved since “the international community could not live with a policy which was perceived as a policy of status quo”.100 On the other hand, it was impossible to complete the overall process of fulfilling this framework of standards since:

These larger-than-life requirements - such as the rule of law and the reintegration standards - are difficult to fully achieve within any independent and stable state, not the least in an unstable province under international protection. The attainability of the standards is further diminished by the fact that the Kosovo institutions of self-government lack effective control over several standards and thus are in practice unable to live up to the requirements.101

On the other hand, constant efforts have been made to establish some good governance mechanisms within the framework of the PISG. One of these mechanisms is the Advisory Office on Good Governance, Human Rights, Equal Opportunity and Gender that operates within the Office of the Prime Minister. This office played a positive role in trying to bridge the work of civil society and the government. This office, together with civil society and other sectors of society played an important role in drafting the Law Against Discrimination (2004), the Anti-Corruption Law (2005), the Action Plan for Gender Equality, etc. The Anti-Corruption Agency, which aims to supervise all civil workers and politicians holding public offices, was created as a result of the Anti-Corruption Law.102

Nevertheless, until now different NGOs such as the local NGO “ÇOHU” and other international institutions criticized the way the PISG functioned several times. One of Transparency International’s latest reports placed Kosova in fourth place as the country with the highest level of corruption in the world.103 In February 2005, the International Monetary Fund (IMF) criticized the PISG harshly for unreasonably high expenses. “IMF regional representative, Mark Auboin stressed that the “Kosovo Government risks to go bankrupt due to uncontrolled expenses. This condition came both as result of corruption and dysfunctional budget process management.”104 UNMIK has yet to take any serious legal measures to prosecute high political international and local figures involved in corruption.

Some NGOs have also identified procedural mistakes. According to the Centre for Political and Social Research, as regards the Kosova Assembly:

[R]ules of procedures must be better by: earlier preparations of agenda, living the needed time for review of draft legislation etc. One of the biggest critics to the Assembly was directed to the head of the assembly for not giving enough space to opposition parties. (...) Corruption has been identified in all levels of governance but not much has been done that such cases to be solved. “Tender mania” is well known phenomena and the

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99 Ibid.
100 Ibid, Opinion No. 9.
101 Korhonen et al., note 30, 143.
102 See Murati op.cit. note 65, 96-98.
perception by local people is that no tender can be earned without corrupting any of responsible officials.\textsuperscript{105}

At the same time, other NGOs criticized the PISG for the significant lack of transparency. One test conducted by the NGO Youth Initiative for Human Rights (YIHR) on monitoring the law on access to official documents (Regulation No. 2003/32) concluded that the percentage of transparency and accountability of PISG and other institutions has reached a critical level. On the central level, during the year 2006 the institutions replied to only 25.65\% of YIHR requests to review official documents, while at local level only 8.28\% responded and only 16.66\% of courts responded.\textsuperscript{106} The overall level of reply was 15.85\%.\textsuperscript{107}

The legal and political framework under which the PISG operate is not conducive to the proper exercise of good governance principles. As they operate only as the arm of UNMIK (Regulation 2001/9), despite having been established through an election, these institutions ultimately depend on the authority and decisions of the SRSG. According to all legal documents beginning with Resolution 1244, the SRSG is the highest authority in Kosova. In this sense the elections are a democratic tool more in form than in substance. They do not represent the will of the Kosova people regarding the state’s political and legal framework or how it should be governed. The legal order in Kosova still represents, and unfortunately will continue represent (according to the Ahtisaari Plan) a political agreement and a balance between the main international actors rather than the will of the people of Kosova. Under these circumstances it will be difficult to create proper institutions that will be accountable for their behaviors and acts.

3.6. **Inclusion and Integration**

The CFPSK is designed to create all the necessary mechanisms to enable successful ethnic and gender inclusion within the institutional life of Kosova. The CFPSK applies positive discrimination for minorities in Kosova. It ensures that among the total seats within Kosova Assembly, “twenty (20) of the 120 seats shall be reserved for the additional representation of non-Albanian Kosovo Communities”.\textsuperscript{108} Concerning the Serb minority:

Ten (10) seats shall be allocated to parties, coalitions, citizens’ initiatives and independent candidates having declared themselves representing the Kosovo Serb Community. These seats shall be distributed to such parties, coalitions, citizens’ initiatives and independent candidates in proportion to the number of valid votes received by them in the election to the Assembly.\textsuperscript{109}

Another 10 seats “shall be allocated to other Communities as follows: the Roma, Ashkali and Egyptian Communities four (4), the Bosniak Community three (3), the Turkish Community two (2) and the Gorani Community one (1)”\textsuperscript{110}. The CFPSK also states that “at all times, at least two Ministers shall be from Communities other than the Community having a majority representation in the

\textsuperscript{105} CPSR, 20.
\textsuperscript{107} Ibid.
\textsuperscript{108} CFPSK, Chapter 9, sec. 1, 9.1.3 (b).
\textsuperscript{109} Ibid. Chapter 9, sec. 1, 9.1.3 (b) (i).
\textsuperscript{110} Ibid. Chapter 9, sec. 1, 9.1.3 (b) (ii).
Assembly,” one of whom necessarily belongs to the Serbian minority and one to another Community. Other institutions have also made considerable progress toward including minorities. Nearly 10% of the members of the KPC belong to minority groups, while 16% of the KPS is composed of minority members. The OSCE reports that the existence of parallel judiciary structures is one of the problems preventing Serbian judges and prosecutors from integrating in Kosova judiciary system.

Considerable progress has been made in the field of gender inclusion within institutional life in Kosova in recent years. According to the UNMIK Office of Gender Affairs, as a direct result of institutional measures undertaken to create necessary conditions for gender representation within political institutions, over 28% of the deputies in the Kosova Assembly are women. This holds true for female representation within local assemblies. Nevertheless, only 10% of the ministers and 3.8% of the members of Parliamentary Commissions are female. Within the judiciary 19% of judges and 5.5% Kosova Police Service members are female. There were some obstacles in achieving multiethnic representation in the judicial system.

3.7. Equality and Discrimination

Yugoslav and Serbian state institutions discriminated against Kosova’s population (especially Albanians) for many decades.

Kosova was a place where for decades continuous discrimination took place, mainly directed against Albanians in Kosovo. Such discrimination was general and was done in ethnic basis. All branches of government which existed were discriminative and were created without the will of the majority of the people of Kosovo. That government had promulgated discriminative laws and interpreted them according to its desires and interests.

Thus UNMIK’s initial decision to incorporate laws promulgated during the time of Milosevic into Kosova’s legal system was met with widespread dissatisfaction. First, an UNMIK regulation explicitly stated that all the laws ratified before 24 March 1999 (the day NATO began its military campaign against FRY), were applicable in Kosova. By doing so, UNMIK “urged a huge debate which had a certain impact on SRSG to change some things with the regulation 1999/24”. This regulation defines that the applicable laws in Kosova include:

- UNMIK regulations promulgated by SRSG and additional instruments

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111 Ibid. Chapter 9, sec. 3, 9.3.5.
112 Dimitrijević, 133.
115 Ibid.
118 UNMIK Regulation 1999/1 of 25 June 1999, Art. 3.
119 Zogaj et. al., 18.
• Laws in power in Kosova until 22 March 1989
• If there are cases which do not belong to any of these fields, then the laws after 22 March 1999 are valid if they do not have discriminatory nature and if they are in accordance with international standards on human rights.\textsuperscript{120}

The prohibition of discrimination is regulated in accordance with the highest European and international standards on human rights.\textsuperscript{121} The CFPSK is determined that “all persons in Kosovo shall enjoy, without discrimination on any ground and in full equality, human rights and fundamental freedoms.”\textsuperscript{122} On 19 February 2004, the Kosova Assembly passed the Anti-Discrimination Law, which the SRSYG signed four months later. It states that regulation of issues concerning discrimination would be based on:

\begin{quote}
[The principle of equal treatment which means that there would not be any kind of direct or indirect discrimination on the basis of the gender, age, marital status, language, physical or mental disabilities, sexual orientation, nation, political thoughts and attitudes, religion or faith, social or ethnic belonging, race, property, birth, or other status.\textsuperscript{123}
\end{quote}

YIHR monitored the implementation of the Anti-Discrimination Law (2004/32). It concluded that many problems exist concerning the mechanisms needed to implement this law in practice.\textsuperscript{124}

From the very beginning of the international presence in Kosova, UNMIK never tolerated the creation of an institution to monitor the relationship between official power and human rights issues. In 2005, the Parliamentary Assembly of the Council of Europe, through Resolution 1417, required that UNMIK create a Human Rights Court in Kosova with power over the international and national administration and with a direct link to the European Court of Human Rights.\textsuperscript{125} Unfortunately this court was never created. This left Kosova a black hole in the European system of human rights as it was unable to reach the Strasbourg court due to its unresolved political status. This situation is rendered even more absurd and grotesque if one takes into consideration the fact that European Convention on Human Rights is part of Kosova’s legal order. Nevertheless, Kosova citizens (who the CFPSK merely labeled as residents) do not have right to apply to the European Court for Human Rights. The only institution dealing with this sensitive domain in Kosova remains the Ombudsperson, who disposes of very limited powers.

