



KOSOVO INTERNATIONAL HUMAN RIGHTS CONFERENCE

10-11 December 1999

CONFERENCE DOCUMENTS AND REPORT



The open nature of the conference discussions

The opinions and statements contained in this report are meant to represent the open discussions which took place at the conference and do not necessarily represent the position of the OSCE.

In publishing this report, the OSCE does not accept responsibility for any errors or omissions which this document may contain.

This report was prepared by the OSCE Mission in Kosovo, Human Rights Division, and the Council of Europe.

© OSCE Mission in Kosovo, 2000

This publication may be reproduced in part or in whole, provided no changes are made to the text, the individual authors and the OSCE are credited, and the parts reproduced are distributed free or not for profit.

Conference Reporter's Acknowledgements

A conference of this size does not happen anywhere just by itself. And this one took place only months after the major conflict which destroyed so many lives and severely damaged the infrastructure of the region. Much praise must go to all those who worked so hard to make the conference a reality, especially in the areas of communications, logistics, protocol, support staff and security. A special mention should be made of the interpreters who played such a vital role in facilitating communication.

Respect to the speakers and participants who showed commitment, interest and – in some cases – real bravery in their participation.

As reporter, my thanks go to all those who provided me with copies of speeches and workshop reports and, in particular, to the staff of the OSCE Human Rights and Administration Divisions, and the Council of Europe office in Pristina for their support, advice and patience.

Mark Taylor, Consultant to the Council of Europe
Strasbourg, 28.1.00

KOSOVO INTERNATIONAL HUMAN RIGHTS CONFERENCE DOCUMENTS AND REPORT

Table of Contents

	Page
1 Introduction	5
2 Conference Declaration	8
3 Welcoming Addresses	
3.1 Dr Bernard Kouchner, Special Representative of the Secretary General	10
3.2 Ambassador Daan Everts, Head of Mission, OSCE	13
4 Workshop Reports	
4.1 Protecting Minorities.....	17
4.2 Preventing Torture	21
4.3 Post-Conflict Justice	23
4.4 Democratic Policing	28
4.5 Housing and Property Disputes	30
4.6 Children's Rights	34
4.7 Women's Rights	42
4.8 Human Rights Institutions	45
4.9 Detainees and Missing Persons	48
5 Keynote Speeches	
5.1 Mr Bertrand Ramcharan, Deputy High Commissioner for Human Rights, UNHCHR	53
5.2 Mr Hanno Hartig, Head of Division, Directorate General of Human Rights, Council of Europe	56
5.3 Ambassador Thomas Hammarberg, Ministry of Foreign Affairs, Sweden	61
5.4 Ambassador Kai Eide, Chairman of the OSCE Permanent Council	67
6 Closing Speeches	68

Appendices

	Page
A Conference Programme	69
B List of speakers and facilitators	70
C Press Release: Ambassador Everts on the Imprisonment of Flora Brovina	73
D List of Non-Governmental Organisations for Information kiosks	74
E Cultural events during the Conference	75
F Further background reading provided by facilitators and invited speakers – list of individual papers.....	76
(i) Protecting Minorities	77
(ii) Preventing Torture	79
(iii) Post-Conflict Justice	83
(iv) Democratic Policing	90
(v) Housing and Property Disputes	98
(vi) Children’s Rights	106
(vii) Women’s Rights	114
(viii) Human Rights Institutions	118
(ix) Detainees and Missing Persons	127
G Materials on the Human Rights Reports <i>As Seen, As Told</i> , Parts 1 and 2	
(i) Press release	132
(ii) Press background paper	134
(iii) Executive Summary of <i>As Seen, As Told</i> , Part 1	137
(iv) Executive summary of <i>As Seen, As Told</i> , Part 2	141
H OSCE Contact information	145

1 Introduction

The context

During the first week of December and all over Kosovo, posters, stickers and leaflets appeared in five languages – Albanian, Romani, Serbian, Turkish and English- all saying the same thing:

The 10th of December is coming...

The aim: to raise curiosity and awareness about International Human Rights Day and the first Kosovo International Human Rights Conference.

Only days before the Conference, the OSCE released two major reports that document extensive human rights violations during 1999 in Kosovo. The first report, *Kosovo/Kosova - As Seen, As Told*, is an analysis of the human rights findings of the OSCE Kosovo Verification Mission and is based on hundreds of documents compiled in Kosovo up to 20 March 1999, and afterwards nearly 3,000 interviews with refugees in Albania and the former Yugoslav Republic of Macedonia. Examining the actions of both sides to Kosovo's internal armed conflict, the report concludes that there was no semblance of balance in the human rights abuses committed. Overwhelming, it was the Kosovo Albanian population that suffered.

The second report, *As Seen, As Told, Part II*, documents the period between 14 June and 31 October 1999 when the majority of the refugees returned. It analyzes human rights conditions in each of Kosovo's regions and shows that Kosovo Serbs, Roma, Muslim Slavs, and others who are perceived to have collaborated with the Serb security forces, have been targeted for "revenge" attacks. The report documents abuses committed against minority communities and calls for thorough investigations into allegations of human rights violations as well as for an increase in international police and judicial experts to help break the cycle of violence in Kosovo.

These two reports demonstrate clearly how important defence and promotion of human rights will be for the future of Kosovo and, hence, how important the Conference would be. Summaries of the reports may be found in Appendix G.

Expectations for the Conference

As the first major international human rights conference in Kosovo since the conflict, the Conference took place at a turning point in history and hoped to contribute to the process of post-conflict reconciliation and peace-building. The Conference was held on International Human Rights Day to place the dialogue toward peace within a human rights framework.

The goals of the Conference were

- to create an awareness of human rights among the population of Kosovo

- to begin a process of dialogue and education toward the acceptance and inclusion of human rights in the institutions and practices of Kosovo, and
- to recognize efforts in Kosovo toward securing respect for human rights.

Designed as an educational and functional tool, the Conference aimed to enable Kosovars to come together to consider issues of human rights, to begin discussions and make recommendations, and to identify local solutions to local problems.

Planning and structure of the Conference

Arriving at agreed goals and aims, deciding on speakers, arranging logistics and other practical details were the results of a remarkable, cooperative effort between a range of institutions and organisations. Planning meetings began at the end of August and gradually the scope of what was to be attempted became clear. Hosts for the Conference were:

Organisation for Security and Cooperation in Europe Mission in Kosovo
 United Nations Mission in Kosovo
 United Nations High Commissioner for Human Rights
 United Nations High Commissioner for Refugees
 Council of Europe

In addition a range of local and international non-governmental organisations participated in the planning and organisation of the Conference.

It was decided to organise a conference that would be more than just an event in itself, it was to be a conference which would be a space for dialogue in which a wide range of vital topics could be discussed. Therefore, in addition to the more usual set conference speeches, a series of nine workshops were prepared – participants could choose one of three at any one time. Facilitators reported to the full plenary after each set of workshops, which meant that everyone could gain an overview of proceedings and contents. Within each plenary session, there were open opportunities for participants to give voice to their concerns, views and comments.

Participation in the Conference

As news of the conference spread, the organisers found themselves having to refuse applications from organisations and individuals in Kosovo to participate. Many of the personnel from international organisations who wanted to attend were not able to be admitted. Space was limited in the conference venue to 450 and, in the event, over that number actually attended.

Men and women came representing all communities and regions in Kosovo. Some were as young as 14 years old. Local and international non-governmental organisations based in Kosovo attended. Security, provided by KFOR and UNMIK police, was tight around the Government Buildings. Guests from outside of Kosovo came from other regions of Europe and other continents. The day before, weather conditions at Skopje airport were so bad that planes were diverted to Ohrid, Sofia or

Thessalonica and one keynote speaker was on a plane which was sent back to Munich and was therefore unable to reach Pristina at all. But despite the cold, despite the necessary security measures, despite the efforts involved in waiting for consecutive translations in some of the workshops, the overwhelming majority of the participants stayed through the whole two days.

Outside events reflected immediately in the Conference

Concrete, accurate information about the fate of the missing persons is one of the most urgently-needed solutions in Kosovo. Consequently, the conference organisers took seriously the fact that thousands of people demonstrated outside the conference venue demanding an end to the uncertainty and the release of Kosovar prisoners in Serb prisons. Calls were also made for the release of renowned human rights activist, Flora Brovina, who had just been sentenced to twelve years imprisonment in Belgrade. In talks with the organisers of the demonstration, Ambassador Daan Everts, OSCE Head of Mission, promised renewed pressure on the Serbian authorities and both he and Dr Kouchner, UNSRSG, gave priority to her case in their opening speeches. Please see the text of the press release contained in Appendix C.

Results of the Conference

One of the major results of the Conference was that it actually happened with such widespread participation and without violent or dangerous incident. Perhaps it is sufficient to state that the first words of the master of ceremonies were to explain to participants where the emergency exits were situated.

- Many representatives of majority and minority communities were able use this large forum to make their voices heard. And the international community listened to some very frank and hard-hitting criticisms.
- Each of the workshops provided ideas and recommendations for future action and reflection to help improve the situation in Kosovo.
- One common theme emerging from the workshops is the desire to continue exploring problems and their solutions together – the Conference being seen as an important first step.
- Guests from outside Kosovo were able to transfer the lessons of their experience in other crisis zones and to demonstrate their solidarity with the people of Kosovo.
- With the Declaration of the Conference, there is a firmly expressed set of principles pointing the way to "a human rights culture" in Kosovo.

In sum, it is hoped that the conference can act as a springboard towards further dialogue and increasing respect for human rights in the future of Kosovo.

2 Declaration

Final Declaration of the Kosovo International Human Rights Conference Pristina 10-11 December 1999

The participants in the first Kosovo International Human Rights Conference, which took place on the 51st anniversary of the adoption of the Universal Declaration of Human Rights, welcome the opportunity to discuss the human rights situation in Kosovo, which is of immediate concern. They declare that the debate during the Conference has demonstrated the need to make a concerted effort to build a human rights culture in Kosovo. In particular, they emphasise the necessity to obtain justice, secure fundamental freedoms and establish the rule of law. To this end, they call for concrete action to be taken in the following fields:

1. Justice and the rule of law are the basis for a stable and secure society. Perpetrators of past crimes must be called to account, and redress provided to victims. Failure to prosecute would perpetuate a cycle of impunity. Continued support for the work of the International Criminal Tribunal for the former Yugoslavia must be complemented by the speedy reconstruction of a domestic judicial system, already underway with international participation. In particular, the prosecution of crimes committed during the recent armed conflict must be accelerated, namely through the establishment of a Kosovo war crimes tribunal. Witness protection before and after the trial is of highest importance. Human rights in present-day Kosovo must be protected by appropriate institutions, including an Ombudsman institution, to be established as soon as possible.

2. The search for missing persons must be given urgent priority. More resources must be allocated to speed up the task of locating missing persons. The identification of the dead through the work of international and local organisations is of paramount importance. Further pressure must be exerted so that persons detained in jails in Serbia are allowed to return home.

3. A democratic society is a tolerant society, in which the protection of minorities is central. The inclusion of all communities in public and civic life must be the basis for reconstruction. Care must be taken and assistance provided, so that all parts of society can participate fully and their contributions are valued. Leaders must acknowledge their share of moral responsibility in ending violence and fostering tolerance.

4. Conditions must be created to allow for the safe return of refugees and internally displaced persons across Kosovo. Disputes about private property must be resolved speedily and in an equitable way. Institutional arrangements must be made so that the process is as fair and orderly as possible.

