FINAL STATUS FOR KOSOVO

HENRY H. PERRITT, JR.*

INTRODUCTION

Transforming nondemocratic states is one of the great challenges of the twenty-first century. Since the official end of the U.N. trusteeship system and the subsequent end of the Cold War, the international community has intervened in Bosnia, Kosovo, East Timor, Afghanistan, and Iraq to set up "political trusteeships,"[1] under which the international community exercises powers traditionally associated with sovereignty.[2] The legal structure of these political trusteeships has varied widely. Only in East Timor has the political trustee made a relatively clean exit.

* Professor of Law and former Dean, Chicago-Kent College of Law. Member, Council on Foreign Relations, and Member of the Board of Directors of the Chicago Council on Foreign Relations. Member of the bar: Virginia, Pennsylvania, District of Columbia, Maryland, and United States Supreme Court. Democratic Candidate for U.S. Congress, 10th District of Illinois, 2002. (312) 906-5098, hperritt@kentlaw.edu. The author appreciates the many conversations he has had with symposium participants and other political and opinion leaders in Kosovo, including Ramush Haradinaj, Hasim Thaci, Bajram Rexhepi, and also thoughtful observations from Robert Sorenson, Deputy Chief of Mission, Kirk McBride, Political Officer, and Michael McClellan, long-term Public Affairs Officer, at the U.S. Office–Pristina, and Dale Pfeiffer, Head of Mission, USAID–Pristina. Of course, they do not necessarily embrace the views expressed herein.

Andrew Wachtel, Dean of the Graduate School at Northwestern University, collaborated in organizing and moderating the symposium and co-authored the initial report, from which much of this introduction is drawn. The author appreciates the opportunity over many years to work with Prof. Wachtel on developing a greater understanding of challenges in the Balkans.

One of the most important contributors to the work of the Symposium and preparation of this volume has not been adequately recognized elsewhere. Michelle Brunsvold, the Editor-in-Chief of the *Chicago-Kent Law Review*, has been tireless and committed in her work on all of the articles published here. She has personally edited all of them and worked intelligently to make sure that differences between the Albanian and English languages did not get in the way of clear expression and rigorous analysis. To her belongs much of the credit for any contributions made here.

1. In Kosovo, the United Nations *is* the political trustee. There, the U.N. Interim Administrative Mission in Kosovo ("UNMIK") exercises all aspects of sovereignty, devolving power to elected local institutions function-by-function, while reserving a veto power.

2. Recently, I published a law review article, which sought to draw lessons from recent international interventions in Bosnia, Kosovo, East Timor, Afghanistan, and Iraq. It offers a number of "prescriptions" for successful political trusteeships. Henry H. Perritt, Jr., *Structures and Standards for Political Trusteeship*, 8 U.C.L.A. J. INT'L L. & FOREIGN AFF. 385 (2003) [hereinafter *Political Trusteeship*]. The article explains why the concept I labeled "political trusteeship" provides a more accurate legal framework than "protectorate," "belligerent occupant," or "peacekeeping" for evaluating international civil administration.

Kosovo, so far, is the high-water mark of international authority. When the United Nations Security Council authorized U.N. civil administration of Kosovo in 1999, after Serbia agreed to withdraw its forces to end a NATO bombing campaign, it provided that its political trustee would exercise all the attributes of sovereignty over the territory, but only for an interim period. The United Nations Interim Administration Mission in Kosovo ("UNMIK") was instructed to "promot[e] . . . self-government in Kosovo,"[3] to "transfer[r], as these institutions are established, its administrative responsibilities [to] local provisional institutions;"[4] to "facilitate[e] a political process designed to determine Kosovo's future status;"[5] and, "in a final stage," to "overse[e] the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement."[6]

UNMIK was slow to organize its civil administration,[7] has been uneven in the quality of its governance (while showing some success in infrastructure reconstruction and in overseeing four rounds of peaceful and fair local elections), and has done almost nothing to facilitate determination of final status and eventual handover of its power.

On April 16–17, 2004, the Chicago-Kent Law Review, the Northwestern University Center for International and Comparative Studies, the University of Pristina Law Faculty, the McCormick Tribune Foundation, and the Chicago Council on Foreign Relations cosponsored a Symposium: *Final Status for Kosovo: Untying the Gordian Knot*.[8] Participants in the symposium discussed a range of legal, political, and economic issues that frame the context for negotiations over Kosovo's final status, envisioned by U.N. Security Council Resolution 1244. This issue of the law review contains a collection of law review articles and essays developed from formal papers presented at the symposium. The articles focus primarily on legal issues—as befits a law review. It is important to understand, however, that determination of final status for Kosovo is not primarily a legal question; it is a political question. This introduction sketches some of the nonlegal factors within which legal discourse occurs. It also offers basic historical back-

3. S.C. Res. 1244, U.N. SCOR, 54th Sess., 4011th mtg. ¶ 11(a), U.N. Doc. S/RES/1244 (1999).

4. *Id.* ¶ 11(d).

5. *Id.* ¶ 11(e).

6. *Id.* ¶ 11(f).

7. INT'L CRISIS GROUP, ICG BALKANS REPORT NO. 83, STARTING FROM SCRATCH IN KOSOVO: THE HONEYMOON IS OVER (Dec. 10, 1999), *at* http://www.icg.org/home/index.cfm?id=1580&l=1 (last visited Nov. 3, 2004).

8. The Symposium grew out of discussions among the author, Professor Rexhep Murati of the University of Pristina Law Faculty, and Dastid Pallaska, graduate of the University of Pristina Law School, in the outskirts of Pristina in July 2003, following a successful symposium on the same subject sponsored by the University.

ground on the crisis in Kosovo, leading to international intervention in 1999 and the subsequent U.N. civil administration of Kosovo.

While legal issues and arguments will not be determinative by themselves, they are nevertheless important. The ultimate political positions taken by the governments of the states making up the international community will be determined by what the leaders of those governments believe is "right," and by their assessments of the interrelationships between the positions they take on Kosovo and domestic pubic reaction to those positions in their own countries. Persuading them and their publics at home that some alternatives are legal and others are not shapes their perceptions both of what is "right," and how their publics are likely to react at home. In other words, legal argumentation is a persuasive form of political rhetoric. Few political leaders want to be put in the position of declaring that they do not care about the law and that they and their countries are comfortable proclaiming themselves to be outlaws.

Accordingly, the material in this issue seeking to reconcile the international legal system's concepts of sovereignty, self-determination, and human rights represent material contributions to the broader political debate over the future of Kosovo. Because human rights violations played such an important part in the justification for international intervention in Kosovo, the discussions in this issue about how to protect human rights in various future configurations for Kosovo, especially those of minority ethnic groups, are particularly significant.