It seems that all other communities except Serbs are relatively satisfied with the official measures taken to combat discrimination. Bosnian community representative and the former Minister of Health, Sadik Idriz, declared that:

Bosnians and Turks of the Prizren region have the possibilities for education in their language, beginning from the primary level to the university level.

\textsuperscript{120} UNMIK Regulation 1999/24 of 25 December 1999.
\textsuperscript{121} Berisha, Zeka, 170.
\textsuperscript{122} CFPSK, Chapter 3, 3.1.
\textsuperscript{123} Ligj i Kundër Diskriminimit/Закон Против Дискриминације/Avrımcilğia Karşi Yasa, 2004/3, Chapter I, Art. 2 (a).
\textsuperscript{125} See Resolution 1417 (2005), Protection of Human Rights in Kosovo, Assembly debate on 25 January 2005 (3rd sitting), doc.10393, report of the Committee on Legal Affairs and Human Rights, Rapporteur: Mr.Lloyd).
He also declared that after the war in Kosovo a considerable progress was made regarding the respect of minority languages.\textsuperscript{126}

Nevertheless, though a considerable number of laws regulate antidiscrimination mechanisms, in reality discrimination takes place in several fields of society. Among the most vulnerable groups are persons with physical or mental disabilities:

[F]rom the practice we can notice that even though many persons with physical or mental disabilities apply for certain job positions they are not treated equally and very rarely happens to be accepted in a job. Disability persons in Kosovo are discriminated in all spheres of life and also in employment.\textsuperscript{127}

Some experts warned that the Law on Pensions for the People with Disabilities is poorly constructed:

The defect of this law is the fact that just those persons who are 100% invalid and totally unable to work can benefit from it. This means that the remaining number of persons with the physical or mental disabilities who cannot benefit from this law is high. This opens new possibilities of discrimination since on the one hand they could not use the pension advantage while at the other hand they could not get a job because the society cannot effectively create new working places for them.\textsuperscript{128}

Except for Serbs who disregard Kosova institutions and fulfill their needs through parallel structures, the most discriminated minority in Kosova are Roma. Immediately after the war, most Roma who used to live in the southern part of Mitrovica were violently expelled from this region by Albanians who perceived them as collaborators of Serbian regime. For this reason they were collectively resettled in the Serbian inhabited municipality of Zveçan, north of Kosova. UNHCR and UNMIK constructed a refugee camp for 112 displaced Roma families, located near the main foundry of “Trepça” mine. Five years later (2004), the World Health Organization (WTO) analyzed the environment in which these families were settled and concluded that the space was highly contaminated. These camps were:

[F]ound to have high blood lead levels (BLLs) by WTO. (...) According to the July report produced by WTO, lead has chronic multi system effects in human body, but the most significant effect is on IQ levels were meta analysis of numerous studies shows increases in blood lead from 10 to 20 micrograms/dl was associated with a decrease of 2.6 IQ points. These impacts are irreversible. (...). In the Zitkovac camp some of the soils were 100.5 times over and above recommended levels. For the Cesminlug Camp, the situation is even worse with levels exceeding 359.5 times the safe limits.\textsuperscript{129}

After the Roma had spent seven years living in these miserable and dangerous conditions, UNMIK and the PISG jointly undertook their evacuation into newly built homes and apartments. Though the environment in Kosova has recently been much more friendly to Roma, their position is still poor due to a high rate of illiteracy, high unemployment and poverty. It is our view that the improvement the Roma position in Kosova is linked to the adoption of regional approaches on the European level. Solutions to the problems Roma face should also be sought in

\textsuperscript{126} Ibid. 181.
\textsuperscript{127} Ibid. 183.
\textsuperscript{128} Fitore Gashi, Të Drejtat e Personave me Aftësi të Kufizuara në Kosovë/Prava Lica sa Ogreničenim Sposobnostima na Kosovu/The Rights of Persons with Disability in Kosovo, Human Rights Monograph No. 8 (Finnish Human Rights Support Programme Kosovo and Human Rights Centre of University of Prishtina, LEOPRINT, Prishtinë, 2004), 15.
\textsuperscript{129} Bejtullahu, 255.
European realm, as the Roma community predominantly lives in poor conditions throughout the continent.

The PISG promulgated the Law on Gender Equality to create equal possibilities for both genders. 130 “This law guarantees high standards of human rights and it is in accordance with the ECHR.” 131

3.8. National and Regional Stability

Political stability in Kosova is very fragile due to the area’s unresolved political status. This instability has had an impact on many countries in the Balkan region. First of all it has direct impact on the stability of the FYR of Macedonia as the large Albanian population is still dissatisfied with its political status within the state. The possible partition of Kosova would be followed by the partition of the FYROM and perhaps Bosnia and Herzegovina. Developments in Kosova always influence the political and economic stability of Serbia and Albania. This uncertain political situation also has political and socio-economic effects on the stability of Kosova.

The current frustration of the majority of the population derives from two sources: political and economic. Albanians thought that after a maximum of three years their political future would be clear and would be resolved based on their political will. At the Rambouillet conference it was stated that three years after the implementation of the document, the political status of Kosova would be solved. We are now entering an eighth year under international rule, and the political status of Kosova remains unresolved. The economic conditions in Kosova, where 16% of the population lives in extreme poverty (a number likely to increase) make the security situation extremely very fragile.

These two conditions combined can explain the violent events of 17 and 18 March 2004, which followed the deaths of two Albanian children from Mitrovica. As one of the survivors of the incident claimed, the children were forced to jump into the Iber River to escape dogs unleashed by a group of Serbs. These events triggered an angry backlash among the Albanian population, which in led some uncontrolled groups to attack the Serb minority. During the course of these events 19 people died, 12 Albanians and 7 Serbs. Most of were shot by KFOR soldiers, though no one has taken responsibility for these actions or been brought to justice. Sonja Biserko of the Helsinki Committee for Human Rights in Serbia concluded that there is a direct link between international political limits imposed on the majority population of Kosova and people’s frustration:

Because of the unsettled status, Kosovo has extremely limited access to international, and most of all, economic organizations, including for example the Stability Pact. This additionally and considerably decelerates development and obstructs the resolution of the poverty issue. According to a public survey conducted in Kosovo, the overwhelming majority of Albanians think that the basic source of of the problem is undefined status. A high index of political pessimism within Kosovo’s population due to unfulfilled expectations increases tensions in Kosovo and reflects on interethnic relations. All of these led to the March violence against the Serbian minority. 132

130 Law No. 2004/2.
131 Zogaj, et. al. 62.
Although everyone is concerned about the final political status of Kosova, there are many indicators that clearly show the Kosova population’s readiness to engage in demonstrations against social and economic misery rather than on political issues. Various socio-economic indicators support these indications. Current unemployment rates are very high. “Kosovo is one of the poorest parts of Europe with the GDP at € 1,232 (World Bank 2006) and unemployment at around 42.2% (EU Commission 2007)”\(^{133}\), but others believe that the level of unemployment is higher. Professor Perritt Jr. believes the unemployment rate in Kosova to at 60%\(^{134}\) as some people who are able to work are not registered as unemployed persons. In addition, 37% of the population lives close to the poverty line.\(^{135}\) At the same time “Kosovo faces low economic growth and an enormous trade deficit amounting to € 1,34 billion (ECIKS 2006)”.\(^{136}\) Perritt Jr. stated that “uncertainty about final status discourages potential investors from taking even the first step to explore investing in Kosovo.”\(^{137}\) He:

Caused an inquiry to be to be made with McDonald’s headquarters near Chicago as to how some Kosovar would-be entrepreneurs could apply for a franchise in Kosovo. McDonald’s was not interested because Kosovo does not show up as a country on its lists.\(^{138}\)

According to the Internal Security Sector Review (ISSR), there is direct link between economic problems in Kosova such as underdevelopment, poverty and unemployment with general instability:

Although the international community has largely focused on the issue of interethnic violence, the ISSR found that for the people of Kosovo high unemployment, a lack of economic development and widespread poverty have created an atmosphere of insecurity. Economic instability has exacerbated problems such as ethnic violence, corruption, increased crime rates and contributed to a growth in mistrust of Kosovo’s key institutions of government, both international and indigenous. The ISSR found that the economic situation and current demographic trends mean that the greatest security challenge lies in promoting economic development.\(^{139}\)

All these are signs that Kosova is an unexploded political and socio-economic mine, and that the actual status quo should be changed in order to avoid possible unrest in the future (Ahtisaari Plan).

