

# **KOSOVO: LANDMARK ELECTION**

21 November 2001



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## KOSOVO: LANDMARK ELECTION

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

On 17 November 2001, people from Kosovo turned a page in their history by voting in multiparty elections for new self-government institutions. The conduct of the election was generally judged to have been a clear improvement on the municipal elections of October 2000. Levels of violence were much lower, even though more voters took part.

Like last year, Albanians voted mainly for three parties. Unlike last year, Serbs took part in the election. If they had voted massively, they could have won more than 25 seats in the 120-seat Assembly. Instead, the confusing messages sent by their leaders – some of them campaigning against participation – depressed the Serb vote.

The establishment of new self-government institutions in Kosovo following the election for a new Assembly on 17 November 2001 will represent a significant landmark in the post-conflict development of the province. The powers of the new institutions will be limited, and, despite the devolution of responsibility for the day-to-day running of affairs in many areas of government, the ultimate powers of the Special Representative of the Secretary General (SRSG) are undiminished.

Nevertheless, the political significance of an elected Assembly lies in its legitimacy for the majority Albanian population, whatever the formal limitations on its authority. The establishment of an elected Assembly and a Kosovo government will irrevocably transform the political landscape of the province and the relationship between the UN administration and local political leaders.

Crucially, the SRSG is empowered to strike down any attempt to step outside the institutions' competencies, as laid down in the Constitutional Framework document that defines the powers of the new bodies. In particular, the institutions have no authority to make any moves towards deciding the issue of Kosovo's final status. This is in line with UN Security Council Resolution 1244, which established Kosovo's present interim system.

Thus any attempt by Kosovo Albanian parties to use the Assembly to move towards their goal of independence would appear futile. Yet, whatever its limitations, the Assembly will provide a new and significant forum from which local leaders, with the legitimacy of a democratic mandate, will be able to challenge UNMIK in ways which are as yet unclear.

In the run-up to the election, a key issue was whether or not Serbs would participate. The SRSG engaged in a round of frenetic negotiations with Belgrade leaders that eventually bore fruit just a fortnight before the vote. While an agreement was reached which enabled Belgrade to claim that they had won concessions, but without UNMIK compromising the principles contained in UNSCR 1244 or the Constitutional Framework, Albanian leaders were incensed by the agreement and by the key involvement of Belgrade in the process.

In the event, Serbs in some parts of Kosovo stayed away in large numbers. The intimidation of would-be Serb voters that marred the election in the Serb-controlled region north of the Ibar river underlined the need for UNMIK, with the support of KFOR, to deal with the organised thuggery that,

supported by Belgrade, keeps the UN administration from extending its writ to that area.

Western officials have urged Kosovo's political leaders to put aside for now the issue of independence and concentrate on making the new institutions work, and thus prove themselves capable of governing the province. Indeed, taking on the responsibilities of government will be a challenge for Kosovo leaders whose experience has lain in opposing the established authorities rather than constituting them.

But it is unrealistic to expect Kosovo Albanian leaders or voters to shelve the one overriding issue that really matters to them. If the Assembly attempts to expand its role beyond that which is envisaged in the Constitutional Framework, or adopts a confrontational approach, the SRSG can be expected to keep it on a short leash. In any event, the newly elected officials will be unlikely to accept for long the straightjacket imposed by the unelected international administration. Albanian anger over UNMIK's agreement with Belgrade to obtain support for Serb participation, added to impatience with the slow progress towards independence, may be a precursor to more strained relations between UNMIK and the Albanian parties after the election.

## **RECOMMENDATIONS**

### **TO THE INTERNATIONAL COMMUNITY**

1. UNMIK should allow the new self-governing institutions as free a rein as possible to govern within the parameters laid down in the Constitutional Framework. The institutions should have the opportunity to learn by their mistakes and to grow in responsibility and effectiveness.
2. The establishment of limited autonomy in the shape of the self-governing institutions should be seen as only the beginning of a process that will before long devolve more 'substantial' self-government to elected Kosovo institutions, both at the provincial and municipal levels.
3. In order to avoid unnecessary friction with Kosovo's majority, UNMIK should, in representing the external interests of Kosovo,

consult with elected local representatives and take serious account of their views.

4. KFOR should continue to take more effective steps to protect Serb and Roma civilians, including crackdowns on illegal Serb and Kosovo Albanian paramilitary and intelligence forces.
5. The international community must take control of the situation in Mitrovica. KFOR and UNMIK police should act, with legal force if necessary, against the 'bridge watchers', and UNMIK's writ should, with the support of KFOR, be extended north of the Ibar river.

### **TO THE KOSOVO ALBANIANS**

6. The newly elected representatives should concentrate on making the new self-governing institutions work, rather than making premature gestures concerning Kosovo's final status.
7. These elected representatives should initiate the formation of a committee, perhaps under the new Assembly, to consider constructive options for addressing Kosovo's relationship with Belgrade, and to prepare proposals that could form a basis for discussion with Belgrade and the international community.
8. Kosovo Albanian leaders should exert their moral authority to take responsibility for improving the conditions of Serbs and Roma in Kosovo, reducing attacks and intimidation against them and enabling the return of refugees.

### **TO THE KOSOVO SERBS**

9. The newly elected Serb representatives should represent their community through constructive participation in Kosovo's new self-governing institutions, and cooperate with UNMIK.
10. Kosovo Serb leaders should cooperate with UNMIK and KFOR in integrating the region north of the Ibar into Kosovo's institutional framework and enabling displaced Albanians to return to their homes in safety.

**TO BELGRADE**

11. Belgrade should cooperate with UNMIK and cease support for Kosovo Serb obstruction of the integration of the area north of the Ibar into Kosovo.
12. Belgrade should encourage Kosovo Serb representatives to participate constructively in Kosovo's new institutions.

**Pristina/Brussels, 21 November 2001**



## KOSOVO: LANDMARK ELECTION

### I. INTRODUCTION

The 17 November election for a new Kosovo Assembly represents a significant landmark for the province. The shape of the Assembly and the scope of its responsibilities were set out in the Constitutional Framework agreed in May 2001 by Kosovo representatives and officials of the United Nations Mission in Kosovo (UNMIK).

The Constitutional Framework lays down areas in which a new government, to be formed following the election, will be competent. No community or political party is entirely satisfied with the document. Broadly, Albanian leaders would have preferred to see greater powers transferred to the newly elected bodies, seeing in the election a step towards their ultimate goal of independence. Serb leaders, by contrast, for whom that goal is something to be feared and opposed, wished to downplay the landmark significance of the new institutions.

In line with UN Security Council Resolution (UNSCR) 1244, which established Kosovo's present interim system,<sup>1</sup> the Constitutional Framework does not prejudice the issue of Kosovo's status, and the institutions established under it will not be competent to make any moves towards deciding that issue. Thus on the face of it, the hopes and fears of Kosovo's Albanians and Serbs for the new Assembly appear to be without foundation. Formally, the holding of an election and the formation of institutions of self-government do no more than implement provisions of UNSCR 1244, and Kosovo will as a result be

neither closer to independence nor further away from it. However, such a reading of the situation would wholly miss the political significance of the establishment of an elected Assembly, with all the legitimacy that it will have for the majority Albanian population, whatever the formal limitations on its authority.

Because of the unsatisfactory security situation for Kosovo's non-Albanian (notably Serb and Roma) population, and the consequent limitations on their freedom of movement, the election could not qualify for the usual standard for internationally-supervised elections, that they should be 'free and fair'. Rather, the OSCE aimed for the lower standard of 'legitimate and credible'.<sup>2</sup>

In the run-up to the election, one of the most controversial issues was whether Kosovo's Serbs would participate at all. While Belgrade finally called on Serbs to vote only two weeks before the election, many Kosovo Serbs opposed the decision, and the election was marred by intimidation of would-be Serb voters in some areas not to vote. And yet the holding of an election, even under such conditions, represents an important step in fulfilling UNMIK's mandate under UNSCR 1244, especially given widespread doubts earlier in the year as to whether it would be possible to organise an election in 2001 at all.

This report examines the significance for Kosovo of this election, and of the establishment of the new self-government institutions. It considers how the election will alter the relationship between local political factors and the UN administration. It looks at the question of Kosovo Serb participation in the election, and what that will

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

<sup>2</sup> OSCE Elections officials to ICG.

mean for the position of Serbs in Kosovo. It considers the challenges that the local leaders and UNMIK will face in making the new set-up work and in taking the next steps on the roadmap foreseen in UNSCR 1244 towards resolving Kosovo's final status.