5. Everyone deserves a secure environment, which can only be provided by democratic policing and a culture of full co-operation of everyone with law

enforcement agencies. The call for greater contribution to the international police force and OSCE training for members of the future Kosovo police force is supported. Torture is forbidden in all circumstances and can never be justified.

6. Non-governmental organisations will continue to monitor and expose human rights violations, wherever they take place. A strong and vibrant civic society is crucial in providing the necessary vigilance for democracy. It must be encouraged and supported.

7. Investing in the welfare of children is investing in the future of Kosovo. Young people must be encouraged in the development of fora in which they can discuss their views and express their concerns about their future. All children must have equal access to education, not only in theory but in practice. As part of a general awareness campaign, the curricula for schools should aim at instilling in future generations respect for human rights.

8. Full and equal participation of women throughout society and at all levels of governance must be ensured. The voice of women must be an integral part of public life in Kosovo. Mechanisms must be developed to protect women from further violations of their human rights. The fight against organised crime must be intensified in order to protect women and children from becoming victims of trafficking in human beings.

9. A free, independent and pluralistic media, recognising both its rights and responsibilities, must flourish. Hate speech and incitement to violence are anti-democratic and should not be tolerated. Journalists who suffered in the past must be encouraged to take up again their profession in the pursuit of free and open democracy.

10. Respect for diversity, tolerance and pluralism, a commitment to non-discrimination, and the rejection of violence are the cornerstones of a democratic society. The participants appeal to all in Kosovo to acknowledge the wrongs of the past and work together for a future in which everyone's rights and freedoms can be fully realised.

3 Welcoming Addresses

3.1 Dr Bernard Kouchner, Special Representative of the Secretary General of the United Nations

Ladies and gentlemen, dear friends.

Welcome to this historic Human Rights Conference in Kosovo.

This is the first time ever that people from around the world have come to Kosovo to discuss human rights issues with their local colleagues. I am very grateful to the OSCE, our UNMIK third pillar, for its efforts to set up this important initiative, together with the Council of Europe, UNHCHR and UNHCR. This conference comes at a crucial time.

This is the International Human Rights Day and the 51st anniversary of the Universal Declaration of Human Rights. Today the Nobel Peace Prize is being awarded to MSF. However, regrettably, yesterday Flora Brovina was sentenced to 12 years of gaol. And speaking of Flora Brovina, I think of the victims and before starting my speech I ask you to stand up for some seconds in honour of all the victims of this war.

Mary Robinson, the High Commissioner for Human Rights, is right in insisting that today is not a day for "celebration"; there are too many places around the world where human rights are violated, if you look at Chechnya, Sierra Leone, Indonesia, Colombia, Burundi, to name only a few. It is rather a time to push all of us, here and elsewhere, to work as hard as we can to end human rights violations wherever they occur, and especially here in Kosovo.

I am particularly happy that many human rights experts and activists joined us today. Among them I see old, and new militants of the cause of Kosovo. We welcome them and thank them for taking the time to share their experiences and expertise with us. Some of you, I know, worked in Cambodia, Rwanda, Colombia, Bosnia, Haiti, El Salvador, Angola and other countries that have unfortunately faced grave human rights challenges. Sometimes I was with them.

Human rights to me includes women's and children's rights, preventing torture, the right to shelter, democratic policing, justice in a post-conflict situation, protection of minorities, creating national human rights institutions, and well as addressing the crucial issue of the missing persons and detainees. All these are crucial to Kosovo today and I am looking forward to your recommendations.

We are all here today to help build a better future for Kosovo, a region that has experienced a human rights catastrophe for 10 years. We must now insure that the Kosovo of today and tomorrow respects human rights fully, without exception and without distinction based on ethnicity, religion, or any other invidious discrimination. We cannot let vengeance or retribution replace truth and justice.

Kosovo must not forget.
Kosovo might forgive.
Kosovo is definitely turned to the future.

I remember an elderly woman in South Africa who told the Truth and Reconciliation Commission there that she needed to know which member of the Security Forces had killed her son so that she would know whom to forgive. She sets a standard of magnanimity that should be an example for all in Kosovo.

I know how difficult it is.

One lesson that emerges from past experience is that one cannot forget the past.

The first report released by OSCE this past Monday - "As Seen, As Told," - reminds us of the terrible things that occurred, after ten years of apartheid, from October 1998 to June 1999.

Truth, justice and reconciliation are intricately bound. Bringing to justice those responsible for past violations is crucial for Kosovo. This is why I am particularly happy that I will be able to announce, at the beginning of next week, new steps towards a functional judicial system, that we desperately need. But at the same time those who were not responsible must be allowed to live in peace, without fear and in full equality with all the communities of Kosovo. This is why what is described in the second report, covering the period starting in June is unacceptable.

Since June, we have made tremendous efforts to restore law and order. As a result of it the crime rates have continuously decreased. In mid-November, we reached the level of New York, only five months after the end of the war. In the last two weeks, only 3 murders were committed per week. But the very recent period was not a good one in Kosovo. The crime rate has shot up again following the Flag Day celebrations. Kosovo is in danger of being criminalized. As the recent OSCE human rights report documents, the violence affects all ethnic groups. The crime reports, for example, of the recent killing of two young cigarette vendors or the killing of the Serb professor and the brutal attack on his wife and her mother, are truly horrifying. All crime is reprehensible, but ethnically motivated crime threatens peace in the region and the very future of Kosovo.

Human rights activists around the world who rallied to the cause of Kosovars in the decade of oppression are becoming more and more disillusioned and discouraged when they learn of ethnically motivated violence here. The Albanians of Kosovo earned the admiration of people around the world for non-violent and creative responses to terrible mistreatment. Yet this good sympathy and support may be forfeited if attacks on minorities continue.

You, people of Kosovo, better than most, know what it is like to have your human rights violated. Your suffering was real, but inflicting violence on others gives your former oppressors a victory they do not deserve. In addition every Serb killed is a victory for Mr. Milosevic. I implore you to resist extremists seeking revenge; I urge you to speak out against violence, to give information to the police and do not become a silent accomplice to crimes and human rights violations.

We know the vast majority of Kosovars of whatever ethnicity deplore violence and want peace. Several political leaders have denounced the current violence. I am encouraged by the determination expressed by these leaders in this week's Kosovo Transition Council to establish law and order. Local leaders, civil society, UNMIK, KFOR, we must all unite to form a genuine coalition for law, order and justice. I will be announcing on Monday, along with General Reinhardt, a detailed plan of action for order and the rule of law, which I hope will improve security for all in Kosovo.

Ladies and Gentlemen, the cycle of violence and impunity must end. We are building the rule of law and laying the foundations for a just and tolerant society where all communities can live with mutual respect. A society that focuses on what we all have in common, which far exceeds what makes us different. A place where anyone can go to the market and speak whatever language he wants, where anyone can go to a cafe and drink coffee with friends, anytime and anywhere she wants. It is not too late, but time is passing. We in the international community are here to help you build this society, but the ultimate responsibility lies with you, the people of Kosovo. In other parts of the world it has sometimes taken decades. 15 years in Lebanon, 20 years in Cambodia, many years in Algeria, 15 years in Salvador, Angola is not over yet... and what about Somalia and Sierra Leone. And right in the middle of Europe, it took 30 years in Ireland. Let me assure you that here in Kosovo we will never give up, human rights in Kosovo will triumph.

Good luck with your work here over the next two days and I am sure that with your hard work at this conference and the essential work that follows, you will build that society.

3.2 Ambassador Daan Everts, OSCE Head of Mission and Deputy Special Representative of the Secretary General of the United Nations

Welcome

Today, we mark the final International Human Rights Day of the millennium. To those from abroad, welcome to Kosovo; and to all, welcome to the Conference.

Last week, we launched the Human Rights Awareness campaign initiated by the OSCE with its partners in UNMIK, the Council of Europe and local NGOs. We warmly welcome the local organisations and individuals who are here today and with whom we hope to work closely with throughout the campaign and beyond. Indeed, one of Kosovo's leading NGOs, the Council for the Defence of Human Rights and Freedoms, will be continuing with a Human Rights Conference in the Grand Hotel from 12 to 14 December; a conference which I urge you to attend.

The reports

Two reports released on Monday form the backdrop to this conference. As *Seen, As Told Part I and Part II* document a twelve month litany of abuse and violation in Kosovo. The first report documents a shocking, systematic, and state-sponsored abuse of human rights that took place against the Kosovo Albanian community from December through to mid-June of this year. These abuses followed hard on a decade of discrimination and humiliation.

Discrimination and humiliation continue: yesterday, Flora Brovina, a woman whose courageous work in assisting women and children and speaking out against oppression was well known, was sentenced to 12 years in prison. The OSCE, and many others here today, have spoken in support of Flora Brovina and those like her who remain in prison in Serbia with little hope that their rights will be respected or even acknowledged. I call upon all those at this conference to condemn this and other outrages against human rights; to remember that oppression, left unchecked, will not cease; and finally to remember that the role of human rights defender is never an easy one. Those like Flora Brovina who stand so bravely against oppression must be encouraged and protected and supported.

The tragedy is that I speak not only of past abuses. The second OSCE human rights report reveals that the vicious cycle of ethnic violence has not yet been broken. The violence is, of course, of an incomparable different scale and of an incomparable different order; but violence it remains.

We must seek redress and justice for past abuses. Those responsible for these atrocities must be called to account according to due process of law; those whose loved ones are missing must be given answers; those who are in jail in Serbia must be allowed to return home. They are not - and will not - be forgotten. But there is also a new violence, a new climate of fear amongst minorities, a wall of impunity around today's perpetrators. It must be breached. The failure to respect human rights in Kosovo, and the systematic abuse of human rights, led to the last conflict here. It was an ugly, appalling and shocking one. That failure cannot be repeated. We have

fought to break with the past. We now join battle to create a society rooted in principles of the rule of law and respect for human rights. We did not fight a just war to win an unjust peace.

The legacy of these reports - and this awful year - should not be one of despair and resignation. What we inherit is a responsibility to make maximum efforts to ensure that all of us, the local and the international community, construct and maintain a stable democratic society.

Let us proclaim our support for those in Kosovo who have so courageously spoken out against lawlessness and violence, those who urge tolerance and a new respect for human rights. These are not new voices in Kosovo, where civil society has long spoken out against abuses. But they are quiet voices. They must be heard not just for these two days, not just for Human Rights Day, but for every single day. They must be amplified until they cannot be ignored.

We condemn those who incite hate, violence and revenge. We condemn those who propagate hate speech which corrodes the foundations of democratic society. This especially applies to the media which have a special, public responsibility in this regard. Hence, we welcome the initiative of the Kosovo journalists to form a professional association and reflect on journalistic ethics. The society that Kosovo must become - a genuine democracy – cannot be built on foundations of violence and revenge. It can only be built on tolerance and diversity.

The Kosovar precedent: Ending the blood feuds

Kosovo has an honourable past of religious and cultural tolerance, of peaceful co-existence and an active civic movement. In the 1990s it was a movement from *within* the Kosovo community that brought an end to a tradition of blood feuds and killings. That movement drew together academics, lawyers, teachers, other professionals and grass roots organisations to gain true popular support. Led by the author Anton Ceta and the lawyer Bayram Kelmendi, it was a genuine example of human rights promotion, using the weapons of dialogue and co-operation - not the weapons of violence - to resolve the crisis. Let us derive inspiration and determination from the examples set by these courageous men as we enter the new millennium.