### 3.9. Interethnic Tolerance, Coexistence and Cooperation

Though after the war it appeared that almost all the international attention was directed towards promoting interethnic tolerance and multiethnic coexistence in

\(^{133}\) Forum 2015, Kosovo’s Foreign Policy: Kosovo’s Post-Status Foreign Policy (Kosovo Foundation for Open Society, Adnan Rezniqi CO, Prishtinë, 2007), 19.


\(^{136}\) Forum 2015, op. cit.

\(^{137}\) Perritt Jr., 22.

\(^{138}\) ibid. 63

\(^{139}\) ISSR/Rishikimi i Sektorit për Siguri të Brendshme/Preispitavanje Sektora za Unutrašnje Bezbednosti, Kosovo Internal Security Sector Review (ISSR, PISG and UNDP), XII.
Kosova, it is clear that UNMIK’s strategy did not produce the desired outcome. This strategy deepened the existing animosity between Albanians and Serbs. The Belgrade regime, who violently occupied and maintained its rule over Kosova, had cultivated this animosity for decades. Instead of pursuing a strategy to create economic development and job opportunities that might lead toward interethnic integration and cooperation, the international community and UNMIK tolerated that Belgrade exercise its negative political control upon local Serbs. The regime pushed them to dismiss the international presence and Kosova’s central political institutions. It encouraged them to build their own parallel structures and institutions, which now threaten Kosova with total partition. This has led some scholars to evaluate the international community’s strategy as counterproductive:

Although it is questionable whether the international community can to begin with be the source, the driver or even the catalyst of ethnic reconciliation - or whether the negotiation of multiethnic relations is essentially something outside the ambit of effective external guidance - the international community’s efforts to achieve a multiethnic society have failed. The reason of this failure lies in the paradox of the employed methods for reaching the objective; the methods used to achieve a functioning multiethnic society are based on existing ethnic divisions. (...) While the objective itself - the inclusion of minority communities - is essential, the chosen methods can be counterproductive as they institutionalize ethnic divisions.140

UNMIK’s tolerance of Belgrade’s military, political and institutional impact on local Serbs in Kosova encouraged Serbs to boycott social, political and institutional life in Kosova. This led to the creation of self-sufficient, isolated Serbian territories that created horizontal links with each other and vertical ties with Belgrade: [I]n practice there is illegal approach of ethnic enclaves in Kosova, which do not respect the unity of UNMIK’s system, neither the unity of the territorial integrity in Kosova, nor the system of UNMIK’s regulations. On the contrary: they created parallel illegal, executive, administrative, judiciary, and economic structures in their enclaves, supported by Belgrade authorities.”141

Noticing the Belgrade authorities’ negative influence, one of the ICG’s earliest recommendations was to scrap this approach and create institutional opportunities for Serbs within Kosova so that they might achieve the same rights as Albanians and other minorities:

The first step in any viable approach to dealing with the Serbs in Kosovo has to be breaking the influence Belgrade continues to exercise by virtue of the money, propaganda, and personnel it supplies to Mitrovica and to the Serb enclaves in the south.142

But UNMIK did the exact opposite, even though some well known institutions and NGOs such as the ICG and OSCE recommended dissolving these structures. The OSCE report on parallel structures concluded that: “UNMIK needs to seek the cooperation of Belgrade to dismantle these structures”.143 To date, Belgrade has refused to co-operate on this issue. On the contrary, Belgrade enlarged its influence by increasing funds dedicated maintain its parallel structures. The OSCE identified six important fields of Serb social, political, economic and cultural life covered by the activities of the parallel structures:

- Security

140 Korhonen et. al. 148.
141 Reka, 157.
142 ICG, 6.
143 OSCE Mission in Kosovo, 6.
• Judiciary system
• Administrative structures
• Education
• Healthcare
• Internal Affairs (Ministry)\textsuperscript{144}

Until recently, almost all these parallel structures functioned legally under the authority of the Serbian Coordination Center for Kosovo (SCCK). The OSCE recommended that UNMIK prohibit the SCCK from opening offices in Kosovo without SRSG permission.\textsuperscript{145} After October 2006, the SCCK promoted to the position of a ministry within the Serbian Government, called Ministry for Kosovo and Metohija (MKH). In December 2006, the MKH opened an office North Mitrovica, without SRSG permission. The SRSG and UNMIK took no measures against this action. All the facts suggest that international approach is strengthening the link between the Belgrade controlled parallel structures and the livelihoods of the Serbian population. This works against the frequently mentioned idea of a “multiethnic society since the failure to reintegrate the Serbs would likely lead to a formalization of Kosovo’s de facto partition along Ibar River, which divides the northern and southern portions of Mitrovica.”\textsuperscript{146}

On the other hand, the lack of any strategy for economic development oriented the international community more towards security than towards economic progress. This further distanced the Serbs. Most of the salaries offered by Belgrade are higher than those offered by the public sector in Kosovo:

The salary paid by the Serbian Ministry of Education and Sports to Kosovo Serb teachers working in Kosovo is approximately twice the average salary that teachers receive in Serbia proper. The SMES states that the purpose of the higher salaries is to compensate Kosovo Serb teachers for working in Kosovo and to encourage them to stay in their positions. Kosovo Serb teacher also receive salaries from the Kosova Ministry of Education Science and Technology (KMEST). The effect is that a Kosovo Albanian teacher working under the KMEST earns 200 Euro per month, while a Kosovo Serb teacher working under both the SMES and the KMEST can earn as much as 500 euro per month.\textsuperscript{147}

One of the most detailed reports about the Serbian minority in Kosova, compiled by CDHRF in March 2006, stated that in western and central Kosova, living conditions in Serbian villages are poor. In eastern areas, however, conditions much better than in other regions where Serbs live.\textsuperscript{148} One reason Serbs frequently give to indicate the lack of “freedom of movement” is fear. It seems, however, that this is the result of perception rather than of reality. A considerable number of Serbs still remains hostages of the critical situation that immediately followed the war. The best example of this problem of perception is Todorka Nikolić, a 60-year-old Serbian woman from Rahovec municipality in eastern Kosova. She said that the security situation is good “because nobody is provoking us. I didn’t try to go to Rahovec during these last six years. Maybe nothing is going to happen to me, but I fear.”\textsuperscript{149} On the other hand, Belgrade’s impact upon local Serbs through its parallel structures combined with strong inner social cohesion produces an unfavorable

\textsuperscript{144} See OSCE report on parallel structures.
\textsuperscript{145} Ibid. 9.
\textsuperscript{146} ICG, 7.
\textsuperscript{147} Ibid., 33.
\textsuperscript{149} Ibid. 18
environment for integration. When a Serb decides to join institutions such as the KPC, he often does not tell his community where he works because of the possibility of being labeled a “traitor” or “collaborationist”.150

Although UNMIK and the PISG encouraged the return process of displaced Kosova Serbs who are living in Serbia, the results so far are below expectation and are unsatisfying. On the other hand, the main problem the families who have returned face is that:

Returnees were coming back but they were not integrating with the receiving community. Very often, to avoid confrontation, the international community and donors encouraged return to predominantly mono-ethnic areas, which resulted in the creation of secluded enclaves of minorities surrounded by Albanian populated villages. As a consequence the return process was characterized with what came to be named ‘enclavization’ which raised questions about future integration and sustainability.151

Kosova Serbs often boycotted central and local elections held in Kosova during these eight years of international rule. “The main reason for non-participation has been the influence of the Belgrade official authorities on Serbian political representatives in Kosovo, urging them until late in the process to boycott the elections.”152 During the 2004 and 2007 elections the number of local Serbs who participated was lower than 1%, which is discouraging. “The boycott of PISG responsibilities in returns from the side of UNMIK and returnees themselves further increased the lethargy of the already little-motivated Albanian leaders with respect to the returns policy.”