## **II. THE STRUCTURES OF SELF-GOVERNMENT**

### **A. UNITED NATIONS SECURITY COUNCIL RESOLUTION 1244**

In drafting the Constitutional Framework, UNMIK took as its benchmark UNSCR 1244, under which Kosovo is effectively an international protectorate administered by UNMIK. The Resolution directs the UN in Kosovo to 'provide an interim administration' under which Kosovo could enjoy 'substantial autonomy' within the Federal Republic of Yugoslavia (FRY). It is further charged with 'establishing and overseeing the development of provisional democratic self-governing institutions...'<sup>3</sup> Following UNMIK's establishment of its administration, the responsibilities assigned to it under UNSCR 1244 envisage a four-stage process to establish self-governing institutions and resolve the issue of Kosovo's final status, as follows:<sup>4</sup>

Stage 1 – 'Organising and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections';

Stage 2 – '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';

Stage 3 – 'Facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords';

Stage 4 – 'In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement.'

The election and the establishment of self-governing institutions are designed to accomplish the first two stages. Critically, the implementation

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<sup>3</sup> UNSCR 1244, Article 10.

<sup>4</sup> UNSCR 1244, Article 11 (c)-(f).

of stages 3 and 4, which concern Kosovo's final status, is unaffected by this election. Despite assurances from UNMIK officials on this point,<sup>5</sup> leaders of both main ethnic communities repeatedly expressed the hope or fear that the election would be a step towards the establishment of an independent Kosovo.<sup>6</sup> Serbs fear that the new Assembly, with its large Albanian majority, will press for independence. Thus, many Serbs argued that they should not grant the new institutions legitimacy by participating in the vote. For their part, Albanians sometimes make the opposite complaint, that in creating institutions without consolidating Kosovo's independence, the international community was preparing to insinuate some degree of Serbian rule back into the province.

However, under the terms of UNSCR 1244 it is quite clear that the establishment of self-governing Kosovo institutions will not prejudice the ultimate decision on Kosovo's status, and the Assembly will have no authority to make decisions related to that subject. As noted above, Stage 3 of the process for determining Kosovo's future envisages that the decision on Kosovo's status will take into account the Rambouillet accords. These list the will of the people of Kosovo as only one of the factors to be taken into consideration in reaching a final settlement.<sup>7</sup> Thus the assertions of Albanian politicians that the world should simply respect the will of the majority of Kosovo's people for independence are not borne out by the UN Resolution.

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<sup>5</sup> For example, in a letter to the Belgrade daily *Politika* (dated 19 September 2001), the UNMIK Public Information Director Simon Haselock stated that 'any discussion on such a resolution [on independence] in the Assembly would be beyond its competence and would have no validity.'

<sup>6</sup> For example, shortly before agreement was reached between UNMIK and Belgrade over Serb participation in the election, Serbian Prime Minister Zoran Djindjic stated that Belgrade required guarantees that the newly elected Kosovo bodies would not be able to decide on changing Kosovo's status (*VIP Daily News Report*, 1 November 2001).

<sup>7</sup> Interim Agreement for Peace and Self-Government in Kosovo, Rambouillet, 23 February 1999.

## B. THE CONSTITUTIONAL FRAMEWORK

Signed on 15 May 2001 by the Special Representative of the UN Secretary-General, Hans Haekkerup, in a public ceremony, the Constitutional Framework was the fruit of a two-month process of consultation.<sup>8</sup> This involved a Joint Working Group (JWG) comprising ethnic Albanian political leaders and legal representatives, UNMIK representatives and lawyers from the UN headquarters in New York. Kosovo Serb representatives only participated on the first and final days, on each occasion presenting demands that were considered unfeasible.

Consisting of a preamble and 14 chapters, the document was much longer than international officials originally intended or anticipated. Its final length and level of detail reflects the determination of the Albanian representatives to secure for the new institutions the maximum extent of competencies. This reflects their wish that the Constitutional Framework should make Kosovo look as close to an independent state as possible. Its international framers argue that the resulting document gives the institutions as much power as it possibly could under UNSCR 1244.

A particularly contentious issue was the name of the document. Initially the SRSG proposed that it could be called a 'legal framework'. Kosovo Albanians immediately took offence, arguing that as Kosovo had had a constitution of its own under the former Yugoslav constitution of 1974,<sup>9</sup> anything less now would represent a step backwards. Again, the significance of this point lay in the desire of Kosovo Albanians to have the appearance of the attributes of statehood.

International representatives, however, took the view that to grant a constitution might appear to pre-judge Kosovo's final status. In the end, the adoption of the document under the name 'Constitutional Framework' was seen as a satisfactory compromise.

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<sup>8</sup> Constitutional Framework for Provisional Self-Government, UNMIK, 15 May 2001.

<sup>9</sup> Constitution of the Socialist Federal Republic of Yugoslavia, 1974, Articles 170-171; and 245-247.



The preamble confirms the UNSCR 1244 mandate, with the modification that it refers to 'meaningful self-government in Kosovo pending a final settlement', rather than 'substantial' self-government. Further, it affirms that '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.' Combined with a broad array of powers that are specifically reserved for the SRSG, the conclusion of the Independent International Commission on Kosovo that what the Constitutional Framework actually grants is limited autonomy rather than the 'substantial self-government' referred to in UNSCR 1244 is inescapable.<sup>10</sup>

The new institutions created under the Constitutional Framework will be 'substantial' in the sense that their areas of competence are broad. However, the SRSG has a virtually unlimited prerogative to override them. Essentially, and despite the prior consultation with local figures, the Constitutional Framework is an UNMIK regulation subject to amendment at the whim of the SRSG. In effect, the SRSG remains a benign, 'legal tyrant' (in the classical Greek sense: a despot subject to no checks and balances). Kosovo Albanian leaders argued that the Constitutional Framework should provide for a constitutional court that could act as a check on the SRSG. UNMIK took the view that as, pending a final settlement, Kosovo does not have a constitution, and as in the meantime full legislative and executive authority is vested in the SRSG,<sup>11</sup> in line with UNSCR 1244, there could be no constitutional court.

Kosovo Albanian representatives wanted to include a clause in the Constitutional Framework allowing for a referendum on independence. However, the SRSG was firm in insisting that under UNSCR 1244 the Constitutional Framework must not prejudice final status in that way. Indeed, given the order in which the stages for advancing the political process in Kosovo are laid out, as described in the previous section, the Resolution

does appear to indicate that final status will be determined at a later stage in UNMIK's mandate, after the setting up of provisional institutions. In UNSCR 1244 it is stated that the Rambouillet agreement will be taken into account in determining final status, and Rambouillet did foresee the 'will of the people' as one of the factors to be taken into consideration.<sup>12</sup> Yet the UN judged that an explicit reference to a referendum in the Constitutional Framework would be premature at this point. The Constitutional Framework does, however, in its preamble, repeat the reference made at Rambouillet to the 'will of the people' as one of the relevant factors to be taken into account in deciding Kosovo's final status.

### C. THE INSTITUTIONS OF INTERIM SELF-GOVERNMENT

The Constitutional Framework establishes four primary Provisional institutions of Self-Government: the Assembly, President, Government and Judicial System, as well as number of other bodies and institutions,<sup>13</sup> and lays down their areas of responsibility.

#### 1. The Assembly

Of the 120 seats in the Assembly, 100 are distributed among the parties and coalitions according to a system of proportional representation, with the whole of Kosovo comprising a single electoral district. In addition, ten seats have been set aside for representatives of the Serb minority and another ten for other minorities.<sup>14</sup> In order to be eligible for these set-aside seats, parties or coalitions have to declare themselves as representatives of the minority in question. The Constitutional Framework thus stacks the deck in favour of the Kosovo Serbs and other minorities, as they are entitled to an additional ten seats on top of those that they receive out of the 100 seats that are divided among all parties. The system is thus skewed in favour of the Serbs and other minorities, who will be able to

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<sup>10</sup> The Independent International Commission on Kosovo, *The Follow-Up: Why Conditional Independence?* (September 2001). Available at <http://www.kosovocommission.org>

<sup>11</sup> UNMIK Regulation No. 1999/1 on the Authority of the Interim Administration in Kosovo, 25 July 1999.

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<sup>12</sup> Rambouillet accord, Chapter 8, Article I.3.

<sup>13</sup> Constitutional Framework, Article 1.5. The operations of the institutions are laid out in Chapter 9 of the Constitutional Framework.

