

**TWO TO TANGO:
AN AGENDA FOR THE NEW KOSOVO SRSG**

3 September 2003



TABLE OF CONTENTS

EXECUTIVE SUMMARY AND RECOMMENDATIONS	i
I. INTRODUCTION	1
II. THE ACTORS	1
A. THE SRSG AND UNMIK	2
B. THE PISG: THE EXECUTIVE BRANCH	4
C. THE PISG: THE ASSEMBLY.....	6
D. THE DIPLOMATIC OFFICES: AN EXTERNAL CHECK	9
III. OFF THE RAILS?	
CASE STUDIES OF UNMIK-GOVERNMENT RELATIONS	10
A. THE MINISTRY OF FINANCE AND ECONOMY	10
B. THE MINISTRY OF HEALTH	12
C. ASSEMBLY RULES OF PROCEDURE	14
D. BELGRADE-PRISTINA DIALOGUE.....	15
IV. THE SHARED OBJECTIVE: AUTONOMOUS SELF-GOVERNMENT	16
A. BENCHMARKS	16
B. TRANSFER OF COMPETENCIES TO THE GOVERNMENT	18
V. PUTTING THE RELATIONSHIP BACK ON TRACK.....	20
A. UNMIK: MORE FOCUS BUT IN THE BACKGROUND.....	20
B. SPIRIT OF PARTNERSHIP: UNMIK/PISG CONSULTATION	21
C. INTRA-PISG RELATIONS.....	22
D. LEGAL CLARITY.....	22
E. BUILDING REAL CAPACITY IN INSTITUTIONS	23
F. THE NEED FOR LEADERSHIP.....	24
VI. CONCLUSION	25
 APPENDICES	
A. MAP OF KOSOVO	26
B. GLOSSARY OF ACRONYMS	27



TWO TO TANGO: AN AGENDA FOR THE NEW KOSOVO SRSG

EXECUTIVE SUMMARY AND RECOMMENDATIONS

A new Special Representative of the Secretary General (SRSG), former Finnish Prime Minister Harri Holkeri, has taken up his post at the helm of the United Nations Interim Administration Mission in Kosovo (UNMIK). While UNMIK is in its fourth year, the current period is one of the most sensitive since the war. The province's elected Provisional Institutions of Self-Government (PISG) are gradually gaining more responsibility, and final status discussions are approaching. However, recent security incidents, including the killings of a UN police officer and two Kosovo Serb teenagers in August 2003, are a stark reminder that stability is not yet deep-rooted. Frustration is growing with the poor state of the economy and the delay of the international community in addressing status. In the midst of these challenges, the crucial relationship between UNMIK and the PISG has become dangerously strained. Holkeri will need to come quickly to terms with the legacy of confrontation and tension left by his predecessor, Michael Steiner, and instil in his team a new attitude of respect for PISG and a reflex for consultation rather than unilateral action.

This report analyses case studies and concludes that, rather than being a natural by-product of power-sharing and essential to identifying problems so that they could be corrected, tense relations between the Steiner-led administration and the PISG often distracted officials from the effort to build democratic institutions and created unnecessary hostility and ill-feeling. The key objective – to establish functioning democratic institutions with checks and balances among the judicial, legislative, and executive branches of government – has too frequently been lost in the rhetoric of who is to blame for Kosovo's governance problems.

Such conflict is not inevitable. Kosovo has generally been a welcoming environment for the international community. Holkeri has a unique opportunity to learn from the mistakes of the previous UNMIK administration, refresh relations with the PISG, and ensure that any disputes lead to the identification and resolution of problems, rather than the exacerbation of tensions. Putting the relationship with the government back on track is essential. Holkeri will have to navigate extremely sensitive and important issues – such as the incipient dialogue between Belgrade and Pristina, the transfer of competencies to the PISG, and the implementation strategy for the benchmarks UNMIK has established as a precondition to the ultimate turn over of its authority. Maintaining a professional and collaborative relationship with the PISG will be important to ensure that these issues result in steps forward, not steps backward.

The PISG also shares responsibility for ensuring that relations are collaborative. It is the weaker party in this relationship, with no status internationally and reliant upon UNMIK for reporting progress to the Security Council. Kosovo officials must recognise that cooperative interaction is in their direct interest. Public disputes with UNMIK mark Kosovo's reputation at a delicate time. While clamouring for more power, Kosovo officials must take seriously those areas of authority that they do have – such as the education and health sectors. They must also constructively use the instrument developed to guide the hand over of competencies to the PISG – the Transfer Council. PISG officials must show leadership by becoming proactive in developing and maintaining dialogue and constructive relations with UNMIK and assisting in creating an effectively functioning government.

This report outlines several critical issues that the government and UNMIK will have to address together. It also provides recommendations on how the two sides can put their relationship back on track. The fates of UNMIK and the PISG are intertwined. To safeguard its credibility and ensure its role in future peacekeeping missions, the UN needs its engagement in Kosovo to be a success. The PISG needs to safeguard continued international support and its path towards European integration. Yet neither side appears to recognise their shared destiny. Given the challenges ahead, this must change.

RECOMMENDATIONS

To the New SRSG, Harri Holkeri:

1. Develop a clearly focused policy agenda that can reasonably be implemented given the declining resources available to UNMIK and its actual capacity.
2. Share the spotlight in the local and international media with Kosovo's elected officials in order to encourage and force them to exercise leadership.
3. Acknowledge the contribution made by government officials at international events, including UNMIK's quarterly report to the Security Council and lobby for the President and Prime Minister of Kosovo to be invited to Security Council sessions on Kosovo.
4. Recognise that although UNMIK is a peacekeeping mission, capacity building and development are an important component of its mandate.
5. Ensure that UNMIK policy initiatives are discussed with government officials before decisions are taken and public announcements made, and be prepared to negotiate with the PISG about its role in implementation.
6. Initiate and co-chair with the Prime Minister a bi-weekly meeting between senior representatives of UNMIK and the government.
7. Ensure that UNMIK officials – particularly the Principal International Officers assigned to ministries – have the skills and experience necessary to undertake their important capacity building role and encourage them where feasible to make the transition from executive roles to advisory positions.
8. Together with the PISG, operationalise the Special Chamber of the Supreme Court to determine violations of the Constitutional Framework.
9. Ensure that diplomatic offices – including development agencies – are consulted on key UNMIK actions.
10. Activate the Independent Oversight Board for the Civil Service and do not suspend civil service officials unless appropriate procedures are followed.
11. Reinvigorate the Transfer Council and use it to incorporate PISG officials gradually in areas of UNMIK's reserved authority.
12. Permit the government to manage the budget in areas under its responsibility (Chapter Five of the Constitutional Framework).

To the Provisional Institutions of Self-Government:

13. Develop a coherent government platform, with specific policy initiatives, and build consensus with the political parties for these initiatives so that ministers do not undermine the Prime Minister.
14. Proactively engage with UNMIK on key policy issues and carefully choose areas of confrontations.
15. Revise the Assembly rules of procedure by removing the provision for blanket immunity and ensuring documentation is shared with UNMIK.
16. Stop placing conditions on the initiation of dialogue between Belgrade and Pristina and begin to prepare for these talks by building consensus with political parties on the agenda.
17. Ensure that senior officials, including President Rugova, regularly address the Assembly.
18. Ensure that the Assembly exercises its mandate to hold the government accountable, for example by initiating a bi-weekly period to question ministers.
19. Support an apolitical civil service and reach outside of Kosovo's institutions to civil society

for assistance on sensitive issues such as discussions with Belgrade.

To the Diplomatic Offices in Kosovo:

20. Support the inclusion of areas reserved for UNMIK's competence (Chapter Eight of the

Constitutional Framework) in the work of the Transfer Council.

21. Actively engage with UNMIK to build domestic consensus – particularly among leaders of political parties – on sensitive issues.

Pristina/Brussels, 3 September 2003



TWO TO TANGO: AN AGENDA FOR THE NEW KOSOVO SRSG

I. INTRODUCTION

In a recent speech on the occasion of the fourth anniversary of the entry of NATO troops (KFOR) into Kosovo, the former Special Representative of the UN Secretary General (SRSG), Michael Steiner, stated: “We are bound together. UNMIK can’t do without KFOR, and KFOR can’t do without UNMIK. We are totally interdependent”.¹ This spirit of partnership is completely appropriate given how closely UNMIK and KFOR must work together to ensure a safe and secure environment within which democratic institutions can function.

However, the same spirit did not characterise the other critical relationship for the Steiner-led UNMIK – that with the Kosovo Provisional Institutions of Self-Government (PISG). No sense of collective responsibility or shared objectives appeared to be present in either party. Instead, an underlying tension characterised the interactions, accompanied by a war of words played out in the media. The biggest challenge Steiner’s successor, former Prime Minister of Finland Harri Holkeri, faces is to create in fact that much praised but largely missing spirit of partnership with Kosovo’s elected political leaders.

II. THE ACTORS

One of the objectives of UNMIK under United Nations Security Council Resolution 1244 is to build autonomous institutions of self-government and transfer administrative responsibility to these institutions before facilitating the political process to resolve the status of Kosovo.²

The promulgation of the Constitutional Framework for Provisional Self-Government in May 2001 was a crucial step towards establishing autonomous self-government. The Framework outlined the competencies of the Kosovo government, as well as the reserved powers of UNMIK. The PISG has control over ten ministries, which cover basic governance functions such as health and education,³ while UNMIK retains exclusive prerogative over security, rule of law, and property issues. Although the Constitutional Framework gives the PISG significant responsibility, the SRSG remains the ultimate authority in Kosovo, with final say over the budget, the power to dissolve the Assembly and call new elections, and the right to change the Constitutional Framework.⁴

¹ UNMIK Press Release, “SRSG Michael Steiner’s Speech on the 4th Anniversary of KFOR’s Arrival in Kosovo”, 12 June 2003.

² United Nations Security Council Resolution 1244, 10 June 1999.

³ The ten ministries are: Finance and Economy; Culture, Youth, and Sport; Health; Transport and Communications; Trade and Industry; Agriculture, Forestry and Rural Development; Education, Science and Technology; Labour and Social Welfare; Public Services; and Environment and Spatial Planning.

⁴ UNMIK Regulation No. 2001/9, “A Constitutional Framework for Provisional Self-Government in Kosovo”, 15 May 2001. See Chapters 8.1 (b), 8.1 (c) and 14.3.

After three democratic elections, a structural framework of autonomous self-government exists. Autonomous institutions operate at both the local and central levels. A coalition of ministers from the three main Albanian parties, as well representatives from Coalition Povratak and non-Serb minorities, shares executive authority with UNMIK. A legislative Assembly functions, but it has been sensitive to the need to hold this coalition together and has shied away from open debates. Thus, no effective opposition operates.

Four main actors work together to operate Kosovo's institutions. UNMIK – particularly the Office of the SRSG – has overarching responsibility; the PISG has two main components – executive and legislative; and the diplomatic offices in Pristina operate as a check and balance on the system.

A. THE SRSG AND UNMIK

When Michael Steiner took the helm of UNMIK in February 2002, the atmosphere changed dramatically. His dynamism brought renewed energy to the mission. Moreover, his ability to resolve the government crisis upon his arrival⁵ won him many friends and much credit among Albanian political parties. This allowed him to launch numerous policy initiatives, as evident in his listing of priorities for 2003:

- ❑ the eight Benchmarks or Standards with 32 sub-goals;
- ❑ jobs, security and real multiethnicity;
- ❑ the transfer of power to the PISG;
- ❑ the establishment of direct Pristina-Belgrade dialogue; and
- ❑ preparation for European integration.

While the Steiner-led UNMIK could not be criticised for lack of ideas, it had less success implementing them. In some cases, UNMIK simply

did not have the human or financial resources available to take sufficient action on some policy initiatives. The constant turnover and inexperience of staff in key positions undermined continuity and interrupted action on key initiatives. No planning framework was developed to achieve priorities. Only two of UNMIK's four pillars – Civil Administration and Police and Justice – are affiliated with the UN. The other two pillars – from the Organisation for Security and Cooperation in Europe (OSCE) and the European Union (EU) – are connected to UNMIK but also report to their own institutions. The SRSG's office was not effective at coordinating UNMIK objectives across these four pillars, and internal communication within UNMIK was weak. As a result, many policies remained in their conception phase.

UNMIK's interlocutors in the PISG expressed frustration, complaining that there were too many ideas and not enough action. Moreover, Kosovo's leaders felt marginalised from the decision making process and objected that most of the initiatives were conceived without consultation with Albanian or Serb politicians, to the detriment of both their realism and their sustainability.