UNMIK undertook different steps and employed many measures to encourage the Serbs to participate in the political process. These were largely unsuccessful. One of these steps was a decentralization proposal that then SRSG, Michael Steiner, offered to the Serbs in the north of Kosova to encourage participation in the elections.

Since 2002, when UNMIK launched the idea of decentralization in Kosovo and up to this day, decentralization is seen as the main tool for including the Serb community in government and for developing power and decision-making responsibilities to the communities, especially to the Serb community.154

Belgrade official politics politicized decentralization in order to institutionalize ethnic divisions inside Kosova:

There is no doubt that decentralization in Kosovo has been seen as a way to divide it into two entities - the Serb and the Albanian entities. The aim to divide Kosovo has been expressed clearly by many leaders of Kosovo Serbs, and lately even by Serbian President Boris Tadic and other high ranking Serbian officials. On the other hand, the Serbs plans for decentralization

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150 Ibid. 10-11. In HRCUP we bear witness to this bitter experience. In year 2005 we organized the seminar “International and Kosova Human Rights Standards for KPC”. One of the participants that belonged to Serbian minority refused to participate during the time national media came to follow this event. He told us that he is afraid that somebody from his community will realize that he is the member of the KPC and can see him participating together with Albanians in this event.

151 Bejtullahu, 249-250.

152 Bekim Çollaku, “Kosovo: Accountable and Democratic Institutions as the Main Prerequisite for the European Integration”, in Policy Development, 11-38, at 21.

153 Bejtullahu, 250.

154 Rama, in Policy Development, at 332.
have clearly territorial tendencies and are aimed at legitimizing the existing enclaves.\textsuperscript{155}

Rebuilding, rehabilitation and reconstruction of damaged properties (i.e. houses) after the 1999 and March 2004 events were among the international and national administration in Kosova’s highest priorities. Though it can be argued that significant results have been made in this field, the rebuilding, rehabilitation and reconstruction of inter-ethnic relations has not yet succeeded. Nevertheless, under these political circumstances, in which the Albaninan majority has no clear perspective for the future, in which the Belgrade regime constantly misuses the Serbian minority, and in which the international community promotes ethnic division rather than integration, it is impossible to improve inter-ethnic relations between Albanians the Serbs significantly. Since the situation is so hostile on the ground, the prospect of establishing a mechanism of transitional justice is very vague. To date partial results have been achieved in the documentation of war crimes in Kosova. According to a recent survey conducted by the UNDP, both nations, Albanians and Serbs, favored the establishment of mechanisms to deal with the legacies of war crimes in Kosova in the future.\textsuperscript{156}

4. The Situation of Minorities

4.1. The Definition of Minorities in the Legislation

As was clarified above, two basic documents, UNSC Resolution 1244 and in CFPSK, do not use the word minority in an attempt to escape the political implications of this term. The new term, community, was designed for all ethnic groups in Kosova. This terminology was inherited from the Rambouillet Accords (it also influenced the Ohrid Agreement in Macedonia). It will most likely be part of Kosova’s legal order under the Ahtisaari Plan, which continues to apply the same logic and standards as Rambouillet with regard to the term community.\textsuperscript{157} The CFPSK always used the word community. This term also continues to be used in other laws and regulations that are issued by the SRSG or the Kosova Assembly. Nevertheless, in daily usage the term community has been equated with the term minority. In the political discourse of the international community, Albanians are always treated as the majority while the other ethnic groups are referred to as communities, meaning minorities.

4.2. Concepts and classifications of minorities

As previous reports have stated, the issue of who is the majority and who is the minority in Kosova was always hotly debated. Serbs, though traditionally a minority in Kosova, claimed and still claim that since Kosova is part of Serbia they are the majority and Albanians are the minority. Albanians, on the other hand, always claimed that since they are majority in Kosova, they should be treated as such in

\textsuperscript{155} Ibid. 349.
political terms, while Serbs should be treated as the minority. This debate has continued to this day, particularly as the issue of Kosova’s political status is on the agenda.

In the aftermath of the war in Kosova, there was great distrust between people living in Kosova, particularly between Albanians and Serbs. The position of the Serbs after the war was quite weak, as many feared revenge from the Albanian side. Many others who suffered individual assaults either left Kosovo or were barricaded in enclaves. As previously noted, the Belgrade regime, and occasionally UNMIK policies, supported the confinement of the Serbs. Therefore in Serb majority areas, Serbs created their own institutions on the local level that were more accountable to the Belgrade than to Prishtina and UNMIK.

UNMIK and PISG have made constant efforts to set some standards for the protection of minorities, at least in the legislative field. The main instrument in this regard is the CFPSK, or UNMIK Regulation 2001/9. The CFPSK set the priority for Kosova’s institutions of protecting minorities by creating appropriate conditions to enable them to develop and maintain their identities. “Communities of inhabitants belonging to the same ethnic or religious or linguistic group shall have the rights in order to preserve, protect and express their ethnic, cultural, and linguistic identities.”

After June 1999 many important international organization such as the EU, CoE, OSCE, UNHCR, etc., became involved in Kosova, and tried to build trust between Albanians and other ethnicities. Relationships between Albanians and Egyptians, Ashkali, Turks, and Bosnians never deteriorated. These minorities played an active role in Kosova society, participated in Kosova’s institutions, and have stabilized their relationship with the Albanian majority in the seven years since the war. The same cannot be said about relationships between the Albanians and Serbs and Roma, who were particularly effected by the last war. The position of the Roma minority has improved significantly in recent years. They are integrating into Kosova society and feel free to live and move throughout Kosova. Though the position of Serbs has improved significantly in the last two years, it is still strained due to the deadlock over the political status of Kosova. Today, their position due in large part to pressure from Belgrade not to integrate into Kosova’s institutions rather than to any pressure from individual Albanians. The institutions of Kosova are trying to demonstrate their readiness to integrate Serbs into their structures.

The CFPSK has foreseen the use of positive discrimination as a tool to protect minority rights. The Kosova Assembly has 120 seats. In addition to directly competing for these 100 seats, 20 seats have been set aside for minorities in the Assembly. Out of the 20 places granted, 10 are for Serbs, 4 are for the Roma, Egyptian and Ashkali community, 3 seats are for the Bosniak community, 2 are for the Turkish community and 1 seat is for the Gorani community. Furthermore, one to two ministries should always be handed to Serbs, depending on the total number of ministries, while another should be administered in alternation by other minority groups. The composition of Kosova’s population is the best argument that this constitutes positive discrimination. The Statistical Office of Kosovo estimates that out of a total population of 1.9 million, 88% are Albanian, 7% are Serbs, and 5% are others.

Albanian and Serbian languages are official languages at the national and local levels. Therefore the official languages of the Kosova Assembly, Government and Municipal Assemblies are Albanian and Serbian. Nevertheless, other minorities

158 CFPSK, 11.
159 Ibid. Chapter 9, Section 1, Paragraph 9.1.3
160 Ibid.
have the right to address the Assembly and to submit laws, or any relevant
documents or requests, in their own language. Furthermore all laws promulgated at
the central level are also to be published in the Bosniak and Turkish languages. At
the municipal level, all minorities (communities) have the right to have all relevant
documents translated in their own language and to use their own language with
civil servants as well as during the municipal assembly sessions. The names of
cities, villages or streets in areas where communities whose language is neither
Albanian nor Serbian live are also to be written in the language of that
community.162

According to the CFPSK, members of the communities in Kosova also have
the right to be educated in their own language, and use it freely in courts,
agencies, and other public institutions in Kosova. They should enjoy equal
opportunities for employment in all public bodies at all levels, so as to integrate
with other communities. Minorities have the right to safeguard their culture and
history by preserving the historical, religious, and cultural importance of their
communities.

In addition to the CFPSK, the main framework guaranteeing the rights of the
minorities (communities), minority rights are also guarantied through various laws
and institutions. The Anti-Discrimination Law is one of the most comprehensive
laws. It aims to influence the creation of good relations between communities
while banning all forms of discriminations between them. This law should assist in
preventing any discrimination of minorities in real life situations. It should serve to
create a bond between communities, review their needs in order to ensure human
rights standards, and provide everyone with equal opportunities.