<sup>14</sup> Other minority communities are the Roma, Ashkali, Egyptians, Bosniaks, Gorani and Turks.

wield a disproportionate influence in the new Assembly.

In devising the electoral system, an emphasis was placed on simplicity,<sup>15</sup> hence the decision to opt for a single electoral district. All of the three big Albanian parties expressed a preference for a system of multiple districts, with individual Assembly members representing constituents in a given area.

The OSCE Mission argued that, given the absence of up-to-date population data, such a system would be unfeasible. A proposal for a mixed system based on Kosovo's existing 30 municipalities, with the rest of the seats being filled on the basis of province-wide lists, was also rejected. In order to avoid delaying the election, the Albanian parties accepted the system favoured by the OSCE.

Some observers see it as an advantage that the adopted system will limit the possibilities for regional fiefdoms. The system also makes it very difficult for any single party to dominate the Assembly, so that negotiations over power-sharing are likely to become a feature of Kosovo politics. Given the provision of set-aside seats for minorities, mainstream parties would need to gain 61 out of 100 seats to secure an Assembly majority.

Other contentious features of the electoral system included the provision for closed candidate lists (meaning that the ranking of candidates on the lists cannot be altered by the voters), as stipulated in the Constitutional Framework,<sup>16</sup> as well as a gender quota. In accordance with the preference of Kosovo political leaders, open candidate lists were used in the October 2000 municipal elections, with the result that voters were able to reorder the ranking of the candidates, thus effectively eliminating many women candidates. For the 17 November election, parties were required to place a woman in every group of three candidates over the first two-thirds of their list.

Under the closed list system, since lists cannot be rearranged and UNMIK has accepted that where a woman resigns from the Assembly she is to be replaced by another woman, an Assembly with

roughly 25 per cent women was expected to result. All of the major parties complained that closed list ballots represented an infringement of their democratic latitude. There were also grumbles that, regarding the gender quota, standards were being imposed by international officials which are not applied in Western democracies and for which Kosovo is allegedly unready.

The Constitutional Framework describes the Assembly as the 'highest representative and legislative Provisional Institution of Self-Government of Kosovo'.<sup>17</sup> Its functions include the adoption of laws and resolutions, endorsing or rejecting the prime minister and government, and establishing committees to oversee legislation. The Assembly is empowered to adopt laws in the areas of responsibility assigned to the provisional institutions.<sup>18</sup> Nevertheless, as already noted, the Constitutional Framework explicitly states that the prerogatives of the SRSG under UNSCR 1244 are not diminished by the new set-up, so that the Assembly's authority is in fact very limited.

How the Assembly operates in practice will depend on several factors. The SRSG may opt largely to leave the new institutions to govern within the parameters laid down in the Constitutional Framework.<sup>19</sup> Until now, UNMIK officials have often tended to show a marked lack of faith, bordering on contempt, in the ability or fitness of Kosovo leaders to run their own affairs. After municipal elections in October 2000, international officials in practice continued to be the real authorities at the local level.

Whether the picture will be different at the central level will depend partly on whether the elected Kosovo officials demonstrate that they can govern effectively, and partly on the attitude adopted by the SRSG. Notwithstanding Haekkerup's assertion that he will allow the new institutions to govern in the areas allotted to them, conflicts may arise in particular in policy areas where funding by international donors is in play. Donors may not be

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<sup>15</sup> OSCE elections official to the ICG.

<sup>16</sup> Constitutional Framework, Article 9.1.3 -(d).

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<sup>17</sup> Constitutional Framework, Article 9.1.1.

<sup>18</sup> Constitutional Framework, Article 9.1.26 -(a).

<sup>19</sup> The SRSG asserted at a post-election press briefing on 17 November 2001 that so long as the new institutions operate within the competencies laid down in the Constitutional Framework, he will leave them to get on with it.

prepared just to watch local leaders decide on how their money is spent.

Much will also depend on how the political parties use the Assembly – whether Kosovo leaders try to test the limits of the authorities granted in the Constitutional Framework, and whether, and how, they seek to advance the cause of independence through the Assembly. Certainly it is unrealistic to expect the Kosovo Albanian parties to heed the urgings of international officials and set the independence question aside in order to concentrate on making the new institutions work. There has been speculation that the parties might declare independence or introduce an independence referendum in the Assembly. Such a move cannot be altogether ruled out. However, while independence remains the overriding goal for all Kosovo Albanian parties, it appears to be recognised among the parties that such an extremely confrontational gesture would be counter-productive at present.<sup>20</sup>

However, it seems unlikely that the Kosovo Albanian parties will meekly play the political game according to UNMIK's rules. The existence of an elected Assembly with a democratic mandate will irrevocably alter the political environment in Kosovo. Whatever the formal limits imposed by the Constitutional Framework, the Assembly will provide a powerful new forum from which Kosovo leaders will be able to assert their case. A more strained relationship with UNMIK can be expected to develop.

## 2. The Government

The role of the government, as envisaged by the Constitutional Framework, is to exercise executive authority and implement 'Assembly laws and other laws within the scope of responsibilities of the Provisional Institutions of Self-Government'. It can also propose draft laws to the Assembly on its own initiative. A prime minister shall be proposed by the president, in consultation with the political parties. There is provision for the inclusion of at least two representatives of minorities among the government ministers.

According to the Constitutional Framework, the responsibilities of the government will include the following areas: economic and financial policy; fiscal and budgetary issues; trade and industry; education and culture; science and technology; health; the environment; labour and social welfare; agriculture; and tourism.<sup>21</sup> The new government will have an annual budget of DM 400 million.<sup>22</sup>

Significant areas of competence are reserved for the SRSG. Among these, the SRSG may dissolve the Assembly if the provisional institutions are 'deemed to act in a manner which is not in conformity with UNSCR 1244, or in the exercise of the SRSG's responsibilities under that Resolution.' He has the 'final authority to set the financial and policy parameters for, and to approve, the Kosovo consolidated budget.' He exercises final responsibility regarding the appointment and removal of judges and prosecutors. He is responsible for external relations, although he should consult with the provisional institutions in this area. He has the authority to administer public, state and socially owned property and to regulate public and socially owned enterprises.<sup>23</sup>

In the realm of law and order, the Kosovo Police Service functions under the authority of the SRSG and under the supervision of UNMIK Police.<sup>24</sup> The Kosovo Protection Corps, a civil emergency organisation that was set up as a home for former members of the Kosovo Liberation Army (KLA), and which many Albanians would like to develop into a fully fledged army, is under the control and authority of the SRSG.<sup>25</sup> In the realm of security and defence, the Constitutional Framework reaffirms the mandate of the NATO-led Kosovo Force (KFOR), with which the SRSG is to coordinate closely.<sup>26</sup>

Thus while the Constitutional Framework does hand over responsibility to the newly elected government in a broad range of areas, key powers

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<sup>20</sup> The SRSG told a press conference on 19 November 2001, in response to a question as to how he would stop the Assembly from making a move on independence, that 'it would never get on the agenda.'

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<sup>21</sup> Constitutional Framework, Article 5.1.

<sup>22</sup> UN Secretary-General Kofi Annan, 'Kosovo: our most ambitious peace operation yet', *Focus Kosovo*, October 2001.

<sup>23</sup> Constitutional Framework, Article 8.1.

<sup>24</sup> Constitutional Framework, Chapter 6.

<sup>25</sup> Constitutional Framework, Article 8.1 -(k).

<sup>26</sup> Constitutional Framework, Chapter 13 and Article 8.2.

are reserved for the SRSG. In many cases that is only logical under current circumstances. Given the continuing unsatisfactory security situation within Kosovo and on Kosovo's borders, and the continuing need for a heavy KFOR presence, it would clearly be unrealistic at this stage for control over internal or external security to be devolved to local control.

In general, Albanian representatives on the JWG had wanted to secure as broad a range of competencies as possible for the provisional institutions. In particular, they would have liked to include responsibility for external affairs. That the SRSG, an unelected international official, represents Kosovo abroad is a constant source of suspicion among Kosovo Albanians aware that he will not necessarily represent their interests as they would wish. However, the rejection of the idea of an external affairs ministry within the government was unsurprising given that Kosovo's status has yet to be decided.

### 3. The President

Provision for a president of Kosovo was of key symbolic importance for Kosovo Albanians, although it was opposed by international representatives on the JWG and in the Kosovo Serb community. The need for a figurehead, even if the post is largely symbolic, is seen as important by Kosovo Albanians. A president is seen as a head-of-state in waiting, which affirms Albanians' aspiration to statehood.