Steiner also dedicated much of his attention and energy to ensure that UNMIK, and especially its SRSG, were in the spotlight. Much UNMIK activity came across as carefully staged media events in which the policy message was often lost. Moreover, in his efforts to increase UNMIK's credibility he was often publicly antagonistic towards the government. In an address at the end of January 2003, Steiner told the public that there was "corruption in business and civil administration" and argued "you the population should demand that all elected politicians and public officials make it crystal clear that they have absolutely no links with this underworld".⁶ While there clearly should be zero-tolerance for crime, as long as UNMIK is in control of the justice system, it has the responsibility to ensure that Kosovo's politicians have no links with organised crime. UNMIK has far more power – and muscle – than the public.

Steiner's presence could be overwhelming and undermine the ability of Kosovo politicians to deliver key messages. A March 2003 trip to

⁵ When Steiner arrived in Kosovo in February 2002, three months after the central elections held on 17 November 2001, the Assembly had not yet managed to elect a government. Although the Democratic League of Kosovo had received the most seats in the Assembly, it lacked a simple majority, much less the 60 per cent of seats necessary to elect a president. Without a president, a government could not be formed.

⁶ UNMIK Press Release 907, "SRSG Michael Steiner's TV Address to Kosovo, Taking Responsibility for 2003", 20 January 2003.

promote returns to the Zhupa Valley, Prizren region, was a media circus. The heads of key diplomatic offices flew with UNMIK officials, representatives from multilateral agencies, and PISG officials. The cameras were all on Steiner as he delivered a message of support to Serbs who had returned to Zhupa. The headline read, "UN seeks to encourage Serbs to return to Kosovo".⁷ The participation of Kosovo's politicians – newsworthy by itself – was relegated to a side issue. Briefings were tightly controlled, with UNMIK reluctant to take questions on the details of the returns process. The briefing package provided only cursory information on that process – no project proposals were presented, and no concrete data was provided on who was willing to return and when. It was, in short, a photo opportunity for the SRSG.⁸

UNMIK's desire to take centre stage in the returns process extended to a recent presentation before the Assembly itself. Despite the fact that the Office of Returns and Communities (ORC) has two PISG members working with it – the Special Advisor to the SRSG on Returns, Nenad Radosavljevic, and Dr. Milorad Todorovic, the Inter-Ministerial Coordinator on Returns – its international director, Peggy Hicks, made the presentation, and Radosavljevic and Todorovic were not present. This was a missed opportunity to demonstrate to the Assembly that it shared the responsibility for planning returns.

In contrast, a visit to returns sites in June 2003 that gave Kosovo's politicians the space to exercise leadership successfully sent a message that displaced persons should be allowed to go home, and Albanian politicians support that right. Instead of UNMIK taking centre stage, Prime Minister Rexhepi and Todorovic were able to signal to returnees as well as to receiving communities that Kosovo is a place for all ethnicities. They made a joint visit to Albanian returnees in a predominantly Serb municipality (Shtrepce), as well as to a potential Serb return site in an Albanian municipality (Ferizaj/Urosevac). Their objective was to get across the point that Albanians had been allowed to return to their homes in Shtrepce, so they

should create the conditions for the return of Serbs to Ferizaj/Urosevac. The Prime Minister spoke in Serbian, Dr. Todorovic in Albanian, and both delivered a message of co-existence.⁹

This kind of leadership is critical for success on returns. On 1 July 2003, the Kosovo leaders, President Rugova, Prime Minister Rexhepi, Assembly President Daci, Thaqi (Democratic Party of Kosovo, PDK), Haradinaj (Alliance for the Future of Kosovo, AAK), Bukoshi (New Party of Kosovo, PREK), General Ceku (Kosovo Protection Corps, KPC) and leaders from non-Serb minority political parties sent an open letter appealing to all the displaced persons from Kosovo in Serbia, Montenegro and Macedonia to return "as Kosovo is their homeland". The leaders committed themselves to a multiethnic Kosovo with freedom and equality for every citizen.¹⁰ This was originally an initiative of PDK leader Hashim Thaqi. Partly in response to this appeal, 30 heads of Serb families returned to Belo Polje village near Peje.¹¹ Such a joint letter from all Kosovo's leaders to displaced persons conveyed a much stronger message to displaced populations than any UNMIK presentation could. Everyone knows that UNMIK supports returns, but the public (and displaced persons) must see that elected leaders also do.

UNMIK's effort to dominate the media spotlight within Kosovo carried over to the international arena. Speeches by UNMIK officials do not reflect any partnership with the PISG nor the accomplishments of the government. Instead, they focus almost exclusively on the role of UNMIK. Before the EU Summit in Thessaloniki in June 2003, Steiner stated, "The UN administers Kosovo, the EU and others bankrolled its reconstruction and development, and KFOR provides a safe and secure environment".¹² There was no mention of the PISG's accomplishments. Its delegation was introduced but its work was not acknowledged.

⁷ UNMIK Online, "UN Seeks to Encourage Serb Refugees to Return to Kosovo", 5 March 2003. The vast majority of Serbs displaced from Kosovo are not officially refugees. As they have not crossed an international boundary in going to Serbia, they are technically considered internally displaced persons (IDPs).

⁸ ICG interview with diplomatic official, 1 March 2003.

⁹ Kosova Live, "PM Rexhepi Calls Upon Strepce Residents to 'Get Focused on Essential Issues, Leave Politics To Us'", 18 June 2003.

¹⁰ Kosovo at a Glance, "Summary of the Appeal by the Leaders of Kosovo", 3 July 2003.

¹¹ Kosovo at a Glance, "First Group of Serbian Refugees Respond to Appeal of Kosovo Leaders to Return", 16 July 2003.

¹² UNMIK Press Release 993, "Intervention by SRSG Michael Steiner at the European Union Western Balkans Summit", Thessaloniki, 21 June 2003.

Steiner spoke in the same vein before the European Parliament:

Our mandate under the UN Security Council Resolution 1244 is to create conditions for substantial autonomy and self-government... We have organized the first three democratic elections in Kosovo's history; built a multi-ethnic government; brought a billion Euros a year to Kosovo's economy; built a judiciary and responsible police force from scratch; begun privatizing socialist dinosaurs and creating the framework for a market economy; and we have established all the basics of a modern administration, from customs to license plates to travel documents. Until June 1999, most children studied in apartments. Today 420,000 children attend 1,200 schools.¹³

While the immense contributions of the international community should be acknowledged, the people of Kosovo have also been critical to providing a facilitative environment within which the international community can operate. Although the Steiner-led UNMIK did lobby to have PISG officials join at international events, they were rarely allowed to speak. No PISG representative has been invited to the Security Council during the SRSG's presentation of the quarterly report on Kosovo. This has created understandable animosity. Some politicians argue that UNMIK's interest in the success of the PISG stopped at its creation, and this has damaged the will of the PISG to cooperate.¹⁴

Moreover, the UN has not been shy about publicly criticizing PISG performance and attitudes. The January 2003 report of the Secretary General to the Security Council stated: "Much energy has been spent challenging the authority of my Special Representative and seeking additional powers. It is important that the Kosovo leadership recognise that, in order to gain additional competencies, they first need solid accomplishments for the benefit of all communities in the areas for which they do have responsibility under the Constitutional Framework".¹⁵

Kosovo's leaders have continued to be much criticised at the Security Council, where they are not present to defend or explain their activities. While the PISG must be open to criticism, it must also have the opportunity to respond.

UNMIK itself did not always welcome critical assessments. Under Steiner, UNMIK was extremely sensitive to criticism from the media as well as from other organisations in Kosovo. Instead of welcoming such input and utilising it to address problems and build a climate of transparency and accountability, UNMIK often reacted defensively.

UNMIK does face a difficult task. While it wants the government to take more responsibility, at the end of the day the UN is legally responsible for what happens in Kosovo. Officials recognise that they will ultimately be blamed for institutional failures. Therefore, UN officials have been understandably conservative about moving from an executive to an advisory role. Moreover, UNSCR 1244 specifies that UNMIK is a peacekeeping mission, which has caused some officials to interpret their mandate as not including more development oriented activities.

The UN and key Security Council members need to recognise that despite being run out of the Department of Peacekeeping Operations (DPKO) in New York, UNMIK's role has moved beyond peacekeeping into development. This requires establishing relations with local officials and working with them in support of good governance. Although donors are important supporters of building governance in Kosovo, the key capacity building institution is ultimately UNMIK. To play this role successfully requires qualified and experienced personnel, partnership and patience.

B. THE PISG: THE EXECUTIVE BRANCH

Political parties reflect the fault lines that divide Kosovo society: between Albanians and Serbs, and between those Albanian political parties that supported armed struggle (PDK and AAK) and those that were at the forefront of passive resistance (Democratic League of Kosovo, LDK). When the PISG was formed, it was little more than a loose association of the three major Albanian parties and minority representatives. A broad coalition government – with the LDK holding the Presidency and the PDK the position of Prime Minister – was

¹³ UNMIK Press Release 985, "SRSG Michael Steiner's Intervention in the European Parliament Foreign Affairs Committee", 10 June 2003.

¹⁴ ICG Interview with Ramush Haradinaj, leader of the Alliance for the Future of Kosova, 24 April 2003.

¹⁵ United Nations Security Council, "Report of the Secretary General on the United Nations Interim Mission in Kosovo", 29 January 2003.

seen as the only way to avoid conflict within Kosovo's institutions. The composition of the government reflected the priority of bridging the animosity between Albanian parties in 2001. The need for effective governance came second to the need for stability.

Therefore, parties, rather than institutions, remain at the centre of power in Kosovo's politics. Before the establishment of local and central level institutions, these parties had not worked together, and a high level of distrust characterised their early interactions. As seen below, this distrust has affected the work of the government, particularly on dialogue with Belgrade and minority issues generally, where the fear of being branded a traitor rendered the government almost useless for establishing firm and credible positions. However, the situation is slowly changing. An important by-product of the coalition government has been a marked reduction in inter-party tensions.

While the coalition has been important for stability, it has undermined the ability of the government to exercise leadership and implement policies. Prime Minister Bajram Rexhepi is not the leader of his party – the Democratic Party of Kosovo (PDK). He must consult with it first and then with other members of the coalition when making decisions. This need for consensus diminishes his ability to control his government. On occasion, the Prime Minister has discovered that his party is not supportive of some of his actions – his impromptu meeting with the important Belgrade Serb politician Nebosja Covic at a conference in Lausanne, Switzerland in autumn 2002 is one prominent example.

In addition, the Prime Minister finds it difficult to use a key mechanism for maintaining government discipline: the removal of ministers. While the sacking of the Health Minister, Numan Balic, did send a clear signal that no one is irreplaceable, it threatened to tear apart the coalition.¹⁶

The Prime Minister's office has serious structural weaknesses. The Prime Minister is unable to control his own budget and has engaged in disputes with UNMIK over matters as trivial as the money allotted for coffee during official meetings.¹⁷ He lacks the staff

to fully coordinate governmental activities. The salaries that he can offer are not high enough to draw experienced political analysts from their positions with diplomatic offices or nongovernmental organisations. In fact, the combined salaries of the seven staff members in his immediate office are far less than that of the UNMIK Principal International Officer.¹⁸ The position of government secretary within the Prime Minister's office is vacant – a position which the Office of Legal Advisor (OLA) argues should be civil service, while the Prime Minister argues that it is political. The position of spokesperson is similarly contested.¹⁹ Such positions are inherently political, and this dispute reflects a fundamental misunderstanding about the role of the civil service. The failure to staff them undermines the Prime Minister's ability to coordinate with ministers and leaders of other political parties as well as to present government positions and policies to the public.

While the position of Prime Minister as head of government is weakened by the nature of the coalition, the international community occasionally further undermines him. Steiner, fond of publicity, was not forthcoming about sharing the media spotlight, and UNMIK has failed to consult with the Prime Minister on key policy initiatives.²⁰ Others – such as the head of the PDK, Hashim Thaqi, who has no formal role in government – are seen by the international community as the real power brokers in Kosovo. Javier Solana, the EU's High Representative for foreign policy, recently met with him in Brussels without the presence of the Prime Minister or other PISG representatives. Although Thaqi has considerable weight and must be consulted about any major policy, the international community should also be careful to support Kosovo's democratically elected government.