In addition, the several discussions of the role of internal boundaries defining Kosovo within the former Yugoslavia and within the Republic of Serbia are important because of the principle adopted by the international community that the dissolution of Yugoslavia and the consequent definition of new states there should be handled without disturbing Yugoslavia's internal borders.

A report and recommendations were released shortly after the symposium.[9] This introduction draws extensively on the content and language of that report. The full text of the report is available at http://operationkosovo.kentlaw.edu.

I. BACKGROUND

The history of Kosovo reflects centuries of conflicting ethnic myths and nationalist aspirations. The historic conflict infects political analysis,

9. The report was authored by the co-organizers of the Symposium: this author and Andrew Baruch Wachtel, Dean of the Graduate School, Northwestern University.

poisoning efforts to focus on a twenty-first century solution instead of attempting to redress insults from centuries before. The energies of the Serb and Kosovar Albanian stakeholders must be focused on the future rather than on developing and presenting competing interpretations of history.

Nevertheless, an historical sketch is necessary to understand the political and legal context of the current political trusteeship in Kosovo and the feasible pathways to final status. Albanians and Serbs in the Balkans coexisted uneasily as part of the Ottoman Empire. In 1878, the same year that Serbia became independent from the Empire, the Prizren League, an assembly of representatives of the Albanian inhabited regions within the Ottoman Empire, formed with the purpose of gaining autonomy from that Empire. The League reflected growing Albanian nationalism. The delegates to the League worked to thwart the implementation of the Treaty of San Stefano, an agreement between Russia and the Ottoman Empire that assigned Albanian territories to Serbia, Montenegro, and Bulgaria, but did not create an independent Albania. By 1881, the League had established itself as far north as Pristina, and it declared autonomy from the Empire. The Sultan finally was galvanized to crush the League and did so in April 1881.

Kosovo had a predominantly Albanian population when Yugoslavia was assembled by the Paris Peace Conference after World War I.[10] Indeed, the Kosovar Albanians were bitterly disappointed that Albanian national aspirations were largely ignored by the Western Powers at the end of the nineteenth century, and again by the Paris conferees at the end of World War I. The Paris conferees took it for granted that Kosovo was part of Serbia, although Serb occupation of Kosovo dated only from the 1912 First Balkan War.

Serbs, meanwhile, viewed Kosovo as an historic part of Serbian land, at least since the ninth century. Today's Kosovo was the heart of "Old Serbia," where the Serbian Orthodox Church, acting through monasteries still standing in Kosovo, organized Serb and Christian resistance to the spread of Islam under Ottoman domination. After the defeat of Austrian forces by Ottoman forces in the late seventeenth and early eighteenth centuries, many Serbs migrated northward, decreasing the Serb population density in today's Kosovo. These Serbs were replaced by newly converted Islamic Al-

10. *See* MARGARET MACMILLAN, PARIS 1919: SIX MONTHS THAT CHANGED THE WORLD 109–24 (2001) (discussing agreement on boundaries of the predecessor of Yugoslavia in post–World War I peace conference); *id.* at 357–64 (describing emergence of Albania as a separate state, American support against efforts by Serbia and other great powers to divide it, and the exclusion of Kosovo, despite a majority Albanian population).

banians, who were encouraged by the Turks to migrate northward to further the Islamization of the territory of Kosovo.

During the two Balkan Wars of the early twentieth century, Kosovo was a battleground between Serb and Ottoman forces, with Serbia penetrating all the way to the Adriatic at one point.[11] During the Second World War, Italian occupation of Albania and much of Kosovo reinforced Albanian nationalist aspirations and also Serb determination to regain lost historical lands. During the Second World War, Tito sought to enlist Kosovar Albanians in his struggle against German and Italian forces by promising them independence after the war. But other political considerations overwhelmed these promises, and Kosovo became a reluctant province of the Republic of Serbia within the Yugoslav federation under Tito's leadership after the war.

From the establishment of Yugoslavia until at least 1974, Serb interests in Yugoslavia sought to adjust the ethnic imbalance between the Albanians and Serbs in Kosovo by encouraging Serb migration into the province. From the end of the Second World War until Tito's death in 1980, however, the number of ethnic Albanians in Kosovo tripled. The Kosovar Albanians were allowed to open an Albanian-language university, the University of Pristina, in 1969. In 1974, Tito sought to mitigate Albanian restlessness through greater Albanian autonomy in Kosovo. He made Kosovo an "autonomous province" of Serbia under the Yugoslav Constitution of 1974. This status gave it a constitutional position nearly equivalent to that of the Yugoslav Republics (Serbia, Croatia, Slovenia, Montenegro, Bosnia, and Macedonia). It had its own assembly, a legal system distinct from that of Serbia, and was entitled to be represented directly in federal Yugoslav institutions. Unlike the Republics, however, it was not explicitly entitled to secede from Yugoslavia (or from Serbia).

Those institutional changes, resulting in the growing Albanization of educational, political, and legal institutions under the Constitution of 1974 led to growing Albanian pressure for redefining Kosovo as a republic with the right to self-determination—including secession, which crystallized in massive student demonstrations in 1981, only a year after Tito's death.

Albanian assertiveness spawned deep frustration throughout Serbia during the 1980s. This stimulated a growing Serb resistance to autonomy

11. *See* CARNEGIE ENDOWMENT, THE OTHER BALKAN WARS: A 1913 CARNEGIE ENDOWMENT INQUIRY IN RETROSPECT WITH A NEW INTRODUCTION AND REFLECTIONS ON THE PRESENT CONFLICT BY GEORGE F. KENNAN (1993) (reprint of 1914 report by Carnegie Endowment for International Peace).

for Kosovar Albanians.[12] The Kosovar Albanians also were restless, organizing.

Beginning in 1989, Slobodan Milosevic exploited Serb frustration.[13] After he gained control of the Serbian Communist Party and state institutions, he disbanded the Kosovo Assembly, abrogated other legal arrangements that protected Kosovo's autonomy, and caused ethnic Albanians of the professional classes, including most Albanian government officials, to be expelled from their jobs. He caused control of socially owned and publicly owned enterprises in Kosovo (the Yugoslav mechanism for organizing economic production) to be removed from Albanian interests and transferred to Serbs or foreigners friendly to him.

Kosovar Albanians responded by declaring independence in 1990 and organizing a "parallel system" with their own schools, businesses, and political institutions. The goal of this parallel system was to achieve practical independence and statehood through passive resistance.