The Framework for the Protection and Rights of Communities in Kosova
(FPRCK) was a document the Kosova delegation offered to the Serbian minority,
the Serbian government, and international mediators during the negotiations on
Kosova's political status early last year. This document was meant to show the
political willingness of the Albanian majority in Kosova to guarantee the various
minority rights needed to build a democratic state that would bring peace among
people. This lengthy legal document states, *inter alia*, that

Kosova would respect, protect and promote ethnic identity, culture,
language and religion of all persons and communities who live in Kosova
society with tolerance, integration and special respect and for this reason
there would be adequate law guaranties.163

The FPRCK foresaw that the Kosova’s Assembly would adopt the Law on Community
Rights after gaining independence. This law will also directly address minority
rights, even though it is dependent on the political status of Kosova. According to
the FPRCK the “primary issues of this Constitutional Law would be local self-
government and territorial organization, language, education, culture, and specific
matters for community media”.164

162 For the way how the language usage was regulated in the central level see CFPSK,
Chapter 9, Section 1, Paragraphs 49, 50, 51. For local level see Regulation No. 2000/45, On
Self-Government of Municipalities in Kosovo of 11 August 2000, Chapter 1, Section 9 and
Regulation No.2007/30, Amending UNMIK Regulation No.2000/45 on Self-Government of
Municipalities in Kosovo, 16 October 2007, Chapter 1, Section 9.
163 Framework of Protection and Rights of Kosova Communities, 1.2.4.
4.3. Institutions and Minorities

There are certain bodies within Kosova’s institutions that deal with the interests of the communities/minorities. Thus the CFPSK requires that the Assembly create a Committee on the Rights and Interests of Communities (CRIC), composed of two members of each community. This committee can request to review laws that are in affect the interests of communities before their adoption by the Assembly. It can also make recommendations on a proposed law in order to protect the rights of communities.\(^{165}\) The CRIC played an important role in reviewing laws that deal with the rights of communities. CRIC was and is fully functional. The president of this committee is Randjel Nojkic, a Serbian representative. As SRSG reported to the Security Council in June 2007, in 2007 alone the CRIC held 11 meetings and reviewed 10 amendments to draft laws, returning one draft law for functional committee review.\(^{166}\) On the municipal level, Regulation 2000/45, amended by Regulation 2007/30, required each municipal authority to set up a Communities Committee, Mediation Committee and Community Office to represent minority interests. A Community Office was to be established in those municipalities where a community that is not in the majority forms a substantial part of the population. This office is responsible for enhancing and protecting community rights and ensuring that communities have equal access to public services at the municipal level. The head of this office is to be an ex-officio member of the Board of Directors (municipal government).\(^{167}\) According to these regulations, municipalities in which one or more non-majority communities live should appoint an additional Deputy President (Regulation 2000/45) and now additional Vice-Chairman (2007/30) who comes from these communities. Furthermore, according to this new regulation, in the event that such communities are not represented in the Municipal Assembly, the respective assembly must appoint, in consultation with members of those communities, a person from those communities to serve as Vice-Chairman with the right to attend and speak as a non-voting member at meeting of the assembly and its committees.\(^{168}\)

An institution that deals specifically with the needs of communities/minorities in Kosova and their return to their properties and homes in Kosova was established at the central level. This institution is the Ministry of Community and Return, which operates under the PISG. In association with international organizations, the Ministry of Community and Return proposes laws in order to create a prosperous place for all people regardless of their identities. Inclusion and integration of the communities/minorities in the life of Kosova society was one of this Ministry’s main goals. The Ministry created programs that would help minorities advance. It would also help them establish relationships with Albanians, the majority, and with other minorities. This would contribute to creating an environment that would allow them to participate in public life. These programs are designed to introduce minorities to their rights and guarantee equality within society as to:

\[
\text{[A]ssure that politics in central and local level to comprise provisions of protection of community rights, human rights and interests of returnees, including also the issue of free movement, use of language, freedom of}
\]

\(^{165}\) CFPSK, Chapter 9, Sec. 1, Paragraphs 12-17.
\(^{166}\) UN SC Report of the Secretary-General on UNMIK, 29 June 2007, 9.
\(^{167}\) See UNMIK Regulation No. 2000/45, Chapter 1, Sec. 23 and UNMIK Regulation 2007/30, Chapter 1, sec. 23.
\(^{168}\) UNMIK Regulation 2007/30, Chapter 1, sec. 13.3
speech, equality in representation, participation and equal approach in judicial legislation, free choice of residence, municipal utilities.\textsuperscript{169}

This institution is interested in raising communities’ awareness of their rights in order to “develop and advance law application with purpose for protecting ethnic group’s rights and their communities, including even their rights to return.”\textsuperscript{170} The Ministry of Communities deals particularly with the return of Serbs and Roma in Kosova municipalities, and securing these groups’ integration into society. Though only a small number of people are returning to Kosovo, a significant number still show an interest in returning. According to the UNHCR updates for 2006-2007, by 2003 3,800 people had returned, though this rate seemed to decrease after the events of March 2004.\textsuperscript{171}

Unfortunately the majority of the Serbs boycotted the PISG as Belgrade had urged. Serbs participated only in the first municipal and parliamentary elections, boycotting the other elections in Kosova in large numbers. Thus all Serbs represented in Kosova institutions i.e. the Assembly and the Government, are really not genuine representatives of the Serbs in Kosova. This represents an additional problem in establishing measures to integrate Serbs and to protect their rights under the legal framework of Kosova’s institutions. As has been noted, these problems all arise because of Serbia. Belgrade continues to encourage Serbs to not participate in Kosovar institutions and sponsors parallel administrative structures in Kosova, which continue to operate. From the very beginning, other communities showed interest and actively took part in all PISG institutions.

In the last couple of years many projects were designed to make minorities feel safe in Kosova. The Government of Kosova and international organizations such as OSCE and UNDP initiated a program of constructing new homes. This program was designed to resettle more than 500 RAE by the end of the summer 2007.\textsuperscript{172} Taking into account the historic evolution, today minorities in Kosova are more protected by Kosova institutions and its legislation than ever before in Kosova’s history. Nevertheless, due to its peculiar political situation, even though government of Kosova is working toward integrating minorities in public life, the position of Serbs in particular is still critical. According to OSCE reports and to other international organizations, the situation of this minority has being steadily improving, and there has been a decline in serious crimes committed against them.\textsuperscript{173} Human Rights Watch reported that in the year 2006 the number of inter-ethnic crimes in Kosova fell.\textsuperscript{174} Nevertheless, other issues such as unemployment and security issues still disturb minorities. According to the OSCE:

[M]inority groups have two overriding concerns that contribute greatly to their sense of isolation. The first is unemployment, and many feel powerless to improve their situation without assistant. The second major concern is that municipal employees ignore or do not address their special concerns.\textsuperscript{175}

\textsuperscript{169} http://www.ks-gov.net/mkk
\textsuperscript{170} http://www.ks-gov.net/mkk
\textsuperscript{172} “Romany Return to the Mitrovica Mahalla Marred with Problems”, European Roma Rights Centre; see http://www.errc.org/cikk.php?cikk=2827&archiv=1
State institutions are trying to work together with minority representative in order to resolve their concerns. In 2006, the Forum of Roma, Egyptians and Ashkali (REA) noted their interest in and their concerns toward integrating in Kosovo’s society by stating their willingness to join and be part of Kosova. Their objective seemed to be to promote political, economic and social development so that they would be able to participate in everyday life without fear or discrimination. The group “intends to contribute to the creation of democratic and multiethnic Kosovo.”\textsuperscript{176} The Forum at which REA presented their work and demonstrated that they are ready and willing to be part of Kosova society was part of a minority partnership with Kosova institutions.

All minorities have parties that enable them to bring their concerns before the Assembly of Kosova. Each community has a political party that plays a major role in their integration into society. They have representatives who try to put the community’s issues on the agenda and deal with their concerns. By participating in the public life of Kosova, these parties help their communities to be better integrated in all of Kosova’s institutions. The United Roma Party of Kosova, the Turkish Democratic Party of Kosova, the Democratic Ashkali Party of Kosova, the Bosniak Democratic Initiative of Kosovo (VAKAT), and the Bosniac Party of Democratic Action of Kosovo are some of the main ethnic minority parties that work with Kosova institutions to achieve integration. They attempt to make the Kosova Government aware of educational deficits, unemployment, and healthcare, and to reach adequate conditions for integration and build stability.