More than one year after formation of the PISG, the capacity of the executive branch to develop and implement policy remains low. Although the government released a platform, its goals were highly ambitious and ambiguous. Clear policy initiatives or priorities were not developed, the objectives of each ministry were not clearly set, and no strategy was developed. Most ministers and

¹⁶ ICG interview with an adviser to the Prime Minister, March 2003.

¹⁷ *Ibid.*

¹⁸ The Kosovo Consolidated Budget 2003 reports an expenditure of €87,320 in wages and salaries for the seven staff in the Prime Minister's immediate office.

¹⁹ ICG interview with USAID consultant, 15 July 2003.

²⁰ It is widely reported that the idea for the Transfer Council came from Rexhepi, but this is not readily acknowledged by the Office of the SRSG.

political leaders do not yet realise that the effectiveness of their ministry will reflect back on their political party and could have an impact in the next round of elections. Few have the management skills to direct their ministries effectively. This has created the perception that the PISG fails to take governance seriously.

Because the government has not outlined clear objectives, it is difficult to give a general assessment of its performance. No measuring mechanisms are in place for each ministry. Kosovo's media has failed to hold the government accountable, focusing instead on the occasional war of words between UNMIK and the PISG rather than the failure of many ministries to achieve concrete objectives. In the majority of ministries it is difficult even to tell who is responsible for performance, as the demarcation of powers between minister and UNMIK is not precise. Rather than reflecting on their own weaknesses, PISG officials have instead focused on the failings of UNMIK.

Assembly oversight of the government is virtually non-existent. Therefore, ministers are not held accountable for performance, and their actions are not scrutinised. This leaves UNMIK as the only effective check. Senior UNMIK officials within each ministry are known as Principal International Officers (PIOs). However, some PIOs lack experience for their positions and are unable to work constructively with their ministers to establish goals and objectives and identify gaps in capacity. Many PISG officials compare the PIOs with the USAID advisers – who are not part of the UNMIK reporting chain but have been reasonably successful at developing good working relations with their PISG counterparts. With the downsizing of UNMIK and the international community in general, the PIOs and other international advisers could be critical sources of information for what is needed to ensure that ministries receive the support necessary to function as democratic institutions. However to play this role effectively, international advisers need to have experience and be willing to let the government make mistakes.

It is clear Kosovo leaders need to exercise more initiative. However, when initiative has been exercised in the past, UNMIK has occasionally reacted angrily, believing that it is losing control. While the executive branch should choose initiatives wisely and not provoke confrontation, many members of the international community often fundamentally misunderstand the political

pressures at play in the government. Michel Duclos, the deputy French ambassador to the UN, recently told the Security Council that the PISG had “as their particular responsibility, to establish a climate conducive to implementing the objectives of the international community for the benefit of the entire Kosovo population”.²¹ The PISG is an elected body accountable to its electorate. Its first priority is not pleasing the international community.

C. THE PISG: THE ASSEMBLY

The Assembly had a slow start. After its inaugural session on 10 December 2001, it was effectively frozen until the government was selected in March 2002, following which it held only one plenary session per month until June 2002. Members argued that the slow pace was natural. In the summer and autumn of 2002, the administration of the Assembly focused its attention on building internal structures including committees. Sitting in a parliament as democratically elected representatives was a new experience for all members, and it took them time to identify their roles.²² However, international observers – including the U.S. and British diplomatic offices in Pristina, USAID, the National Democratic Institute (NDI), and the OSCE – lobbied the Assembly to accelerate its work,²³ and it began holding weekly sessions each Thursday.

The most visible aspect of the Assembly's work over the last year has been its frequent clashes with UNMIK. Indeed, its first session witnessed the then SRSG Hans Haekerrup ordering that the microphone be switched off while the PDK leader, Thaqi, was speaking. Frequent tensions between Steiner and the Assembly, in particular its president, Nexhat Daci, cast a cloud over relations between UNMIK and the government. These were largely caused by the Assembly's determination to pass non-binding resolutions on issues outside the powers and responsibilities of the PISG.

²¹ United Nations Security Council Press Release 7785, 10 June 2003.

²² ICG interview with OSCE official, 18 June 2003.

²³ ICG interview with Franklin De Vrieze, OSCE Democratisation Department, Assembly Support Initiative, 19 June 2003.

Following violence in Mitrovica in April 2002 and a border agreement between Yugoslavia and Macedonia (implemented in spring 2002) resulting in a slight loss of territory for Kosovo, the Assembly adopted a resolution on “The Territorial Integrity of Kosovo” on 23 May 2002. Steiner declared the resolution null and void 30 minutes later, and both the Security Council and the EU condemned the Assembly’s behaviour. Another resolution, on 7 November 2002, which condemned the inclusion of Kosovo in the preamble of the Serbia-Montenegro Constitution, was also declared invalid by Steiner, who said it overstepped the competencies outlined by the Constitutional Framework.

The most serious clash occurred on 15 May 2003 over a resolution on the “Liberation War of Kosovo People for Freedom and Independence”. While the Serbs’ Coalition Povratak walked out during the vote, it later returned. Steiner issued a declaration denouncing the resolution as “divisive and against the reconciliatory spirit enshrined in Security Council Resolution 1244 and the Constitutional Framework”. He argued that it undermined respect for the rights and interests of all Kosovo’s communities – the principle that UNMIK was attempting to rebuild after it had been “trampled on” during the conflict in the 1990s – and he questioned whether “the Kosovo leaders have learned the lessons of that past conflict”.²⁴ As punishment, Steiner banned Kosovo institutions from participating in three international meetings: a presentation to the NATO Council, a Stability Pact Parliamentary Conference; and an EU/NATO/OSCE/Stability Pact Regional Conference. Kosovo’s leaders were privately shocked by UNMIK’s decision, but their official reactions were muted as they did not want to jeopardise increasingly fragile relations with UNMIK and the international community.

Some analysts²⁵ have argued that Steiner should have downplayed these resolutions, since the Constitutional Framework characterises them as “non-binding declarations.”²⁶ Moreover, because the 15 May resolution on the war recognised both the armed struggle of the KLA and the peaceful resistance of the LDK, it substantially diminished

conflict among the various Albanian parties – critical for more effective government. Other activities by the Assembly – particularly the refusal to incorporate protection for Serbs in the law on higher education,²⁷ have been far more damaging to ethnic relations. UNMIK counters that the Assembly can debate these issues, but passing resolutions could damage already fragile relations with Kosovo’s neighbours. While the incoming SRSG, Holkeri, must ensure that the Assembly respects the Constitutional Framework, he must also recognise the political forces at play and wisely pick his confrontations.

While the resolutions caused friction, the personal animosity between Speaker Daci and Steiner fuelled it. Daci has been among the sharpest critics of UNMIK. Only two weeks after the Assembly was constituted, he stated, “The office of the SRSG is not and will not be my boss. My bosses are the people of Kosovo through the democratically elected representatives in the Parliament of Kosovo”.²⁸ Throughout his tenure, his criticisms of UNMIK have not abated, but he has claimed to ICG that they serve to keep UNMIK focused and working hard for Kosovo’s interests. Moreover, he maintains that he also has kept the bridge of cooperation with the SRSG open.²⁹ Whether or not Daci was always constructive, it was not in Steiner’s interest to engage in sharp disputes with him since he is one of Kosovo’s more popular politicians.

UNMIK has been particularly frustrated with the slow pace of work at the Assembly, arguing that it can ill-afford to take time debating declarations in areas of reserved responsibility when so much effort is needed on areas of PISG authority – including the review of laws and oversight of the government. One reason for the Assembly’s sluggish pace was the failure to establish operational committees quickly, but there

²⁴ UNMIK Press Release 967, “Declaration of the SRSG Michael Steiner on the Assembly Resolution on War Values”, 15 May 2003.

²⁵ ICG interview with Lulzim Peci, 16 May 2003.

²⁶ Constitutional Framework, Chapters 1 and 9.1.27.

²⁷ The SRSG promulgated an amended law on higher education on 14 May 2003. See UNMIK Press Release 966, “SRSG Promulgates Four Laws”, 14 May 2003.

²⁸ *Kosovalive*, “Interview with President of the Assembly, Nexhat Daci”, 24 December 2001.

²⁹ ICG Interview with President of the Assembly Nexhat Daci, 9 July 2003.

are now nineteen³⁰ to review, and if necessary, revise all the laws introduced by the government.³¹

While committees existed on paper, it took time for the machinery to become operational. The administration of the Assembly had to deal with technical issues – where committees would meet, how to coordinate translation and the like. Moreover, many Assembly members have multiple jobs and did not make time for their committee responsibilities, which in turn slowed the work of the Assembly to a standstill. To encourage attendance, “additional compensation” was introduced in March 2003 (€25 for each meeting and €20 in travelling expenses). This has dramatically improved committee performance and increased Assembly efficiency as well.³² However, the increase in output has overburdened the administration of the Assembly, which needs more legal officers.³³

The Office of the SRSG repeatedly complains that both the government and the Assembly focus on policy issues outside their competencies, instead of working to build those institutions – like health and education – which fall within their direct responsibility.³⁴ The Assembly has adopted only 21 laws since its inception. While members point out that this pace exceeds that of most European states, and a faster pace could damage quality, critics argue that the absence of a reformed legal framework requires more speed.

In response to such criticism, the Assembly cites the sluggish promulgation of laws by the SRSG. According to the Constitutional Framework, the SRSG promulgates laws after the Assembly adopts them, if they are in compliance with the Framework and UNSCR 1244. The Office of the Legal Advisor (OLA) is the key body within UNMIK that acts as the engine for all legislation, developing UNMIK

regulations in areas of reserved authority as well as intervening as necessary in the legislative work of the Assembly.³⁵ Together with the Office of the Legal Advisor in New York, it has the power to interpret what activities and legislation are in compliance with the Constitutional Framework (specifically if legislation infringes on the areas of authority reserved to the SRSG), UNSCR 1244, and other UNMIK regulations. OLA representatives intervene throughout the legislative process: they are invited to sit on ministerial working groups that draft laws (although they do not attend all meetings);³⁶ after the Assembly passes a law, the OLA states whether or not it is compliance with the Constitutional Framework; and if the SRSG refuses to promulgate a law, the OLA advises both the SRSG and the Assembly what is necessary to bring it into conformity with the Constitutional Framework.

The OLA has been the subject of intense criticism from the PISG, which says that while laws are being drafted in government working groups, OLA representatives provide their comments very late, or not at all. The OLA counters that the government is unable to amend laws efficiently, and consequently submits draft legislation to the Assembly even when it is aware that it is flawed. The biggest point of contention is the amendments that the OLA makes to these laws after they have gone through the legislative process. Assembly representatives argue that this process violates the democratic principle of the right of a parliament to draft legislation without interference.³⁷ UNMIK rightly counters that all parliaments need to abide by standards, and the standards for the Kosovo Assembly are the Constitutional Framework and UNSCR 1244.

After a war of words between the Assembly and the office of SRSG on who was to blame for the lack of progress, Daci and Steiner agreed in a public exchange of letters that the bills would be sent in their final draft form to the OLA. If the OLA had objections, it would submit specific recommendations

³⁰ The two main committees are Budget and Rights and Interests of Communities. The others are functional committees.

³¹ ICG interviews with OSCE and Assembly officials, May 2003.

³² ICG interview with Daut Beqiri, Director of the Legal Department of the Assembly, 23 May 2003.

³³ Ibid. Before 1 March 2003, the committees met on average twice a month. The new regulation on rules of procedure of the Assembly provides that they meet at least four times a month.

³⁴ ICG interview with OSCE official, 14 May 2003; National Democratic Institute, “Kosovo Central Assembly Summary”, July 2003.

³⁵ ICG interview with Alexander Borg Olivier, UNMIK Legal Advisor, 5 August 2003.

³⁶ ICG interview with OSCE Democratisation Department official, 23 May 2003.

³⁷ Bajram Kosumi, “We have not invested enough in the structures to prepare laws,” *ASI Newsletter*, July 2003.

in written form so that Assembly committees could review and incorporate them.³⁸

Relations between the Assembly and the OLA have improved significantly. Yet the potential for tension remains. Particularly given the lack of experience of Assembly members with constitutional matters, it is critical that the OLA maintain a consistent dialogue with the Assembly, and inform it if legislation is problematic before it is tabled. OLA representatives could participate in committee meetings considering legislation, or work with the Assembly Committee on Judicial and Constitutional Affairs to review legislation. This would also help build capacity on legal matters within the Assembly. Moreover, as argued below, in a normal setting, the courts would determine what actions contravene the Constitutional Framework.