Accountability in a Democratic Society

In a democratic society, the primary responsibility for protecting human rights rests with those who exercise authority. By their very leadership they share moral accountability for a climate in which human rights cannot be exercised. Nowhere does a culture of human rights flourish without moral leadership, constant vigilance and scrutiny. It is not only leaders that hold responsibilities. Society itself has an essential role. That is why many of the workshops in this Conference provide a forum to discuss frankly how we can make progress. Again, let us recapture and rebuild part of Kosovo's past. In the last decade there have been many NGO's, women's groups, and youth groups, such as the Post Pessimists - who had diverse cultural programmes with members from across communities, legal associations and community groups. Here at the Conference are many of those individuals and groups

who will contribute to enlarging that civic base. Their contribution to the workshops will be invaluable.

Central, too, to building civil society is education and training. Again, Pristina set the precedent in the former Republic of Yugoslavia in opening a Roma school here. For many years mixed community education, in all the Kosovar languages, were provided here in Pristina. We must regenerate that spirit in the system of the present Kosovo.

Rule of Law

The great and immediate challenge is to establish what is sadly lacking in present day Kosovo: a sense of confidence in Kosovo's judicial and law enforcement institutions. A democratic society *manifests* itself through the ability of its population to exercise and enjoy their human rights. That society is *created and sustained* through the rule of law: implemented by an effective, democratic police force; fair and efficient law enforcement machinery, and a robust, independent, impartial judicial system.

It is now urgent that the international and local communities come together to help build the rule of law in Kosovo. In other words, a society that is ruled by laws, not by personality; a society in which all individuals are subject to the law, regardless of position, political affiliations, wealth, or ethnicity; and where laws are enforced through strong official institutions, rather than through personal vendettas, or unofficial, unsanctioned mechanisms. Three immediate actions must be taken to strengthen the rule of law in Kosovo.

First, the conditions for a functioning judiciary must be established. These include the appointment of more judicial personnel, the participation of all ethnic groups as judges and prosecutors, and improved work conditions for the courts and court personnel. Creative approaches including the appointment of a limited number of international judges and prosecutors, or the development of a specialised local war crimes tribunal – should also be seriously considered. I am pleased to say that international and local actors are taking steps in all of these areas.

Second, democratic policing must be quickly strengthened. Additional local and international police must be put in place rapidly to maintain order and to help ensure what all Kosovo residents want - a safe and secure society. A democratic police force is essential to prevent and deter abuses and investigate crime, and is crucial to progress in Kosovo. To be able to do this effectively the police force must command the trust of all the Kosovar communities. We repeat our urgent call to the member countries of the United Nations and the participating States of OSCE to provide additional international police, as well as to continue their support for the build up of the local police force.

Third, and perhaps most importantly, Kosovo's residents must come forward and speak out against criminal acts. Without assistance from the local community, law enforcement officials and the courts will not be able to apprehend and punish criminals. We call upon each and every resident of Kosovo, regardless of background and ethnicity, to provide police forces with the necessary information to apprehend

the perpetrators of crime so that they can be brought to justice. This citizens' support is vital to end the cycle of impunity.

To complement the role of the police and the judiciary, the Ombudsman Office for Kosovo will be established. I am pleased to announce that soon, there will be an independent institution which will monitor, follow up and investigate complaints of human rights abuses and abuse of authority by those who exercise authority.

Conclusion

Ladies and Gentlemen,

Establishing a human rights culture in Kosovo is not the job of any single group: neither is it only for the courts, the police, or the community. It requires serious and sustained commitment by everyone so that it becomes an integral part of the government, the administration, the law enforcers and the population they serve.

The Human Rights Awareness Campaign, and this Conference must unite those who are struggling to make a change for the better. This last International Human Rights Day of the 20th Century should reinforce our conviction that work in human rights can have a lasting impact. It will not be easy and this is anything but a slow and difficult task. But there must be change and there is already change. In the window of a shop I saw three human rights campaign posters side by side: one in Albanian, one in Serb, one in Romani. The shop owner explained that customers from all three ethnic groups came to his shop, so it was only appropriate that he had posters in all three languages.

It is this spirit that must manifest itself throughout the Conference and into the future. Now is not the time to repeat the violations that have caused so much suffering and conflict. Now is the time to raise our voices to prevent these violations that lead to suffering and conflict. Now is the time for peace.

Now is the time to act together.

4 Workshop reports

4.1 Protecting Minorities Workshop Report

The workshop was moderated by Mr. Volker Turk – Head of Protection, UNHCR Mission in Kosovo, and Ms. Sandra Mitchell – Head of Human Rights, OSCE Mission in Kosovo

Invited speakers:

Mr. Dennis McNamara, Deputy Special Representative of the Secretary General, Special Envoy of the UN High Commissioner for Refugees, Pristina

Mr. Marcin Czaplinski, Senior Advisor to the High Commissioner on National Minorities, OSCE

Mr. Marcel Courthiade, Section d'Etudes Rromani, INALCO

Mr. Nicolae Gheorghe, OSCE Office for Democratic Institutions and Human Rights

1. Background

For the purposes of the workshop, we will use the term "minority" to describe groups of persons who are in a numerical minority situation in a particular location, regardless of their status elsewhere in a country or province.

1.1 The precarious situation of ethnic minorities in Kosovo is made strikingly clear by the human rights report released this week by OSCE, (*Kosovo/Kosova As Seen, As Told, Part II, A report on the human rights findings of the OSCE Mission in Kosovo, June to October 1999*. OSCE Mission in Kosovo, 1999), by the joint UNHCR/OSCE assessments undertaken since this summer, (*Overview of the Situation of Ethnic Minorities in Kosovo*, UNHCR/OSCE, 3 November 1999; *Second Assessment of the Situation of Ethnic Minorities in Kosovo*, UNHCR/OSCE, 6 September 1999, *Preliminary Assessment of the Situation of Ethnic Minorities in Kosovo*, UNHCR/OSCE, 26 July 1999) and by the continuing reports of violence directed at minorities. During the past week alone, at least six Serbs were murdered in various locations around Kosovo, a Roma man was shot and wounded in Stimlje, a Roma family was attacked by an armed gang near Gorazdevac, four Turkish men were attacked by an armed group in Mamusa, an Albanian man was attacked in North Mitrovica, and a Muslim Slav woman was injured in a house-bombing in Dragas.

1.2 Informed observers agree that there is a climate of violence and impunity, as well as widespread discrimination, harassment and intimidation directed against non-Albanians in Kosovo. The situation is mirrored in the Serb majority areas in northern Kosovo, where the Albanian and Muslim Slav minorities continue to be the targets of attack. The combination of security concerns, restricted movement, and lack of access to public services (especially education, health care, and pensions) are the

determining factors in the departure of minority groups from Kosovo and their displacement within Kosovo to date.

1.3 The overriding preoccupation is security, as well as the full establishment of law and order. KFOR and UNMIK Police are working to create a safe and secure environment by establishing deterrent measures, performing thorough investigations, and apprehending criminals. UNMIK is in the process of establishing a functioning criminal justice system. The most basic rights of individuals in both minority and majority situations will not be achieved until the rule of law is fully established in Kosovo.

1.4 Other measures, however, can also contribute to improving the situation, and are being pursued by UNHCR, OSCE, the UN Civil Administration, and other concerned agencies. Such measures include monitoring and reporting on locations which require increased policing, devising creative methods for increasing security and freedom of movement (such as security devices for people at risk, mobile satellite phones, and bus services for isolated minority communities), and promoting unhindered and non-discriminatory access by minorities to food, health care, education, and other public services. The inter-agency Ad Hoc Task Force on Minorities, chaired by the DSRSG for Humanitarian Affairs, meets weekly to coordinate action and maximise the capabilities of the international community in Kosovo.

2. Focus of the Workshop

2.1 Workshop participants were asked to focus on the overall question:

- How to create a climate of tolerance and non-discrimination?

2.2 The following topics and questions were given to participants to help guide discussion:

2.3 Confidence-building measures

- How to facilitate inter-ethnic dialogue in a post conflict situation like the present one?
- Which interlocutors of these communities could eventually contribute to such talks?
- Are there specialists/organisations competent in this area who could devote their time to the inter-ethnic dialogue in Kosovo?
- What other practical measures can be taken to establish confidence between communities?
- Is there a catalogue of best practices in this area? If not, can we develop one and put it to use?

2.4 Political strategies

- Which directives will need to be considered at the political level to ensure the continued presence of non-Albanians in Kosovo?
- How can this be translated into concrete political actions?

- Should conditionality (economic or otherwise) be considered?
- Are there models of political accommodation that would guarantee co-existence, participation and protection for minorities?

2.5 Legal strategies

- What are the applicable legal standards and how can we ensure their implementation?
- What type of mechanism needs to be created to ensure that all legal regulations take into account the very specific protection needs of minorities?

2.6 Regional strategies

- Minority protection is in essence a major regional issue. What are the regional initiatives currently pursued in the area of minority protection?
- How do we ensure that Kosovo remains part of the regional dialogue in this area?
- Can we develop regional strategies, both generally - with respect to minority protection issues - and more specifically in relation to each minority group (e.g. Roma)?

3. Summary of key points raised in presentations and discussion

3.1 Presentations were given by Mr. Dennis McNamara, Mr. Nicolae Gheorghe, Mr. Marcin Czaplinski, and Mr. Marcel Courthiade, after which participants from around Kosovo, both local and international, added their thoughts and suggestions. Among others, we heard Serbs, Roma, Ashkali, Turks, and Albanians from Mitrovica, Gnjilane/Gjilan, Podujevo, Pec/Peja, Prizren, Djakovica/Gjakova, and Stimlje. Certain observations were common throughout the debate. It was clear that a strong government which can provide security for all of its citizens is essential. There was also a strong sense that a common language must be found between Kosovo's ethnic groups, that a multi-ethnic Kosovo must be achieved through dialogue and compromise, and that Kosovo's future lies in its ethnic groups working together as they did in the past. It was stressed that there can be no free and fair democracy in Kosovo until all of its inhabitants are able to enjoy their fundamental rights and freedoms. A number of concrete ideas were raised during the workshop, and can be summarised as follows:

3.2 Media

- Discussion leaders and many participants stressed the importance of media in creating a climate of tolerance in Kosovo. In addition to ensuring multi-ethnic television and radio stations, it was suggested that media reports include positive stories about inter-ethnic co-operation and tolerance - stories which people could look to as examples for their own lives. It was noted how powerfully the media had been used to manipulate people and to separate ethnic communities in Kosovo, and it was pointed out that the media must now be used to bring people together again.
- It was also suggested that media be used to bring the voices of Kosovars currently outside of the province into the dialogue.

3.3 *Inter-ethnic dialogue*

- It was suggested that women of all of Kosovo's ethnicities could provide stories demonstrating inter-ethnic co-operation throughout Kosovo's history. These stories could be published in a book aimed especially at Kosovo's younger generation.
- It was suggested that music and dance in particular can serve as a vehicle to begin dialogue. A Balkan music festival was proposed for next year.
- A strong public campaign for tolerance needs be launched, in which the media, religious leaders, artists, musicians, and political leaders speak out for a multi-ethnic, democratic society.
- It was stressed that the leaders of ethnic communities must be active in beginning the process of inter-ethnic dialogue and working towards a climate of tolerance.
- It was noted that both a Council for Inter-Ethnic Relations and an Ombudsperson should be established to lead inter-ethnic dialogue.

3.4 *Education*

- Education and programmes focused on children were brought up as vital to the creation of a tolerant society. The participation of local youth group representatives in the workshop highlighted the importance of youth in shaping a future Kosovo.

