

# The UN as Government in Kosovo



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United Nations Security Council Resolution 1244 of 10 June 1999 (Resolution 1244) envisaged the withdrawal from Kosovo of all the military, police, and paramilitary forces of the Federal Republic of Yugoslavia (Yugoslavia) together with a synchronized deployment of an international civil and security presence under United Nations auspices, respectively the United Nations Interim Administration Mission in Kosovo (UNMIK) and the NATO-led Kosovo Force (KFOR).<sup>1</sup> Resolution 1244 also envisaged the appointment of a special representative of the UN secretary-general (SRSG) to administer Kosovo and to coordinate closely with KFOR. The role of the international administration was to replace the Yugoslav authorities in the territory of Kosovo and to assume full interim administrative responsibility. The central tasks of UNMIK were (1) to establish a functioning interim civil administration, including the maintenance of law and order; (2) to promote the establishment of substantial autonomy and self-government, including the holding of elections; and (3) to facilitate a political process to determine Kosovo's future status. KFOR was asked to assist in this process through the establishment of a secure environment.

In terms of scope and ambition, UNMIK's mandate was almost unprecedented by the standards of UN field operations. Not only was it empowered to assume full interim administrative responsibility over the territory of Kosovo, it was also given a central political role in settling the conflict. As such, the establishment of the international administration in Kosovo was a move into uncharted territory.

Some of the major challenges that have plagued the mission are directly linked to the exceptional character of the mandate. The very idea of establishing an international administration that would assume full interim administrative responsibility over the entire territory of Kosovo was a novel challenge both conceptually and operationally. For example, it raised new and complex questions not only about the status, the source of legitimacy, and the powers of the international administration but also about the meaning and function of sovereignty in such

circumstances. This virtually unprecedented degree of authority entrusted to the international administration in Kosovo also created ambiguities about the meaning of certain of its central tasks, such as the requirement to perform basic civilian administrative functions and to establish substantial autonomy and self-government. However, the most prominent challenge of the mandate has been the absence of an end state for the international presence—that is, uncertainty over the final status of Kosovo and the contradiction of the requirement in Resolution 1244 to respect Yugoslavia's sovereignty even though the overwhelming majority of the Kosovo population, the Kosovo Albanians, desire independence.

The central place of highly political tasks in Resolution 1244, such as the responsibility to facilitate the political process to determine Kosovo's future status, alone reveals the intrinsically political role of the international administration in the management of the Kosovo crisis. In fact, the political challenges cannot and should not be understood only as problems affecting some central objectives of the operation, such as keeping the peace and establishing security—traditional features of the first, and to a large extent second, generation of peacekeeping operations—but also as the very central factors that provide guidance to the international administration about how to address its key operational challenges on “how to govern” and “to what end.” The principal test of success for the administration is how these latter challenges are handled.

If success in Kosovo is measured in terms of creating the conditions that would allow for the withdrawal of international administrators, then the political challenges facing UNMIK in Kosovo today remain almost as arduous and complex as when the mission was first established. The Kosovo conflict is still far from over because the underlying cause of the dispute, the contest between Yugoslavia's sovereignty and Kosovo's independence, has not yet been settled and because neither local nor international consensus exists on how to resolve it. The international administration looks set to stay in Kosovo for the long term. In the short run, it will most likely have to continue struggling to preserve the peace, while trying to balance between the Scylla of Kosovo's independence and the Charybdis of Yugoslavia's sovereignty. In doing so, it will have to grapple with the tensions inherent in Resolution 1244. In particular, it will have to reconcile, to the extent possible, Kosovo Albanian aspiration for independence with the protection of the Serbs living in the province. In the long run, and in the light of the uncertainty over the final status, its central political objective will likely remain to

freeze the dispute and effectively divert attention away from the question of the international status of Kosovo.