While the legislative work of the Assembly has increased,³⁹ it still does not operate as an effective check on the power of the executive branch. Its oversight and control of the government is limited.⁴⁰ Prime Minister Rexhepi is rarely asked to address the Assembly, while President Rugova has yet to appear, thus failing to comply with the explicit rule of the Constitutional Framework that “the President of Kosovo shall present a report to the Assembly on the general state of affairs in Kosovo at least once a year”.⁴¹

Given the tenuous nature of the coalition – wracked by tensions among Albanian political parties and between Albanian parties and minorities – Daci has controlled debate with the objective of ensuring stability of the government and smooth functioning of the Assembly. However, over the last year tensions have decreased, and members whom ICG interviewed argued that such excessive control over discussion in the Assembly was becoming counterproductive to the goal of developing functioning, accountable, democratic institutions.

Daci informed ICG that government representatives will appear before the Assembly more regularly and

be required to answer questions regarding the government’s performance.⁴² UNMIK has also appeared before the Assembly on occasion to brief members on progress in areas of reserved power. Continued appearances of UNMIK are important so elected members can be aware of what is happening in those areas, but also so that UNMIK can undergo the process of answering questions from elected officials.

D. THE DIPLOMATIC OFFICES: AN EXTERNAL CHECK

UNMIK is no ordinary peacekeeping mission. It resulted from a protracted bombing campaign by NATO, supported by a sometimes tenuous coalition of international powers. This coalition placed peacekeeping troops on the ground, contributed large amounts of money to support reconstruction and has remained actively engaged in Kosovo. Key countries established diplomatic offices (also known as liaison offices) to monitor and influence political developments as well as guide the substantial aid flows.

In the early days of UNMIK, these diplomatic offices were critical for providing information to capitals and ultimately to the Permanent Representatives at the Security Council. States used accurate information from the field to apply pressure on UNMIK through their representatives at the UN to ensure critical objectives were met. Particularly the Quint – the five main contributing NATO countries⁴³ – acted as a check and balance on UNMIK, while providing policy guidance and assistance. They also facilitated relations between UNMIK and Kosovo’s political leaders, putting additional pressure on these politicians when needed.

The diplomatic offices have thus been described as the “balance wheel” in the system that keeps the relationship between UNMIK and the PISG on track. Representatives from these offices work together at critical moments to intervene directly in the process. When the PISG is out of line, diplomatic offices meet with the Assembly caucus leaders or government representatives. When diplomatic representatives

³⁸ *KosovaLive*, “Only Some Laws can be Promulgated, says Steiner”, 15 April 2003.

³⁹ If Assembly committees meet on a regular basis during autumn 2003, 25 laws should be put for adoption in the near future.

⁴⁰ ICG interview with OSCE Democratisation Department Official, 18 June 2003.

⁴¹ Constitutional Framework, Chapters 2 and 9.2.4 (d).

⁴² ICG Interview with Assembly President Nexhat Daci, 9 July 2003.

⁴³ The Quint is composed of France, the United Kingdom, Germany, Italy, and the United States.

disagree with UNMIK policy, they send clear and direct messages to the UN.⁴⁴

While this arrangement worked well, the relationship between UNMIK and diplomatic offices changed upon Steiner's arrival. UNMIK consulted with Quint countries, but often waited until after the policy had been developed. The Quint offices had a less active and visible role. While some of this is normal given the transition from an emergency to a more routine political environment, the important constructive role of the liaison offices has diminished. Moreover, Steiner failed to meet and consult with donors – a critical source of technical advice and financial support – and so undermined UNMIK's ability to deliver on policy initiatives.

UNMIK is accountable only to the Security Council, which is far away and preoccupied with the crisis *du jour*. Like any government, UNMIK must be urged to be transparent and accountable, and have clear checks on its authority. They do not inherently exist within UNMIK's system – its leaders are not elected, and its officials wield enormous authority with minimal mechanisms for accountability. Without strong intervention from the diplomatic offices, an important and previously effective check on UNMIK power is missing.

Steiner warned heads of diplomatic offices not to criticize UNMIK publicly.⁴⁵ Some officials stressed the need for “seamless” support of UNMIK, arguing that Kosovo's politicians would exploit any divisions.⁴⁶ However, over the last year this has disrupted the ability of the diplomatic offices to act as the balance wheel. Key diplomatic offices did engage in very public and harsh criticism of the PISG, which eroded their local credibility. Diplomatic offices must recognize the need to support and encourage the PISG in its work, and save their harsh criticism for truly critical issues. UNMIK also needs to set an example that governments should be accountable and welcome criticism as an important democratic virtue. As demonstrated by the case studies below, the role of the diplomatic offices can be critical for ensuring that the process works.

⁴⁴ ICG interview with Reno Harnish, head of the U.S. Liaison Office, 9 June 2003.

⁴⁵ ICG interview with an official of a diplomatic office, 15 April 2003.

⁴⁶ ICG Interview with Peter Rondorf, Head of the German Liaison Office, May 2003.

III. OFF THE RAILS? CASE STUDIES OF UNMIK-GOVERNMENT RELATIONS

A. THE MINISTRY OF FINANCE AND ECONOMY

The relationship between the Ministry of Finance and Economy and UNMIK has been strained by the controversy over the merger of the Central Fiscal Authority (CFA) and the ministry, the failure of the Assembly to approve the 2003 Budget; and a dispute over the allocation of a budget surplus to the Kosova Energy Corporation (KEK).

The CFA had regulated budgetary expenditures in Kosovo since June 1999 and received high praise for establishing a sound fiscal system and gradually reducing dependency on donors. After the establishment of central PISG institutions in early 2002, UNMIK was reticent to incorporate the CFA into the new Ministry of Finance. Lacking confidence in their local counterparts, CFA officials appeared reluctant to cede even partial control over fiscal issues.

The ministry had a mandate to coordinate the development of the budget, monitor donor financing and grant contributions, report the expenditures and revenues of the budget to the Economic and Fiscal Council, monitor PISG compliance with public expenditure rules including the adoption of international accounting standards, and promote anti-fraud measures.⁴⁷ This mandate clearly overlapped with the CFA, and there was no credible reason to maintain separate structures. Moreover, relations between the head of the CFA and the minister were so strained that the agencies found it difficult to collaborate. The continued existence of the CFA was criticised by PISG officials, the World Bank and key international donors. UNMIK responded to this criticism and planned a merger for 31 December 2002.

This merger was initially resisted by CFA officials, but the U.S. exerted diplomatic pressure, most visibly at the February 2003 Security Council meeting on Kosovo. The U.S. representative stated

⁴⁷ UNMIK Regulation No. 2001/19, “On the Executive Branch of the Provisional Institutions of Self-Government”, 13 September 2001.

that “[The U.S.] concern is that UNMIK had been ‘too reluctant’ to transfer authorities not reserved to the SRSG . . . [The U.S.] had expended much energy and political capacity to persuade UNMIK in December to fold its fiscal authority into the institutions of self-government”.⁴⁸

The merger was not well planned, however, and no institutionalised process of transformation was followed.⁴⁹ While officially disbanded, remnants of the CFA still operate as the EU Fiscal Affairs Office. ICG was informed that some former CFA staff were incorporated into the ministry but operate independently, out of separate buildings, and do not report to ministry officials. Moreover, it is not clear what transition and capacity building strategy is in place to hand over complete responsibility to ministry officials. Though the ministry has requested that CFA officials be transferred to it to boost capacity, the CFA has resisted.⁵⁰

The dispute over the 2003 Kosovo Consolidated Budget (KCB) damaged UNMIK-PISG relations further. The Kosovo budget for 2003 is €16.9 million, of which 95 per cent (€191.9 million) is financed by domestic revenues, with international donations making up the remaining five percent (€25 million). The PISG is responsible for the administration of 72 per cent (€370.2 million), while the remaining €146.7 million finances UNMIK’s areas of reserved responsibility, such as the Kosovo Police Service, the Kosovo Protection Corps, the Customs Service, the Kosovo Trust Agency, the Pristina airport, and the Housing and Property Directorate. Although these areas are funded by domestic revenues, UNMIK maintains total administrative control over this portion of the budget.

Even though the 2003 budget is almost fully financed by domestic revenues and a democratically elected Assembly exists, the budget was not approved or even seen by the Assembly before its promulgation. On 13 December 2002, the Economic and Fiscal Council met and discovered that neither UNMIK nor the ministry had communicated the budget specifications for scrutiny to the Assembly. UNMIK stressed that it

could allow the Assembly to examine the reserved part of the budget, but would allow no interference from the PISG in determining line allocations in these reserved areas. The PISG represented by Minister of Finance and Economy Ali Sadriu, pledged during the meeting to provide the budget to the Assembly.

As the end of December approached, approval of the budget for 2003 became critical to ensure continued functioning of the government. UNMIK decided that it could wait no longer for the budget to be presented to the Assembly, and Principal Deputy SRSG Charles Brayshaw signed the Budgetary Regulation on 31 December 2002. This enraged Assembly members. As late as March 2003, many Assembly representatives had seen only a single sheet summarising key expenditures.⁵¹ Although the minister was also responsible for neglecting to inform the Assembly, anger was directed almost solely at UNMIK.

The failure to present the budget to the Assembly was a blatant disregard for the elected representatives of Kosovo and violated the democratic principle of parliamentary oversight of expenditures. Such oversight is a key mechanism for the legislative branch of government to act as a check and balance on the executive branch. Part of the reason for this lapse was the failure of the Constitutional Framework to set out an understandable division of responsibilities for the budget, including the approval process. In Chapter Five, the PISG is assigned responsibility for “fiscal and budgetary issues”, while in Chapter Eight, the SRSG is given “final authority to set the financial and policy parameters for, and to approve, the Kosovo Consolidated Budget”. The Assembly Budgetary Committee is only given “general competencies in budgetary and financial matters”, while the overall Assembly is not mentioned.⁵² Despite this lack of clarity, both the SRSG and the Minister of Finance and Economy should have ensured that the Assembly was consulted on all elements of the budget.

PISG officials and UNMIK have also clashed over the budget surplus. Because Kosovo cannot operate a deficit, officials have been conservative in their revenue and expenditure estimates when calculating the budget. Kosovo generated more

⁴⁸ Statement of Richard Williamson at Security Council Meeting on Kosovo, 6 February 2003.

⁴⁹ ICG Interview with UNMIK Official, 8 May 2003.

⁵⁰ Ibid.

⁵¹ ICG interview with member of the Assembly Presidency, 5 March 2003.

⁵² Constitutional Framework, Chapters 5, 8, 9.

income (through customs duties and taxes) and spent less than predicted, so the 2002 surplus was over €100 million, over a quarter of the budget total.

The 2003 Budget law outlines the mechanism for the appropriation of surplus funds from Fiscal Year 2002: the ministry submits the amount of the surplus together with a proposal for its appropriation to the SRSG for approval. Despite this and opposition from the PISG, UNMIK unilaterally allocated €17 million from the surplus to KEK. For the remainder of the funds, the ministry has accepted proposals from government agencies. These projects have now been assessed and forwarded for consideration to the Economic and Fiscal Council. Officials note that this is a signal that cooperation and decision making processes in the Council are gradually improving.⁵³ Perhaps this will help avoid another crisis regarding Assembly oversight of the 2004 budget.

B. THE MINISTRY OF HEALTH

Under the Constitutional Framework, the PISG holds almost full authority in the health sector. The Ministry of Health has the mandate to monitor the health situation and implement appropriate measures to prevent and control healthcare problems, develop policies and implement legislation, coordinate activities in the health sector including the management of infrastructure, develop and implement norms and standards, and oversee adherence to such standards. The PISG's ability to undertake these tasks has been constrained by the immense challenges of the health sector, the lack of experience and weak capacity of the ministry, and a political stalemate coupled with the interference of Steiner.

The health sector in Kosovo is in crisis. It has an infant mortality rate of 35 per 1000, and a newborn death rate of 29 per 1000 while 25 per cent of the population is estimated to suffer from Post Traumatic Stress Disorder.⁵⁴ While available health statistics are among the worst in Europe and poorer than some countries in the developing world, the real situation remains unclear. Kosovo lacks an

adequately functioning health information system so the accurate incidence rate of many communicable and non-communicable diseases is unknown. Moreover, the healthcare infrastructure was seriously neglected throughout the 1990s, and many healthcare professionals were not able to obtain training in modern methods of medicine.