3.5 *Roma and Ashkali*

- The rights of Roma and Ashkali in Kosovo provided a large topic of discussion. It was noted that the problems of Kosovo's Roma can only be properly understood in the wider context of the problems faced by Roma throughout Europe. The phenomenon of violence against Roma is unfortunately not unique to Kosovo.
- It was noted that there is no history here of investigating and trying ethnically-motivated violence against Roma, and that there is therefore a need to train magistrates in this area, and to ensure that there are legal provisions to counter such violence.

3.6 *Other Issues*

- It was noted that by strengthening the economy, we could reduce much of the interethnic tension and crime we see today.
- Conditionality in economic aid could be used to promote non-discrimination and equal rights.
- Positive discrimination may be necessary to ensure equal rights of minority groups.

3.7 Participants were also invited to submit written contributions to UNHCR and OSCE in Kosovo. Such contributions may be incorporated into subsequent UNHCR/OSCE minority assessments. In addition, the best contributors may be invited to participate in a special workshop in Pristina to further discuss their ideas.

4.2 Preventing Torture Workshop Report

Facilitator Ms. Alison Jolly – Senior Human Rights Officer, OSCE Mission in Kosovo, Regional Centre Gnjilane/Gjilan

Invited speakers:

Professor Dr. Pajazit Nushi, Chairman Council for the Defence of Human Rights and Freedoms, Kosovo

Professor Sir Nigel S. Rodley, Department of Law/Human Rights Centre University of Essex; UN Special Rapporteur on Torture and other Cruel Inhuman and Degrading Treatment

Structure

The first part of the workshop, led by Professor Sir Nigel Rodley, focused on the international framework for the prevention of torture, and on key areas in which there is a risk of torture. The second part of the workshop, led by Professor Doctor Nushi, looked at concrete steps and set out a comprehensive programme for the prevention of torture, and the role of civil society.

Questions, comments and contributions from participants covered a wide range of issues, including the conditions and treatment experienced by Kosovo Albanians who remain in detention in Serbia proper, the situation of Kosovo Serbs currently missing or believed to have been abducted, and the need to ensure that past violations are not forgotten but also not repeated.

The scope of the right

While often referred to simply as ‘prevention of torture’, the full scope of this right states that “no-one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment” (Article 7, International Covenant on Civil and Political Rights). Torture is a specific category within the right, involving the infliction of severe pain or suffering, and it requires both the involvement of an agent of the state and that there is a specific purpose to the treatment meted out. For example, if a victim is beaten severely by a police officer with the purpose of extracting a confession from that victim, that treatment might amount to torture. Cruel, inhuman or degrading treatment or punishment are less severe, and do not require that the perpetrator has a specific purpose.

The international framework

Torture was specifically outlawed in the Universal Declaration of Human Rights (Article 5) and the International Covenant on Civil and Political Rights (Article 7), as well as in the European Convention on Human Rights (Article 3). However, it was clear that more detailed and specific protection from torture was needed, and it is here that non-governmental organisations played a major role. Pressure, starting in the early 1970’s, led to the drafting and eventual ratification of two major international

legal instruments: the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention for the Prevention of Torture.

Article 1 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment sets out precisely the meaning of 'torture':

"For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or with the consent or acquiescence of a public official or other person acting in an official capacity."

This definition, internationally accepted, is the cornerstone of the international framework for preventing torture. However, there are other essential elements required for the prevention of torture.

First, it is essential, for example, that torture is an offence in the domestic law of every State: it is not acceptable for States to claim that they cannot punish torturers because of a lack of domestic legislation or because domestic legislation is inadequate.

Second, there must be no impunity for torturers: States, when an accusation of torture is made, must conduct a serious investigation and bring the perpetrators to trial, with due process of law. If the perpetrators are found guilty, they must be punished.

Third, and the main point to emphasise, is that there are absolutely no circumstances in which torture is permitted or should be allowed. The prohibition on torture is non-derogable: not a war, nor a state of emergency, nor the presence of terrorists, nor any other justification is acceptable or will be accepted.

Danger signs

There are certain circumstances in which torture is more likely to take place. Some States and their agents, for example, think that torture is acceptable if the victim is accused of terrorist offences. As has been said, however, torture is not acceptable in any circumstances, and the presence of terrorist groups is no justification. Where the criminal justice system is weak, there is also the danger that judges and/or juries will be more likely to accept confessions extracted by the use of torture. Therefore, a strong criminal justice system, including an independent judiciary and a police force trained and monitored in methods of democratic policing, are essential to the prevention of torture.

Incommunicado detention is a particular danger sign. Long experience shows that incommunicado detention is the main circumstance in which there is a risk of torture. Where a person is held without access to lawyers, medical assistance or family

members and where the authorities refuse to acknowledge that the person is in detention or bring that person before a court promptly, there is a high risk of torture. For this reason, a key way of preventing torture is to insist that nobody be held in detention without their due process rights being respected, and that all detainees be held in officially and publicly recognised places of detention and not in secret locations. Some key elements are:

- A publicly available record, regularly updated, of exactly when and where a person was detained and on what grounds.
- Tape or video recording of interviews with the detainee.
- Access to medical care for the detainee, ideally immediately upon detention and then at regular intervals during detention.
- Access to a lawyer to whom the detainee can speak in private.
- Visits by or a regular flow of information to family members so that they know where their relative is detained and for how long he or she has been detained. Family members may also have detailed information on any medical conditions that need monitoring or treatment, and can help to ensure that the detainee receives proper care in such cases.
- Any detainee must be brought promptly before a competent authority, such as a judge charged with reviewing the basis for the detention.

Additionally, agreement with the ICRC or local Red Cross committees allowing them to visit places of detention can provide additional safeguards.

For all places of detention, whether intended for short-term or long-term use, certain standards apply. Poor conditions of detention, such as over-crowding or locking up for long periods, can in themselves amount to ill-treatment and the European Committee Against Torture and the UN have set out minimum standards for places of detention, including police cells, short-term detention facilities, and prisons. In all cases, adequate access to medical care, family visits and access to a lawyer are essential.

A comprehensive plan for preventing torture

Professor Doctor Nushi of the Centre for the Defence of Human Rights and Freedoms introduced the second section of the workshop, focusing on a range of measures to prevent torture. The role of NGOs in monitoring, investigating and reporting on allegations of torture or cruel, inhuman or degrading treatment or punishment is central and vital. Authorities and the individuals that work in them must be held accountable for violations of this right, and NGOs have a key role in monitoring conditions of detention and the standards of treatment of detainees, and in bringing allegations of torture and ill-treatment to light.

A comprehensive list of elements - all of which must be in place to prevent torture - was set out:

- Domestic legislation outlawing torture and cruel, inhuman or degrading treatment or punishment.

- Compliance of law and the practice of law enforcement agencies and the courts with international standards.
- Special mechanisms, which may include setting up independent, transparent and accountable investigative bodies to look into allegations of torture.
- General training in human rights, and special training for law enforcement officers.

Changes to curricula in schools to include human rights education and make pupils aware of human rights standards. Education in general should be geared to teaching equal respect for human dignity and creating a culture in which torture is not accepted or possible.

4.3 Post-Conflict Justice Workshop Report

Facilitators Mr. Antti Routsalainen and Mr. Berry Kralj - Rule of Law Officers, OSCE Mission in Kosovo

Invited speakers:

Mr. Carl Alexandre, Director Overseas Prosecutorial Development and Assistance Training, US Department of Justice

Mr. Roland Amoussouga, Legal Officer responsible for witness and victim protection, UN International Tribunal for Rwanda

Mr. Martin Collins, President Britain and Ireland Human Rights Centre

Ms. Nuala Mole, Director of the AIRE Centre, Advice on Individual Rights in Europe

The workshop focused on the specific post-conflict situation in Kosovo. Starting with a short overview of the constitutional pre-dispositions in Kosovo as part of FRY. The focus then moved to the situation after the (international) conflict (i.e. Nato bombings, as opposed to the present *local* conflict in the region). The efforts of the international community were examined in the re-establishment of a judicial system since the end of the conflict. Discussion moved on to long-term aims to establish the rule of law.

At heart, the question of the status of Kosovo remains a constitutional issue. Several scenarios are being discussed and envisioned. New tendencies in international law, as well as the discussion surrounding the political impact following the humanitarian intervention will determine the question of the future status of Kosovo. Possible models of development vary from republican status within FRY to independence.

Preparations for establishment of post-conflict judicial system:

Introduction

The term of "post-conflict justice" implies two aspects: one of substantive, or qualitative, nature (What nature would "justice" have after the conflict? How would it be applied? And therefore has parallels with the particular field of Human Rights). The other aspect is a rather formal, i.e. organisational, one, dealing with the judicial *organisation* rather than with content. The question of organisation was of particular importance because it was clear that once the international community would re-enter the province, the re-establishment of judicial organisation would be of utmost importance in order to avoid a judicial vacuum. Another aspect was, if the judicial system needed to be *established* (which indicates that a new judicial system would be implemented); or, if the old system (plus necessary corrections regarding recognised international legal standards) should be *re-established*: "establishment or re-establishment?"

After the evacuation on 20 March 1999, the OSCE started to prepare for the future re-entry in the region of Kosovo, once an agreement was achieved and the bombing

campaign stopped. Particular attention was given to all the issues surrounding the question of post-conflict justice. While preparing for the future, the first analysis had to be made regarding the system in the past, i.e. how the judicial organisation was set up. It was determined that out of some 750 judiciary and prosecution members only some twenty were Albanians, the rest were Serbs and other minorities. Two conclusions were drawn:

Some Serbian (and other minorities) members of the judiciary/prosecution may leave the region after K-Day. In that event, their posts would have to be refilled in order to ensure the functioning of the judicial system and avoid a legal vacuum. Therefore, the recruitment of new judicial personnel was considered to be of utmost importance.

Even assuming that the Serbian population would stay in the province after KFOR entry, lack of human resources would still remain an issue since ethnic Albanians would have to be recruited in large numbers in order for an ethnic balance to be achieved in state institutions

Legislation

The other question that had to be addressed was the question regarding the legislation that had to be applied. Three possibilities could be distinguished:

1. "tertium" (imported legislation from a third country)
2. draft new legislation
3. old laws continue to apply insofar as they are in their substance in compliance with international legal standards: this raises constitutional and practical issues.

With its Regulation No 1999/1, as revised by Regulations No 1999/24 and 25, UNMIK has followed the third option.

Independence of the Judiciary

What kind of system should be implemented in order to ensure the greatest independence of the judicial bodies? (Separation of state powers / organisation of state institutions)

Situation at re-entry of the international community in the region in June 1999

- No judiciary / prosecutors (since most judges / prosecutors left the region);
- Selection of judges and prosecutors necessary to establish a functioning judiciary;
- Practical problems (lack of working tools etc.);
- Problem of applicable law. This was a reflection in many ways of political considerations rather than legal technical ones;
- Jurisdiction questions;
- Court system;
- Problem of administration of judicial bodies;
- Time factor, establishing a functioning judicial structure quickly;
- Institution building is a long-term effort, but security, i.e. law enforcement, is needed right away.

These (and other) aspects needed to be dealt with by the international community in its efforts to establish a functioning system and enforce the rule of law.

Establishment of Post-Conflict System

Human resources and organisation of judicial system

- During the war 24.3. - 10.6.1999 the civil administration collapsed;
- Security Council Resolution 1244/10.6.1999 set out the need for political progress towards the establishment of an interim political framework agreement providing for substantive self-government for Kosovo;
- Regulation No 1999/1 of 25 July 1999 established the following ground rules:

Section 1:

- All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK;
- The SRSG may appoint any person to perform functions in the civil administration;

Section 2:

- All functions shall observe internationally recognised human rights standards and shall not discriminate on any grounds;

Section 3:

- The applicable law in Kosovo shall be: "...the laws that were applicable in Kosovo prior to March 24th 1999 continue to apply..."