In 1996, after the Dayton Accords settled the wars over Bosnia's and Croatia's secession from Yugoslavia, but did not make any mention of Kosovo, Kosovar Albanian frustrations with the status quo boiled over. A guerilla resistance, which came to be known in English as the Kosovo Liberation Army ("KLA"), began attacking Serb police and military facilities in Kosovo in response to continued Serb repression of the Albanian population.

Serb forces began an escalating campaign of ethnic cleansing, which at its high point expelled on the order of 800,000 Kosovar Albanians from their homes into neighboring countries. The ethnic cleansing campaign was accompanied by acts of mass violence against Kosovar Albanians and their families by Serb paramilitary, police, and military forces, intending to induce terror in the population.

After a number of diplomatic efforts were unsuccessful in stabilizing the situation in Kosovo, NATO began a seventy-eight day bombing campaign aimed at ending ethnic cleansing and protecting human rights in Kosovo. The campaign ended on June 10, 1999, with the withdrawal of Serb forces and negotiations involving the "Contact Group" (the United States, Great Britain, Russia, Germany, Italy, and France) in which Serbia, by then linked with Montenegro and known as "The Federal Republic of

12. *See* ANDREW BARUCH WACHTEL, MAKING A NATION, BREAKING A NATION: LITERATURE AND CULTURAL POLITICS IN YUGOSLAVIA 198–99 (1998) (describing Dobrica Ćosić's expulsion from the Yugoslav Communist Party for protesting Albanian nationalism in Kosovo).

13. *See generally* LOUIS SELL, SLOBODAN MILOSEVIC AND THE DESTRUCTION OF YUGOSLAVIA (2002).

Yugoslavia" ("FRY") participated. This negotiated agreement was embodied in U.N. Security Council Resolution 1244, which mandated the establishment of a civil administration in Kosovo under the control of a "Special Representative" of the Secretary-General of the U.N. The Resolution also authorized a security presence comprising NATO forces, augmented by a contingent from Russia.

The Security Council Resolution acknowledged in its preamble the sovereignty of the Federal Republic of Yugoslavia, while giving the civil administration (now known as UNMIK) plenary powers to govern the territory of Kosovo. The Resolution also mandated the transfer of these powers to local Kosovar institutions as they were developed under international tutelage and became capable of exercising them. The Resolution mandated, without setting a deadline, a determination of "final status" for Kosovo through a process influenced by the Rambouillet Accords.[14]

In the five years since UNMIK took up its responsibilities in Kosovo, little has happened with respect to determination of final status. UNMIK has taken a position in its "Standards before Status" doctrine that certain standards relating to human rights protection, maturation of local political institutions, and return of Kosovar Serbs who fled after the bombing campaign must be met before final status can be determined. UNMIK has allowed, however, commencement of discussions over certain "technical issues." These technical discussions were delayed by the assassination of the Serb Prime Minister in early 2003 and then by political conflict within the Kosovar Assembly over the structure of the discussions. Initial technical-discussion meetings were held in mid-October 2003 in Vienna, and other discussions, billed as "academic," took place in September 2004.

Interest in accelerating movement on final status was intensified by widespread unrest in Kosovo in March 2004. Thousands of Kosovar Albanians rioted, targeting UNMIK personnel and vehicles, and also focusing their rage on Serb "enclaves" and religious symbols. International police proved largely impotent to stop the violence, and NATO forces performed unevenly at best.[15]

14. The Rambouillet Accords were elements of an agreement negotiated in Rambouillet, France before the NATO bombing campaign among representatives of the Federal Republic of Yugoslavia and Kosovar Albanians in talks brokered by the Contact Group. The Kosovar Albanians signed the accords but the FRY refused. The Accords explicitly provided for a determination of the will of the Kosovar people with respect to final status three years after the effective date of the Accords. The Kosovar Albanians understood this to mean a plebiscite.

15. The author was in Kosovo during the unrest, witnessed some of the violence in Pristina, and talked to many participants.

II. SECURITY COUNCIL RESOLUTION 1244

Disagreement continues over the proper interpretation of U.N. Security Council Resolution 1244. Some legal commentators read it unambiguously as providing for restoration of full sovereignty in Serbia if some other final status is not agreed to by Serbia or formally mandated by the U.N. Security Council. Others read it as contemplating only formal retention of sovereignty by Serbia during the period of U.N. administration and clearly contemplating some other sovereign arrangement as a part of final status.

Ultimately, however, determining final status for Kosovo is not primarily a legal issue. If a new Security Council resolution is required to replace or clarify 1244, the positions taken by Security Council members will not be determined on the basis of law but on the basis of political considerations within those countries. Even if Kosovo demonstrates that it is "ready" for independence by satisfying all of the UNMIK-articulated standards and makes compelling legal arguments in favor of its position, Russia and China are likely, at the behest of Serbia, to resist Kosovar independence in the U.N. Security Council, because of their own concerns with the secessionist tendencies of Chechnya, Tibet, and Taiwan.

III. A REPORT CARD ON UNMIK

According to one set of hallmarks for successful political trusteeship, the intervention in Kosovo deserves a mixed evaluation. In Kosovo, unlike Bosnia, the political trusteeship was well designed at its incipience. Ultimate UNMIK authority was clear, although debate ensued over UNMIK's authority to change political and economic institutions and alter property regimes because of a mistaken application of the doctrine of belligerent occupation instead of a more flexible political-trusteeship concept.[16] At the outset, UNMIK enjoyed considerable international and internal legitimacy. International legitimacy flowed from the U.N. Security Council taking the ultimate decision to set up civil administration in Kosovo and also taking responsibility for operating the administration.[17] Internal legitimacy was high at first, but has eroded, as UNMIK has been slow to transfer power to

16. Treating the U.N. administration as a belligerent occupant would have limited its power to make only those changes absolutely necessary to meet the basic needs of the indigenous population and to protect the security of international forces. *See Political Trusteeship*, *supra* note 2, at 412 (explaining why belligerent occupation is an unsuitable model for political trusteeships, including the one in Kosovo).

17. The need for U.N. approval does not suggest U.N. administration. Indeed the track record of U.N. administration in Kosovo is not encouraging as to the U.N.'s capacity to run a competent, transparent, noncorrupt political trusteeship.

elected local institutions and has engaged in apparently arbitrary exercise of its power on a number of occasions, with little transparency or pretense of accountability. UNMIK's internal legitimacy has diminished even more sharply in the face of its sluggishness in moving toward any sort of negotiations over final status. In contrast, local political institutions in Kosovo, established through relatively early elections, enjoy considerable local legitimacy.