In that sense, the four-year-old international administration in Kosovo is a work in progress; it is only at the beginning of a long process and cannot yet offer any definitive lessons about the prospects for success or failure. In this article I examine in greater detail the factors emanating from UNMIK's mandate that have so far posed the major political challenges to the international administration in Kosovo and that have influenced central policy choices by the international administration on "how to govern" and "to what end."

### **The Political Challenges of Resolution 1244**

#### *Novelties: Powers and Structures*

The enormous authority and responsibility entrusted to the international administration in Kosovo by Resolution 1244 is a novel experience for peace operations. It raises complex issues, both conceptually and operationally, such as the extent of the powers of the international administration, its international status, its relation to Yugoslavia's sovereignty and the Yugoslav authorities, and the kind of operational structures it requires to fulfill such a far-reaching mandate. A number of interesting observations and conclusions can be drawn from the first few years of the international administration in Kosovo.

*Powers.* Regulation No. 1999/1 of 25 July 1999 (better known as "the Mother of all Regulations") stated that "all legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the SRSG."<sup>2</sup> The powers of the international administration emanating from Resolution 1244 and specified in Regulation No. 1991/1 were unprecedented. It was only a few months later in East Timor that a similar far-reaching mandate would be entrusted again to an international administration. An obvious tension here from the very beginning has been the one between the extensive powers of the international administration and the constraints imposed upon its powers by the explicit requirement to respect Yugoslavia's sovereignty.

In practice, UNMIK has interpreted its mandate from its very early days as being virtually unrestrained by considerations of sovereignty. Pragmatism on how to fulfill its demanding mandate has basically

guided decisions and policies. For example, in an early major crisis in 1999, the Kosovo Albanians rejected the decision taken by UNMIK to adopt as applicable law the Yugoslav law that had been applicable to the territory of Kosovo prior to 24 March 1999, the day the NATO bombing campaign began. A compromise was reached and the international administration introduced as the applicable law the law in force on 22 March 1989—that is, the *corpus juris* applicable in the territory of Kosovo prior to the abrogation by the Milosevic regime of the legal status of Kosovo's autonomy.<sup>3</sup>

Other decisions and policies of the international administration provide further evidence that Yugoslavia's sovereignty over Kosovo was treated as being essentially suspended. In reality, what was left from Yugoslavia's sovereignty over Kosovo was a mere fig leaf signifying nothing more than that UNMIK could not unilaterally change the status of the territory and its internationally recognized borders. For all other purposes, UNMIK and KFOR basically assumed full responsibility for the administration of Kosovo and totally excluded Yugoslav authorities from any administrative role in the territory.<sup>4</sup> This bold interpretation by the international administration of its mandate was also backed by the United States, the United Kingdom, France, Germany, and other key Western states that had supported the NATO intervention and the establishment of the international administration in Kosovo and that saw in this approach the only recipe for success. At the time, in summer 1999, Milosevic was still in power, and the continuing antagonism between the major Western powers and Yugoslavia precluded any meaningful cooperation between Belgrade and the international administration. For some western capitals and international observers, the ethnic cleansing campaign of Belgrade in Kosovo had also deprived Yugoslavia of its moral right to have even a say in the developments in the new Kosovo.

However, not everyone shared this interpretation of a rather open-ended mandate for UNMIK, including some legal advisers in the UN Secretariat in New York, certain states such as Russia, and definitely not the Milosevic regime in Belgrade. For example, Regulations No. 1999/3, Establishment of the Customs and Other Related Services in Kosovo, and No. 1999/4, Currency Permitted to Be Used in Kosovo (which introduced the deutschemark as additional official currency) caused significant skepticism in New York and strong protests and condemnation by Belgrade and Moscow as acts encroaching on the sovereignty of Yugoslavia. This controversy was soon settled as Yugoslavia swiftly discredited itself by protesting against virtually every single legislative act of UNMIK as being contrary to its sovereignty. Russia also soon changed course on this issue and adopted a more pragmatic approach

that focused on preserving the legal fiction of the unity of Yugoslavia and on preventing Kosovo from gaining formal independence, while in practice conceding to UNMIK the right to rule Kosovo as an essentially independent entity.