What constitutes legislation and the legislative power?

- UNMIK Regulation No. 1 (see above. Later amended by Regulation Nos. 24 and 25)
- Existing legislation (Penal code, acts, civil matters)
- Legislative authority invested in the international community, i.e. UNMIK. Regulations issued formally by SRSG (signature of SRSG)
- Joint Advisory Council on Legislative Matters established to advise UNMIK/the SRSG in questions related to legislation, issuing of regulations etc.

Independence of the judiciary

This needs to be created, i.e. system needs to be found that guarantees organisational, functional and structural independence of justice/the judiciary from other state powers (executive and legislative power).

In the past, judges were appointed by the legislative power, i.e. parliament, upon recommendation by a section within the Ministry of Justice (which meant that the

executive power had somewhat of an influence). In order to impede tendencies of corruption and to ensure total independence of the judicial power in the frame of the state, one option (as suggested by OSCE Judicial Planning and, newly, TAC) would be the establishment of a Judicial Council. The Council would function as a barrier between legislative and executive state power, and deal with all the aspects concerning the administration of the judiciary in terms of appointment and removal of office, disciplinary sanctions, and, in general, all aspects dealing with the career of judges and prosecutors.

The present status:

- There is a huge backlog of cases;
- Public confidence in the judiciary is low;
- There are contradictory ethnic expectations;
- This is a priority for the re-establishment of civil administration;
- The applicable law is not clarified;
- No financing has been organised;
- There is a significant threat of corruption;
- The social peace of the territory is at risk.

Establishing an independent court system and legislative body would imply the need to:

- guarantee a fair trial and the impartiality of judges;
- secure multi-ethnic participation;
- separate judicial institutions from the rest of the public administration;
- provide for permanent facilities and appointments of judges;
- provide for the continuous education and training of the judiciary (OSCE plans to establish a Judicial Training Institute and an independent Law Centre)
- commence work on drafting new legislation;
- establish an Ombudsman institution;
- plan for the provision of sufficient funding;

The main points of discussion in the workshop can be summarised as follows:

In former times in Kosovo, law and order was seen as a question of training police and then leaving them to do what they felt best. What needs to happen now in Kosovo is a strong emphasis on capacity building within both the police and the judicial sectors.

In respect of the rule of law, it is clear that a triangle must be set up comprising the police, the judicial system and detention mechanisms. Sufficient resources and personnel must be allocated to allow this triangle to function efficiently.

All those involved in this triangle should be educated about international human rights instruments.

Those guilty of crimes should be prosecuted and here it is important to stress that individuals should be prosecuted – only in this way will Kosovars be able to move away from the ultimately destructive concept of collective guilt. Related to this subject, it will be necessary for those guilty of the most serious war crimes to be prosecuted internationally.

It is not enough to have a justice system in place to solve the problems of Kosovo – for this, long-term peace and stability will be required.

Going further towards real post-conflict justice, the workshop felt that Kosovo society would need to see:

- clarifications of Resolution 1244's impact on the justice system;
- explanations provided about the fate of- and concrete actions on behalf of "missing people" from before and during the war;
- a functioning police force;
- that Serbs living in Kosovo distance themselves from the political policies of Serbia.

4.4 Democratic Policing Workshop Report

Facilitator Mr. Steve Bennett – Director of the Kosovo Police Service School, Director Police Education and Development, OSCE Mission in Kosovo

Invited speakers:

Mr. Steve Bennett, Director of the Kosovo Police Service School, Director Police Education and Development, OSCE Mission in Kosovo

Mr. Michael Jorsback, Deputy-Commissioner of Police, UNMIK,

Mr. William G. O'Neill, Senior Advisor on Human Rights to the Special Representative of the Secretary General in Kosovo

Mr. Steve Bennett highlighted some of the achievements of the Kosovo Police School (KPS), noting that all communities of Kosovo are represented in the KPS. He praised the performance of the women police trainees, who comprise approximately 20% of the classes thus far. The goal is to train 3,000 people in the next twelve months. After receiving basic training and the 19-week field training, special courses will be offered at the school in community policing, criminal investigations, forensics, organized crime and drug-trafficking. Mr. Bennett noted that human rights issues pervade all aspects of the training; human rights is not taught only as a separate subject but is interwoven with other issues throughout the curriculum. He is convinced that the Kosovo Police Service will succeed because of the calibre and dedication of its staff.

Mr. Bennett noted that one challenge in a post-conflict situation is that often crime increases. How to fight crime while respecting human rights is a challenge but one that must be met.

Mr. Michael Jorsback described the challenges facing the UNMIK police, noting that this is the first time that the UN has taken on responsibility for policing and not merely monitoring an existing police force. He emphasized the importance of not seeing police issues in isolation, but rather policing is linked to the justice system and penal administration. All three "legs of the stool" must be strong for there to be security, law and order. He added that all are responsible if the police are to succeed in their mission to "serve and protect." The community must help the police prevent and solve crimes and the police in turn must earn the respect and trust of the community it serves. Cooperation is a two-way process. To do this, the police must also reflect the community and include all ethnic groups and women in its numbers.

The police must also be accountable: impunity must be banished. There must be a fair and transparent disciplinary mechanism to investigate and punish police abuses. Mr. Jorsback added that the police must get close to the population, patrol on foot, get out of their vehicles and talk to people. Learning first-hand the community's problems and coming up with practical solutions is the best way to enhance security for all. Close contacts between the police and NGOs must be established and a varied series of community relations programs will be set up between UNMIK police and civil society in Kosovo.

Mr. William O'Neill described some community relations activities undertaken in his home area in Brooklyn, New York. He noted that these are not "high tech" or expensive ventures but just take time and persistence. He cited several simple programs to cut down on car thefts as an example and noted that telephone hot-lines to report domestic violence and drug-dealing have been particularly effective. Community policing has cut the crime rate substantially in New York and elsewhere and should have a similar impact in Kosovo.

Mr. O'Neill also noted that it is especially difficult for the police to gain the community's trust where there is a legacy of police violence and human rights abuses as is the case in Kosovo. Gaining this trust is not impossible, but it is vital to punish police misbehaviour, otherwise the population will think that the new police are just like the old force. This would be fatal to any effort to create a democratic police force. Accountability and disciplining police abuses are essential to confidence-building where trust has previously been lacking.

A lively discussion followed with many questions. One workshop participant wanted to know how the police can be trained to do their work in a way that respects human rights but is also effective in fighting crime. The panel noted that techniques are taught to question suspects, conduct searches and seizures, and to make an arrest that respect human rights. These are "high risk" incidents where rights might otherwise be violated and it is important to give police proper techniques and tools to do their jobs and still uphold human rights. Operational applications for human rights in actual policing are taught at the Kosovo Police School.

Another topic frequently raised in the discussion was the need to develop close ties to the community. The panel agreed and both the KPS and the UN Police plan to begin as soon as feasible a series of "community forums" where people can exchange views with the police, highlight problems and design solutions.

Developing a code of conduct for the police officers and instilling in police managers a strong sense of responsibility for the acts of their officers were emphasized by one of the workshop participants as important elements in democratic policing. Another participant recommended transparency in all aspects of police work to reinforce community respect for the police, the police should meet the public and explain what they do and how they need the community's support.

The entire workshop agreed that the conference was an important beginning in the effort to create a real dialogue between the community and the police but that the real work lies ahead.

4.5 Housing and Property Disputes Workshop Report

Facilitator Mr. Winston Krone – Human Rights Officer (Property Issues), OSCE Mission in Kosovo

Invited speakers:

Mr. Hans Das, Senior Officer, Commission for Real Property Claims, Bosnia and Herzegovina

Mr. Jorge Gavidia, Coordinator Disaster Management Programme, HABITAT Office in Kosovo

Mr. Craig Jenness, Deputy Head of OSCE Mission in Kosovo

Ms. Nekibe Kelmendi, Attorney at law, Pristina

Introduction

The purpose of this workshop was to discuss ways to resolve residential Housing and Property disputes in Kosovo.

This is one of the most serious long-term problems in Kosovo.

From 1989 to the present day, property has been used as a weapon:

- After the ending of Kosovo's autonomous status, there was a decade of legislation and government action which discriminated against Kosovo Albanian property rights;
- The armed conflict since March 1998 saw the deliberate targeting of property;
- Since the conflict, we have seen forced eviction and unlawful occupations, that have effected all members of Kosovo's population.

Resolving these problems will be one of Kosovo's biggest challenges.

Panel Members

Craig Jenness began by outlining how the work of the International Community was based on International Human Rights Standards, including the right to property and housing.

The property situation in Kosovo has been effected by three distinct factors:

- A decade of discriminatory property legislation and government action (1989-98), leading to the stripping of property rights, unregistered property transactions and multiple claims of ownership;
- Armed conflict since February/ March 1998 leading to mass destruction of property and displacement of population. This lead to a desperate shortage in housing stock and general lawlessness;
- A circle of violence, forced evictions and the unlawful occupation of vacant property since the conflict.

It is impossible to deny that at present, it is minorities (and those in minority situations) that are most at risk.

To give an example, when the OSCE returned to Gnjilane/Gjilan on 20 June 1999, only one house in the town had been destroyed. By the end of October, 280 houses (belonging exclusively to Kosovo Serbs and Roma) had been burned or destroyed.

The situation was further confused by the evident desire of some self-styled authorities to retroactively annul post 1989 property transactions. In some areas, Kosovo Albanians who have purchased property from Serbs, have been denounced as 'unpatriotic' and physically threatened.

In the absence of effective protection of property rights, and in the face of continued pressure on housing stock, many minorities have abandoned or sold their properties at large discounts. (Kosovo Serbs have started to sell their properties at a fraction of their pre-war price. See OSCE Human Rights Report, *As Seen As Told*, Part II, p.43.)

The legal situation has been further confused by the expressed desire of some self-appointed authorities to retroactively annul post 1989 property sales.

While this has mainly effected Kosovo Serbs, Kosovo Albanians who purchased from Serbs have also been threatened or denounced as "unpatriotic". (Broadcast by TV Gnjilane/Gjilan, November 1999.)

The absence of an official resolution process for property claims has caused self-appointed and unofficial bodies to mushroom throughout Kosovo. These unofficial bodies, as well as undermining UNMIK's authority and the rule of law, provide no guarantee of impartiality or fairness either to minorities or to Kosovo Albanians who lack political or military "connections".

This has obvious implications for the return of refugees and future democratization in Kosovo.

Ideally, the resolution of property disputes in Kosovo should be a matter for the local courts. However, immediate problems here include:

- disputes over the applicable laws;
- practical problems of enforcement and execution;
- the need for a Kosovo-wide approach to property dispute resolution.

UNMIK therefore took the decision to create a new Housing and Property Directorate to handle most residential property claims, established on 15 November 1999, by Regulation 1999/23.

Finally, the resolution of these problems can only come from one source – i.e. International Human Rights Standards. These must be:

- Discussed by all members of Kosovo society;
- Agreed upon;
- Applied.

Ms Nekibe Kelmendi, one of Kosovo's most celebrated lawyers turned to the property situation from 1989-98:

After Kosovo's autonomous status was rescinded in 1989, the Serbian authorities issued a series of laws which were either expressly discriminatory against Kosovo Albanians, or in their application. Examples include:

- *The Law Concerning the Functioning of Republican Government Bodies Under Special Circumstances* (1990), under which approximately 135,000 Albanians were dismissed from their jobs and lost their work-related apartments;
- *The Law on Changes and Supplements on the Limitations of Real Estate Transactions* (1991) a registration scheme whereby purchases by Albanians of Serb property were de facto prevented. This led to a decade-long period of underground property transactions, which were never registered with the authorities, and where housing and property records were incomplete and substantially inaccurate.