The role of president of Kosovo will indeed be largely symbolic. According to the Constitutional Framework, the president will 'represent the unity of the people and guarantee the democratic functioning of the Provisional Institutions of Self-Government.'<sup>27</sup> The president will be indirectly elected, by the Assembly, and will, in consultation with political parties, propose a prime minister.

The president is given duties in external relations, in coordination with the SRSG.<sup>28</sup> Thus although this may be a sop to Kosovo Albanian hopes for an external ministry, responsibility for external relations rests with the SRSG and the president has in effect a ceremonial role. Nevertheless, as with

the Assembly, the institution of president may acquire a legitimacy for the majority Kosovo Albanian population outweighing the limited role afforded it in the Constitutional Framework. While the president may have no formal powers to represent Kosovo abroad, undoubtedly Kosovo Albanians will expect to be represented by their own legitimate representatives on the international stage, and thus the president may attain an importance far beyond that envisaged in the Constitutional Framework.

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<sup>27</sup> Constitutional Framework, Article 9.2.1.

<sup>28</sup> Constitutional Framework, Article 9.2.4 -(a).

### III. THE KOSOVO ALBANIAN PARTIES

Though the OSCE's Central Election Commission certified a total of 26 political entities (parties, coalitions and citizens' initiatives), the campaign for Albanian votes was dominated by three groups: the Democratic League of Kosova (LDK), the Democratic Party of Kosova (PDK) and the Alliance for the Future of Kosova (AAK). These three groups dominated the October 2000 municipal elections, they dominated these elections, and they will dominate the new Assembly. Kosovo's Serbs, who boycotted the municipal elections, will have significant representation in the new Assembly through their single, joint coalition 'Return'.

According to partial results issued by the OSCE on 19 November 2001, the LDK won about 46.3 per cent of the vote, the PDK took 25.5 per cent and the AAK 7.8 per cent. The single Serb list won about 11 per cent. Although this result was only partial, the OSCE Head of Mission, Daan Everts, estimated that the vote would translate roughly into a number of seats in the high forties for the LDK, the high twenties for the PDK, and slightly under ten for the AAK. The Serb list is expected to receive slightly over ten seats, plus another ten guaranteed, set-aside seats for the Serb minority.<sup>29</sup> Some smaller parties may, when the final allocation of seats is made, be eligible for a seat in the Assembly, while ten set-aside seats will be divided among the non-Serb minorities.

The conduct of the election was generally judged to have been a success, and in terms of efficiency was a marked improvement on the October 2000 municipal elections. While noting some infringements, the Election Observation Mission, led by the Council of Europe, issued a generally positive preliminary statement. It noted that while some incidents did take place, levels of violence were much lower than last year.<sup>30</sup>

One reservation of the election observers concerned the relatively low turnout of about 64 per cent, well down on the 78 per cent turnout in

the municipal elections. However, Everts pointed out that the drop in percentage terms partly reflected the fact that voters who had not registered for the municipal elections, including Serbs, were registered this time, and that the absolute numbers voting were actually higher.<sup>31</sup>

That the campaign failed to raise as much enthusiasm as the campaign for the October 2000 municipal elections may in part have reflected the difficulty in distinguishing among the parties on substantive issues. While all three main parties assert their commitment to sound, democratic government, the rule of law, a market economy and so forth, given that none has any record of government there is no basis on which to assess their claims. On the key issue of the future status of Kosovo, all are committed to independence. To a considerable degree, preferences among the electorate are based on habit or regional factors, combined with the personalities of the party leaders.

#### A. THE DEMOCRATIC LEAGUE OF KOSOVA (LDK)

The election result was a bitter disappointment to the LDK, which had scored 58 per cent of the vote in the October 2000 municipal elections and expected to fare much better than they did in this election. While the drop to 46.3 per cent is a little less dramatic when one takes into consideration the fact that many Serbs also participated in this election, increasing the total turnout, the fact remains that the LDK's support has dropped in comparison with the other main Albanian parties. Nevertheless, the LDK remains much the biggest party.

The LDK, with its leader, Ibrahim Rugova, derives much of its strength from its record as the political movement that led the campaign of passive resistance to Serbian rule during the 1990s. The LDK initiated the parallel system of schools, medical facilities and other services that underpinned that resistance. It has been unswerving in its support for independence, while at the same time maintaining a generally cooperative stance towards the international authorities. Thus the LDK holds a venerable place

<sup>29</sup> Post-election press briefing, 19 November 2001.

<sup>30</sup> International Election Observation Mission Preliminary Statement, 18 November 2001.

<sup>31</sup> Post-election press briefing, 19 November 2001.

on the political scene, and much of its support derives from inertia among its supporters rather than positive preference. The party maintains a strong network of offices throughout Kosovo.

Many thought that the party and its leader were politically dead in the aftermath of the NATO bombing campaign in 1999. During the campaign, Rugova was televised in the company of former Yugoslav President Slobodan Milosevic in Belgrade, and was accused by some of being an appeaser. Following the campaign, the KLA moved swiftly to fill the vacuum left by the departing Serb forces, while Rugova remained abroad for some weeks. However, only a minority of Kosovo Albanians actively participated in the KLA. Loyalty to the LDK and Rugova was rekindled by widespread revulsion at the perceived arrogance of the KLA in seeking to take over all the reins of political and economic power in the chaos before UNMIK established itself. The LDK's strong performance in the October 2000 municipal elections re-established it as the dominant political force in Kosovo.

The LDK is perceived as having rested on its laurels, and its loss of support in this election was not a surprise. It is in many ways a passive presence in Kosovo politics, and many, including within the party, have accused the leadership of complacency in the face of the challenge from the newer PDK and AAK. Critics of Rugova's leadership include the former prime minister-in-exile, Bujar Bukoshi.<sup>32</sup> Such critics express fears that Rugova is aloof and has lost touch with the electorate. While Bukoshi is frustrated with his party's performance, he still prefers the LDK to its rivals, seeing it as relatively tolerant, broad-based, and untainted by the violence of the other parties.<sup>33</sup> Some observers close to the party predict that it will split after the election. In that case, Bukoshi would likely play a leading role in one of the emergent factions.

Campaign speeches by LDK leaders have laid stress on the party's record as the longstanding champion of independence. Rugova continues to lobby European capitals in hopes of building

international support for recognition of Kosovo's independence. At a rally in Klina, Rugova stated the party's core position: 'As you know, we declared independence in 1991 and we have built our state for more than ten years. Therefore we ask for the official recognition of Kosovo's independence by the United States, the EU and the international community.'<sup>34</sup>

Immediately after the election, Rugova reiterated the call for independence.<sup>35</sup> While this elicited swift rebuttals from Western officials, the repetition of the Albanians' key aspiration was not surprising. Of greater importance is how Rugova would pursue that goal in practice. As indicated by the campaign remark cited above, the LDK takes the position that Kosovo has already made clear its determination to be independent, implying that any new declaration would add little. The point, in the view of many leading LDK officials, is to gain international recognition.<sup>36</sup> Even if there is no early attempt to push the issue in the Assembly, Rugova, who expects to be the new Kosovo president, can be expected to devote himself above all to trying to win diplomatic support for Kosovo independence.

In the campaign for the October 2000 election, a high incidence of attacks and intimidation on LDK officials may have gained the party extra sympathy. In the run-up to the November 2001 election, the atmosphere was considerably calmer, with far fewer violent incidents.<sup>37</sup> Nevertheless, the pro-LDK newspaper *Bota Sot* reported numerous incidents against LDK officials, presenting them as evidence of a wide campaign of violence and intimidation.<sup>38</sup> The other political parties accuse the LDK and *Bota Sot* of habitually casting the LDK in the role of innocent victim, wringing maximum mileage out of every act that

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<sup>32</sup> OSCE *Background Report: Political Party Landscape – Political Entities Competing in the 2001 Kosovo-wide Election*, Oct. 5, 2001.

<sup>33</sup> Bukoshi to ICG, October 2001

<sup>34</sup> *Bota Sot*, 6 November 2001

<sup>35</sup> *Reuters*, 18 November 2001.

<sup>36</sup> ICG interviews with senior LDK figures. One LDK source pointed out that not everyone in the party favours such a cautious approach.

<sup>37</sup> In a press briefing on 12 November 2001, UNMIK spokesperson Susan Manuel described the election campaign as 'going ahead with very few incidents'.