Following the fall of the Milosevic regime, Belgrade appears to have adopted a more constructive attitude toward the international administration, with the latter in turn also adopting a more cooperative stance toward Belgrade. Yet the powers of the international administration in Kosovo are now widely considered to be far beyond traditional peace operations and comparable only to the extensive mandates of UN trusteeships and international protectorates. Although neither of these two models is an exact fit, both because they form part of different historical experiences and because not all their characteristics match the features of the international administration in Kosovo, the analogy is very helpful in understanding its exceptional degree of authority.<sup>5</sup>

Therefore, its source of legitimacy and its status are largely new for the international system. The distinctive characteristic of the international administration in Kosovo is that its formal source of authority and legitimacy lies exclusively with Resolution 1244 and the peace enforcement powers of the UN Security Council acting under Chapter VII of the UN Charter. Thus, UNMIK and KFOR are a *sui generis* and a novel arrangement, with the term employed in this volume—*international administration*—appearing to be the more adequate description of this new generation of peace operations. Yet the concept that could help to better describe the function of this novel arrangement in international affairs should be that of *suspension of sovereignty*, which after all is not a new idea in international legal and political discourse.<sup>6</sup>

Although this approach can provide some useful policy guidance, the lack of clarity of the international legal status of the international administration has posed some serious practical and political problems in Kosovo. For example, the ambiguity regarding the powers of UNMIK in relation to public assets and of so-called socially owned enterprises has seriously crippled efforts for economic reconstruction and development. The ambiguity has hampered the much-needed privatization process, discouraged private investment in Kosovo, and also hindered lending from international financial institutions. Moreover, the lack of clarity forbids Kosovo from becoming in practical terms an equal partner with other countries in the region and on the international stage in the wider processes toward democratization and development. Major illustrations here are the problem of passports for the Kosovo Albanians, which makes travel and business difficult; the lack of opportunities for participation in regional and international sports and in cultural and scientific institutions

and activities, which deprives the peoples of Kosovo from valuable interethnic contacts; and, above all, the virtual exclusion from international initiatives and institutions that promote regional cooperation and provide opportunities for opening up to the wider world, such as the Stability Pact for South Eastern Europe and the European Union's Stabilization and Association Process. Permitting the ambiguity of the status of the international administration and the status of Kosovo to become a chronic institutional weakness is self-defeating and counterproductive, threatening paralysis and failure. Thus, greater legal clarity of the status of the international administration and creative solutions addressing these kinds of problems, particularly when it is widely accepted that the international administration will remain there for a considerable period of time, are very critical in the promotion of building peace and stability in the postconflict environment of Kosovo.

Another problem related to the special status of UNMIK and KFOR is that even though the international administration has full administrative authority over Kosovo, it has very limited legal and to some extent political accountability to the local population. According to their own statement "UNMIK and KFOR, their property, funds and assets are immune from any form of legal process."<sup>7</sup> There is no forum either in Kosovo, New York, Brussels, or anywhere else in which actions by UNMIK or KFOR can be challenged. Jarat Chopra, reflecting on similar legal issues raised by the establishment of an international administration in East Timor, compared the legal status of an international administration with that of "a pre-constitutional monarch in a sovereign kingdom."<sup>8</sup> Yet in reality the political implications of this problem have so far been limited. The international administrations of our times, whether in Kosovo or East Timor, operate in a rather sophisticated and developed international environment with consolidated democratic values and institutions, a developed international legal machinery, an advanced political and human rights culture, and international institutions, including strong media and civil society—all of which indirectly provide considerable checks and balances against abuses. Furthermore, the emergency nature of the operation in Kosovo also largely explains this exceptional degree of immunity enjoyed by UNMIK and KFOR. This does not mean that the international administration should not strive to bridge this gap of accountability and to promote transparency and compliance with human rights in the exercise of its mandate.<sup>9</sup> The point is that this abnormal situation has so far had limited political implications, and unless things unravel for other reasons, it should not pose any significant political challenge in the future.