Mr. Hans Das, a representative of the Commission for Real Property Claims in Bosnia, referred to the body of International Human Rights law including:

- The right not to be arbitrarily deprived of property;
- Right to peaceful enjoyment of property [both expressly enshrined in the Universal Declaration of Human Rights and Protocol 1 of the European Convention on Human Rights];
- The principles of non-discrimination and equal protection of all ethnic groups is of supreme importance in a post conflict situation;
- The right to an effective legal remedy must be the guiding principle of prospective new legislation;

While recognizing there was no similarity between Bosnia and Kosovo in respect of discriminatory legislation, we can still focus on the lessons learned when establishing a property claims commission in Kosovo, e.g.:

- The International Community must not underestimate the importance of Property Rights especially in post ethnic-conflict situations. Even 4 years after Dayton and the massive efforts of the International Community, property problems were still the main hindrance to minority returns. Only last week, the High Representative was forced to remove a number of local officials mainly for obstructing the property process.
- The lack of flexibility in the CRPC mandate (it can only receive and make decisions) is a major problem. Unlike the UNMIK Housing and Property Directive, the CRPC cannot mediate, issue provisional measures, or refer claims to local bodies.
- Any property claims commission needs to be fully integrated into the other activities of the International Community (especially the reconstruction process).
- The CRPC did not have exclusive jurisdiction in property claims, resulting in parallel jurisdictions with local courts, and giving rise to practical problems. The UNMIK Housing and Property Directorate will have exclusive jurisdiction for most residential property claims in Kosovo which should ensure a consistency of legal approach and application.

The ensuing discussion raised the following points:

1. The issue of the applicable law in Kosovo was raised several times. This issue must be resolved by UNMIK without delay.
2. As regards persons who wish to sell their homes to the present unlawful occupiers, the UNMIK Housing and Property Directorate could facilitate by finding a reasonable or minimum price for the sale. However, transactions will only be legal if they are the freely expressed will of the parties.
3. Specific examples of contested property were raised by both Kosovo Serbs and Albanians. Some stressed that there had to be a move away from discussing cases solely in terms of ethnicity. In particular, now was the time to begin the debate over the principles which will be behind the Housing and Property Directorate, and the resolution of property claims generally.

Many of the claims in Kosovo involved properties from which Kosovo Albanians had been evicted after 1991, which Kosovo Serbs had subsequently purchased, and from which those Serbs had now been evicted by other Kosovo Albanians. All ethnic groups in Kosovo had pre-conceived ideas how these claims should be resolved. However, these multiple claims of ownership can only be resolved by reference to International Human Rights standards.

Discussion must move to analyzing ways to create a legal regime in accordance with International Human Rights standards where individual cases were heard irrespective of ethnic backgrounds.

4. Although there was not sufficient time to cover all areas, most of the participants accepted this workshop was just a first step in a longer dialogue. It was therefore encouraging that several local participants requested the OSCE to facilitate further workshops where specific property issues could be discussed.

4.6 Children's Rights Workshop Report

Facilitator Mr. Dan Seymour – Human Rights Officer, OSCE Mission in Kosovo, Field Office Djakovica/Gjakova

Invited speakers:

Ms. Sevdije Ahmeti, Centre for the Protection of Women and Children, Pristina

Amb. Thomas Hammarberg, Ministry of Foreign Affairs, Sweden

Mr. Stephen Johnson, Head of Mission, United Nations Children's Fund, Kosovo

Ms. Jane G. Schaller M.D., President-Elect of the International Pediatrics Association, KARP Professor of Pediatrics, Tufts University

The workshop was attended by some 70 people. The definition of the child (any person under 18 years of age) and of children's rights from the United Nations Convention on the Rights of the Child (CRC) was agreed as a foundation for the discussion.

The broad message of the workshop is contained in two quotations:

- 'Children are the first victims of any war' - Eglantyne Jebb (founder of Save the Children) 1919
- 'Children are the carriers of the possibility of change' - Thomas Hammarberg 1999

Children are both a priority for protection due to their vulnerability, but also for progress due to their potential. Participants were asked to consider three questions:

- Do we really understand what happened to children during the war?
- What is the situation of children in Kosovo today?
- What must we do to improve the children's rights situation in the future?

The workshop identified a range of problems for children in Kosovo, and was aware of having run out of time to cover many more. The workshop participants tried to address some of these problems with practical suggestions.

Opening presentations

The four opening speakers decided to keep their presentations short, to allow more time for discussion. Ms. Sevdije Ahmeti was also invited to participate as a speaker at the last moment, since the panel of speakers did not include a representative of the local community.

An overview of the situation of children in Kosovo.

Mr. Stephen Johnson reported that the situation of children in Kosovo at present is a mixed one. In the area of education, 94-97% of children are back in school. This is to be welcomed. However, only 10,000 non-Albanian children are attending school. This is a problem. The quality of the education provided is also a concern. Some schools are operating two or even three shifts a day. It is not clear how much time children are actually able to spend in classes. Also, teaching methods employed are old-fashioned and minimise children's participation in the learning process. Too much emphasis is placed on memorising, and not enough on actual understanding. The system is also, generally speaking, too dependent on textbooks.

In the area of health, services are available to the majority ethnic Albanians, but minorities are excluded. More generally, Primary Health Care and rural health services are in danger of disappearing altogether. Social services are not functioning.

Exploitation of children is a reality, both in terms of visible exploitation but also 'invisible' exploitation. The children selling cigarettes, or looking for objects in rubbish tips and the orphan children are very high profile. However, in addition to this there are children who become involved in organised crime, who are subjected to violence in the home and other such problems. These forms of harm and exploitation are exacerbated by the problem that those providing policing are not trained to deal with children's cases, that there are no juvenile justice professionals and there are no social safety nets. KFOR and UN CIVPOL cannot be expected to be prepared to deal with cases involving children. In addition the inadequate levels of policing in Kosovo make children all the more vulnerable to problems relating to criminal activity.

Ms. Sevdije Ahmeti indicated that a starting point for dealing with children in this 'post-conflict' phase is to ask '*What happened to them*'. Children were displaced and made refugees - around 60% of refugees and Internally Displaced Persons (IDPs) were children. Children were killed, wounded, sexually abused and psychologically damaged through witnessing atrocities, sometimes against their own family. Children were also, and continue to be, victims of landmines. Some children are still in prison in Serbia.

Many schools were closed down during the last ten years, and children were not free to go to school in an open and proper way. The response to the restrictions on schooling made education 'clandestine' which was far from desirable and also had negative impacts on children. Many children today have very low self-esteem. For the past ten years many children have been dropping out of school, especially girls, due to the difficult educational conditions and the lack of prospects for young people. During the NATO bombing 230 primary schools alone were shelled and mined, while others were taken over as military bases. Getting children back to school requires an effort to improve material conditions, but also an effort to encourage parents to send their children to school. A particular difficulty in this area is the non-registration of children for school.

Children from the different ethnic groups have grown up side-by-side but apart. Children have become heavily politicised and have grown up with ethnic divisions imprinted firmly on their minds.

Another problem is that of child labour. This was a response to the economic conditions of the past ten years. Families needed the extra income, but also children were better able to sell goods than their parents because they were less vulnerable to arrest, particularly where those goods were smuggled (the obvious example being cigarettes).

There is also the problem of orphans. For example, in Malishevo/Malishevë alone there are 696 orphans living in tents. In fact, 25% of the population of Malishevo/Malishevë are still living in tents and the majority of these are women and children. Conditions are hard with the wet and the cold.

Children also suffer a lack of basic material conditions, including clothing. Finally, they are also now being targeted for kidnap and trafficking. The overall picture is one of extreme difficulties and challenges, not just to improve their short-term conditions but also to invest in their development in the longer term.

Healing after war

Dr. Jane Schaller then turned to the question of healing, asking three main questions:

- What needs to be done?
- How can it be done?
- Who should do it?

It should not be forgotten that there were serious health problems before the war. Current problems need to be identified and assessed. The international community stands ready to help, but solutions will need to come from local people - the only durable solutions are built on local capacity.

However, dealing with the physical health needs of children is relatively easy compared to dealing with the psychological needs. All children in Kosovo were exposed to war and in some sense to the 'trauma' that accompanies it. The question of how to help is a difficult one. Traditional Western therapy approaches may be inappropriate. By way of illustration, a Slovenian child psychologist was trying to work in refugee camps in Bosnia. She tried to identify children with whom she should work, but found that no families were willing to talk to her. Eventually, she went to a grandmother in the camp and asked why no one was willing to talk to her. She was told that it was not them who were crazy - rather it was the situation that was crazy.

Whatever assistance people may try to provide, the key will be the ability of those that work closely with children on a day-to-day basis, particularly teachers, to know how to identify children with problems and to be able to react appropriately, even if this means referral to others better able to deal with those children. The difficulty should not be underestimated. But success will depend upon creating the capacity to address these problems within the existing structures, rather than through building new structures.

In order to 'heal' children psychologically it is necessary to recognise the problem of 'poisoned minds'. Children's experiences will have left them with a great deal of hate, and emotions which are destructive both to themselves and to others. One important part of addressing this problem will be through setting examples of tolerance, forgiveness and reconciliation. This is a responsibility for all adults, but particularly for those in the areas of education and the media. It will also be essential that children are able to mix with other children and socialise, especially with children from other ethnic groups.

The lessons of the Convention on the Rights of the Child

Ambassador Thomas Hammarberg stressed it is important not simply to see children as victims. They have the potential to improve the situation, not just to obstruct improvement if not properly cared for. This idea is contained in the United Nations Convention on the Rights of the Child (CRC 1989). This instrument is unique among human rights treaties in that it enjoys near universal ratification, and as such represents a universal standard with regard to the rights of children.

The CRC does not simply lay out minimum standards in its 41 normative articles. It presents an ideology and philosophy. The CRC rests on four key principles:

- That the best interests of the child should be the primary consideration in all decisions affecting the child. (Article 3)
- That the child's survival and development need to be prioritised. (Article 6)
- That the child have a voice, particularly in decision affecting him or her. (Article 12)
- That all rights of the child apply to all children without discrimination. (Article 2)

There are three lessons that seem to be common to post-conflict situations with regard to the situation of children. These are:

1. School and education are the key to progress. Content is important, but teaching methods need to be interactive and stimulating. If children are to recover and move on they need to look forward, and school is the forum within which this can happen. School must also be inclusive, bringing in all children, including those with disabilities. Schools must also be 'zones of peace', places into which violence does not intrude. This includes beatings by teachers, which are extremely harmful and unacceptable.
2. Domestic violence always seems to increase in conflict and post-conflict situations, yet seldom receives the attention it merits. There is a world-wide problem of children being subjected to violence in the home which seems to be exacerbated by conflict environments. The most fruitful approach to this in the past has been where leading males in communities - be they political, intellectual, cultural or religious leaders speak out against domestic violence. Conversely, where male leaders legitimise domestic violence by playing down its unacceptability the problem grows.

3. Local NGOs can be fundamental to improving the situation of children.

Using the CRC and building on the lessons learned from other post-conflict situations (while not trying to apply them unthinkingly and ignoring the particularities of each individual conflict) can provide a framework and give greater impetus to the process of reconstruction in its broadest sense.

Discussion

It was pleasing to see both the presence and the participation of so many young people in the workshop. A system was agreed whereby anyone under 18 wishing to speak raised two hands instead of one in order to prioritise them.