Access to healthcare also is a problem, especially for the poor and minorities.⁵⁵ Despite a publicly funded system including free access to essential pharmaceutical drugs, the World Bank survey of 2001 showed that over 95 per cent of Albanians reportedly paid for services received. These costs make it difficult for some families to get medical care; 28 per cent of respondents did not seek medical treatment because they could not afford it. The system is divided between a public system and completely unregulated private clinics. Doctors operating in the former often redirect patients to their private clinics, where they are required to pay for services. These are grave challenges for any government, given that healthcare and education are often the two most important issues for the electorate.

When UNMIK established the Department of Health, it embarked on an ambitious reform program to transform Kosovo into a system focused on primary care. Although the department put in place a basic administrative structure and a rudimentary regulatory framework, it did not successfully lay the foundation for a ministry of health, nor did it have the capacity to undertake the necessary reforms. No one within the UN department had experience working in such a ministry, donors did not provide the necessary support, and the department was woefully short-staffed. The failure to establish this foundation haunts the ministry today.

The coalition agreement that led to the formation of the PISG awarded the Ministry of Health to a representative of a non-Serb minority party.⁵⁶ Dr. Numan Balic, from the Bosniak political party Vatan, became the minister. The government pledged to continue the ambitious goals of UNMIK, promising to improve the efficiency of

⁵³ ICG interview with Jim Wooster, Principal International Officer to the Minister of Finance and Economy, 11 July 2003.

⁵⁴ ICG interview with Matthias Rienicke, European Agency for Reconstruction, 17 June 2003.

⁵⁵ Minorities primarily lack access to secondary health care services.

⁵⁶ The Constitution Framework stipulated that one ministry should be held by a non-Serb minority. Constitutional Framework, Chapter 9.3.5 (a).

healthcare delivery, including improvement in the qualifications of healthcare professionals, development of a financing system, and regulation of private clinics.

However, despite these grand objectives, the ministry did not develop a concrete strategy. Moreover, its current priorities include the development of cardiac diagnostics and an oncology department, questionable pursuits in a system committed to concentration on primary care. Given that the ministry cannot guarantee the supply of essential drugs and has maternity units without running water 24 hours a day, this focus does not match the government's reform objectives.

The ministry is poorly organised and has fledgling leadership with little management capacity. It has no monitoring or enforcement mechanisms to ensure that laws are implemented and ministerial directives followed. Moreover, its structure is weak – internal communication is almost non-existent. There are few formal staff meetings and planning sessions. Key members of the ministry remain out of the loop on major policy decisions. As such, it has been unable to perform adequately – for example, the ministry recently drafted a health law that is not in conformity with European standards. Although weak capacity is one reason for poor performance, the ministry has also been wracked by political disputes.

The ministry was affected by the first shuffle of government officials. Prime Minister Rexhepi was unhappy with the performance of Dr. Balic, who did not fully respect the hiring procedures of the ministry and had made some political appointments in the civil service. His cooperation with donors was minimal and sometimes hostile, and he obstructed some key developments such as the appointment of Dr. Pleurat Sejdiu as permanent secretary.⁵⁷

Dr. Sejdiu was formerly a member of the PDK and the co-head of the Department of Health under the Joint Interim Administrative Mission. His appointment was controversial, and the competition took several rounds, with much consideration by the Senior Public Appointments Committee. When Balic refused to acknowledge the choice, Steiner intervened, ruling that the appointment process had

been proper, and Sejdiu should remain Permanent Secretary.

Prime Minister Rexhepi finally dismissed Balic on 3 March 2003, replacing him with Resmije Muncu, a representative of the Turkish Party (KTDP). Despite the fact that the Constitutional Framework clearly gives the prime minister authority to replace any minister without the consent of the Assembly,⁵⁸ Balic refused to accept his dismissal, and threatened to use his alliance with the LDK to break up the coalition government. He ensured that Vatan members supported the LDK in several key municipalities so the LDK could control their governments⁵⁹ and turned to the Supreme Court to uphold his appointment.

Steiner intervened, attempting a balancing act to prevent the collapse of the coalition government. He stated that the new minister would be acting until the Supreme Court reached its verdict, but he also suspended Sejdiu without giving a reason. In fact, Sejdiu first heard about his suspension through the media.⁶⁰ After Steiner left Kosovo, Sejdiu was recruited as the senior special adviser to the minister. His appointment as permanent secretary was terminated and it is planned that for the coming months an international expert will fill that position. The job will be advertised again and a local permanent secretary can be expected to take up the post by October 2003. Another delay of two to four months, however, will severely delay recruitment of other significant staff, the development of a mid term strategic plan and establishment of a fully functional ministry.⁶¹

The Sejdiu suspension was in clear violation of the Civil Service Law, UNMIK Regulation No. 2001/36, and the Administrative Directive implementing the law. In the regulation, UNMIK clearly stated the actions that constitute a violation of civil service conduct, the disciplinary proceedings, and the applicable penalties. A civil servant should be suspended only when serious violations of the civil service regulation have occurred. Moreover, an investigation must be undertaken, including interviews with the alleged

⁵⁷ The position of Permanent Secretary is the highest in the civil service.

⁵⁸ Constitutional Framework, Chapter 9.3.12.

⁵⁹ ICG Balkans Report No.143, *Kosovo's Ethnic Dilemma: The Need for a Civil Contract*, 28 May 2003.

⁶⁰ ICG interview with Pleurat Sejdiu, 25 March 2003.

⁶¹ Information from UNMIK Civil Administration Pillar, 23 July 2003.

offender. A disciplinary board should hear the case and determine the penalty. The investigation, including decision, should be completed within 60 days.⁶² No such investigation was undertaken in the Sejdiu case, nor did UNMIK state the reasons for the suspension.

This political battle and the errant UNMIK intervention has set back the Ministry of Health, as well as the overly ambitious program of reforms. As one commentator stated:

There is no real harm in appointing a minister according to political (or even ethnic) criteria when the public service is well established. But Kosovo has a small, low paid public cadre, relatively inexperienced in public administration, and such a policy can be harmful. And, in a ministry run by an acting minister and an interim (international) permanent secretary, any attempt to build sustainable capacity is at risk. International donors invested nearly €80 million in the public health sector between 1999 and 2002. This investment is at risk and needs to be secured. The authorities (the Government and, where and when necessary, UNMIK) must ensure that users of public health facilities can expect to get out of these facilities in better condition than when they enter.”⁶³

Because of the low capacity of the ministry, little work has been done to address the real problems of the health system. Moreover, UNMIK played a pernicious rather than helpful role. Steiner and UNMIK flagrantly violated their own regulatory framework, and politicized the civil service. UNMIK's actions are particularly disturbing given the PISG's tendency to regard the civil service as a mechanism for patronage.

C. ASSEMBLY RULES OF PROCEDURE

In June 2002, the Presidency of the Assembly authorized the Committee on Judicial and

Constitutional Affairs to draft new rules of procedure, revising provisional rules that UNMIK developed prior to formation of the Assembly. UNMIK introduced those rules to ensure that early sessions had procedural guidelines and anticipated that the Assembly would revise them. The Constitutional Framework gives the Assembly the authority.⁶⁴

With legal advice and practical assistance from the U.S. National Democratic Institute (NDI), the Committee ended its work in December 2002. Although the new rules contained some controversial sections, put in against the advice of NDI, the Assembly adopted them on 9 January 2003.

UNMIK reacted strongly and refused to recognize the new rules until several issues were addressed. On February 2003, Principal Deputy SRSG Brayshaw met with Daci, presented him with a list of seven key UNMIK concerns, and argued that some sections contravened the Constitutional Framework. This list included the following:

- The new rules sidelined the Office of the SRSG in two critical areas. The Assembly was not obligated to share all agendas and documents – including draft legislation – circulated to members of the Assembly. Moreover, the Presidency of the Assembly was not required to coordinate external parliamentary contacts. While the latter is in clear violation of the SRSG's reserved powers, the failure to share documents could undermine the SRSG's ability to advise the Assembly on areas where it is overstepping the Constitutional Framework. This has the potential to result in a worsening of relations between the PISG and UNMIK.
- The new rules provided members of the Assembly with immunity for criminal and civil actions. Although the Assembly could waive this immunity, the rules go far beyond the immunity provisions already outlined in the Constitutional Framework, which are standard in legislative bodies throughout the world (i.e. immunity

⁶² UNMIK Regulation No. 2001/19, “On the Executive Branch of the Provisional Institutions of Self-Government in Kosovo”; Administrative Direction No. 2003/2, “Implementing UNMIK Regulation No. 2001/36 on the Kosovo Civil Service”, 25 January 2003.

⁶³ Matthias Reinicke, “Health: Condition Stable, Prognosis Uncertain,” *Focus*, April 2003.

⁶⁴ Constitutional Framework, Chapter 9.1.26 (i).

from all civil and criminal proceedings with regard to words spoken or other acts performed in their capacity as members of the Assembly).⁶⁵

- The role of the Assembly in the appointment and dismissal of judges and prosecutors was expanded far beyond the current role to endorse candidates as outlined in the Constitutional Framework.⁶⁶ This expanded role threatens to undermine the independence of the judiciary.

Other, less serious, UNMIK contentions involved the review of laws (overly cumbersome) and Assembly efforts to clarify the circumstances under which its president would assume the responsibilities of the President of Kosovo.⁶⁷

A working group was created to address these concerns, consisting of a member of the Presidency of the Assembly, UNMIK's OLA, a member of the Assembly Secretariat, NDI, and USAID. It concluded that the Assembly should operate under the new rules, while not applying those sections contested by UNMIK.⁶⁸

The Legal Adviser to the Presidency of the Assembly subsequently worked on incorporating the amendments requested by UNMIK and finalised the draft at the end of May 2003. UNMIK and the legal advisor agreed during a Stabilisation Tracking Meeting in June that the rules would be revised by 30 September 2003. UNMIK threatened that if this deadline is not met, it will consider the Assembly to be operating without rules of procedure and its work, therefore, null and void. Meeting this deadline may be difficult, as the Assembly recessed on 10 July and is not expected to be back in session until early September.

Handling this issue could be a political challenge. If Daci is perceived to be caving in to UNMIK, and if inter- (and intra-) party consensus is not reached – particularly on the immunity issue – the revision of the rules of procedures could be very contentious. If he does not address UNMIK's concerns, he risks

friction with the new SRSG, and the work of the Assembly will be deadlocked. While he committed to take up this issue in early September, resolution may require the active engagement of the diplomatic offices.

D. BELGRADE-PRISTINA DIALOGUE

Early in 2003, the relationship between UNMIK and the government and party relations within the coalition were undermined by the effort of the international community to initiate direct dialogue between Belgrade and Pristina. Two factors were responsible for the deterioration in relations: the way Steiner handled the dialogue and the lack of preparedness among the PISG as well as within political parties.

Steiner had repeatedly stated that one of his priorities for 2003 was to initiate direct talks on technical issues with Belgrade. On the anniversary of the coalition agreement (28 February), he secured the agreement of government officials and key political party leaders for dialogue with "neighbouring countries" through a declaration commemorating the achievements and principles of the coalition. All key Albanian political leaders, with the exception of Ramush Haradinaj of the AAK, signed. UNMIK quickly moved to set an agenda for the meeting and within three days, sent an invitation to officials in Belgrade.

Although the international community had placed a high priority on initiating these talks, and despite the lobbying of the then Serbian Prime Minister Zoran Djindjic for them, Kosovo political leaders reacted with surprise to their imminence. Some members of the PDK and LDK revolted at the prospect and questioned why their leaders had signed the declaration without consultation. Prime Minister Rexhepi was left defending the government's decision. This threatened to undermine the coalition government – and there was a rumour that the PDK was seeking to remove Rexhepi. With the intervention of key diplomatic offices, the coalition government held together. However, this episode demonstrated the fragility of Kosovo's political institutions, how UNMIK must ensure that its actions support rather than undermine the PISG, and the critical role of the diplomatic offices.

⁶⁵ Ibid, Chapter 9.1.24.

⁶⁶ Ibid, Chapter 9.4.8.

⁶⁷ ICG Interview with National Democratic Institute representative, 1 July 2003.

⁶⁸ ICG interviews with members of the Assembly, May and June 2003.