*Structures.* The degree of authority and the tasks of the international administration also have posed novel questions regarding the structures and operational requirements to fulfill its mandate. A major issue is the lack of unified authority as much at the top of the command of the international administration, due to the separate structures of UNMIK and KFOR, as within UNMIK, which is divided into different spheres of influence with different management structures and ultimately accountable to different bureaucratic chains of command and different constituencies. Another central issue was the lack of preparedness and operational capacity to deploy an international administration at the speed required by the swift withdrawal of the Yugoslav authorities. The Report of the Panel on United Nations Peace Operations of August 2000 (the Brahimi report) has taken up many of these issues and examined in great detail the operational challenges of the international administration in Kosovo, something that is beyond the scope of this article.

What is important to note, however, is that the lack of unified command and operational difficulties, particularly during the early days, have posed major political challenges to the international administration. They have made it difficult for the administration to implement political initiatives requiring significant enforcement capacity and have undermined its credibility by reducing its ability to display credible authority to the local population. Prominent political problems in Kosovo emanating from these structural and operational challenges have been, for example, the continuing limited capacity of UNMIK to fully enforce its authority in the Serb-dominated part of Mitrovica and the rest of the predominantly Serb areas in northern Kosovo, where Serb parallel structures continue to operate virtually unobstructed; and the initial failure of UNMIK to establish a credible civil administration at the level of the Kosovo municipalities and to halt the abusive and often criminal activity of Kosovo Albanian parallel structures that initially filled the vacuum of authority in Kosovo. The insecurity and political chaos that marked Kosovo during the first months of the international presence is largely the result of deployment problems of the international administration.<sup>10</sup>

### *Ambiguities, Uncertainties, and Contradictions*

Ambiguity refers mostly to the lack of clarity about the exact meaning of central political tasks assigned to the international administration by Resolution 1244, such as the performance of basic civilian administrative functions and, most important, the development of provisional institutions

for democratic and autonomous self-government. Uncertainty refers to the absence in Resolution 1244 of a determination of the future status of Kosovo and the contradiction to the open disagreement between the desire of the overwhelming majority of the Kosovo population for independence and the explicit reference in Resolution 1244 to the international commitment to respect the sovereignty of Yugoslavia over Kosovo.

In fact, all three issues are interconnected and have been acting as mutually reinforcing challenges for the international administration. For example, the uncertainty over the final status of Kosovo has been a central consideration affecting the attitudes of local rivals vis-à-vis the efforts of the international administration to address the ambiguities surrounding its task to establish “substantial autonomy.” The Serbs, as a case in point, initially had a policy of noncooperation that grew from their suspicion that UNMIK, while working on devising the institutions of self-government, was in fact conspiring with Kosovo Albanians in preparation for the independence of Kosovo. The bones of contention were indeed the very concepts of self-government and substantial autonomy. Even though these concepts formed the key policy objectives of the international administration, they meant very little to both Kosovo Albanians and Serbs. In the absence of an agreement over the final status, Kosovo Albanians and Serbs have continued to pursue their competing objectives—secession and independence for the former and the preservation of Yugoslav sovereignty and a return to Serb rule for the latter. Thus, any decision or policy undertaken by the international administration toward establishing self-government and substantial autonomy, such as the preparation of the municipal elections in October 2000, was basically construed by the local rivals as a move toward independence, and any decision appearing to preserve Yugoslav sovereignty (such as UNMIK’s reluctance to allow Albanian flags inside polling stations) as a move against independence.