<sup>38</sup> Examples include a report of a hand grenade attack on the chairman of the municipal assembly at Obilic (*Bota Sot*, 4 November 2001); a grenade attack on the home of an LDK member at Gjakove (*Bota Sot*, 6 November 2001); and the stabbing of an LDK supporter at a party rally (*Bota Sot*, 6 November 2001).

could possibly be construed as an attack on the party.<sup>39</sup>

On 19 October 2001 a drive-by shooting occurred in Skenderaj/ Srbica. One of the two victims in the incident was a journalist for *Bota Sot*. Rugova claimed the incident was political and aimed at the LDK. KFOR, however, stated that the killings were not politically-motivated, but the result of a non-political feud.<sup>40</sup> Whether it was a political crime or not, the LDK pounced on the opportunity to demonstrate that once again it was a victim of political violence. The PDK denounced the attack but also criticised the LDK for manipulating the incident for political gain. Nevertheless, violent incidents did occur, and the AAK was sanctioned by the Election Complaints and Appeals sub-Commission due to the repeated threats and physical violence of an AAK member against LDK supporters in Decan/ Decani.<sup>41</sup>

## **B. THE DEMOCRATIC PARTY OF KOSOVA (PDK)**

The PDK remains the second strongest party, and has narrowed the gap on the LDK. While its share of the overall vote remains similar, taking into consideration that Serbs turned out to vote this time, the PDK's share of the Albanian vote has increased. The PDK is led by Hashim Thaci, who spoke for the KLA at the Rambouillet negotiations in 1999. The party, which was formed in September 1999, was seen as the political

successor to the KLA. Wearing the mantle of the KLA, for a time it seemed that, with the prestige of having led the war of liberation against Serbia, Thaci and the KLA would inherit political power in Kosovo. As the Serb forces withdrew, former KLA fighters, not all of them Thaci allies, initially stepped into the breach, taking over all 26 municipalities with an Albanian majority and forming a provisional government. New managers were appointed to nearly all socially owned enterprises

However, what seemed at first to have been a major victory became a burden that contributed to electoral defeat. Only in a few cases did the mainly young ex-KLA fighters have the necessary experience to run municipalities and enterprises. More experienced people not affiliated to the movement were either sidelined or chased out. The KLA takeover came to be widely seen as a usurpation. Subsequently the PDK and Thaci were widely held responsible for the chaos, corruption and criminality of the immediate post-war period. Rugova's LDK, which sat quietly on the sidelines in 1999 and early 2000, benefited from the dissatisfaction with the PDK. The October 2000 municipal election results were a major disappointment for the PDK, although much of the international community barely disguised its relief that a party that they associated with extremism, organised crime and violence had been beaten. The PDK won majority support mainly in Thaci's Drenica-region power base, west of Pristina.

The party has since tried to improve its image, to re-invent itself as a responsible party that can be trusted with political power. To this end, it recruited Flora Brovina, a human rights activist, former political prisoner in Serbia, paediatrician, poet, and president of the Albanian Women's League of Kosovo, as the PDK candidate for president. Brovina proved an effective political advocate. The party also built up its organisation around the province, in the hope of increasing support beyond its core areas. Given its increased share of the Albanian vote, the PDK has some reason for satisfaction.

While moderating its image, the PDK has sought to present itself as the party that can be most trusted to achieve independence. Of the three main Kosovo Albanian parties, the PDK was the most outspoken critic of the Constitutional Framework. Thaci argued that it left all real decision-making to

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<sup>39</sup> *Bota Sot* has been criticised for its heavy pro-LDK bias. On 31 October 2001 the paper was fined by the Election Complaints and Appeals sub-commission for this bias (OSCE Weekly Media Monitoring Analysis of Kosovo-wide Print Media: Election Campaign, Week Five, 31 October - 6 November 2001). *Bota Sot* has also tried to portray the Kosovo Police Service as actively favouring the PDK. In one such case, UNMIK police condemned the 'slandorous misrepresentation of facts by *Bota Sot*' (press briefing, 12 November 2001). On 16 November 2001 *Bota Sot* was fined a second time, for publishing a picture of PDK presidential candidate Flora Brovina allegedly, but 'without proof, substantiation or the right to reply', in the company of Serbian secret service officials (OSCE press release, 16 November 2001). The pro-PDK newspaper *Epoka E Re* was also fined for its biased reporting (OSCE press release, 12 November 2001).

<sup>40</sup> OSCE Weekly Report No. 43/2001, 17-23 October; *VIP Daily News Report*, 24 October 2001

<sup>41</sup> OSCE press release, 12 November 2001.

the SRS. He declared that 'this document will hold hostage the aim of the people of Kosovo, which is political independence.'<sup>42</sup>

Nevertheless, the PDK has accepted political reality and intends to work within the Framework as it stands. This willingness to fit into the space granted to the Kosovo political parties cannot be taken for granted, however. If the party leadership comes to feel that the international community is taking steps, for example in UNMIK's relations with Belgrade, which ignore the interests of Kosovo Albanians, as they themselves define them, a cooperative approach by the PDK may not last long.

### C. THE ALLIANCE FOR THE FUTURE OF KOSOVO (AAK)

The youngest of the three main political groups, the AAK was founded in May 2000 as an alliance of six parties (later reduced to four) under the leadership of Ramush Haradinaj. Haradinaj was a prominent KLA commander, and his image as a war hero gives him great credibility among many Albanians, especially in the Dukagjin region where he served during the conflict. The appearance of the AAK challenged both the LDK and the PDK, and the AAK took some 8 per cent of the vote in the October 2000 municipal elections. Its challenge to the PDK lay in the fact that the PDK was no longer the only credible successor party to the KLA. Nevertheless, like the PDK the AAK hoped to take support away from the less dynamic and increasingly troubled LDK. Its performance in the Assembly election was below its expectations. However, as with the PDK, while its share of the overall vote remains much the same, its share of the Albanian vote increased. Thus the general impression is that the AAK as well as the PDK have gained at the expense of the LDK.

The AAK fought perhaps the slickest election campaign of the main parties. Under its slogan 'Neither Left, nor Right, but Straight', it sought to present itself as a party of the centre, more pragmatic than either of its rivals. The AAK shares the uncompromising attitude of the other two parties on independence. However, Haradinaj has fostered a more cooperative relationship with

UNMIK. The party has sought to differentiate itself from its rivals by claiming to represent hard work and effective government. For example, at a rally in Klina, Haradinaj stated that 'If anyone asks you why you think that the AAK is the best, I would ask you not to say that we are patriots because we are all patriots and we all love Kosovo. Say that the AAK works more than other parties, that AAK members wake up earlier than members of other parties and that they will do more for you than the others. I can say that personally I work more than Thaci and Rugova'.<sup>43</sup>

In a bid to broaden its appeal, the AAK recruited the highly respected former communist leader in Kosovo, Mahmut Bakalli. Like the PDK's presidential candidate, Brovina, Bakalli insists that despite being on the AAK's list of candidates, he remains independent and is not a party member. Bakalli considers that the electorate is becoming more politically mature and that the AAK can respond by stressing practical issues instead of untimely posturing over independence.<sup>44</sup>

There is a certain ambiguity in the international community's attitude towards Haradinaj and the AAK. There is respect for the party's professional approach and effective organisation, and for Haradinaj's energy, as well as appreciation for the party's moderate, pragmatic and cooperative stance. On the other hand, questions have been raised about his connections with alleged criminal and extremist elements. Like Thaci and the PDK, Haradinaj has adapted to changing circumstances, acknowledging that Kosovo's leaders have to prove they can run an administration, promote the rule of law, respect minorities etc. However, given his record, he will be expected to prove himself.

### D. POSSIBLE COMBINATIONS

The Assembly will hold its first session only after the final election result has been certified. Only then will the exact distribution of seats be confirmed. Given that no party will have an absolute majority in the Assembly, some kind of agreement will have to be made among the parties. There have been calls from many quarters to put their differences aside and form a broad coalition

<sup>42</sup> Quoted in UNMIK press release, 15 May 2001.

<sup>43</sup> *Koha Ditore*, 6 November 2001.