UNMIK deserves reasonably good marks for developing institutions of a liberal democracy, although much remains to be done. Four rounds of free and fair elections have been held, and at least two of the three major political parties have worked to democratize their internal procedures and to broaden their base by appealing to moderate voters. UNMIK has not done a particularly good job, however, of drawing on unique local experiences or defining and implementing strategies for economic development. Efforts to build a liberal democracy in Kosovo have been undercut by a lack of political sophistication, a failure to appreciate the link between economic progress and political stability, and an indifference to the rich possibilities for harnessing the unique features of local culture and history to support the mission of the trusteeship.[18]

UNMIK's biggest failure is in its reluctance so far to announce and implement a sound exit strategy, even though this was explicitly envisioned by the Security Council Resolution's mandate to facilitate determination of final status.[19] Any viable exit strategy includes clearly defined triggers for devolving power to local institutions, thereby mitigating the inevitable tendency of postwar euphoria to turn into resentment of the trustee. To date, there have been no concrete assurances of termination, except for precatory language encouraging devolution of power to local institutions.[20]

18. *See Political Trusteeship*, *supra* note 2, at 455–67 (discussing criterion and critiquing UNMIK's efforts to establish institutions of liberal democracy).

19. UNMIK is obligated by article 11(e) of the Resolution to facilitate a political process designed to determine Kosovo's future status. The process for determining final status must take into account the Rambouillet Accords. The Rambouillet Accords provided for a referendum on independence within three years. Rambouillet Accords: Interim Agreement for Peace and Self-Government in Kosovo, chap. 8, art. I, para. 3, Feb. 23, 1999, U.N. Doc. S/1999/648 (June 7, 1999), *available at* http://ods-dds-ny.un.org/doc/UNDOC/GEN/N99/168/81/IMG/N9916881.pdf?OpenElement (last visited Nov. 3, 2004) [hereinafter Rambouillet Accords] ("Three years after the entry into force of this Agreement, an international meeting shall be convened to determine a mechanism for a final settlement for Kosovo, *on the basis of the will of the people* . . . ." (emphasis added)).

20. S.C. Res. 1410 provides that the political trustee in East Timor should "downsiz[e]" and "fully devolve all operational responsibilities" to local authorities as soon as feasible "without jeopardizing stability." S.C. Res. 1410, U.N. SCOR, 4534th mtg. ¶¶ 7, 8, U.N. Doc S/RES/1410 (2002). The Afghanistan resolutions contain no provisions on duration of the trusteeship. S.C. Res. 1511 calls upon the trustee to "return governing responsibilities and authorities to the people of Iraq as soon as practicable." S.C. Res. 1511, U.N. SCOR, 4844th mtg. ¶ 6, U.N. Doc. S/RES/1511 (2003).

Delays in defining and starting this process have intensified local opposition to the political trustee. Local political institutions, emphasizing their legitimacy based on three rounds of local and national elections, chafe under limitations on full exercise of their political power, imposed by an unaccountable UNMIK.

Internal political dynamics inevitably will lead to local opposition to control by the trustee, especially as local political institutions mature. A successful trustee will manage this legitimacy cycle rather than being forced into an undignified retreat when the local population becomes unwilling to tolerate its continued supremacy. Indeed, growing resistance to the continued authority of the trustee may indicate success in establishing internal legitimacy of local institutions that eventually must assume full sovereign responsibility for governing. Growing resistance to the trustee can be a useful tool in constructing the checks and balances inherent in a liberal democracy. A sound exit strategy must manage this exchange of one form of internal legitimacy (for the international trustee) for another (for the new local government). UNMIK has failed to understand or to exploit this political dynamic.

Exit triggers should encompass more than elimination of threats of violence and return of displaced members of the Serb, and other, minorities. Of course, power cannot be devolved to local institutions until reasonable physical security exists for all segments of the trust population. In Kosovo, international intervention was justified in order to protect human rights against ethnic cleansing. The interveners hardly could be expected to endorse or transfer power to a regime that is likely to commit human rights violations or ethnic cleansing. But political trusteeship is more than pacification and peacekeeping.

Exit strategies in Kosovo should have been linked more broadly to success in establishing liberal democracy, rather than focusing mostly on interethnic harmony. If political institutions are not viable, handing power to them and canceling the political trusteeship will result in a failed state. Moreover, if no reasonable scenario of economic success exists, political and physical security will be only temporary. Kosovo would be better off now if UNMIK had started with the following political criteria for ceding power:

1. The existence of political parties capable of competing with each other;
2. Demonstrated capacity to hold peaceful and fair elections;

3. Demonstrated capacity of political institutions, such as an executive, ministries, and an assembly, to make decisions and carry them out;
4. The existence of a rule of law, including functioning courts, reasonable access to those courts, reasonable promptness in making decisions, and the capacity to decide controversies that might paralyze the government or impair its implementation of decisions consistent with basic individual rights in private arrangements; and
5. Demonstrated capacity of institutions of a civil society, including a free press, universities, and voluntary associations and legal and accounting professions capable of holding political actors accountable.

It also should have given far greater emphasis to market-oriented economic development, identifying benchmarks for economic viability, including:

1. Concrete progress toward establishing the basic infrastructure to support private economic activity. This progress should include: a transportation and telecommunications system; a reliable supply of energy; and a civil administration that grants licenses and permits promptly, equitably, and honestly.
2. The existence of bodies of substantive law that support private economic arrangements and specify the terms pursuant to which commercial disputes will be resolved, including commercial contracts, property conveyances, formation of business enterprises, pooling of investments, and investor security;
3. The existence of financial intermediaries necessary to channel investment funds into enterprises and to facilitate payments among trading partners, including banks, investment funds, stock markets, and other mechanisms through which entrepreneurs and investors can find each other;
4. Successful initial operation of mechanisms for restructuring inefficient existing enterprises, through privatization of state-owned enterprises or bankruptcies of insolvent enterprises; and
5. Development and acceptance by relevant government authorities of a "national business strategy," including the assembly of reasonably detailed development plans that show how private sector development will be financed, government expenditures financed, and balance of payments deficits financed.

IV. OUTLOOK

The status quo in Kosovo is unstable. The situation on the ground could be described as a stalemate. De facto, Kosovo is an independent state in many respects, but de jure prospects for independence are cloudy. Kosovar Albanian political leaders believe that both international law and the facts on the ground entitle them to de jure statehood and insist that the international community should provide an unambiguous timetable for independence. At the same time, Serbian political leaders in Serbia proper and in Kosovo insist that they must have a say in determining any future political arrangements for the area, claiming that according to U.N. Security Council Resolution 1244, the territory remains a sovereign part of Serbia. Serbian leaders in Belgrade appear intent on delaying final status consideration for as long as possible, most likely because the Kosovo issue is so loaded internally that no Serbian politician can afford to risk endorsing anything other than the status quo ante. Meanwhile, the remaining Serbian inhabitants of Kosovo are themselves divided between the group that lives north of the Ibar river and which could imagine itself as part of Serbia should any sort of partition occur,[21] and those south of the river who will end up a tiny minority in an independent Kosovo. The United Nations administration seems intent on avoiding the issue entirely. It has proclaimed a policy of "standards before status," but has set such a high bar for "standards" that few believe these standards could ever be reached.