*Ambiguities.* These problems were compounded by the ambiguity of the concept of substantial autonomy and self-government that also existed in the minds of the international administrators. Resolution 1244 indeed provided little guidance in this respect. The reference to the draft Rambouillet accord as a guiding text was of little help because events on the ground had rendered many of the compromises of Rambouillet obsolete and irrelevant. Instead, the international administration initially sought guidance in the institutional setup of the “golden epoch” for Kosovo Albanians based on the autonomy status enjoyed in Kosovo under the 1974 constitution of the former Yugoslavia. Yet the ambiguity



about the meaning of substantial autonomy combined with the uncertainty over the final status and the *sui generis* status of the international administration has for some time seriously crippled its efforts to develop a widely accepted *modus operandi* between the two local rivals on how to proceed in fulfilling its mandate. The promulgation by the international administration in May 2001 of the Constitutional Framework for Provisional Self-Government in Kosovo and the subsequent elections in November 2001 have to some extent momentarily settled this issue. The implementation of the Constitutional Framework, however, will determine how successfully this issue has been resolved. Since the first government of Kosovo was formed only at the beginning of 2002, it is still too early to reach any conclusions.

Resolution 1244 contained additional ambiguities that also greatly affected policy decisions of the international administration on how to deal with critical tasks such as the establishment of a functioning civil administration. Not only was the task of “performing basic administrative functions” in Resolution 1244 originally unclear in the minds of the international administrators and acquired its full meaning only eventually through practice—for example, by the promulgation in 2000 of sixty-nine regulations covering such diverse issues as the appointment of judges and prosecutors, the importation of live animals, and the age of compulsory school attendance—but also many of these administrative functions were by their nature highly controversial.<sup>11</sup> The lasting problem of the judiciary is a prominent example. The initial hesitation of the international administration to introduce international judges and prosecutors in the judicial system against the will of the Kosovo Albanians was the combined result of the ambiguities of Resolution 1244, the lack of previous experience by the UN in administering a territory, and the contradiction of Resolution 1244 that made the Kosovo Albanians reluctant to accept the introduction of foreign judges and prosecutors whom they saw as incompatible with their conviction that Kosovo was heading toward independence.<sup>12</sup>

*Uncertainties.* The uncertainty over the final status of Kosovo has perhaps been the most discussed and analyzed issue of the engagement of the international administration in the region. It has been widely argued that the absence of a clear road map about the future status of Kosovo has posed a virtually insurmountable obstacle in the efforts of the international administration to bring lasting peace and stability. Uncertainty without doubt breeds instability. The experience of the international administration provides ample evidence for this assertion. From the very beginning in Kosovo, it exacerbated the inherent difficulties of a

conflict in which both rivals seek exclusively zero-sum solutions. For example, virtually any policy or decision by the international administration, particularly in the early days, was interpreted by Kosovo Albanians and Serbs as promoting either independence or the return to Serb rule and thus was openly contested and/or undermined by one side or the other.<sup>13</sup> The examples of the first regulations about the applicable law, customs, and the deutschemark come immediately to mind. Most importantly, the controversy over the final status was behind the strong Serb reaction against the agreement for the demilitarization of the Kosovo Liberation Army (KLA) and its transformation into the Kosovo Protection Corps (KPC) in September 1999, and the agreement for the establishment of a Joint Interim Administrative Structure between the international administration and the key Kosovo Albanian leaders in December 1999. The initial rejection by Kosovo Albanians in May 2001 of the Constitutional Framework for Provisional Self-Government in Kosovo, because it did not contain a provision similar to the draft Rambouillet accord for a referendum at a fixed future date, is another illustration of the direct impact the uncertainty of the final status had on the politics of the international administration in Kosovo.