<sup>44</sup> Conversation with the ICG.



government. The AAK has consistently called for such a broad front, which could also include representatives of minority parties. Bakalli stresses the importance of presenting to the international community a common, united front representing the political aspirations of Kosovo Albanians. Bukoshi too expresses his hope that political leaders will demonstrate 'the political courage necessary to form a common front.'<sup>45</sup>

Thaci also indicated that the PDK was interested in forming a broad coalition government.<sup>46</sup> In the immediate aftermath of the election, the main question mark concerned the attitude of the LDK, as it struggled to come to grips with its disappointment over the result.<sup>47</sup> Rugova declared, rather elliptically, that the result meant it would be 'difficult to create effective institutions', but they would do their utmost 'to advance the process'.<sup>48</sup> However, the LDK's options appeared limited. Despite early suggestions that it would try to find support among non-Serb minority parties, the partial result indicates that this would still leave them well short of a majority. Thus some form of coalition appeared to be the most likely outcome, although the potential for strains in any such government is high.

Theoretically, the representatives of the Serb and other minorities could play a key role in deciding on the president and prime minister. The president of Kosovo will be elected by the Assembly in a secret ballot, and the president will then nominate a prime minister and government who will be confirmed or rejected by the Assembly. However, the prospect of Serb representatives wielding such influence may be sufficient to concentrate the minds of the Albanian parties to reach an agreement among themselves.

As has been discussed, there is little to distinguish the main Albanian parties on substance. All recognise that they need to demonstrate the capacity to govern effectively. All realise that patience is called for in approaching their ultimate goal of independence. And none is likely to show inexhaustible patience if they do not see the

international community continuing to move in the direction that they want to go. Thus there is little that can be said at this stage about possible differences of approach after the election.

At least at first, the parties are likely to concentrate on making the new institutions work, but sooner or later they can be expected to begin testing the limits placed on the new institutions. Above all, they will be looking at how UNMIK behaves in its developing relationship with Belgrade. There is already considerable suspicion as to international intentions, and if that suspicion is fuelled by the actions of UNMIK, then the Kosovo Albanian leaders are likely to sharpen their relations with the international administration. At that point, none of the Albanian leaders would want to appear lax on defending the national interest.

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<sup>45</sup> Bukoshi to the ICG.

<sup>46</sup> *Associated Press*, 19 November 2001.

<sup>47</sup> A senior LDK official told the ICG that he was convinced that the true LDK vote had been much higher.

<sup>48</sup> *Associated Press*, 19 November 2001.

## IV. SERB PARTICIPATION

Among all the contentious issues in the run-up to the election, the greatest amount of political energy on the part of the international community was devoted to the question of whether the Kosovo Serbs would participate. This reflected the widespread perception in Western capitals that Serb non-participation would represent a significant failure for UNMIK's efforts to build a multi-ethnic society in Kosovo.

Belgrade was always going to play a decisive role in deciding whether Kosovo Serbs should participate, and thus international efforts to secure participation focused on winning Belgrade's endorsement. As Belgrade procrastinated, international efforts to secure an agreement became ever more frantic.

The Western preoccupation with securing Serb participation was both unnecessary and counter-productive. While participation was highly desirable, the only people likely to suffer from its refusal were the Kosovo Serbs themselves. The impression that Serb non-participation would have represented a major failure for UNMIK was wrong. Having made every effort to persuade Serbs to participate, the process of establishing the new institutions and moving ahead with resolving Kosovo's final status could have gone ahead regardless of whether they participated or not. As it was, the desperate efforts to secure a nod from Belgrade only created new problems for UNMIK with Kosovo Albanian leaders, who strenuously objected to the importance that was attached to Belgrade's role in Kosovo affairs.

### A. THE ISSUES

Serbian leaders presented several reasons why they considered that conditions for Serb participation had not been met. The precise demands varied, reflecting the difficulty that Belgrade's ruling coalition had in finding a common position. Key demands consistently included the improvement of security for Serbs, the return of Serb refugees, freedom of movement within Kosovo, and the resolution of cases of missing Serbs.

Indeed, the security situation for Serbs and Roma in Kosovo remains highly unsatisfactory. An

estimated 170,000 Kosovo Serbs sought refuge in Serbia and Montenegro after the withdrawal of Yugoslav security forces in 1999.<sup>49</sup> Because of the violence and intimidation that many faced from vengeful Albanians, angry after a decade of abuse, oppression and finally attempted genocide, Serbs who remain in Kosovo mainly do so in enclaves under close KFOR protection, or in a Serb-controlled region north of the Ibar river.

There have been modest signs that the position of Serbs in Kosovo is becoming more secure, a factor mainly of passing time. Nevertheless the continued incidence of acts of violence and intimidation against Serbs during 2001 underscores that Kosovo remains a profoundly unsafe place for Serbs. The bomb attack in February 2001 on the Nis express, a bus transporting Kosovo Serbs to Serbia proper, in which eleven people were killed, shook the confidence of Kosovo Serbs.<sup>50</sup> Increased security has perhaps prevented further such atrocities. However, several interethnic incidents occurred in July 2001, including the stoning of a Kosovo-Albanian bus passing through Gracanica and the stoning of a bus from Nis in southern Serbia a week later. In January and February 2001, the last two Serb residents of Podujeva town, both elderly women who had lived for the past two years with constant KFOR protection and under constant intimidation, left, their departure accompanied by 'ugly scenes of jeering and verbal abuse'.<sup>51</sup>

While conditions for security and freedom of movement are clearly lacking, so are conditions for the return of refugees. The one significant return, organised in August 2001, was of 83 Serbs to the village of Osojane in north-west Kosovo. There is little doubt that but for the protection of KFOR troops, the returnees would be in grave danger. A number of humanitarian workers have expressed serious misgivings about the project, suggesting that UNMIK gambled with the Serbs' lives for the sake of a gesture on return.

Though Albanian leaders have condemned acts of violence against Serbs, and expressed support for

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<sup>49</sup> Information from the UNHCR.

<sup>50</sup> *Assessment of the Situation of Ethnic Minorities in Kosovo, March through August 2001*, UNHCR/ OSCE, p. 22.

<sup>51</sup> *ibid*, p. 23.

their return, anti-Serb hostility is frequently intense. There is a widespread perception among international officials that the condemnations have been half-hearted and that in general Albanian leaders have failed to use their moral authority strongly to counter attacks and intimidation against Serbs. There have been honourable exceptions,<sup>52</sup> but ICG contacts have confirmed the tendency of Albanian leaders to place responsibility for Serbs' security at the door of UNMIK and the Serbs themselves, shirking their own responsibility.<sup>53</sup>

Apart from the conditions for Serbs in Kosovo, Belgrade sought guarantees that the new Assembly would not be able to take any steps towards independence, and that the status of Kosovo would not be changed.<sup>54</sup> In fact, as already described, the Constitutional Framework rules out any such initiative by the new Assembly. Belgrade leaders may have been fishing for a guarantee that Kosovo would never be fully independent, but this the SRSG could not concede as to have done so would have been contrary to UNSCR 1244, which leaves the issue of final status open. Similarly unrealistic were demands from Belgrade for the return of some Yugoslav Army and police units to Kosovo. While in line with UNSCR 1244, such a move would be too destabilising to be seriously considered by the international community.

An aim of the Yugoslav authorities may have been to seek agreement on some kind of formalised structure within which Belgrade would have a say on running affairs in Kosovo, thus asserting in a practical way the FRY's continued sovereignty over Kosovo.<sup>55</sup> The head of the FRY's Kosovo Coordination Centre, Nebojsa Covic, proposed during a visit to the United Nations in New York in

September 2001 that relations between Belgrade and UNMIK should be institutionalised.<sup>56</sup> That Belgrade had not had institutionalised ties with UNMIK earlier reflected the uncooperative attitude of FRY leaders towards the UN in Kosovo. However, prompted by Covic, Belgrade may have decided that establishing an institutional link with UNMIK could offer an opportunity to increase Belgrade's influence in the province. As discussed below, the agreement reached between Belgrade and UNMIK on Serb participation in the election was seen by Kosovo Albanian leaders at least as realising just such an institutional link. Belgrade may also push for UNMIK and KFOR to sign status of mission and status of forces agreements with Yugoslavia, formally the host country.<sup>57</sup>

## B. BELGRADE AND KOSOVO

For many politicians in Belgrade, seeking various guarantees to obtain Serb participation in the Kosovo election may have been little more than a smokescreen to cover their inability to come to grips with the loss of Kosovo. While many leading Serbian figures privately acknowledge that Kosovo is lost, the sensitivity of the issue with the wider public is such that they feel that they can only lose politically by dealing constructively with UNMIK.

At the root of the long agonising of Belgrade's leaders over whether to call for Serb participation in the election was the reluctance to take political responsibility for a decision that would effectively acknowledge the legitimacy of Kosovo's self-government institutions. It was thus essential, before the Belgrade leadership could issue a call for Kosovo Serbs to participate, to reach a consensus within the ruling Democratic Opposition of Serbia (DOS) coalition. Above all this meant that Yugoslav President Vojislav Kostunica – the Belgrade leader with most credibility on national questions – needed to put his weight behind any decision.