UNMIK cannot continue much longer as the structure for international political trusteeship of the territory. If political leaders in Kosovo and Serbia as well as the international community continue to adhere to their past—irreconcilable—positions, agreement on final status will become less likely as time passes, and outbreaks of violence more likely. Negotiations between Pristina and Belgrade are the only channels likely to produce a stable solution, but successful negotiations will almost certainly not take place in the absence of some action-forcing strategy pursued by the international community, most probably one that sets a deadline for negotiated agreement to be followed by an international withdrawal in the absence of agreement. In the meantime, preparatory efforts should focus on developing an economic program, defining alternative constitutional structures—especially ones for effective protection of minority rights, defining mechanisms for regional security, and solving the Mitrovica problem as a "practice round" for final status negotiations. Eventual independence of Kosovo

21. Not only would a partition at the Ibar River leave most Kosovar Serbs in an Albanian dominated Kosovo, it also would leave all of the historic Serbian monuments in Kosovo.

is inevitable, but whether it can occur peacefully and whether it will result in prosperity and security for all the inhabitants of Kosovo is very much in question.

A. Progress requires realistic re-evaluation of existing Albanian, Serbian and international positions.

Kosovar Albanian political leaders are making a mistake if they believe that the international community is simply going to declare that they will become a sovereign state. Recent threats by some leaders to propose a referendum on independence in order to force the hand of the international community may help make it clear that the status quo is untenable, but a referendum in favor of independence by itself would accomplish little, leading at best to Kosovo's coming to resemble Northern Cyprus. A Kosovo that becomes independent through unilateral action would be challenged to build a sustainable economy, to maintain public order, to extend its writ into areas now under the practical control of parallel institutions taking their direction from Belgrade, as in north Mitrovica, and, no doubt, to protect its borders against military encroachments—all without international assistance.

The insistence by political leaders in Serbia proper that Kosovo be reintegrated into Serbia is similarly unrealistic. Although few political leaders in Serbia proper dare to question the fantasy that Kosovo should remain sovereign territory of Serbia, it is unrealistic to expect that the international community, having created a de facto independent Kosovar Albanian state, will return full sovereignty, given that almost 100% of the Kosovar Albanian population would be against such a move. Furthermore, even if the international community were to take the step of returning the province to Serbia, Kosovo would simply be ungovernable from Belgrade. Realistic assessment of the range of possibilities for final status of Kosovo must take into account the fact that most of Kosovo is already independent. Elected municipal governments and elected central political authorities increasingly exercise most of the day-to-day responsibilities for government, albeit subject to veto by UNMIK.

If the U.N. mandate for the international civil and military intervention were simply to be terminated and the international community decided to withdraw unilaterally, the practical reality would be an independent Kosovo (although not necessarily within its current borders). Therefore, continued devolution of power from UNMIK to the Provisional Institutions of Self-Government ("PISG") and any conceivable good faith application

of the standards implementation plan through the remainder of 2004 and in 2005 inevitably will strengthen this de facto independence.

B. No scenario for final status of Kosovo is worthy of serious consideration unless it takes these "facts on the ground" into account.

Any plan for restoring sovereignty to Serbia must explain what assertion of that sovereignty would mean with respect to local political institutions determined to resist it. Serbian political leaders who make claims for simple reintegration of Kosovo into Serbia can do so only because they know that they will never be given the opportunity to exercise sovereignty in Kosovo. That is, they make these claims purely for internal consumption in Serbia.

The international community's position is moribund. The international community, through UNMIK, has adopted a gradualist policy that avoids as much as possible dealing with the final status of Kosovo. The present course envisions the PISG continuing to develop its civil governance capacity and intensifying its work on technical issues related to final status through the Prime Minister's working groups, involving Kosovar Serbs and contact with Belgrade. It envisions UNMIK monitoring progress under the standards implementation plan and determining, sometime in 2005, whether explicit discussions of final status are appropriate in light of that progress. This scenario would include further devolution of competencies from UNMIK to the PISG, possibly involving transfer of competence in the justice sphere to the PISG, which would allow local political and legal institutions to demonstrate their capacity to protect the physical security of Serbs and other minorities.

Under this approach the majority Kosovar Albanian population is encouraged to meet standards which they often perceive as being unrealistically lofty, not merely for Kosovo but for any modern state. And the Kosovar Serbs are told that the goal is the creation of a multiethnic state despite little evidence that there are any realistic possibilities for their security. Despite being unpalatable to both Kosovar Albanians and Serbs, this route remains attractive to the international community because it appears to present the fewest short-term risks and requires the fewest hard decisions. This scenario is likely to be seen as maintenance of the status quo by the population of Kosovo, especially if privatization is not restarted promptly and effectively and if statements by UNMIK and major powers indicate skepticism about Kosovo's ability to move past the standards implementation plan into a significantly different phase of final status negotiations by mid-2005.

As the violence of March 2004 shows, however, the international community cannot control what has been going on in either Kosovo or Serbia proper, where growing public frustration and alienation from the democratic political process have demonstrably led to a hardening of positions and fragmentation of practical political authority. Continued slow movement on the present course is likely to produce economic implosion, a pulling apart of local political institutions and increasing unrest, phenomena beyond the ability of the existing KFOR, UNMIK, OSCE, and EU institutions to manage. Gradualism is likely to lead to further outbreaks of violence, with unpredictable effects on the security of minorities and on international political opinion. Eventually, the international community will just give up, increasingly sending less talented people to staff its institutions in Kosovo, diminishing economic support, and retreating further into defensive bureaucratic obscurity.

It is easy to see from the above analysis not only that each of the positions described above cannot lead by itself to a solution for Kosovo but, even worse, that they work at cross purposes and lead to a situation that makes finding a solution ever more difficult.