However, the implications of the uncertainty over the final status have to some extent also been overstated. Richard Caplan argues that “the lack of clarity about the end state has limited Albanian cooperation, encouraged the Albanians to maintain an underground military infrastructure and set the stage for possible confrontation with international authorities in the future.”<sup>14</sup> The first statement is simply wrong. The political maneuvers of Bernard Kouchner, the first SRSG, to secure the political participation of all key Kosovo Albanian leaders in the work of the international administration and to reassure the Kosovo Albanian population that Kosovo is not going to fall under direct Serb rule again, coupled with the successful organization by the international administration of municipal elections in October 2000 and of general elections in November 2001, have ensured up to now significant Kosovo Albanian cooperation with the international administration. The critical point, of course, has been to inspire the conviction among Kosovo Albanians that Kosovo will never again fall under Serb rule. This has been a major achievement of the international administration and is likely to remain a critical point for the future success or failure of the international administration in Kosovo.

The second observation, that the lack of clarity of the end state has encouraged the Albanians to maintain an underground military infrastructure, is also questionable. It is correct to assume that, before securing independence, it is unlikely that Kosovo Albanian radicals will have

any incentive to disarm. But the military radicalism among Kosovo Albanians reflects wider questions, including the objective of some extremists to use violence to promote political objectives in neighboring FYRoMacedonia and southern Serbia, or even to create a Greater Albania. The well-entrenched gun culture among Kosovo Albanians and the persistent political instability and widespread criminality in the region, including the situation in Albania, are additional reasons for the continuing militarization of certain radical groups of Kosovo Albanians. These questions would not be tackled by granting Kosovo independence.

The third observation, that the uncertainty over the final status of Kosovo has set the stage for possible confrontation with the international administration, is a rather speculative proposition that is not supported by developments on the ground.<sup>15</sup> While the relations between the international administration and the Kosovo Albanians will likely go through some rough moments in the future, there is little evidence of the potential for a direct confrontation, mostly because it would be a self-inflicting injury for the Kosovo Albanians, if not self-defeating altogether. Whatever the future status of Kosovo, the Kosovo Albanians know very well that international economic and military assistance will remain indispensable for them for some time. While the economic part is rather obvious, the situation in the Serb-run part of northern Kosovo, the poor security situation of Serbs in the rest of Kosovo, and the continuing volatility in Belgrade are just some reasons why NATO will most likely continue to be for some time the best ally of Kosovo Albanians. In fact, the relations between Kosovo Albanians and the international administration went through challenging moments at the very beginning when the international administration was drifting into irrelevance by the competition on the ground posed by the parallel structures of the Provisional Government of Kosovo led by the Kosovo Liberation Army leader Hashim Thaci. The skillful political handling of the situation by the international administration that led to the creation of the Joint Interim Administrative Structure in December 1999, effectively co-opting the parallel structure in the international administration, largely settled this issue. Unless there is a radical change in the political realities in Kosovo or the region, future similar challenges will require similar skillful diplomacy by the international administration to avoid unnecessary escalation of tensions.

*Contradictions.* The absence of a clear end state in Resolution 1244, which poses an additional practical political challenge, is essentially about the question of Kosovo's independence. All problems of the international administration associated with the uncertainty of the final status

basically concern the Kosovo Albanians. The lack of a clear end state regarding the Serb desire to bring Kosovo back under Serb rule is a minor nuisance to the international administration. Thus, the question regarding the politics about the future status of Kosovo is not so much about the uncertainty over the final status itself but about the contradiction of this uncertainty with the Kosovo Albanians' relentless yearning for independence and the problems that this contradiction raises for the international administration. UN Secretary-General Kofi Annan, in his statement to the UN Security Council on 21 October 2000, pointed to the difficulties imposed on UNMIK by the contradictions of Resolution 1244, stating that while the Security Council had mandated the UN to respect the sovereignty and territorial integrity of Yugoslavia, UNMIK "in its role as interim administrator was faced with a large portion of the population clamoring for independence from the Yugoslav Republic. Its very nature created built-in tensions."<sup>16</sup>

### **Conclusion**

The uncertainty over the final status raises a wider political challenge that is largely beyond the international administration itself. This is about the absence of a clear strategic objective that inevitably deprives the international administration of much-needed guidance as to the ends its policies should seek to achieve. The issue of the final status cannot be addressed by the international administration alone both because it is outside its exclusive competence (Resolution 1244 reserves to the international administration only the role of a facilitator in the process of determining the final status) and because it is as much a question about Kosovo as about the wider geopolitical and regional politics surrounding the Kosovo dispute. In other words, the key political challenge here is to determine to what end the international administration should aim, in the absence of a clear end state.