The domestic Serbian political scene is dominated by the drawn-out political struggle between Kostunica and Serbian prime minister Zoran Djindjic, which came into the open with renewed force in August 2001 following the murder of

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<sup>52</sup> For example, a call by PDK presidential candidate Flora Brovina to Serbs to overcome their understandable fears and join her in the 'gamble of democracy' (New York Times, 31 October 2001).

<sup>53</sup> Without in any degree excusing the inadequate conditions for Serbs to return to Kosovo, it should be noted that neither have displaced Albanians from the Serb-controlled area north of the Ibar river been able to return home. Belgrade's advocacy of the rights of Serb refugees appears to be a continuation of Milosevic's practice of manipulating the refugee issue more than a reflection of genuine concern.

<sup>54</sup> For example, the statement by Serbian premier Zoran Djindjic reported in *VIP Daily News Report*, 1 November 2001.

<sup>55</sup> See *VIP Daily News Report*, 30 October 2001.

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<sup>56</sup> Tanjug news agency, 18 September 2001.

<sup>57</sup> ICG contacts in Belgrade.

Momir Gavrilovic.<sup>58</sup> The issue of participation in the Kosovo election became tied up in this broader struggle, as neither protagonist could afford to go out on a limb and risk being blamed for selling out Serb interests in the province.

The reluctance of Kostunica and his Democratic Party of Serbia (DSS) to call for Serb participation can be explained by several factors, including a continued attachment to the 'Great Serbia' project. Secondly, it was feared that the establishment of the new institutions risked weakening Serb parallel structures in areas of Kosovo still under Serb control, north of the Ibar river, where the DSS is strong. Thirdly, DSS leaders may have feared offending the party's core, nationalist constituency, to the benefit of other parties on the Serbian political scene.

For Djindjic and those close to him in DOS, Kosovo is by and large a non-issue. Its significance lies mainly in its potential to damage him politically. Thus while the Serbian government recognises the UN administration and seeks cooperation with it, Djindjic for the most part avoids personal contact with UNMIK, leaving this responsibility to Covic and Kostunica. Still suffering from low popularity ratings, Djindjic was unwilling to expose himself over the issue of Serb participation in the Kosovo election. Leaving the key decision-making to Kostunica and not breaking ranks on the issue allowed Djindjic to cover himself politically.

### C. THE AGREEMENT

A major problem in securing the participation of Kosovo's Serbs in the election was for Belgrade's leaders to reach a common position that avoided anybody having to shoulder responsibility alone. On 23 October 2001, at a meeting of representatives of the federal and Serbian governments, Belgrade issued a declaration on concerns that needed to be met in order for an agreement on participation to be reached.<sup>59</sup> There followed a frenetic last round of meetings between UNMIK and Belgrade to try to narrow the differences. While Serbian leaders may have already decided to call for Serb participation

before Kostunica finally announced an agreement with UNMIK on 3 November 2001, they reportedly engaged in an extraordinary game of brinkmanship before finally agreeing.<sup>60</sup> The agreement was signed by Haekkerup and Covic in Belgrade on 5 November.

The agreement carefully affirms the principles of UNSCR 1244 concerning the sovereignty and territorial integrity of the FRY and that 'the position on Kosovo's status remains as stated in the UNSCR 1244', i.e. the question remains open, although this was not spelled out in the Belgrade agreement. The document affirms that the new Kosovo institutions will not be empowered to take any steps regarding the issue of final status. Much of the document concerns the need to improve the lot of Serbs in Kosovo. It also welcomes the recently established cooperation between UNMIK and the FRY and, controversially, affirms the establishment of a high-ranking working group under the SRSG, to include representatives of the FRY, UNMIK and Kosovo's provisional institutions of self-government, once established.

UNMIK and FRY officials immediately put different spins on the document. FRY officials claimed they had a guarantee that Kosovo would remain in the FRY and that the agreement was a step in the direction of returning Kosovo to Belgrade's jurisdiction.<sup>61</sup> Haekkerup denied Covic's interpretation, asserting that, in line with UNSCR 1244 the issue of Kosovo's final status remains open and in the meantime full authority in Kosovo remains with UNMIK.<sup>62</sup>

Kosovo Albanian leaders reacted to the agreement with fury. They objected that they were not consulted or even informed about the proceedings. While they welcomed the decision on Serb

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<sup>58</sup> See ICG Balkan report *Serbia's Transition: Reforms under Siege*, 21 September 2001.

<sup>59</sup> *VIP Daily News Report*, 24 October 2001.

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<sup>60</sup> As late as the evening of 1 November 2001, Covic reportedly proposed that FRY military and police forces should be returned to Kosovo, and that the province should be 'cantonised' between Serb and Albanian areas. Such a proposal was completely unacceptable to Haekkerup, who was reportedly convinced that the search for an agreement had failed, before UN Secretary-General Kofi Annan's intervention with Kostunica opened the way to agreement (*Zeri*, 9 November 2001).

<sup>61</sup> For example, statement by Covic reported in *VIP Daily News Report*, 6 November 2001.

<sup>62</sup> *Zeri*, 6 November 2001 and *Koha Ditore*, 7 November 2001.

participation, they were angered by what they saw as the introduction of Belgrade as a crucial factor in deciding on matters in Kosovo. The PDK and the AAK asserted that they would not recognise the announced new working group. A meeting of Kosovo's Interim Administrative Council on 6 November 2001 was not attended by Haradinaj. The LDK was represented by a relatively junior official, while Thaci appeared only to assert that the agreement was unacceptable, and then left.<sup>63</sup>

At a campaign rally in Fusha Kosova/ Kosovo Polje, Thaci expressed his disappointment over the agreement, linking it with the lingering dissatisfaction with the Constitutional Framework: 'We as a party believe that we have declared our stance that we do not want to have any new relations with Belgrade. This agreement is an open violation of Resolution 1244 and it means that the implementation of the shameful Constitutional Framework for Kosovo has begun'.<sup>64</sup> At a rally in Peja/ Pec, Brovina declared that 'Democrats of the world have come here to present democracy. Yet with their behaviour they show that they are not democrats. But it is vain, and while they may make various agreements they should know that they have no value without our signature. The internationals do not have to create Kosovo's independence. We will establish independence.'<sup>65</sup>

This Albanian anger reflects a growing suspicion towards the international community. The conviction is growing among commentators and leaders that the international community is ceasing to be an ally and is increasingly a block on their aspirations. Any further tendencies of the SRSG to represent the interests of Kosovo abroad, or especially in Belgrade, without consultation or contrary to Albanians' own perceptions of their interests is likely to lead to a sharp deterioration in relations between UNMIK and the Albanian parties.

#### D. THE KOSOVO SERBS

Kosovo Serb leaders reacted in various ways to Belgrade's call to participate in the election. Despite their common concerns, Serbs in Kosovo's

enclaves and north of the Ibar by no means form a cohesive monolith. Those in the isolated enclaves within Kosovo feel more vulnerable to Albanian violence and other forms of pressure, and broadly have stronger incentives to find a modus vivendi with Kosovo's Albanians. This combined with a need to retain the goodwill of the international community was behind the support for Serb participation among moderate Serb leaders such as Rada Trajkovic and Bishop Artemije, based in the Gracanica enclave near Pristina.

North of the Ibar, though KFOR and UNMIK police patrol, the UN's writ does not run. Though pockets of Albanians remain in the north, others are deterred from crossing the Ibar by Serb vigilantes known as 'bridge watchers'. The northern Kosovo Serbs, making a relatively compact ethnic bloc abutting Serbia proper, feel more secure. For them Belgrade's control remains real. From this perspective, cooperation with UNMIK is seen as loosening the ties with Belgrade and moving closer to Pristina. A key political actor in northern Mitrovica is Marko Jaksic, a vice-president of Kostunica's DSS, who has all along taken a hardline on Serb participation in Kosovo institutions. Another leading hardliner is the head of the Serb Resistance Movement (SPOT), Momcilo Trajkovic,

Kosovo Serbs are to be represented by a single, multi-party list, the coalition 'Return', which includes all of the main parties of DOS. Moderate Kosovo Serb leaders such as Rada Trajkovic and Bishop Artemije welcomed Belgrade's recommendation to go out to vote. They were joined by the Serbian Orthodox Church Patriarch Pavle, who resided in Kosovo for many years.<sup>66</sup> However, Jaksic and Trajkovic, as well as the local leader of Djindjic's Democratic Party (DS), denounced the agreement and said that Serbs should not participate. Following pressure from Belgrade, their defiance was muted. However, despite promises that they would not campaign against participation in the election, numerous reports followed of organised attempts to disrupt efforts by representatives of the 'Return' coalition to campaign to bring out the Serb vote.<sup>67</sup>

<sup>63</sup> *Zeri*, 7 November 2001.