Representatives of the Gorani, Ashkalli, Bosniak, Turkish and Roma communities came together for a second time this year with the Ombudsperson Institution to detail an updated picture of human rights issues they face on a daily basis - ranging from economic hardships and security issues, to the lack of adequate representation in the government and active discrimination by the KPS.\textsuperscript{177}

The Turkish and Bosniak minorities consistantly have representatives serving in the Kosova government. Thus far, the Ministry of Health has been administered alternatively by Turkish and Bosniak representatives. In the newest government the Ministry of the Environment is being administred by Turkish representatives, while two other ministries i.e. the Ministry of Work and Social Affairs and the Ministry of Community and Return are administered by the Serbian parties that participated in last elections.

4.4. Policies and Measures

Proclaimed goals of the international and national institutions’ official minority policy in Kosova will take time to implement in practice. There are many reasons why the implementation of these standards will not be easy task. First of all, political problems arising from Kosova’s unsettled political status and possible solutions foreseen under the Ahtisaari Plan will constitute the biggest obstacles. Secondly, the lack of a democratic tradition within the newly created institutions will influence the pace and speed of the implementation of these standards. Nevertheless some positive results are already on the horizon. The number of minorities working for Kosova’s government at the central and local level is increasing. Minorities constitute 11.5% of the civil servants at the central level and

\textsuperscript{176} RAE Forum, 2006; see http://www.osce.org/documents/odihr/2006/12/23321_en.pdf

\textsuperscript{177} Ombudsperson, Non-Serbian Minority Representatives Discuss Ongoing Human Rights Issues with Ombudsperson Institution, 7 July 2004; see http://www.ombudspersonkosovo.org/?cid=2,57,19&sqr=minority%20parties
12% at local level, against an overall target of 16.6%. The number of minorities working in government institutions is increasing, although the parallel structures in Kosova are earning more and more money from Belgrade. This is clearly Serbia’s attempt to undermine the work of Kosova institutions. The representation of minorities in the KPS has also increased, and this institution represents one of the best examples of co-operation and the integration of minorities. All ministries have established Human Rights Units. Their task, in cooperation with the Office for Good Governance, is to monitor the implementation of best practices regarding the respect of human and minority rights, as well as in the area of non-discrimination.

One of the main problems in Kosova remains the unresolved final status issue. Directly or indirectly the status question is a hurdle to promoting minority rights, particularly for the Serb minority. As long as the Serbian boycott lasts, it will be very difficult to improve the rights of the Serbian community if they are not ready to co-operate with Kosova institutions. This boycott is constantly hindering them from realizing and promoting their rights within Kosova. Because they are alienated from these institutions, Serbian citizens face many difficulties in their every day lives. The Serbian population did not deserve the ‘gift’ that their political representatives and the Belgrade regime have bestowed.

5. Performance of the International Community and International Organizations

After the war in 1999, the United Nations took responsibility for governing the country in accordance with Resolution 1244. The UNMIK mission in Kosovo was established through this Resolution. UNMIK was and still is the final authority in Kosovo, while other international and national bodies and organizations play an important role in almost all sectors of life.

Every organization is plays an important role in its respective field. Therefore, when listing these organizations and their roles, one should keep in mind that the importance of the organization depends from the field in which it operates.

The UN is the leading force and authority among international organizations in Kosova. Nevertheless, from the outset they have shared some responsibilities with other international organizations. One such example is the EU, which leads UNMIK’s fourth pillar that deals with the economy and reconstruction. The OSCE deals with the democratization process, and, as the military component under the NATO, KFOR is responsible for security. These organizations make up the core of the international involvement in Kosova, but other international governmental and nongovernmental organizations also play a role in various fields in post-war Kosova with the self-proclaimed goal of supporting democracy building in Kosova.

The USA and EU have the biggest influence in Kosova. The Kosovar leaders co-operate closely with them because they supported the Kosova people during the war in 1999. The majority of Kosovars are determined to proceed with Euro-Atlantic integration, which makes it easier for the EU and USA to influence Kosova politics.

179 Ibid. 14.
Serbia was and still is one of the neighboring countries that plays a large role within Kosova. Serbia’s role in Kosova can be seen in different lights. The Serbian community sees their role as positive, as they are protecting Serbian rights. From the Albanian population and the international administration’s view, most of the time the role of Serbian official politics is seen as negative. The permanent obstructions that originate in Belgrade, such as the call to boycott Kosova institutions, or the financing and supporting of parallel institutions in Kosova, represent just some of the activities that Serbia is undertaking in Kosova that keep Kosova in a permanent state of inter-ethnic tension.

5.1. Actors and Their Roles

According to UN SC Resolution 1244, UNMIK represents the ultimate decision-making body in Kosova. UNMIK is at once a legislative, executive and judicial body, although these functions have been extended to some PISG institutions. The main responsibilities of the international presence in Kosova derive from Resolution 1244 of the UN SC. They include “protecting and promoting human rights, assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosova.”

UNMIK responsibilities also include:

Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections... [and] transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo’s local provisional institutions and other peace-building activities.

UNMIK created a structure according to which other international organizations such as the OSCE, EU and UNHCR also undertook some responsibilities. UNMIK was internally divided so that it would be easier to fulfill the duties described in UNSC Resolution 1244. Economic reconstruction, recovery and development fell under the responsibility of the European Union; the OSCE took responsibility for institution and democracy building and the promotion of human rights and the rule of law. Pillar I (Police and Justice) together with Pillar II (Civil Administration) remained under the direct control of UNMIK.

Through Pillar I and II, UNMIK’s role in protecting and promoting human rights in Kosova has a direct impact on daily lives of Kosova citizens. From the outset, the police and the justice system played a crucial role in forming the structure of Kosova’s future legal system and establishing the police service as an executive power. The justice system in Kosova faced many difficulties because a legislative vacuum was created immediately following the war. To fulfill the vacuum in legislation, UNMIK issued a first regulation on 25 July 1999. It stated, inter alia, that “the laws applicable in the territory of Kosovo prior to 24 March 1999 shall continue to apply in Kosovo insofar as they do not conflict with standards referred to in section 2.” Section 2 of this regulation oversees that “in exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards and shall not discriminate against any person on any ground.” As mentioned earlier, this regulation faced harsh public opposition in Kosova and was boycotted.

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180 UN SCR 1244, 11 (k).
181 ibid. 11 (d).
183 ibid.
by Kosovar judges. The negative reaction occurred in response to the fact that according to this regulation, legislation that was adopted during Milosevic’s time has been proclaimed valid in post-war Kosovo. After meeting with such a strong reaction, the SRSG issued the aforementioned Regulation 1999/24. Through the CFPSK, Kosovo has also committed itself to ensuring the human rights and freedoms in accordance with international agreements and conventions.

While the UN is the head of Pillar I, it is UNMIK itself that has the last say on issues involving the protection of human rights and particularly minority rights. UNMIK did not trust the Kosovar judges, and as consequence they brought international judges and prosecutors to Kosovo. This step was made in the hopes that these international judges and prosecutors would be impartial. Nevertheless it was also a sign of mistrust of the Kosovar judges and prosecutors.

Within the UNMIK mission, the OSCE, referring to the UN SC decision, has taken the leading role in matters relating to democracy building, institutional capacity building, human rights and the rule of law. To fulfill this mission, OSCE has organized their Kosovo office into four departments: Democratization (with Central Government Support, Local Government Support, Civil Society Development and Media Development sections), Human Rights and Rule of Law, Election and Police Education. The OSCE is playing a leading role in promoting human rights in Kosovo. The OSCE’s primary task is to monitor the work of the Kosovo PISG at the central and local levels. They ascertain compliance with human rights standards, help build the PISG’s capacities to promote and protect human rights and help ensure that the PISG provide effective remedies for potential human rights violations. OSCE is engaged in:

- Monitoring and producing public and semi-public reports on the work of the judiciary and justice systems — these reports and their recommendations are addressed to the judiciary, lawyers and the Ministry of Justice;
- Monitoring local and central government bodies for compliance with human rights standards, and following up on alleged cases of human rights violations and concerns in order to search for remedies;
- Building the local and central administration’s capacity to promote and protect human rights through trainings for public officials and civil servants in the executive, legislative and judicial branches, so that officials better understand and apply human rights standards in their work; and training students and young people to better understand and apply human rights standards in their daily lives.

The OSCE has played a crucial role in preparing the new Kosovo Police Service. They lead the only Police school in Kosovo, which means that every local police officer has gone through the “hands” of the OSCE before he/she begins his/her duties. The OSCE holds trainings for police officers on international human rights and community-based policing standards. The OSCE has also played an important role in the Kosovo justice system, especially by helping Kosovo’s legal community by building the capacities of judges, prosecutors, lawyers and NGOs. The OSCE has also facilitated the creation and development of the Kosovo Judicial Institute (KJI), Kosovo Law Centre (KLC), Criminal Defense Resource Centre (CDRC) and Ombudsman’s Institution (OI).