V. CONFRONTING REALITY: THE WAY FORWARD

It is hard to escape the conclusion that Kosovo eventually will become independent. Different as they are, the three positions we have described above are all predicated on an expectation that final status for Kosovo will be achieved by an act from above—a kind of "grant" from the international community. But such an act is unlikely. There is, however, a second route to determining the final status of Kosovo: direct negotiations between Pristina and Belgrade that result in an agreement on the part of Serbia and Montenegro to grant independence to Kosovo. If such a bilateral solution were to be achieved it would have enormous advantages, not only over the obviously unstable status quo but even over an international decision should it be forthcoming. By voluntarily ceding all or some of the territory of Kosovo, Serbia would show that it has understood its inability to exercise sovereignty over a hostile, majority Kosovar Albanian population. By showing flexibility in negotiating (even, potentially, on issues of territory) Kosovar Albanian leaders would demonstrate that they are indeed mature political statesmen determined to do their best for their countrymen. Such a bilateral agreement would make moot any need for a new U.N. Security resolution. Finally, such a negotiated solution would be far less likely to create a destabilizing precedent for other countries in the region and elsewhere faced by similar problems.

It will be immediately argued, however, that current political realities in Serbia proper and in Kosovo preclude successful negotiations. There is some validity in this argument. The proper role of the international community should be to confront this reality and to adopt the right kinds of action-forcing strategies to get the parties to negotiate. Absent adoption of an action-forcing strategy, the international community cannot control what has been going on in either Kosovo or Serbia proper, where growing public frustration and alienation from the democratic political process are demonstrably leading to a hardening of positions and fragmentation of practical political authority.

A. Action-forcing Strategies

Human experience in all kinds of negotiations—international, litigation-settlement, and labor-management—shows that parties are not likely to make the hard decisions and significant concessions necessary to negotiate resolution of a difficult issue in the absence of some action-forcing event—a strike or lockout in the labor-management context, the possibility of an adverse jury verdict or an expensive trial in the lawsuit-settlement context, the fear of military hostilities or withdrawal of economic aid in the international context. Presently, in Kosovo there is no such action-forcing event. Things will continue pretty much as they are in the absence of a negotiated agreement, and neither side finds continuation of the status quo acutely intolerable.

Accordingly, an effective strategy to induce serious negotiations between Pristina and Belgrade almost certainly will require more than orders from UNMIK, "decisions" by the U.N. Security Council, or recommendations by think tanks or NGOs.

Those interested in resolving the final status issue for Kosovo must be more energetic in exploring the variety of "carrots" and "sticks" that could be action-forcing. Under one scenario, a failure to achieve a negotiated solution within the time allotted would trigger a reconfiguration of the international presence in Kosovo. If both sides were perceived as contributing more or less equally to the failure of negotiations, the international community would simply pull out, leaving a small force just south of the Ibar river to prevent Serbian incursions into almost 100% Albanian territory and to protect the most historically and culturally valuable Serbian monasteries. Failure under this scenario likely would be accompanied by a formal declaration of independence and statehood by the Assembly of Kosovo, possibly accompanied by a referendum, hoping for recognition by a critical mass of states of Kosovo's status as a sovereign state. It would

then be up to individual world governments to recognize or not the rump Kosovo as an independent state. If sufficient numbers of them did so, Kosovo would have achieved de jure independence under international law. Thus, the results of a pullout under these circumstances would be the partition of Kosovo along ethnic lines and a bleak future for Serbs (approximately some 75,000 of them) who live south of the Ibar river. It would also put off for a very long time any consideration of EU membership for both Serbia and the newly independent Kosovo.

It is easy to imagine that neither side would be happy with such an arrangement. The guaranteed poor result of such a scenario should lead the Serbs and Kosovar Albanians instead to negotiate seriously to find a better solution. One presumably tempting "carrot" for successful negotiations would be a simultaneous admission of Serbia, Montenegro, and Kosovo into the EU as independent members. It is also easy to imagine, however, that for a variety of reasons one side or the other would negotiate and then not act in good faith. If this were to be the case, the international community must also have articulated differentiated "sticks" to punish the bad faith actor as well as "carrots" to reward the good faith actor. If the former turns out to be the Serbian leadership, it is not hard to conceive of a proper incentive package. The international community would recognize Kosovo in its 1974 borders, and move its forces to control those borders, dismantling the parallel structures that have been set up from Belgrade to govern the entire province. Simultaneously Serbia, and possibly Montenegro, would again become subject to economic and diplomatic isolation. It is a bit more difficult to think of the proper incentive package to control bad faith behavior by the Kosovar Albanian leadership. After all, giving sovereignty back to Belgrade, while it might sound threatening in theory and while it might be welcomed by certain nationalist politicians, would lead to complete chaos if implemented, precisely the kind of chaos that the original NATO invasion of 1999 was launched to prevent. Still, such a threat, along with a promise that some international troops might remain, but now to help the Serbs create a modern European regime in the province, would probably be sufficient to get the Kosovar Albanian leadership to the table and keep them there.

The EU must be challenged to identify credible ways for greater European integration if the political leaders in Belgrade and Prishtina negotiate in good faith about final status. Right now, it is far from clear how either Serbia or Kosovo could aspire to membership in the EU in the foreseeable future when so many others are already standing in line. It is also important for the United States government to have some carrots and sticks

of its own. The United States government must make clear its willingness to increase economic aid and to participate fully in any revised security presence in Kosovo. It also may be useful to remind European partners that one policy option available to the United States government is unilateral recognition of an independent state of Kosovo. This possibility is available to break a log jam in determining final status.

B. The Mediation Process

Negotiations between Pristina and Belgrade are unlikely to succeed without mediation. Even a well-crafted announcement of a deadline associated with an appropriate, but static, package of carrots and sticks is unlikely to be sufficient to prod the parties into a bilateral dialogue that can produce an agreement.

Competing perceptions of history and current reality, enormous mistrust, and lack of experience in participating in tough international negotiations would likely undermine negotiations without skillful mediation.

The international community must find a way to engage Serbian and Kosovar Albanian representatives through an ongoing mediated process, in which the parties and the mediator allow all options to be "on the table," and the mediator credibly can adjust incentives depending on the possible failure, as the process evolves, of one or the other party to negotiate in good faith. If the Kosovar Albanians, for example, refuse to respond with constructive proposals to apparently legitimate Serb concerns on a particular issue, the international mediator must be in a position to threaten a scenario in which statehood for Kosovo is less likely. Conversely, if Serb negotiators are intransigent, the mediator must be in a position to threaten a scenario in which the Serb minority is left to its own devices in an independent Kosovo dominated by ethnic Albanians.

Moreover, the international community, as well as the local stakeholders, must accept a negotiation in which everything is "on the table." In order to mediate final status negotiations, the international community must abandon its preoccupation with the possibility that final status for Kosovo would have a kind of "domino effect" on other countries in the Balkans, inviting a variety of claims to redraw borders in an attempt to create monoethnic states. Final status negotiations for Kosovo widely are perceived as presenting special risks for the future stability of Bosnia and Macedonia. Resolution of Kosovo's final status can have significant impact on success in these two other Balkan states, but it may be positive.