<sup>64</sup> *Koha Ditore*, 6 November 2001.

<sup>65</sup> *Epoka E Re*, 6 November.

<sup>66</sup> *Blic*, 8 November 2001.

<sup>67</sup> See *VIP Daily News Report*, 7 and 12 November 2001.

As mentioned earlier, the Constitutional Framework is skewed in favour of Kosovo's Serbs, by granting them an extra ten seats in addition to those that their share of the vote would entitle them to. Thus if Kosovo Serbs had voted massively, they could potentially have won more than 25 seats in the 120-seat Assembly. As it was, the confusing messages being sent by their leaders – some of whom campaigned against participation – served to depress the Serb vote. Voting in predominantly Serb-inhabited areas was put at about 46 per cent, while the turnout among voters registered in Serbia and Montenegro was put at 57 per cent and 56 per cent respectively.<sup>68</sup>

Official Belgrade had been saying for months that conditions for Serbs to participate did not exist. Having finally changed their mind only two weeks before polling day, it is hardly surprising that many Kosovo Serbs were confused. Additionally, intimidation before and on polling day, designed to dissuade people from voting, was surely a factor.<sup>69</sup> As noted, the turnout in predominantly Serb-inhabited areas in Kosovo was lower than among those voting in Serbia and Montenegro, perhaps also reflecting the intimidation in many Serb-inhabited areas in the province. This impression is further supported by the variation in Serb turnout in different areas of Kosovo, surely in part due to the fact that intimidation was greater in some areas than in others.<sup>70</sup>

KFOR stressed that visible incidents of intimidation were dealt with effectively.<sup>71</sup> Be this as it may, the ability of organised thugs in northern Mitrovica to disrupt the implementation of the UN

mandate north of the Ibar and to prevent UNMIK's writ from running there continues to cause grave concern. The confident claim by KFOR officers that they could handle the incidents that occurred in Mitrovica on 17 November begs the question why they do not assert themselves more effectively on the other 364 days of the year.

Despite these problems on polling day, the fact remains that a significant proportion of Kosovo Serbs did cast their votes, and the new institutions will include legitimate Serb representatives. This is an important step in reintegrating ethnic Serbs into the wider Kosovo community. Nevertheless, whether Serb representatives will participate, or will be enabled by the Albanian parties to participate constructively in the new institutions remains to be seen. For example, Serb leaders have already made clear that if things do not proceed according to the agreement between UNMIK and Belgrade, they will leave the Assembly.<sup>72</sup>

Despite their numerical strength in the new Assembly and the provision for at least one minister in the government to be an ethnic Serb, there is a risk that the 'Return' deputies may find themselves politically marginalised by the main Albanian parties. Both the Serb representatives themselves and the Kosovo Albanian politicians should avoid such a development. Of key importance is that Kosovo Serb representatives should look less to Belgrade for protection. As described earlier, in their eagerness to be involved in deciding matters for the Kosovo Serbs, Belgrade leaders are influenced by many factors, among which the interests of the Kosovo Serbs themselves are rarely paramount. Belgrade should encourage Kosovo Serbs to look to Pristina, to participate in the new institutions and cooperate with UNMIK.

A further question concerns whether the election will help fully integrate the area north of the Ibar into Kosovo. The low turnout and intimidation there were not encouraging, suggesting that many Serbs in that region remain deeply resistant to the idea that their future lies in Kosovo. Nevertheless, the very fact that the opponents of participation used such strong-arm means indicated the extent to which they realise that the participation of Kosovo's Serbs in this election is a significant step

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<sup>68</sup> OSCE press release, 17 November 2001.

<sup>69</sup> According to an OSCE source, 'a number of incidents of intimidation were reported in Kosovo Serb areas. UN police removed or arrested persons harassing voters in Polling Centres. More subtle forms of intimidation, however, cannot necessarily be prevented.' Everts referred to 'an active, nasty and sometimes anti-democratic' campaign to keep ethnic Serbs from voting (press briefing, 17 November 2001).

<sup>70</sup> According to information provided by an official of the 'Return' coalition, Serb turnout was relatively high in many areas, notably in eastern Kosovo, while in the area north of the Ibar it was low (*VIP Daily News Report*, 20 November 2001). An OSCE official confirmed to the ICG that the turnout in northern Mitrovica was significantly lower than the average for Serb-inhabited areas.

<sup>71</sup> Statement by KFOR commander, General Marcel Valentin at a press briefing on 17 November 2001.

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<sup>72</sup> *Epoka E Re*, 15 November 2001.

forward. Ultimately, it is other factors that will be critical in improving the situation north of the Ibar, above all the need for a more consistently robust stance by KFOR in dealing with the thugs and intimidators who marred election day.

## V. CONCLUSION

Once the final election results are determined and the new institutions are formed, the main challenge for Kosovo's political leaders will be to make the new set-up work, to show they can govern responsibly and can in time be trusted to take on further responsibilities. Another question mark is to what extent UNMIK will interfere in the workings of the new institutions. If the heavy hand of the SRSG is felt too often, Kosovo politicians will never gain the sense of responsibility that can only come with real authority. A wise approach for the SRSG would be to allow Kosovo's new leaders to make mistakes, to learn from them, and thus to grow into their new role.

Beyond the establishment of the institutions as envisaged in the Constitutional Framework, the Albanians will not be satisfied with standing still. While it is widely understood that a process has to be gone through of establishing institutions and preparing for eventual independence, the Albanians will expect to see further progress along the road to that goal. If this expectation is not met, their patience is likely to prove to be limited and an increasingly strained relationship between the Kosovo Albanian parties and UNMIK could be expected. If this happens, the new elected Assembly, whatever its formal limitations, could prove a powerful forum from which the Kosovo Albanians can put their case. On the other hand, if Albanian frustrations are allowed to build, the limitations imposed upon the institutions could tempt some to pull out of them and return to the type of passive or indeed active resistance with which Kosovo Albanians are so familiar.

It would be completely unrealistic to expect Kosovo Albanians to set aside their aspiration to independence. However, for the time being the new institutions should concentrate on governing effectively. That would be the best proof to Western sceptics of their fitness to govern. Kosovo Albanian leaders should avoid any futile gestures on independence, such as a declaration by the Assembly which would only irritate the international community and if anything harden international opposition to independence.

Rather, the Albanian parties should adopt a constructive approach to addressing the independence issue. One way forward might be to

establish a committee, perhaps under the new Assembly, to consider options for addressing Kosovo's relationship with Belgrade, to prepare proposals that could form a basis for discussion with Belgrade and with the international community. The international community should encourage such a constructive approach.

While the holding of an election and the establishment of self-government institutions represents a considerable success for UNMIK and an important step on the road to resolving Kosovo's final status, the international community cannot afford to stop here. This is a first step, and

there should not be a long pause. Kosovo's Albanians and Serbs both need clarity as to the final outcome if they are to cease regarding the other as a threat and get down to living normal lives together. Serbia is unlikely ever to develop as a healthy democracy unless the issue of Kosovo is resolved. The international community should begin at an early stage to consider the next steps towards ending the uncertainty and turning Kosovo from a destabilising factor in the region to a factor of stability.

**Pristina/Brussels, 21 November 2001**



## APPENDIX A

### MAP OF KOSOVO



## APPENDIX B

### ABOUT THE INTERNATIONAL CRISIS GROUP

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

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

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

ICG's international headquarters are at Brussels, with advocacy offices in Washington DC, New York and Paris. The organisation currently operates field projects in nineteen crisis-affected

countries and regions across four continents: Algeria, Burundi, Rwanda, the Democratic Republic of Congo, Sierra Leone, Sudan and Zimbabwe in Africa; Burma/Myanmar, Indonesia, Kyrgyzstan, Tajikistan, and Uzbekistan in Asia; Albania, Bosnia, Kosovo, Macedonia, Montenegro and Serbia in Europe; and Colombia in Latin America.

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

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

November 2001

## APPENDIX C

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## APPENDIX D

### ICG BOARD MEMBERS

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