Although the assassination of Djindjic delayed the talks, lessons can be learned. Many mistakes characterised this process on both sides. Steiner rushed matters and failed to build political consensus. He also failed to consult on the agenda, and did not give enough preparation time to the PISG. While diplomatic offices used their influence to prevent a government collapse, they did not work from an early stage to build this consensus. Despite all indications that direct talks were imminent, Kosovo politicians were completely unprepared. They had not developed a position, worked to build intra- and inter-party consensus, or identified possible issues for the agenda. In short, they were fortunate that the talks were delayed.

The spectre of dialogue has raised tensions between Pristina and Belgrade. Politicians on both sides are placing conditions on the start of dialogue. Tensions have recently been fuelled by a declaration on Serbian sovereignty over Kosovo that was approved by the Serbian parliament on 26 August 2003.

The international community remains committed to initiate these technical discussions this autumn. The new SRSG will have to ensure that Kosovo's leadership is prepared, help negotiate the agenda, and handle the delicate issue of who should be on the delegation and under what auspices it would work. The role of UNMIK also needs to be clarified – UNMIK officials have argued that they will sit as observers. However, their ability to remain outside the Kosovo delegation will be questionable given their overall responsibility for and retention of authority in a significant number of sectors. To ensure that the negotiations support and strengthen the capacity of Kosovo's elected institutions, the negotiating team should report to the Prime Minister's office – albeit seeking advice and support from key political leaders. The U.S. and the EU will assist UNMIK and the PISG in preparing but active engagement is required from diplomatic offices. It is in no one's interest that the PISG enter the discussions unprepared.

IV. THE SHARED OBJECTIVE: AUTONOMOUS SELF-GOVERNMENT

These four case studies demonstrate the friction that is a feature of UNMIK-PISG relations and threatens to delay the shared objective of building autonomous institutions of self-government. However, the capacity of Kosovo's institutions to operate independently of UNMIK remains questionable. While the Constitutional Framework delineated the power of these institutions, they have yet to become fully functioning. The government is young, with an inexperienced and untrained civil service. UNMIK devised a process to measure the PISG's capacity for self-government. Although they were in effect designed to delay consideration of the status issue – a delay that ICG has repeatedly called problematic⁶⁹ – UNMIK's benchmarks do represent important governance objectives that both UNMIK and the PISG need to strive towards.

A. BENCHMARKS

In April 2002, Steiner presented to the Security Council a series of "benchmarks" or standards for institutions to reach before the political process to determine Kosovo's future status could begin. These are: functioning democratic institutions; the rule of law; freedom of movement; returns and reintegration; the economy; property rights; dialogue with Belgrade; and guaranteeing the civilian mandate of the Kosovo Protection Corps. They were developed at a retreat in Dubrovnik, attended only by international UNMIK staff, and were launched without consultation with the newly formed government. After the Security Council endorsed the benchmarks, the Prime Minister and his government accepted them, but they have recently questioned their usefulness.

Since their announcement, the benchmarks have become a convenient international mantra, cited whenever Kosovo Albanians request movement on status. To build public support for them, UNMIK launched a public information campaign. A

⁶⁹ ICG Balkans Report No. 124, *A Kosovo Roadmap 1: Addressing Final Status*, 28 February 2002; ICG Balkans Report No. 131, *UNMIK's Kosovo Albatross, Tackling Division in Mitrovica*, 3 June 2002; ICG Europe Briefing, *Thessaloniki and After III: The EU, Serbia, Montenegro, and Kosovo*, 20 June 2003.

promotional video in English is narrated by two UNMIK officials – local officials or citizens of Kosovo are nowhere present. The video emphasises that Kosovo lags behind the rest of the region in democratic development and that its leaders rely on theatre and rhetoric rather than action. It stresses that the benchmarks are intended to be “of the people, by the people and for the people”, though the people’s elected representatives did not have a hand in drafting them. The video also outlines a process to build a social contract between the population and Kosovo’s leaders to meet the standards. The development of such a contract seems to have stalled, however.⁷⁰

Public advertisements have also been launched on Kosovo’s television stations. UNMIK promotes the benchmarks with analogies of a child memorizing a patriotic poem and a young athlete practising basketball. The message is that the people of Kosovo need to work hard to achieve standards if they are to gain success. Given that UNMIK is encouraging the public to hold its leaders more accountable, the analogies of poetry and basketball are puzzling since many real examples could be used. Moreover, UNMIK selling the standards will not work – Kosovo’s leadership must do the talking. Leaders of civil society interviewed by ICG regarded these promotions as arrogant and condescending.⁷¹

While the public information campaign is ongoing, in the year since they were revealed, little has been done to operationalise the eight standards. They remain a vague pronouncement of UNMIK, rather than tangible, realistic objectives for the provisional institutions to work towards. Moreover, almost all touch on the area of reserved UNMIK powers and therefore require close and careful collaboration between the PISG and UNMIK. As outlined in this report, such collaboration is undermined by ongoing friction. And it remains unclear how the benchmarks relate to another crucial process for Kosovo: the EU’s Stabilisation Tracking Mechanism.⁷²

The Security Council mission to Kosovo in December 2002 found that UNMIK had not

developed an implementation plan for the benchmarks. Its report stated:

The Mission looks forward to the next report on UNMIK with a further detailing of the benchmarks so as to measure progress. The Mission hopes that the benchmarks can be worked out with local authorities in Kosovo to build local “ownership” of them.⁷³

In January 2003, UNMIK presented its report detailing the benchmarks, which consisted of the original eight standards with 32 sub goals and seemingly randomly selected indicators of whether government institutions had achieved them. It remained unclear how UNMIK and the government would jointly work towards these objectives, and what resources would be required. The Security Council – encouraged by key members such as the U.S. – continued to press UNMIK to develop a strategy to operationalise the benchmarks.

UNMIK brought a strategic planning expert in to establish a work plan for the benchmarks. This plan will consolidate them into five achievable goals, and outline how UNMIK and the PISG will work to meet them. A results-based model will be used, to clarify what various actors need to accomplish as well as what risk factors could undermine the effort. Officials hope that this work plan will cut across the UNMIK pillar structure and mobilise the resources of the entire mission, as well as the PISG. UNMIK also states that it will make an effort to ensure that the plan ties into EU efforts to develop a parallel tracking mechanism to ensure that Kosovo remains in sync with the EU Stabilisation and Association Process and the gradual transfer of competencies to the PISG (outlined below).⁷⁴

The benchmarks are an important instrument to reach the objective of fully functioning autonomous institutions. Yet since their inception, they have more often been used as a mechanism to defer the status question, rather than to build institutions. The strategy plan is an important opportunity to refocus the initiative, and in developing it, the new SRSG should not repeat the failure of the Steiner-led UNMIK to build PISG support. Consultation with the PISG from the earliest possible stage on all

⁷⁰ UNMIK Department of Public Information video, “Standards before Status”.

⁷¹ ICG interview with representatives from Civil Society, May and June 2003.

⁷² ICG Briefing, *Thessaloniki and After III*, op. cit.

⁷³ United Nations Security Council, “Report of the Security Council Mission to Kosovo and Belgrade, Federal Republic of Yugoslavia”, 19 December 2002.

⁷⁴ ICG interview with Christine Roth, 1 July 2003.

elements will be critical to build consensus for the plan and ensure sustainability. Politicians have expressed concern to ICG, however, that UNMIK had again not begun to build consensus at an early stage. The donor community – which still contributes significant resources – should also be consulted. The strategy must contain real instruments to encourage the PISG to reach the benchmarks and to take responsibility for governing responsibly in sectors within its purview. To contribute to a culture of accountability, clarity should be provided also on the role of the PISG in meeting the benchmarks that are in areas of UNMIK competency.

B. TRANSFER OF COMPETENCIES TO THE GOVERNMENT

As discussed above, the Constitutional Framework outlined the division of responsibilities between the PISG and UNMIK. Chapter Five specified the areas where authority should be handed over to the government, while Chapter Eight powers remained reserved to UNMIK.

After the government was formed, several factors impeded PISG's ability to take up its Chapter Five responsibilities. UNMIK officials saw Kosovo as exclusively a peacekeeping mission, and did not emphasise governance objectives.⁷⁵ Thus the regulatory framework for the Civil Service was not established until after the formation of the PISG. If UNMIK had begun the process of staffing the civil service earlier, it would have had more time to build the capacity of these institutions and their personnel. While UNMIK relied on training on the job, the transfer of skills and expertise to local staff was not always successful. UNMIK personnel were preoccupied with their day-to-day operational role, and did not or could not pay sufficient attention to training. The quality and experience of UNMIK personnel was mixed – many had little experience in public administration. The very existence of UNMIK also provides a safety net for the PISG – if government officials are negligent, UNMIK personnel ensure that institutions function at a basic level.

The government was initially understaffed and lacked the experience and capacity to take up its

tasks immediately. As the salaries of the civil service range between €150 to €500 a month, the government continues to find it difficult to attract talented and experienced professionals. Those that work in senior positions are often obligated to hold several jobs to support their families.

The mantra of “Standards before Status” continued into 2003, and the international community criticised the failure of the PISG to work seriously to build functioning institutions. During a Security Council visit in December 2002, the head of the delegation warned:

The people of Kosovo have much to do to achieve these standards. Verbal support is not enough. Real efforts must be made on the ground to make the standards a reality. Kosovo is still a long way from having truly functioning democratic institutions and a society in which minorities can fully participate. UNMIK has reached the stage of transferring responsibility to Kosovo's provisional institutions; the more the institutions can demonstrate they can execute the responsibilities they already have, the more they will be given.⁷⁶

Representatives of the PISG grew increasingly defensive, arguing that most standards reflected reserved powers. In those areas where the Constitutional Framework had transferred authority to the PISG, UNMIK held onto power and did not allow PISG representatives to make decisions that would ensure that the benchmarks were met. UNMIK officials argued that until the PISG could effectively administer its areas of responsibility, it should not be given more power. A war of words ensued in the media, as both sides blamed the other for the lack of progress.

To get out of this impasse, Prime Minister Rexhepi suggested a consultative forum between UNMIK and the PISG to address the sharing of power, and Steiner announced that he was ready to hand over all legally transferable competencies – Chapter Five powers legally already PISG purview – by the end of 2003, provided that the PISG “works more

⁷⁵ The exception has been Pillar Three of UNMIK, which is the OSCE component of the mission.

⁷⁶ Remarks made by Ambassador Ole Peter Kolby, Head of Security Council Mission to Kosovo and Belgrade, 14 December 2002.

seriously.”⁷⁷ Thus, the Transfer Council was created.

The Transfer Council was initially prepared to assess whether UNMIK had sufficiently handed over Chapter Five competencies as well as how to secure the gradual involvement of the PISG in areas reserved to UNMIK, which overlapped significantly with PISG areas of authority. Belgrade strongly objected to such a transfer, arguing that discussion of Chapter Eight competencies prejudiced final status by creating *de facto* independent institutions. Kosovo’s Serb representatives refused to participate in the Council, contending that Kosovo’s institutions should be granted more authority only when conditions had improved for the Serb community – which they deemed an essential test of functioning institutions.

Nevertheless, the Transfer Council went forward. Due to pressure from Belgrade – assisted by a sympathetic international community eager to support Serbia after the Djindjic assassination – its inaugural meeting outlined a process to address only Chapter Five competencies. The Council formed three working groups to facilitate the transfer of power: finance, logistics and recruitment – to identify needed resources; technical assistance – to identify areas that require intervention to build capacity; and monitoring and intervention – to ensure that the rights of minorities are protected.⁷⁸ The Transfer Council also identified 44 areas over which UNMIK retained authority but that according to Chapter Five of the Constitutional Framework belonged to the PISG’s mandate. Nineteen areas were transferred immediately, while seventeen were approved for transfer pending capacity and resources in the PISG. Eight areas required further consideration.⁷⁹

UNMIK argued that two principles guide the transfer process: more authority will be transferred to institutions that prove they have the capacity and will to handle this authority; and UNMIK will strengthen its capacity to intervene to ensure that

the PISG adheres to the Constitutional Framework in transferred areas.⁸⁰

This conditionality has been contentious for the PISG, which feels that it should be able to make mistakes on the job. Officials argue that their performance is better sanctioned and rewarded by conditionality and other incentives and disincentives, rather than the withholding of power.⁸¹ Some local officials have stressed the importance of safeguarding against a “service dip” upon the withdrawal of UNMIK administrative staff. They are aware that the institutions are not yet fully able to take on the entire administrative burden. Leaders highlight the need for technical assistance in various government branches and have approached donors to provide that assistance. However, these officials insist that the international community should send experienced and competent people to build capacity, citing cases where international “experts” have no experience in the job for which they are training others.⁸²

The Transfer Council, while an important initiative, came a year late. The process would have been extremely useful as ministries were being formed. When the Council began, many international officials expressed surprise that UNMIK had not already fully transferred authority to the PISG in its areas of responsibility. They were concerned that it had waited a year before establishing such a key consultative forum.