The children in the workshop all agreed on the importance of the education issue. Their focus was mainly on teaching methods. They described their education as too 'old-fashioned'. There was too much learning facts and figures, and not enough emphasis on applying concepts. Similarly too much was theoretical. They wanted to be taught things which they could immediately relate to their lives and everyday situation. They wanted to see a new more interactive and practically-orientated teaching style. They also identified a practical problem with the lack of equipment for technical subjects. It is not possible to study sciences or computing for example without the proper equipment.

Another point from the child participants was that children in Kosovo needed some landmark event which would mark the end of the past and symbolise moving on to their future. This could be a concert, march or a sporting event. The important thing would be that it signalled a time to stop dwelling on, while remembering, the past.

Finally, the child participants also reminded the workshop that in all questions of humanitarian assistance it was children who would suffer the most where there was a failure to provide that assistance. Where food supplies were inadequate it would be growing children who would be hit the hardest. Where heating was not available it would be young children who would suffer the greatest health consequences. Humanitarian assistance should not only seek to reach children, but should also be carefully examined to ensure that it is genuinely sensitive to children's needs.

Another participant reiterated the importance of local NGOs for children. After all, it is the people of Kosovo who are best equipped, after children themselves, to understand and respond to the needs of their children. It is also the people of Kosovo who will have to care for their children in the long-term when the international community has left.

A representative of the Bosniac community in Kosovo spoke about the importance of looking to the family, and supporting the family, as the foundation of children's well-being in Kosovo as much as anywhere else in the world. He also underlined the point that all children of Kosovo from all ethnic groups had been 'traumatised' by the events of the war. In some ways those children who continued to suffer discrimination now were the ones for whom the war continued the most.

He went on to argue that a child is a child, regardless of the ethnic group to which they belong. Whatever people's prejudices or anger toward any group, children should not be mistreated or discriminated against whoever their parents.

Speaking specifically of Bosniac children, he reminded the workshop that while Bosniac children may have avoided problems of language of instruction during the previous ten years, they were not able to learn about their culture or history. This is something that Bosniac children have a right to, and this should be properly taken into account when considering issues around education. However, Bosniac children neither want nor need separate schools. A multi-ethnic society needs multi-ethnic schools. There is no way to build tolerance and respect between different ethnic groups when their children cannot learn, play and grow up together.

A representative of the Serb community in Kosovo made some similar points. However, she specifically addressed the problem of healthcare for Serb children, who do not have easy access to health services. One glaring area where this causes a problem is that of perinatal healthcare (healthcare during the last stages of pregnancy and immediately after birth), which is particularly fundamental to a child's health and even survival. If the situation in just this area is not addressed quickly it will show itself in increased infant mortality rates for the Serb population in Kosovo.

Regarding education, the situation for Serb children in some areas is particularly bad. For example, a group of Serb children in Pristina are unable to leave their apartments and so cannot attend school. Perhaps what is required is secure transport to school for children in this sort of situation. On the other hand, this might exacerbate the perceived divisions between these children and other children.

The workshop considered the problem of orphans. On the one hand there were clearly children for whom care was needed. On the other hand Kosovo had a culture of extended family, and children were very often cared for within the extended family.

Some participants felt that it was necessary to provide institutional care for these children. The construction and running of these institutions or orphanages would require time and money, and these would need to be provided for by the international community in the absence of a local capacity to do so. However, other participants were less comfortable with this idea. One participant spoke strongly against orphanages, arguing that they constituted a violation of the child's right to a family. Children deserve to be brought up in a family environment, and the promotion and support of fostering is a vastly preferable approach to that of institutional care.

What was certain was that these orphans would require development and education. Their situation is a difficult one, and the approach to it will need careful consideration.

The question was raised of how to ensure that children's rights were properly monitored, promoted and protected in Kosovo. The establishment of the Ombudsman's Office might be a way to do this. It was asked what plans there were to ensure that the Ombudsman's Office was equipped to deal properly with children's issues? Would there be special provisions for dealing with children's cases? Would there be specialists in children's issues employed in the office who were capable of

identifying and responding to children's issues? In some countries there is an institution of a special ombudsman for children. Might this be required in Kosovo?

Recommendations

1. Children need to be prioritised in local and international efforts in Kosovo, both because their needs are the greatest, and because they are essential to any medium or long-term progress.
2. Those working with children, in particular teachers and health professionals, need to be equipped to identify psychological problems in the children they work with. Training should be made available to this end.
3. The issue of child rights demands greater consideration, in particular the issues of education and health. To this end there should be an international conference on child rights in Kosovo. In addition there should be a series of roundtables on education which bring together teachers and pupils to discuss education in Kosovo.
4. An event should be organised for all children in Kosovo which serves the purpose of drawing a line under events during the war and encouraging children to direct their thoughts and efforts to their futures.
5. Adults need to set an example of tolerance to children. Guidelines should be established on educational content and on media relating to children on the promotion of tolerance.
6. Male community leaders should speak out against domestic violence. A vehicle for them to do so should be identified.
7. A capacity to deal with juvenile justice and children who come into conflict with the law needs to be developed. There should be judges in each region who are experienced in dealing with children's cases. Legislation for dealing with juveniles needs to be in place.
8. The education system needs to be better resourced, but also requires assistance to modernise its teaching methods.
9. Education needs to include the promotion of human rights and democratic values.
10. A multi-ethnic summer school should be set up to allow different children to come together in an environment which is less strained and more developmental.
11. The health system needs to be improved for children. This need is particularly urgent for children of minorities.
12. There should be great caution in the provision of institutional care for children, and in particular the construction and establishment of orphanages. Fostering should be considered preferable to institutional care as a rule.

13. Police of all sorts, and KFOR soldiers, need guidance and training on how to deal with cases involving children. This would cover areas such as acceptable levels of use of force, taking statements from children, and referral to appropriate authorities.
14. The UN Convention on the Rights of the Child should be used as a framework for addressing the situation of children in Kosovo. All children should be aware of the CRC.
15. Any Ombudsman institution needs to have the clearly identified capacity to deal with children's cases.

Conclusions

It was very clear at the end of the workshop that the surface of the subject of child rights in Kosovo had barely been scratched. Many issues were not covered in any depth if at all (e.g. minority children, disabilities, gender, recreation and leisure) even though the participants were well aware of them. The feeling was that the workshop paid no more than a cursory glance to the situation and needs of children, but did establish clearly that there is a broad range of fundamental issues around children's rights which not only merit but demand further and more detailed attention. The call for further discussion, perhaps in the form of a future conference, reflected this feeling.

It was clear that children in Kosovo face many difficulties. Some of these are easily understood, for example lack of clothing. Others may appear easily understood, then turn out to be more complex, for example the provision of institutional care as against fostering for orphans. However, there are also issues which are hidden from view, including children's involvement in criminal activities and domestic violence.

The workshop identified two broad approaches. The first is one of identifying specific problems and addressing them discretely. For example, the problem of lack of equipment for the study of technical subjects in schools suggests a clear and direct response of providing the equipment. The second is more of a mainstreaming approach, ensuring that children's issues are taken into account in the whole range of activities of both local and international actors in Kosovo. For example, ensuring that children's issues are properly covered by police, by KFOR, by any Ombudsman institution and so on all point to establishing a child focus in all aspects of the reconstruction of Kosovo.

Finally, the strongest message to come from the workshop was one of responsibility. All participants recognised that children have rights. All agreed that these rights were fundamental and needed to be prioritised. All believed that children's rights stood apart from and above political, ethnic or religious issues or divisions. As a result it was recognised that all people in Kosovo, be they local authorities, communities, families or international actors, have a duty to respect these rights. Children's rights generate an urgent obligation in everybody to respond appropriately.

4.7 Women's Rights Workshop Report

Facilitator Ms. Corey Levine – Human Rights Officer (Women's and Children's Issues), OSCE Mission in Kosovo

Invited speakers:

Ms. Stephanie Farior – Director of the Legal Office at the International Secretariat of Amnesty International.

Ms. Kerstin Greback – Key representative of the Swedish women's NGO, Kvinna Till Kvinna (Women to Women), which provides funding and support to women's organisations in Kosovo and throughout the region.

Ms. Sevdije Ahmeti – Co-founder of the local woman's NGO, Centre for Protection of Women and Children, and a recent recipient of the Human Rights Watch "Monitor of the Year" Award.

Steps for re-building Kosovar society need to be based on equality between women and men. There are many international legal mechanisms and standards through which this can be done; mechanisms such as the Universal Declaration of Human Rights, and the two International Covenants, one on civil and political rights and one on economic, social and cultural rights, all of which enshrine full equality between men and women. There is even a convention focused specifically on achieving this equality, the Convention on the Elimination of All Forms of Discrimination against Women. There are as well, other instruments and organisations within the international arena that are actively working to promote the equality of women and protect their rights; rights such as the right to health, the right to education, the right to participate fully and equally in public life and the right not to be held in bondage.

We have the legal framework, the mechanisms, the institutions and declarations all enshrining the rights of women, then why do we still need a special workshop on women's rights. To quote one of the workshop discussion leaders, "I hope I won't be too old to see the day that when I'm invited to a conference on human rights there won't be a need to convene a workshop for women's rights." In other words, the international community needs to respect its own standards. As well, it should no longer be acceptable to use respect for culture and religion as an excuse to violate the rights of women.

Part of the problem is that there is a lack of awareness of international laws and how they can be used to promote as well as protect the rights of women. However, a large part of the problem lies within the law itself. Many of the violations of the rights of women are hidden within the domestic or private sphere rather than the public sphere of law. This means ultimately that since States do not have to be held accountable or have a obligation to redress violations occurring within the private sphere, many violations of women's human rights, such as violence against women, are not often adequately addressed.

Another aspect to the problem is the fact that 'women' as a group continue to be viewed as vulnerable and thus marginalised. It is true and has been pointed out in other workshops, that the vast majority of the vulnerable and the casualties in conflict are women and those who are dependent on them, namely children and the elderly. Yet the context by which women are seen as needing their rights protected continues to marginalise them as vulnerable and lump them as 'women-and-children' rather than working to empower them as individuals with all rights accorded them.

This can be seen within the three priority areas identified by Kosovo women as the major obstacles to women achieving full equality in Kosovo:

- Political representation of women in the reconstruction and peace-building process of Kosovo;
- Violence against women, including trafficking and prostitution;
- The economic recovery and prosperity of women in the province, including the increased visibility of women in economic and other aspects of public life.

These barriers need to be addressed from a rights-based perspective in order to achieve any sustainable, effective change. For example, it was pointed out that the lack of meaningful participation of women in public life was integrally linked to freedom of expression. The need to use a rights based perspective also holds true for the issue of violence against women, and in particular, the trafficking of women. This issue is directly linked to the low socio-economic status of women in society. Thus, the problem of trafficking will not be solved simply by addressing it as a crime control problem, but needs to be linked directly to the economic and social empowerment of women and girls.

However, Kosovo is now at a crossroads. In this transitional period, Kosovo women have an unprecedented opportunity to make their voices heard and to ensure that the rights of all the women of Kosovo – Albanian, Serb, Bosniak, Roma, Ashkali, Turkish, alike, are protected and promoted. The following recommendations were made to help achieve this goal:

- Local women and women's groups should be listened to and consulted with to ensure effective input of local concerns in developing and implementing policy;
- All reconstruction and development programs should ensure that women's needs are addressed in their implementation. Limited resources should not be used as an excuse for putting women's needs on the backburner;
- The international community needs to 'practice what it preaches' and become a role model for gender mainstreaming. All four pillars should actively implement gender perspectives and incorporate issues of concern to women within all policy, program and training branches;
- A women's conference should be convened to provide a forum with which women can further discuss issues of importance to them and determine ways to effectively address these concerns.