The OSCE had a decisive role in designing the principle of positive discrimination in the Kosovo Assembly. Most importantly, this principle imposed the mandatory level of female participation in the Assembly. The criteria established

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185 Ibid.
186 Ibid.
by the OSCE and accepted by Kosova political parties and institutions are very important to the emancipation of women in Kosova society. Each party running in a Kosova election must present a list of candidates in which every third candidate is female. From the beginning, PISG in Kosova have worked to fulfill the criteria of equal representation of communities in public institutions.

Resolution 1244 and the CFPSK are the basic documents upon which Kosova is governed, and all other laws and future decisions must be in agreement with these two documents. Because of the unresolved status question, Kosova cannot ratify internationally recognized human rights conventions and agreements. Although PISG have not ratified any international convention for the protection of human and minority rights, they must respect most of these rights as the CFPSK states that the rights are directly applicable in Kosova.

5.2. Human Rights

When international actors such as the UN, UNHCR, OSCE and other organizations came to Kosova they brought with them experience from other missions. Although their experience was extraordinary, the Kosova mission was different from other missions in the other parts of the world. In Kosova, international organizations have the final say; they represent all three levels of governance – legislative, executive and judiciary. It is unique case in the modern history of Europe that all three powers are concentrated in the hands of one person i.e. the SRSG. This has transformed the SRSG into an absolute monarch from the medieval times.

Because of the specific situation, the first rule of democracy – that the people should choose the representatives to govern the country – has not yet been fulfilled. Kosovars have had free elections, and they have chosen their representatives, but according to Resolution 1244, UNMIK remains the ultimate decision making body. PISG that are elected in free elections organized by the OSCE can fulfill their duty and are free to make decisions only insofar as the SRSG accepts them. This sort of “democracy” can be called “controlled democracy” or “semi-democracy”. Thus one of the fundamental democratic human rights principles has been violated in Kosova, but this was done in “legally” according Resolution 1244 of UN SC.

From the outset, UNMIK has been involved in creating Kosova institutions with the aim of transferring competences in later stages. In the future, Kosova institutions should protect human and minority rights. These competencies had previously been taken from Kosova’s institutions, as UNMIK exercised complete power in relation to the protection of human and minority rights. Many competences in this field have now been transferred to Kosova’s institutions, but since UNMIK still has the final say in administering police and justice, it still has greater power and responsibility for human and minority rights protection. At the same time, this power also represents a burden to UNMIK, as it is frequently accused of violating human rights. The freshest case concerns the killing, by UNMIK police, of two protestors participating in a peaceful demonstration against the Ahtisaari Plan organized by the Self-Determination Movement in Prishtina on 10 of February 2007. Despite clear evidence identified by one independent commission established by UN with the purpose of investigating the event that the Romanian unit of the UNMIK police committed these gross violations of human rights, UNMIK

did not undertake any legal measures against the Romanian unit. Furthermore, they were repatriated and the Romanian Government rewarded them for their work in Kosova.

Violations of human rights by the UNMIK administration date from the beginning of the mission in Kosovo. The most flagrant official act violating human rights is the SRSG executive order, issued according to Regulation 1999/2, to detain anyone without judicial process if the SRSG believes it to be necessary for the safety of Kosovo. This order was issued in 1999 and the SRSG made immediate use of it. A number of arrests were made pursuant to this order. The OSCE pointed out “these extra-judicial detentions to be illegal; there was no legal basis for making these decision and there were no available means for judicial review.” Later, through regulation 2001/18, UNMIK tried to improve this regulation by establishing a Detention Review Commission (DRC) for Extra-Judicial Detentions Based on Executive Orders. This marked another wrong step for the UNMIK administration. As the OSCE remarked, the DRC was wholly inadequate due to its lack of independence. The main problem with the establishment of this body was that this was outside the regular court system and members of this body were appointed by the SRSG, the person responsible for the issuing the detention orders. Fortunately, this executive order has not been used since December 1999. The SRSG nevertheless may use it in the future if it sees the necessity.

Another remarkable example of the international community violating human rights in Kosovo is COMCFOR Detention Directive No. 42 of 9 October 2001. This directive allows KFOR to arrest anyone without any judicial decision. UNMIK does not have the legal jurisdiction or mandate to conduct investigations into KFOR activities. The governments of troop-contributing countries, who have direct responsibility only for their respective national contingents, exert civilian democratic control over KFOR. This means that for every violation of human rights committed in Kosovo, KFOR personnel have complete immunity except if their respective country opens a legal procedure against them in their country of origin. As Amnesty International has reported, to date there is only one known case of a KFOR representative being brought before the national judiciary of his/her state because of a violation of human rights in Kosovo.

The immunity granted to UNMIK personnel represents another problem that has been present since the beginning of the mission. According to Regulation 2000/47, UNMIK personnel “shall be immune from local jurisdiction in respect of any civil or criminal act performed or committed by them in the territory of Kosovo”. KFOR personnel shall also be “immune from jurisdiction before courts in Kosovo.” UNMIK personnel had full immunity since the beginning, and the only way to bring them to court was for the SRSG to intervene or for the respective state to take up measures in their own state. Many human rights experts saw that this ran contrary to the human rights procedures of a developed democracy. While the local judiciary has no competencies over UNMIK staff it was clear that a

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188 See the transcript of Robert Dean’s press conference of 17 April 2007. He was Special Prosecutor in charge of investigating the events of 10 February.
189 UNMIK/REG/1999/2, On the Prevention of Access by Individuals and Their Removal to Secure Public Peace and Order.
192 Ibid.
194 Ibid. 3.
violation might occur and that no one could do anything if SRSG refused to take adequate measures. In the past there have been many cases of UNMIK staff violating the law in Kosova. Nothing happened to these staff and most were sent back home without suffering any legal consequences. On the other hand:

Several individuals were held in detention at the US military camp Bondtseel despite the fact that they have been acquitted of various criminal charges by the courts’ panel’s comprised of international judges for a lack of proves, their detentions continued on the basis of an executive order issued by the SRSG.196

This constitutes a serious human rights violation, as they spent “2 years in detention and their rights were never satisfied due to the lack of procedural mechanisms through which they could effectively challenge their detention and lack of compensation.”197 It was only in March 2006 that UNMIK issued Regulation 2006/12 on the establishment of a Human Rights Advisory Panel (HRAP). The HRAP “shall examine complaints from any person or group of individuals claiming to be the victim of a violation by UNMIK of the human rights.”198 HRAP was not operational until late summer 2007. In November 2007, the HRAP held its inaugural session in Prishtina. It is important to mention that this panel may not begin to work at all as the Kosova final status talks are ongoing and it seems that the UNMIK may be transformed into an international EU mission.

While the Ombudsman’s Institution cannot defend the human rights of the inhabitants of Kosova, neither can the international actors. According to UNMIK regulations, the ECHR is directly applicable in Kosova. Nevertheless, Kosova inhabitants cannot benefit by applying to the European Court of Human Rights, as the ECtHR can only undertake legal steps against signatory parties. In the case of Kosova, UNMIK is not a signatory party. Serbian sovereignty upon Kosova was suspended, and the majority of Kosova inhabitants cannot exhaust all domestic means in Serbia because of the conflict. This is how Kosova, with the highest number of international organizations and a global international presence (UN SC), was transformed into the most isolated place in Europe — something of a human rights violation ghetto.

On the other hand, the Justice System is within UNMIK Pillar I and has been under the UNMIK’s complete authority since the beginning. UNMIK has tried to bring international prosecutors and judges to Kosova with the aim of creating an impartial judicial system. Yet it is still unclear how much the wounds of war will effect the decision of local prosecutors and judges in cases involving Albanian judges and prosecutors and Serbs accused of war crimes. UNMIK saw this decision as an adequate tool for overcoming the current problems that judiciary in Kosova is facing. Nevertheless, there have been problems with the international judges and prosecutors’ performance. They worked largely independently, without cooperating much with local judges and prosecutors. Cooperation was the exception rather than the rule.199 There were also organizational problems, such as language barriers, the fact that judges came from different judicial systems and were working in a totally new system, and the fact that judges’ short-term contracts meant that sometimes they would finish their assignment before the cases under their authority had been closed. The major problem was that UNMIK

196 Istrefi, 268.
197 Ibid.
198 UNMIK, REG/2006/12 of 23 March 2006.
did not have a comprehensive strategy for building local capacities. Another problem arises when one compares the salaries of international jurists to those of local ones. Salaries of international jurists are 20 or more times higher than local jurists’ salaries. This is totally discouraging.