UNMIK reacted strongly to these criticisms, arguing that most power had already been transferred, and hinted that the PISG was making excuses for its incompetence. In a recent presentation to the OSCE in Vienna, Steiner argued that “90 per cent” of Chapter Five competencies had already been transferred.⁸³ Given that the Transfer Council has identified 44 Chapter Five competencies that have yet to be handed over to the PISG, this was a highly exaggerated claim.

The failure of the Council to address both Chapter Five and Chapter Eight responsibilities is

⁷⁷ UNMIK Press Release, “SRSG Michael Steiner’s TV Address to Kosovo: Taking Responsibility for Kosovo”, 20 January 2003.

⁷⁸ ICG interview with UNMIK official, 22 July 2003.

⁷⁹ *Ibid.*

⁸⁰ UNMIK Press Release 943, “Transfer Council Meets, Forms Three Working Groups”, 8 April 2003.

⁸¹ ICG interview with Ramush Haradinaj, 24 April 2003.

⁸² ICG interview with Assembly President Nexhat Daci, 9 July 2003.

⁸³ Comments following SRSG Steiner’s address to the OSCE Permanent Council, 8 May 2003.

problematic given that many competencies are shared or intertwined. The PISG insists that as the democratically elected representative body in Kosovo, it should have some input into decision-making in areas of reserved powers. Moreover, UNMIK is developing a transition strategy in many areas of reserved powers – such as justice – to build local capacity gradually so that when it withdraws, it will not undermine institutions. The Transfer Council would provide an important forum to air these transition plans.

While the Transfer Council is a significant step forward in resolving problems and addressing directly the issue of transferred administrative responsibility, it should not be seen as a panacea for what ails Kosovo. The frequency of meetings is problematic. Since it was created in March 2003, it has only convened twice. The process appears to be frozen, awaiting the arrival of SRSG Holkeri and a decision on whether it can consider the gradual incorporation of PISG officials in Chapter Eight responsibilities (while retaining UNMIK authority in these areas). Though an important tool, the Transfer Council will not increase the responsibility and capacity of Kosovo's institutions, or single handedly improve PISG-UNMIK relations.⁸⁴

V. PUTTING THE RELATIONSHIP BACK ON TRACK

Although UNMIK and the PISG share the objective of establishing democratic fully functioning institutions, they have been hampered by a tense relationship. This diverts the focus of both local and UN officials from addressing the many challenges that face Kosovo. While some of this tension is natural, it clearly could be managed better.

Some sources of tension are clearly structural in nature – and more amenable to outside intervention. These include the lack of consultative mechanisms, the restrictive legal framework coupled with the failure to address Kosovo's status, and the strains of coalition government. Other issues are less tangible, such as the lack of capacity in Kosovo's institutions, the need for politicians to exercise leadership and establish a vision for the future, and UNMIK's aversion to risk and unwillingness to let go.

A. UNMIK: MORE FOCUS BUT IN THE BACKGROUND

Under Steiner, UNMIK had far too many priorities that it neither first discussed with Kosovo's leaders nor ensured that it had the resources to achieve. Kosovo's elected officials felt marginalised on key decisions.

Under the new SRSG, Harri Holkeri, UNMIK needs to develop a clearly focused policy agenda that can realistically be implemented. Coming up with policy ideas is not difficult; the tough part is building a consensus and implementing those ideas. The focus of UNMIK should be squarely on institution building, good governance and development. Ensuring effective communication and coordination across pillars within the UNMIK structure will be crucial to achieving these objectives as available resources decline.

Holkeri's early statements do not suggest that he sees his job very differently than his predecessor. In his first press conference in Pristina, he ambitiously outlined seven priorities:

⁸⁴ ICG interview with PISG official, 14 April 2003.

- strengthening the rule of law and enhancing the fight against organised crime and extremism;
- supporting returns;
- developing multiethnic judiciary, policy and provisional institutions;
- promoting multi-ethnicity, dialogue and integration;
- bringing Kosovo closer to European standards;
- promote economic development and a free market economy; and,
- following up commitments made at the June 2003 EU Summit (Thessaloniki) to initiate a Belgrade-Pristina dialogue.⁸⁵

However, Holkeri will have to ensure that he has the resources to reach these priorities. For example, the judicial integration unit – responsible for bringing minorities into the judiciary – does not have a head officer. As UNMIK is downsizing, its capacity is inevitably weakening. It is uncertain whether Holkeri appreciates that UNMIK officials must more frequently step into the background to allow, encourage, and if necessary, force elected officials to exercise leadership. Overall, UNMIK's actions and activities should support rather than undermine Kosovo's institutions, which means that credit must also be given to the PISG for its work and PISG officials allowed to share the spotlight, for example when it comes time to address the Security Council during the quarterly report on UNMIK.

B. SPIRIT OF PARTNERSHIP: UNMIK/PISG CONSULTATION

Counter-intuitively, UNMIK has consulted less with the PISG, Kosovo's elected government, than it did with Kosovo's political leaders in the old Interim Administrative Council (IAC). In the days before the election of the government in November 2001, UNMIK shared major policy initiatives with the politicians and often gave them an opportunity to provide input. After the government was formed, this consultation declined dramatically.

There are currently no overarching formal consultative mechanisms between UNMIK – particularly the Office of the SRSG – and key offices of the PISG such as the Assembly Presidency and the Prime Minister's office. Although some mechanisms for consultation exist, including the Transfer Council, the Economic and Fiscal Council, and working groups between the OLA and ministries, high level consultation remains ad hoc, often depending on the good will of senior officials on both sides. The apparent attitude of too many senior UNMIK staff that consultation is not to be taken seriously has trickled down throughout the bureaucracy. UNMIK staff who do build relationships with local counterparts are often undermined by the lack of consultation at higher levels.⁸⁶ This has contributed to the creation of two parallel bodies administering Kosovo – UNMIK and the PISG – rather than one cooperative and coordinated governing structure.

This lack of consultation, as seen above, has had serious consequences. Because UNMIK initially failed to consult on the timing of the planned dialogue with Belgrade, the Prime Minister was undermined and the coalition government almost collapsed. UNMIK's failure to consult has impacted on government and civil society acceptance of its benchmarks initiative. UNMIK's failure to remind the Assembly of the importance of revisions of its rules of procedure has brought that body into considerable difficulties.

However, not all officials interviewed by ICG embraced the idea of more consultation. Some in the PISG complained that high-level meetings with UNMIK were not productive, as participants focused on maintaining relationships rather than addressing concrete issues.⁸⁷ Others emphasised that the time is past for consultative meetings – the PISG should now be allowed to govern.⁸⁸ UNMIK officials argued that the presence of its PIOs in the ministries produces daily consultation that renders further dialogue unnecessary.

⁸⁵ UNMIK Press Briefing, "First Press Conference of SRSG Harri Holkeri", 14 August 2003.

⁸⁶ One Principal International Officer informed ICG that during negotiations over an issue, his minister produced a letter from the SRSG's office that indicated the problem had been solved. The UNMIK official had not been copied on this correspondence.

⁸⁷ ICG interview with Assembly President Nexhat Daci, 9 July 2003.

⁸⁸ ICG interview with Ramush Haradinaj, 24 April 2003.

Given that UNMIK and the PISG share the same objectives, and that the PISG is led by Kosovo's democratically elected officials, the failure to put in place a formal senior-level consultation mechanism that in effect requires the sharing of information on activities and initiatives remains a glaring oversight that the new SRSG should address. Such a mechanism could be bi-weekly and should include key officials from UNMIK as well as Kosovo's President, Prime Minister, and President of the Assembly.

C. INTRA-PISG RELATIONS

Consultation within the PISG, and between the PISG and political parties, also remains problematic. Ministers report to their parties and are reluctant to follow government directives. Although the Prime Minister theoretically could maintain government discipline by removing uncooperative ministers, this would put the fragile coalition at risk, as the difficulty in removing Health Minister Balic showed. A cabinet reshuffle is thus a last resort option. The Prime Minister lacks a "government secretary" who could assist in coordinating the Ministries. Moreover, his advisers are not effective in consulting with political parties to ensure buy-in for policies.⁸⁹

As noted above, the coalition government is weakened because Kosovo's political power lies partly outside its institutions. The Prime Minister is not the head of his party, and PDK representatives openly challenge him. For example, Jakup Krasniqi, the PDK Minister of Public Services, openly criticised the Prime Minister in the press for signing the declaration that led to the initiative on a Pristina-Belgrade dialogue and recently announced a series of conditions that he feels should be met before such talks can begin. Such sensitive and perhaps destabilising pronouncements should come from leaders of institutions or political parties, not government ministers.

Moreover, the interface between the Assembly and the executive branch is almost non-existent. Assembly members do not act as a check on the government, and ministers are rarely requested to appear before the Assembly to take questions and defend their activities.

Party calculations in the pre-election period may also undermine the effective functioning of the government. The LDK in particular may fear that because Prime Minister Rexhepi is a member of the PDK, government successes will accrue to their rivals. Other parties represented in the coalition may work to undermine the government in general, and Rexhepi's leadership in particular. Party rivalry could reach a point before the 2004 elections when the government can do little concrete work.

These problems can be addressed in several ways. First, more effective party discipline must be exercised – particularly within the PDK – so that internal disputes do not impact on the ability of Prime Minister Rexhepi to control the government. Secondly, Rexhepi must address the structural problems in his office. Thirdly, the Assembly Presidency and the Prime Minister's office must develop an effective coordination mechanism – perhaps with a representative of the latter sitting in on Assembly Presidency meetings.⁹⁰ More importantly, the Assembly must begin to hold the government responsible for its actions. A bi-weekly "question period" – with all government ministers present – would add accountability and transparency and also ensure better coordination between the government and the Assembly.

D. LEGAL CLARITY

UNMIK remains the overarching executive, legislative and judicial authority in Kosovo. Ultimately the SRSG – through the OLA – can decide what laws Kosovo needs, and how they should be written, interpreted and applied.⁹¹ While

⁹⁰ ICG interview with National Democratic Institute official, 1 July 2003.

⁹¹ Constitutional Framework, Chapter 12: "The exercise of the responsibilities of the Provisional Institutions of Self-Government under this Constitutional Framework shall not affect or diminish the authority of the SRSG to ensure full implementation of UNSCR 1244 (1999), including overseeing the Provisional Institutions of Self-Government, its officials and its agencies, and taking appropriate measures whenever their actions are inconsistent with UNSCR 1244(1999) or this Constitutional Framework"; Chapter 14.3: "The SRSG, on his own initiative or upon a request supported by two-thirds of the members of the Assembly, may effect amendments to this Constitutional Framework"; UNMIK Regulation 2001/19, Section 7, On the Executive Branch: "The SRSG of the Secretary General shall have the final authority to interpret the scope and any

⁸⁹ ICG interview with USAID consultant, 15 July 2003.

the SRSG has ultimate authority, his effectiveness depends to a large degree on the willingness of Kosovo's politicians and the population to cooperate.

The Constitutional Framework and subsequent regulations are very unclear about the division of powers between UNMIK and the PISG, and between the central and local levels of government. In fact, in the majority of sectors – from trade, to fiscal policy, to judicial issues – the Constitutional Framework specifies that both UNMIK and the PISG have responsibilities – although it is very clear that the SRSG has the final authority.⁹²

The SRSG, acting on the advice of the OLA, has been generally very conservative in interpretation of the Constitutional Framework and has made decisions unilaterally and behind closed doors. There has been little consultation with the PISG and no referral to any judicial process. Any areas that were not specifically transferred are interpreted as reserved. This conservative tendency has resulted partly from the low administrative capacity of Kosovo's institutions, but it is also a result of bureaucratic inertia. It has been difficult for many UNMIK officials, who have long administered the system, to let go, particularly given UNMIK's general aversion to risk.

All legal documents are subject to interpretation. This process of interpretation establishes important precedents and a legal tradition that in turn create the balance of power between various levels of government. The SRSG and the OLA currently decide – together with the UN legal office in New York – whether a law violates the Constitutional Framework. One person or office should not take such far-reaching actions behind closed doors. A transparent legal process and oversight are required. This would also contribute to a cleaner separation of executive, judicial, and legislative authority.