It would seem that the international administration is required here to instrumentalize its role in the wider international environment in order to address the underlying cause of the Kosovo dispute: the contest between Kosovo's independence and Yugoslavia's sovereignty. To do so, and in the absence of a clear strategic objective, it has to constantly define and redefine its policies. This may be posing significant intellectual and political headaches, but it is at the same time a major challenge serving other objectives. Is not an international administration a political enterprise itself operating in a wider political context and serving wider political objectives? And if so, why should an international

administration have a clear end state? And why not perceive the international administration in Kosovo as an instrument mandated to stop conflict, freeze a dispute, and play a constructive role in building the conditions for a future political settlement?

In practice so far, the international administration has been forced to constantly reinvent and redefine its role and objectives in the Kosovo conflict by substituting the absence of a clear end state with a number of successive milestones. During the first period of the international administration, coinciding roughly with the presence of Bernard Kouchner as the first SRSG (June 1999–October 2000), the major objectives were to establish a functioning civil administration, to include local leaders in the interim administrative structures, to establish a secure environment and other positive conditions for the Serbs in Kosovo, and eventually to hold municipal elections to lay the groundwork for the transfer of some degree of administrative authority to the local population. During the second period of the international administration, coinciding roughly with the presence of Hans Haekerup as the head of UNMIK (November 2000–November 2001), the major objective was threefold: to continue building a functioning civil administration, to promulgate the Constitutional Framework of Self-Government, and to make further efforts to improve the conditions of Serbs in Kosovo. The general elections of November 2001 were the major milestone of this period. The beginning of the third period, which started effectively with the election of a president and a government in Kosovo in February 2002, coincided with the arrival in Kosovo of Michael Steiner as the third SRSG, who also incidentally brokered the agreement that led to the creation of the first democratically elected government of the new Kosovo.

The major strategic challenge today is to consolidate the institutions of self-government and to build functioning state institutions and structures that will enable Kosovo to become democratic, prosperous, and tolerant, whatever its final status. 🌐

## Notes

Alexandros Yannis worked as political adviser to Bernard Kouchner, the first special representative of the UN secretary-general in Kosovo, from July 1999 to December 2000. He is the author of *Kosovo Under International Administration: An Unfinished Conflict* (2001).

1. UN Security Council Resolution 1244 (1999), 10 June 1999, pars. 3, 5.
2. UNMIK Regulation No. 1999/1, 25 July 1999, *On the Authority of the Interim Administration in Kosovo*, Sec. 1, Art. 1.

3. UNMIK Regulation No. 1999/24, 12 December 1999, *On the Law Applicable in Kosovo*, Sec. 1, Art. 1.

4. In fact, in August 1999, the FRY Committee for Cooperation with the UN was established in Pristina as the only official presence of Yugoslav authorities in Kosovo. Its mandate was limited to liaising with the international presence, but it soon resembled a diplomatic mission inside its own state. FRY Committee for Cooperation was established to operate under the FRY Ministry of Foreign Affairs and, between August 1999 and December 2000, was led by Ambassador Vukisevic, a FRY diplomat and former Ambassador to Albania. UN Security Council Resolution 1244, Annex 2, par. 6, envisaged that “after withdrawal, an agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the following functions: Liaison with the international civil mission and the international security presence; Marking/clearing minefields; Maintaining a presence at Serb patrimonial sites; Maintaining a presence at key border crossings.” Thus far only the first task has been fulfilled, with the establishment of the FRY Committee for Cooperation. Security considerations have so far ruled out the possibility of any return of FRY military or civilian personnel to perform the other functions envisaged in Annex 2, par. 6 of Resolution 1244.