In Bosnia, nationalist parties emphasize keeping the country separated rather than united. The three main entities included in two structures, the

Bosnia & Croat Federation on one hand and the Serbian Republic on the other, are stronger then the federal institutions. The two federal entities have their own armies and police forces as well as some formal and informal fiscal institutions. Local nationalist authorities inhibit the process of returning refugees and displaced persons. It is far from clear, however, that progress in Bosnia would be undermined by a negotiated solution in Kosovo. Indeed, a negotiated final status for Kosovo could set a constructive precedent for Bosnia: aspirations of major ethnic groups in the same territory must be realized through good faith negotiations between and among the stakeholders, with international mediation.

Macedonia provides mixed lessons. Although some political parties in Macedonia reflect the European model, not being based purely on ethnicity but mostly on modern political alternatives, these parties remain small and not influential. Despite the domination of the political sphere by ethnically based political parties, however, Macedonia has, with the help of an active international community, managed to maintain peace, stability, sovereignty, and territorial integrity. Signed after the violence that took place during the spring of 2000, the Ohrid Framework Agreement provided substantive democratic reforms to preserve the independence, sovereignty, and territorial integrity of the Macedonian State. These reforms respect Macedonia's multiethnic character through pluralistic approaches that ensure full respect for fundamental freedoms, including human and national rights. In particular, Ohrid has led to reformed state institutions that include all ethnic groups and decentralized local power structures that are in accordance with the European principles of subsidiarity. The Ohrid Framework Agreement, if correctly implemented, will reintegrate all ethnic groups, minorities, and individuals into one democratic society within Macedonia.

Kosovo's final status will undoubtedly influence Macedonia's future. If a negotiated solution for Kosovo includes a partition along ethnic lines, it would strengthen arguments for federalization or full partition of Macedonia as well. On the other hand, resolving the status of Kosovo as an intact territory within current borders would also strengthen the unity of Macedonia, leading to greater political stability there. But in any case, the Kosovo precedent would have been set that any border changes would have to be negotiated and agreed to by the parties themselves, rather than imposed by the international community in a manner reminiscent of nineteenth-century great power politics.

Fear of movement toward creation of a "Greater Albania," which long has encouraged paralysis in international efforts to address final status, should be set aside. No credible evidence exists that political leadership in

Kosovo, Albania, or in the Albanian parties in Macedonia, desires any such thing.

VI. IN THE MEANTIME

Formulating an action-forcing strategy and gaining sufficient support for it, and structuring adequately sophisticated mediation, will take some time. In the meantime, important work can proceed on issues that must be resolved in any event, including formulating an economic program for Kosovo; developing deeper legal analysis of constitutional alternatives, including frameworks for protecting minorities; organizing regional security arrangements; and making progress on the Mitrovica problem.

A. Develop an Economic Program

Kosovo presently experiences nearly 60% unemployment and a balance of payments deficit of similar magnitude. Early international efforts to reform the economy were stalled for several years because of uncertainty among U.N. legal advisers as to whether Resolution 1244 authorized reform of laws and property ownership. Now, although it is generally agreed that the U.N. mandate is broad enough to cover economic reform under the concept of "political trusteeship," no coherent vision exists for building a self-sustainable economy.

Any viable final status for Kosovo, regardless of its political acceptability, depends upon Kosovo having a sustainable economy, one capable of producing about 30,000 new jobs per year. Given Kosovo's size and lack of access to ocean commerce, economic success depends upon regional integration. It also depends upon attracting foreign investment, which in turn requires continuing and accelerating the privatization process, which got off to a successful start in 2003, but has since been stalled for nine months by uncertain UNMIK leadership. Privatization must be resumed promptly, not only because some enterprises may attract investment as going concerns, but because privatization is essential to free up substantial amounts of real property now controlled by nonoperating socially owned enterprises on the privatization list.

Kosovo has been participating constructively in a variety of regional economic activities through its Prime Minister's Office, but because it lacks sovereign status, it is not a formal member of the Southeast European Stability Pact. This often means that Kosovo gets left out of consideration for strategic planning as for transportation routes and may lack the "clout" to insist that other countries in the region pay attention to Kosovo's need

and potential. Serious work is necessary on allowing Kosovo to participate in its own name in international regimes governing telecommunications, air transportation, international finance, and regional economic planning, even without it formally being a "state." The operating procedures of the Stability Pact should be revised to permit Kosovo to participate as a full member without waiting for further action on final status.

Discussions about institutional mechanisms to promote regional economic integration should be intensified. Trade and customs policies for Kosovo and for all the countries in the region should be shaped by the concept of a "Balkans Without Borders."

The U.N. and the EU should give much higher priority to market-oriented economic development. Economic development still tends to take a back seat to other priorities for Kosovo, even in the recent Standards Implementation Plan.

Resolution of final status will almost certainly require the establishment of some mechanism to resolve claims arising from the Kosovo conflict and the period of U.N. administration. The Yugoslav Succession Agreement will represent a persuasive model for apportioning governmental assets and debts, but this agreement does not cover private claims, such as pensions, and business and residential property, which are especially important in the case of Kosovo. A broader mechanism to encompass these claims must fill gaps in the existing Special Chamber and Housing Property Directorate regimes, and usefully can be modeled on the International Claims Commission established by the U.N. after the first Iraq war, and on the Iran-US Claims Tribunal.

Privatization of socially owned and publicly owned enterprises in Kosovo is necessary to attract investment and create jobs. Regardless of the number of SOEs and POEs that can be viable as going concerns, privatization is necessary to remove clouds on the title of real property with access to infrastructure. The more than year-long interruption of privatization beginning in October 2003 was a serious blow to economic development and to public confidence in the ability of existing institutions to produce economic progress.

Privatization must be restarted immediately, without the delays certain to result from fundamental reworking of operating or bidding policies. Any gaps in effective recourse of claimants to remedies for deprivation of property rights in the Special Chamber of the Kosovo Supreme Court should be fixed forthwith.

B. Define Legal Structures

Essential preparatory work for final status negotiations should be undertaken, including review of alternative constitutional frameworks, giving special attention to protection of minorities and to decentralization.

Although the content of any constitution for the final status of Kosovo will emerge only from negotiations, it would be helpful for opinion leaders and political and legal experts to begin sketching the outline of such a constitution. In particular, they should evaluate the constitutional framework under UNMIK Regulation 2001/9 and identify specific features of that framework that would be unsuitable for final status.