Oversight is already foreseen in the Constitutional Framework, which establishes a Special Chamber of the Supreme Court to decide:

- whether a law is incompatible with the Constitutional Framework and

international law regarding human rights;

- the extent of the rights and obligations of the PISG under the Constitutional Framework in the event of a dispute between or among the institutions of the PISG;
- whether the PISG is infringing on the independent bodies established in the Constitutional Framework (the Central Election Commission, the Judicial and Prosecutorial Council, the Office of the Auditor General, the Banking and Payments Authority of Kosovo, the Independent Media Commissioner, the Board of the Public Broadcaster, and the Housing and Property Directorate); and,
- whether an act committed by a member of the government or Assembly is covered by the immunity provisions of the Constitutional Framework.⁹³

This Special Chamber has not yet been used, and its rules of procedure have only recently been drafted. The need for the chamber was recognised only in the context of the appeal of Health Minister Balic that his dismissal violated the Constitutional Framework.⁹⁴

Rather than making unilateral decisions behind closed doors, the SRSG and the OLA should utilise the Special Chamber to resolve disputes between UNMIK and the PISG. International judges and prosecutors could play a part. Such a measure would provide transparency to key decisions and build the capacity of the courts on constitutional issues.

E. BUILDING REAL CAPACITY IN INSTITUTIONS

The ability to govern effectively includes having a cadre of technically trained personnel, qualified to undertake the task at hand; management expertise to direct these personnel to achieve objectives; and sufficient resources to support the institutions and

other parameters of the executive responsibilities of the PISG set out in the present regulation”.

⁹² Constitutional Framework, Chapters 5, 8.

⁹³ Constitutional Framework, Chapter 9.4.11.

⁹⁴ ICG interview with UNMIK official, Police and Justice Pillar, 30 July 2003.

personnel. The PISG lacks capacity in all three areas.

While information on the capacity of the PISG is anecdotal, the cases outlined in this report demonstrate that it is generally low. The failure of the Ministry of Health to administer the health sector shows how this impacts on the government's ability not only to implement policy objectives, but also to manage the system effectively. The Finance Ministry's capacity problems are not helped by the reluctance of the Central Fiscal Authority to transfer trained personnel to it. The Assembly lacks sufficient staff to increase its activity.

UNMIK has recognised that low capacity is a constraint on institution building. Many local officials also recognise that the PISG has insufficient quantity and quality of staff and is not yet ready for the full burden of administration.⁹⁵ The Transfer Council is supposed to provide information on capacity needs in ministries and a strategy to address the gaps. The strategic planning document, currently in preparation, to operationalise the benchmarks will provide information on what exactly the PISG is responsible for in that exercise and help focus it on important governance objectives.

The capacity requirements of the PISG are numerous. Its technical capacity is low, and it has no effective middle managers to guide the machinery of government. It is clear that UNMIK can no longer sustain international staff in executive positions, but those in advisory positions must have the expertise to perform that role. The PISG needs real experts with experience working in ministries, legislatures, and public administration generally to train locals in performing their professional duties.⁹⁶ However, UNMIK needs to take a step back and allow mistakes to be made. Capacity building is needed, not interference, so that the PISG can do the job when authority is transferred to its institutions.

Critical instruments are not yet in place with respect to the civil service. The Kosovo Institute for Public Administration (KIPA) is designed to build capacity in that vital element but though it exists on

paper, it is not fully functioning. UNMIK and the PISG have been slow to staff the institute, arguing that such a critical institution needs to be carefully planned and a comprehensive curriculum developed.⁹⁷ Moreover, the Independent Oversight Board theoretically established when the civil service regulation was promulgated is not yet fully functioning. As a result, the mechanism designed to ensure that the civil service is staffed appropriately (i.e. that positions are not overtly politicised) and that dismissals are in accordance with legal procedures is not yet effectively in place. Steiner's suspension of Pleurat Sejdiu from the Ministry of Health occurred without benefit of an established oversight or appeal procedure.⁹⁸

The PISG also faces many hardware problems. Low salaries aside, office space is pressing. For example, the chairpersons of Assembly committees have no offices of their own and hold informal committee meetings in the cafeteria.⁹⁹ Assembly committee secretaries have no equipment with which to record meetings.¹⁰⁰ No budget provision has been made regarding English translation within the Assembly. Considering that English-speaking experts within the PISG and on UNMIK staff at OLA are intrinsic parts of the legislative procedure, this oversight has slowed down one of the most urgent processes in post-war Kosovo.

F. THE NEED FOR LEADERSHIP

Many officials within the Kosovo government are holding political office for the first time. This lack of experience, as well as structural weaknesses within key institutions, the delicate nature of the coalition, and the role of UNMIK, has hampered them in exercising leadership. The government remains unfocused, reacting to events rather than developing policy initiatives.

Yet, it is a critical time for Kosovo's politicians to show leadership. A recent series of serious security incidents against minority communities demonstrate

⁹⁵ ICG interviews with advisers and permanent secretaries in PISG and OSCE, May and June 2003.

⁹⁶ There has been widespread praise from the PISG for the consultants funded by USAID.

⁹⁷ ICG interview with UNMIK official, 31 July 2003.

⁹⁸ ICG interview with head of DFID office in Pristina, 22 July 2003.

⁹⁹ Naim Maloku, as quoted in "The Committee on Environment and its Dynamic Chairperson", *Assembly Support Initiative Newsletter*, No. 4, January 2003.

¹⁰⁰ ICG interview with member of the Assembly Presidency, 5 March 2003.

that stability in Kosovo is not yet deeply rooted.¹⁰¹ There are indications that final status talks will begin in 2005 or 2006. The actions and initiatives of Kosovo's leaders will be crucial in preparing adequately for these discussions, and for determining the shape of future institutions, the relationship with neighbouring countries, and the goodwill of the international community including donor commitments. The recent joint letter encouraging displaced persons to return to their homes is one example of the positive impact leadership exercised by Kosovo's political figures and heads of institutions can have.

There is a lack of capacity within Kosovo's institutions, but not within Kosovo society writ large. Kosovo's leaders must reach outside the institutions and political parties and engage with members of civil society to build the future. While many politicians blame UNMIK for the lack of progress in institutions building, they are also responsible. It is ultimately their society – UNMIK officials will leave, but they will remain to face the legacy of their current actions. It is ultimately their decision if they wish that legacy to be positive.

VI. CONCLUSION

The United Nations has recently been under siege. In the context of the U.S.-led intervention in Iraq, the UN's ability to lead peacekeeping missions like Kosovo has been questioned. Many officials within the Bush administration have suggested that Kosovo is a failure since four years after UNMIK's arrival in the province, key institutions remain weak.

While not without its serious challenges, Kosovo has largely been a welcoming and facilitative environment for the international community. UNMIK is, therefore, a crucial opportunity to demonstrate that the UN is capable of post-conflict institution building. Yet the UN cannot do it alone. The relationship with the PISG is crucial. As seen in this report, accusations that UNMIK is arrogant, patronising, and confrontational are too often accurate. The arrival of a new SRSG offers an excellent opportunity to make important changes in style, attitude, and focus.

More than UNMIK, the PISG needs Kosovo to be a success story. Clashes with and accusations against UNMIK have undermined the reputation of Kosovo's elected government internationally. Politicians have tended to ride the popular aversion towards UNMIK, rather than acknowledge their own contribution to problems. Legitimate requests are increasingly seen as a pattern of complaints from a passive government. The PISG needs to develop a civilised discourse with UNMIK and ensure that the relationship is professional and constructive.

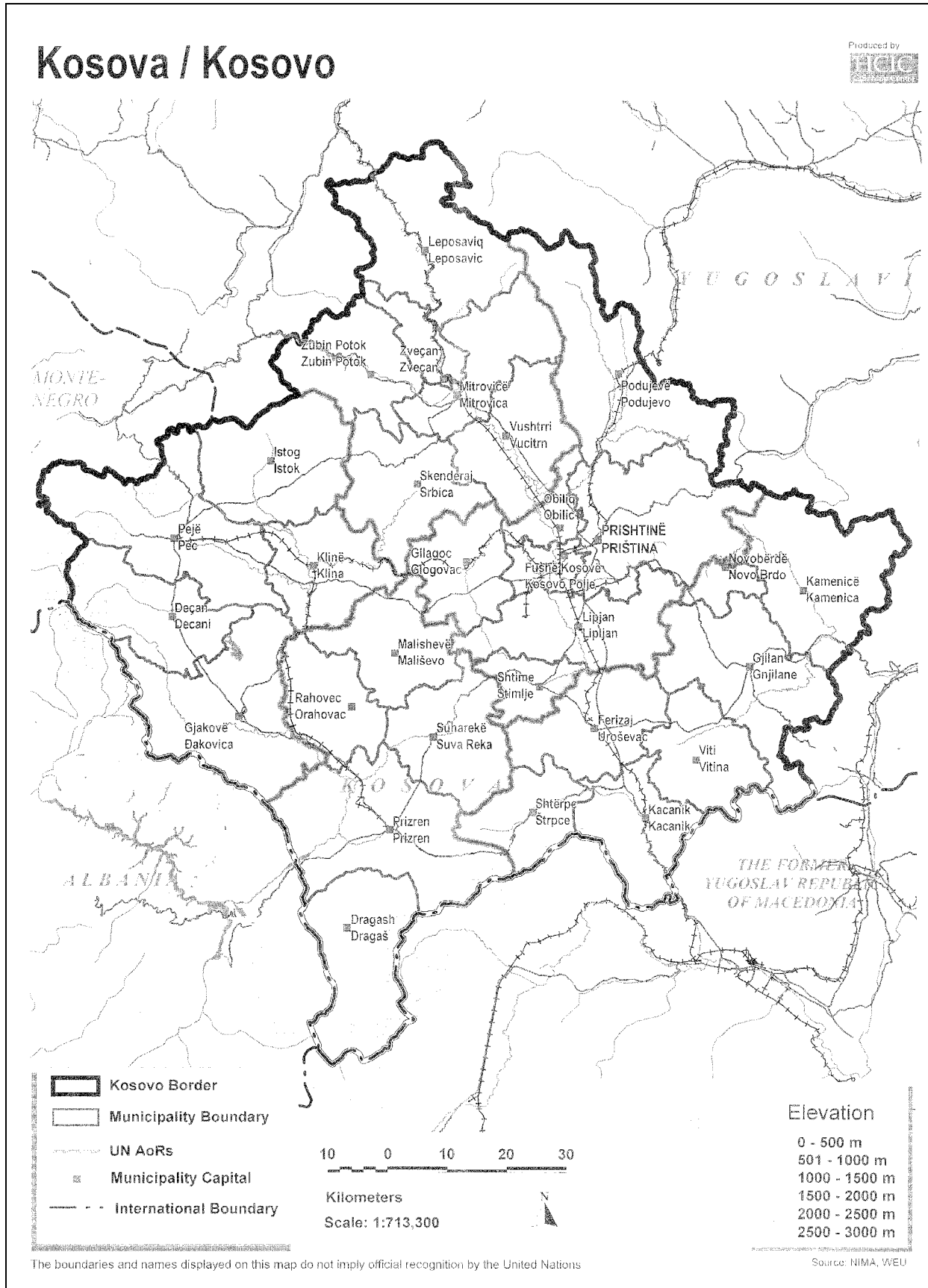
In short, the fates of UNMIK and the PISG are intertwined. One cannot succeed without the other.

Pristina/Brussels, 3 September 2003

¹⁰¹ Most recently two Kosovo Serb teenagers were killed and six injured in an attack by unknown assailants on 13 August 2003. In another recent serious incident, a UN police officer was ambushed and killed on 2 August, after which a Kosovo Serb was arrested.

APPENDIX A

MAP OF KOSOVO



APPENDIX B

GLOSSARY OF ACCRONYMS

AAK:	Alliance for the Future of Kosova
KPC:	Kosovo Protection Corps
LDK:	Democratic League of Kosova
NDI:	National Democratic Institute
PDK:	Democratic Party of Kosova
PREK:	New Party of Kosova
OLA:	UNMIK Office of the Legal Advisor
OSCE:	Organisation for Security and Cooperation in Europe
PIO:	Principal International Officer
PISG:	Provisional Institutions of Self-Government
SRSG:	Special Representative of the Secretary General
UNMIK:	United Nations Interim Administration Mission in Kosovo