Another serious concern remains the judicial system’s dependence on the SRSG as:

**[T]**he SRSG exercises the final authority regarding the appointment and removal of judges and the possibility and the issuance of executive orders conflicts with the courts decisions. The interference amounts to executive interference in the judicial functions. By re-asserting court decision regarding detention SRSG directly interferes in the area where the judicial authority should be able to act independently.

UNMIK also made efforts to grant all externally and internally displaced people the basic right to return to their homes. Through HABITAT, UNMIK also tried to solve the problem of private property being violated, in many cases after the war. HABITAT had to deal with thousands of requests from private persons who simply wanted to have access to their private property. The number of requests was so high that HABITAT could not handle this appropriately because of their limited capacity.

### 6. Conclusion

After the conflict, both Serbs and Albanians proclaimed a victory. Albanians interpreted NATO’s intervention as liberation from Serbian rule, while Serbs emphasized that sovereignty over Kosova had been preserved (as is also prescribed in UNSCR 1244). In a speech addressed to the Serbian nation on 10 June 1999, Milosevic said that the biggest achievement is bringing the Kosova before the UN Security Council. This irreducible discrepancy between the two perspectives continues in Kosova to this day. The majority of the Serbs hope that the Serbian state will one day return. Most Albanians think that the Serbian rule over Kosova brutally ended in 1999. Julie Mertus described both perspectives this way:

Serbs think that hey have won because Kosovo will remain part of Yugoslavia. In their view, the international peacekeepers will ensure that Kosovo Albanians do not break away. In the past, Serbs could only keep control over Kosovo through gross and systemic human rights abuses against Albanians. They think that international peacekeepers will permit them to maintain control over Kosovo Albanians by law.

The Albanian perspective follows:

Albanians think they have won because they will able to return to their homes. In their view, international peacekeepers will ensure that they have human rights, including the right to decide their own political destiny. In the past they established illegal “parallel” Albanian institutions in order to exercise some semblance of control over their political destiny. When they grew tired of enduring Serbian oppression, some Albanians took up arms.

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201 Istrefi, 269.
They think that international peacekeepers will permit them to create their own institutions to govern their lives.203

In June of 1999, the UN sent one of its biggest missions to Kosova. It aimed to stop the fighting and bring peace and security to the region. The first stage of this international peacekeeping mission was the emergency phase of a post-conflict situation. Around 90% of all refugees were returned to Kosova within the first three months (June-August). This period of time was characterized by reconstruction measures focusing on infrastructure and domestic environments. The UNHCR (for the return of refugees) and EU (for reconstruction) were more committed during this period of time. The second stage of the international presence in Kosova was designed to establish national political institutions and organize free and fair elections. The first (local) elections were held in October 2000. Provisional Institutions of Self-Government were established in May 2001. The third stage was conceived as an effort to gradually transfer competencies from international to national institutions and authorities. This process was very sensitive, as Kosova Albanians desired more competencies while UNMIK reserved most of the crucial competencies for itself. Serbs frequently accused both of groups of flirting with each other. They blamed UNMIK for giving the Albanians too many competencies that undermined Serbia’s (nominal) sovereignty over Kosova.

In all three phases, the position of minorities was crucial to understand the whole political picture of Kosova. Immediately after the end of conflict the most vulnerable minorities in Kosova were Serbs and Roma. Many of them fled Kosova either under threat from members of the Albanian majority, or out of fear of possible Albanian retaliation in the aftermath of the war. Those who did not leave Kosova were barricaded in their enclaves within Kosova or clustered in the northern part of Kosova. This, in turn, became one of the biggest problems for the international administration in Kosova and for Kosova’s institutions. The integration of these areas into Kosova was, and still is, one of the biggest challenges for the success of the international community in Kosova. The March 2004 events further confined the Serbian minority in their enclaves and made them more hostile toward Kosova’s institutions. The biggest beneficiaries of this situation are the Serbian political elite in Belgrade, while the biggest losers are the Albanian political elite in Prishtina and the Serbian minority in Kosova. The position of other minorities including the Roma community has significantly improved during last years. One can conclude that the regulation of the position of minorities within Kosova’s legal framework is one of the most advanced in the region and in Europe.

Kosova is currently experiencing the end process of the final stage of the UN-led international mission in Kosova. This stage involves opening the final status solution process. During 2006 and 2007, 15 rounds of negotiations took place between Serbian and Albanian delegations in Vienna. These negotiations were mediated by former Finnish President, Marti Ahtisaari. He was also the main negotiator between the Serbian authorities and international community who tried to convince Milosevic to accept the peace terms set forth by the G-8 and NATO. On 26 March 2007, Ahtisaari made a Comprehensive Proposal for the Kosovo Status Settlement, which Serbia rejected. Ahtisaari also attached one personal recommendation, which defined the future political status of Kosova as “supervised independence”. Serbian and Russian authorities asked for more negotiations. These were held from September-December 2007. To date, the positions of both parties seem to be irreconcilable: Albanians are asking for supervised independence, while the Serbian government is offering “more than autonomy, less than independence”. The current Kosova government promised its citizens that it would

203 Ibid.
declare Kosovo’s independence (as defined within Ahtisaari proposal) in coordination with the USA and the majority of EU member states.

After almost nine years of international rule in Kosova, we can conclude that the paradigm of the international community toward this country was peace (at any price) and (regional) stability. This did not cover the economy, development and employment, nor did it take any interest in human rights. The dominant approach of the international community toward ethnicities was accompanied by wrongheaded measures that eventually led to further divisions and increased inherited animosities over past injustices. UNMIK gives many lessons on multi-ethnicity, but it is one of the main factors maintaining and fostering the separation between peoples (especially Albanians and Serbs). Serbia used this to expand and strengthen its control over the Serbian population, threatening the division of Kosova if the Albanians declare independence. UNMIK and the international community are adopting a poor strategy by allowing the Serbian state to exert total control over the Serbian community in Kosova. The Serbian state is promising them that “Serbia will never let them down” and pushing them to fight Kosova’s independence with whatever means, while motivating Albanians to declare independence without seizing control of the country. This strategy will eventually lead to increased tensions and probably to some new (perhaps isolated) conflicts.
Acronyms

AFK - Alliance for the Future of Kosova
CDHRF - Council for the Defense of Human Rights and Freedoms
CFPSK - Constitutional Framework of Provisional Self-Government in Kosovo
COMKFOR - Kosovo Forces Commander
CRIC - Committee on Rights and Interests of Communities
DLK - Democratic League of Kosova
DPK Democratic Party of Kosova
DRC - Detention Review Center
ECHR - European Convention on Human Rights
ECtHR - European Court of Human Rights
ESI - European Stability Initiative
FPRCK - Framework for Protection of Rights of Communities in Kosovo
FRY - Federal Republic of Yugoslavia
FYROM - Former Yugoslav Republic of Macedonia
HRAP - Human Rights Advisory Panel
IAC - Interim Administrative Council
IAPSK - Interim Agreement for Peace and Stability in Kosovo
ICG - International Crisis Group
IMF - International Monetary Fund
ISSR - Internal Security Sector Review
JIAS - Joint Interim Administrative Structures
KFOR - Kosovo Forces
KJI - Kosova Judicial Institute
KLA - Kosova Liberation Army
KLC - Kosova Law Center
KMEST - Kosova Ministry of Education, Science and Technology
KPC - Kosova Protection Corps
KPS - Kosovo Police Service
KTC - Kosovo Transitional Council
MKH - Ministry for Kosovo and Metohija
NATO - North Atlantic Treaty Organization
OI - Ombudsperson Institution
PISG - Provisional Institutions of Self-Government
REA - Forum of Roma, Ashkali and Egyptians
RS - Republic of Serbia
SCCK - Serbian Coordination Center for Kosovo
SFRY - Socialist Federal Republic of Yugoslavia
SMES - Serbian Ministry of Education and Sports
SRSG - Special Representative of Secretary General
UÇK - Ushtria Çlirimtare e Kosovës
UNDP - United Nations Development Programme
UNHCR - United Nations High Commissioner for Refugees
UNMIK - United Nations Mission Interim in Kosovo
VAKAT - Bosniac Democratic Initiative of Kosova
WHO - World Health Organization
YIHR - Youth Initiative for Human Rights
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