They also must begin some serious work on identifying concrete options for decentralization of governmental power, drawing on the experience so far with distribution of power between central PISG institutions and municipal governments, and evaluating the suitability of foreign models such as the German, U.S., and Canadian federal and municipal "home-rule" systems and the Swiss and Belgian models for distributing political power in a multilinguistic polity.

Attention must be given to legal structures that would back up formal legal protection of minority rights with internationally supervised and backed enforcement mechanisms, such as linkages to the European Court of Human Rights.

C. Protect Minority Rights

Final status negotiators must understand their options for protecting the rights of minorities in Kosovo, including Serbs, Roma, Turks, and Bosniacs, to equal treatment under the law, to be free of physical threats to their security, and to equal economic opportunity. Experts must develop sophisticated alternative proposals for a mix of local and international legal regimes to assure protection of human rights.

There are four basic ways to protect minority rights in the Kosovo context:

1. Under a robust rule of law in an independent democracy embracing values common across the European Union;
2. Under a special rights regime;
3. Through proportional representation or co-governance arrangements in political institutions;
4. Through territorial autonomy.

None of these approaches is sufficient by itself. Ultimately, of course, the best protection for minorities is a pluralistic, democratic political cul-

ture in which multiethnic tolerance is the norm. While this is surely the long-term goal for Kosovo, it is insufficient in the context of Kosovo's transition from its present status to a more independent status because of uncertainty with respect to the eventual political makeup of an independent Kosovo and because of mistrust in the political process.

A special rights regime comprises criminal and civil laws that impose duties on public institutions and private persons not to single out minorities for adverse treatment. These laws can be local ("municipal") or they can be international in origin. Whatever the source of minority rights protection, special rights regimes will not be effective without meaningful enforcement institutions, backed up by international authority.

Systems for ensuring proportional representation in legislative bodies or co-governance and executive bodies may be an appropriate part of an overall program for protected minority rights but such approaches are insufficient by themselves. Minority representatives in an assembly may be outvoted every time. Co-governance arrangements in executive institutions often lead to paralysis in decision making, as they did in Bosnia after the Dayton Accords were implemented or in Former Yugoslavia immediately preceding disintegration.

Territorial autonomy envisions protecting minorities by allowing them to concentrate in certain geographic areas and to have substantial political autonomy over their own affairs. The efficacy of such decentralization approaches depends on the geographic distribution of population by ethnicity and on the practical workings of institutions designed to maintain the intended balance among multiple levels of government. Relying mostly or entirely on territorial autonomy to protect minority rights will lead to further relocation based on ethnicity, with its attendant disruption of lives and spawning of disputes.

Ultimately, any negotiated solution likely will include a combination of the four approaches: a political commitment by independent sovereign institutions to equal protection; special rights regimes, backed up by international enforcement machinery; proportional representation in legislative, if not executive institutions; and decentralization to allow local governance according to the political will of local populations with differing ethnic make ups. Protection of minority rights will be at the center of any discussions or negotiations over final status for Kosovo. Progress will require abandoning simple positions such as, "make us independent first and then we will erect the institutions to protect minority rights," "you cannot even negotiate final status until minority rights are fully protected," and "the only way to protect minority rights is to partition Kosovo."

D. Provide for Regional Security

More work needs to be done to define the alternatives for regional security after KFOR leaves Kosovo. How can an independent Kosovo be protected from overwhelmingly superior military power possessed by Serbia and Montenegro? How can Macedonia and the Presevo Valley in Serbia be protected from a renewal of insurgency campaigns buoyed by militant ethnic Albanian elements within Kosovo? How can the TMK—which most Kosovar Albanians view as the future Kosovo "army"—be integrated into a security regime that promotes rather than threatens stability? What role should NATO continue to play? One possibility is that a newly independent Kosovo would be demilitarized—denied its own army—in exchange for a formal NATO undertaking to protect its security.

E. Solve the Mitrovica Problem

Mitrovica is a microcosm for all of Kosovo. Mitrovica's division and unresolved political status reinforce its social and economic crisis and fuel ethnic tensions. The uncertainty over Mitrovica's future keeps the town trapped in a downward spiral and poisons Kosovo's future.

The Mitrovica problem provides an opportunity for confidence building. An urgent effort by Kosovar Albanian and Serb political leaders, assisted by international mediation, to negotiate a solution for Mitrovica could be a "practice round" for broader-scale final status negotiation and mediation.

Local Mitrovica political leaders and the international community need to show leadership in confronting the double challenge of state building and economy building. The Kosovar Albanian leadership needs to offer a credible and realistic proposal to the Serbian community living in Kosovo and engage in direct negotiations with Belgrade immediately. Kosovo's leaders need to demonstrate that they understand the fears and concerns of the Kosovar Serbian community and both sides—Pristina and Belgrade—need to work hard on reaching compromise agreements addressing the issues of returns and property rights as well as the future role of Serbia in Kosovo. Serious efforts need to be made by domestic and international actors to turn this major setback into an opportunity.

A significant breakthrough in returns, property restitution, and transforming the role of the Republic of Serbia in Kosovo from parallel government to long-term donor in Mitrovica could prepare the ground for real progress Kosovo-wide. A successful negotiation over the future of Mitrovica could adopt the approach suggested in the February 2004 package

proposal presented by the NGO ESI (European Stability Initiative) to local leaders, or it could result in monoethnic separation.

The ESI package, http://www.esiweb.org/, comprised three elements: full resolution of property rights and restoration of freedom of movement in 2004, the development of a joint development and assistance strategy for the Mitrovica region, and the redrawing of municipal boundaries to create a majority Serb but multiethnic North Mitrovica and Zvecan municipality.

CONCLUSION

A lot is at stake in Kosovo: fulfillment of the aspirations of two million Kosovar Albanians for democracy and self-determination, and fulfillment of the aspirations of seven million Serbs to be accepted fully in Europe. That should be enough, by itself, to embolden other members of the international community to fulfill their United Nations mandate to broker a viable final settlement.

But more is at stake than that. This is a time for the shaping of a new international order based on peace and security, and a time to prove that international political missions—especially multilateral ones—can succeed. Kosovo is a highly visible experiment. Inertia and fear of political risk will only give too much breathing space to cynicism and nationalist political forces, not only in Pristina and Belgrade, but in other capitals around the world. Whether we have charted the way forward correctly in this report is far less important than realizing that something has to change, and it is unlikely to change without courageous leadership on all sides, and a commitment to results: a commitment to get final status determined soon in a way that empowers local democracy, protects human rights, vindicates rule of law, and promotes economic prosperity for everyone in the Balkans.

I believe that the contributions in this issue of the Law Review can contribute to a more principled and pragmatic shouldering of responsibility by the international community.