5. A key characteristic of UN Trusteeships was their stated aim to prepare a territory for independence, something strikingly missing from the mandate of the international administration in Kosovo. Protectorates historically referred to a form of relationship in which a state surrenders part of its sovereignty to another. In Kosovo, it is not states but international organizations that assume administrative responsibility and not sovereignty over Kosovo. However, two major characteristics of protectorates can be found in Kosovo: first, that the protectorate nominally retains its sovereignty and, second, that its territory remains distinct from the protector. Thus, the term *protectorate* seems to be correctly used today in political parlance to describe the situation in Kosovo.

6. The term *suspension of sovereignty* has been employed in the past to describe extreme situations in which a clear rupture is observed between the proposition of sovereignty and the social and political realities on the ground. Suspension of sovereignty here signifies that as far as the internal situation in Kosovo is concerned, sovereignty is not an applicable concept any more, and what matters is what the rights and obligations of the international administration are. When this abnormal situation ends, sovereignty will be revived either as a part of Yugoslavia or in an independent Kosovo or in any other arrangement agreed by the parties. However, suspension of sovereignty does not imply that the UN has assumed the sovereignty of Kosovo. Sovereignty after all, to be compatible with the legal principle of self-determination of peoples, implies that governance is exercised on behalf of the local peoples, and UNMIK does not rule Kosovo today on behalf of the local population but on behalf of the UN Security Council. For more on this, see Alexandros Yannis, “The Concept of Suspended Sovereignty in International Law and Its Implications in International Politics,” *European Journal of International Law* 13, no. 5 (November 2002): 1037–1052.

7. For the status of UNMIK and KFOR and their personnel, and the privileges and immunities to which they are entitled, see the UNMIK/KFOR Joint Declaration, 17 August 2000.

8. Jarat Chopra, "The UN's Kingdom of East Timor," *Survival* 42, no. 3 (autumn 2000): 29.

9. Relevant useful recommendations in this direction have been made by the Organization for Security and Cooperation in Europe (OSCE) and the ombudsperson in Kosovo. For more on this, see the relevant reports at <http://www.ombudspersonkosovo.org> and at <http://www.osce.org/kosovo>.

10. For more on this, see Alexandros Yannis, "Kosovo Under International Administration," *Survival* 43, no. 2: 33–34.

11. For more on this, see José-Luis Herrero Ansola, *The United Nations in Kosovo: Finding the Path Through the Maze*, Favorita Papers, Diplomatische Academie Wien, April 2001, p. 13.

12. When it finally happened in February 2000, it was introduced from the back door in the wake of some serious violence in Mitrovica, and it was portrayed to Kosovo Albanians as a temporary measure to ensure law and order in the predominantly Serb northern part of the town of Mitrovica. Yet precious time had been lost, and the paralysis of the judiciary had already played a major role in hampering international efforts to establish security and bring law and order to Kosovo. See also the comments of Simon Chesterman, *Kosovo in Limbo: State Building and "Substantial Autonomy,"* International Peace Academy Report, August 2001, p. 11.

13. For more on this, see Alexandros Yannis, *Kosovo Under International Administration: An Unfinished Conflict* (Athens: Hellenic Foundation for European and Foreign Policy/Programme for Strategic and International Security Studies, 2001), pp. 34–52.

14. Richard Caplan, *A New Trusteeship? The International Administration of War-Torn Territories*, Adelphi Paper 341 (Oxford: Oxford University Press/International Institute for Strategic Studies, 2002), p. 17.

15. For more on this argument, see Jacques Rupnik, "The Postwar Balkans and the Kosovo Question," in Dimitrios Triantaphyllou, ed., *What Status for Kosovo?* Chaillot Paper No. 50, Institute for Security Studies, Western European Union, October 2001, p. 81.

16. UNMIK press release, 21 October 1999.