Finally, although there were no women represented in any of the keynotes or opening or closing speeches, it is nevertheless a positive sign that the women's rights workshop ended up being convened in the main auditorium due the overwhelming interest in the topic. As one woman pointed out, while there remains

much work to be done, to borrow from Emma Goldman, “If I can’t dance I don’t want to be part of your revolution.”

4.8 Human Rights Institutions Workshop Report

Facilitator Ms. Pirkko K.Koskinen – Coordinator of the Ombudsman Support Section, OSCE Mission in Kosovo

Invited speakers:

Mr. Bennett Freeman, Deputy Assistant Secretary of State for Democracy, Human Rights and Labour, US Department of State

Mr. Michael Meyer, Adviser for Kosovo and the Stability Pact for SEE, ODIHR

Mr. Heinrich Klebes, President of the administration council of the International Institute for Democracy, Council of Europe.

As a starting point, a general definition of human rights institutions was discussed. It was stressed that with human rights institutions we mean all those authorities, which implement and/or monitor human rights conventions. There are international and national authorities. However, the main emphasis was on national human rights institutions, especially those operating in post-conflict societies like Kosovo.

It was emphasised that every single power institution in society- the legislative body, the administration, the police and courts have a duty to implement human rights in the course of their everyday work. Still, it is not enough. In every society there is a need for a specific human rights protection mechanism - an Ombudsman institution.

Subsequently, the floor was given to Mr. Freeman, who proceeded with mentioning the release of human rights reports by both the OSCE and by the U.S. State Department documenting the record of atrocities, killings, disappearances, ethnic cleansing, and other human rights abuses that have been committed over the past few years. The facts referred to in these reports were the reasons for international intervention and present international engagement in an effort to restore order, reconstruct civil society, and lay the basis for democratic self-government.

It was stressed that in building a democratic society, one should remember that human rights should be protected systemically - on the part of all the institutions of self-government and civic society. Human rights should also be protected on an integrated basis with all parts of the system working together.

It was pointed out that an Ombudsman is not a substitute for a judicial system or legal remedies, but rather an alternative and complementary avenue for citizens which can provide access to justice, mediation of disputes, and human rights education. The person of the Ombudsman and this Institution will symbolise the central importance of human rights in Kosovo. It will help to determine whether specific grievances have substance and help substitute a culture of accountability for a culture of impunity. It will also build bridges among the individuals, families and communities of Kosovo by being open and accessible to all. To be effective, Kosovo's Ombudsman will have to rely on the support of not only empowered citizens, but also of non-governmental organisations.

The second speaker, Mr. Meyer, specifically stressed that the main features of an Ombudsman institution should be:

- Impartiality and independence. There are some ways to make sure that independence exists. Usually, independence is ensured by according provisions in the law (often the Constitution), by providing financial independence, and by appropriate appointment and dismissal procedures (in normal circumstances an Ombudsman is appointed by the parliament/legislative body, with provisions for appointment and dismissal laid down in the law). It also includes immunities.
- Access to information necessary for the investigation.
- Accessibility for everybody. This would mean physical accessibility, possibility to make complaints personally, freedom to choose the language of complaint, flexibility of the institution, avoiding bureaucracy and cost free.
- Accountability.

He also pointed out that the most important element for citizens is to know that such an Institution exists.

Finally, he stressed that an Ombudsman should enjoy the trust of citizens (it can only be done if the above-mentioned conditions are met in the very beginning of the functioning of the Institution).

The third speaker, Mr. Heinrich Klebes, gave a brief introduction on standard setting in relation to national minorities, mentioning the importance of legally and politically binding instruments.

The following points about the role of the Ombudsman in post-conflict Kosovo were raised:

- Can a national human rights institution play a useful role in a post-conflict situation? A Human rights institution has no power to make legally binding decisions. How effective can the Ombudsman be, given that it can rely on persuasion only?
- What set up should a national human rights institution have: Ombudsman or Commission type?
- What would be the mandate of a human rights institution in Kosovo? How far can it go in investigating human rights violations, including those committed by the Interim Civil Administration, KFOR, self-appointed authorities, and legitimate authorities, once established?
- What should the legal basis of the institution be: What should be the applicable standards for its work?
- What should be the appointment procedures and requirements? What role should be played by the international and the national community in this process?

- What is the impact which the conflict has made on the work of the Institution?

Presentations were followed by a general discussion.

A participant from Finland, who worked in a human rights institution in post-conflict society (Uganda) shared his experience. He pointed out that a lot can be learned from their experience. Uganda has a traditional Ombudsman and, under the 1995 Constitution, the Uganda Human Rights Commission was created.

Lessons learnt by the Commission:

- a traditional Ombudsman institution can exist even in the post-conflict situation;
- the need to define the relationship between the Ombudsman institution and the judiciary (in the participant's view, it is not advisable to create a "complete" Ombudsman institution in Kosovo, because traditional state institutions simply do not exist);
- the Ombudsman institution should have investigative powers;
- the Ombudsman should have power of intervention (e.g. in cases of serious human rights violations, torture), even the power to make legally binding decisions in case the authorities do not things they are supposed to do.

A representative of the OSCE Parliamentary Assembly stressed the need for incorporation of the international legally binding instruments into national legislation. He welcomed Kosovars to make appropriate steps for the incorporation.

A local representative made a statement that the concept of the Ombudsman institution is not completely unknown in Kosovo. Kosovars had an alternative system of complaints about decisions made by the communist system. The main point raised was that the Ombudsman has to fit in to the Kosovo situation reflecting the reality. The Ombudsman should hear the opinion of local experts and make opinions public.

One of the participants made the following remarks:

- One must prepare for the future of all parts of Kosovo society.
- The society of Kosovo should take ownership of the promotion and protection of human rights from the very outset.
- There is an urgent need for the Special Representative of the Secretary General to establish an advisory commission of Kosovars on human rights and the protection of minorities.

4.9 Detainees and Missing Persons Workshop Report

Facilitator Ms. Laura Bowman – Human Rights Officer/Chief of Missing Persons Unit, OSCE Mission in Kosovo

Invited speakers:

Ms. Barbara Davis, Chief of Mission, Office of the UN High Commissioner for Human Rights – Federal Republic of Yugoslavia (OHCHR)

Ms. Mary Ellen Keough, Project Director Kosovo, Physicians for Human Rights (PHR)

Ms. Susanna Swann, Deputy Head of Mission, International Committee of the Red Cross (ICRC)

Mr. Clint Williamson, Senior Legal Advisor to the Kosovo Investigation, International Criminal Tribunal for the former Yugoslavia (ICTY)

Ms. Genevieve Mayer, Deputy Secretary to the European Committee for the Prevention of Torture, Council of Europe (CPT)

a) Summary of the discussion

Participants

The workshop began with brief presentations by four individuals from international organizations that have been involved in work leading to the resolution of missing persons cases – ICRC, ICTY, PHR, and OHCHR. These are by no means the only organizations involved in such work; many other local and international groups made useful contributions during the discussion period. Over 100 people attended the workshop on detainees and missing persons. Workshop attendees included a broad range of local and international community members: UNMIK Police, UNMIK Civil Administration, the International Commission on Missing Persons, the Council for the Defense of Human Rights and Freedoms, local war crimes commissions, the Association of Political Prisoners, the Humanitarian Law Center, the Council of Parents of Gjakova, the Information Center for Detainees from Gjakova, representatives of various national offices (Austrian, British, Finnish, etc.), the Transcultural Psychosocial Organization, and numerous others.

Background Presentations

Ms. Susanna Swann, Deputy Head of Mission for the International Committee of the Red Cross in Pristina spoke about ICRC's activities and mandate. Due to its independent, neutral and impartial spirit, Special Representative to the Secretary-General Bernard Kouchner appointed ICRC the lead agency on the missing in an exchange of letters between the two organizations. ICRC is present in both Kosovo and Serbia and it maintains contacts with authorities on all sides.

ICRC holds regular coordination meetings with local and international organizations concerned with missing persons' issues in order to avoid duplication of effort. ICRC also tries to respond to the families' needs. This means that ICRC is in direct contact with relatives of those persons who have gone missing anytime since January 1998 whether they were detained or simply disappeared. ICRC collects the basic information about the missing person when the remaining immediate relative files what is called a "tracing request". These tracing requests are then put into a database. During bilateral, confidential interventions, ICRC asks the responsible authorities to confirm information or provide answers to the fate of the missing person. In addition, ICRC tries to offer other assistance to families of the missing.

The tracing process is a slow one, so final figures about the missing are not available. There are currently 1,710 persons registered and visited by ICRC in Serbian prisons. There are 3,000 outstanding tracing requests of which approximately 2,200 relate to persons reportedly detained. As the tracing process continues these numbers will fluctuate as new cases are added to the list and resolved cases are removed.

ICRC visits prisons throughout Serbia and Kosovo to register detained persons in need of protection, to establish bilateral dialogues with detaining authorities, and to improve conditions as required. ICRC helps family members and prisoners maintain contact through the exchange of Red Cross Messages.

Although ICRC registers and monitors the condition of prisoners, ICRC does not investigate their judicial status, although adherence to basic judicial guarantees is expected. ICRC does not request the release of prisoners, but will facilitate release from prison by providing safe transport from the prison facility. ICRC has facilitated the release of 324 detainees of all ethnicities since June 1999.

Ms. Barbara Davis is the Head of Mission for the Office of the High Commissioner for Human Rights in the Federal Republic of Yugoslavia. OHCHR has offices in Belgrade, Pristina, and Podgorica. As a diplomatic mission and under agreement with the Yugoslav authorities, OHCHR reports, promotes and monitors human rights throughout Yugoslavia including in places of detention.

OHCHR conducts prison visits, but unlike ICRC, the OHCHR does question the authorities about the reasons for detention and ask for the release of those being held in violation of international human rights standards.

In addition, OHCHR chairs the Commission on Prisoners and Detainees, created after the first meeting of the Kosovo Transitional Council in order to elucidate the whereabouts of those missing who may be detained. The commission advocates immediate release of all persons deprived of liberty in connection with the crisis in Kosovo, except those indicted for violations of international humanitarian law. The Commission is concerned with the fate of all persons deprived of their liberty on the territory of Kosovo before, during and after the NATO air campaign. The commission operates according to the principle that all authorities are responsible for the security of all persons who live on the territory they control.

Until recently it seemed that slow progress was being made on the issue of detention of Kosovo Albanians in Serbia: several groups of prisoners were released and lawyers and family members have been visiting Serbian prisoners. Unfortunately, two recent incidents have a chilling effect: 1) the recent detention of Teki Bokshi, an attorney from Djakovica/Gjakova representing some of the detained Kosovo Albanian prisoners in Serbian jails and 2) the stiff (12 year) sentence handed down in the Flora Brovina case. Nonetheless, work must continue to ensure that appropriate institutions such as ICRC, OHCHR, the Humanitarian Law Centre and advocates and families have access to all places of detention – civilian and military – maintained by the Serbian authorities as well as those maintained by armed Kosovo Albanian forces.

Mr. Clint Williamson, the Senior Legal Advisor to the ICTY's Kosovo Investigation, spoke about the efforts to investigate crimes that occurred during the '98 and '99 conflict in Kosovo. The exhumation of sites of mass killings is an important part of the investigative process. ICTY has exhumed 195 of a reported 529 gravesites in which were found a total of 2,108 bodies. Approximately 70 % of these bodies were recognized by family members or presumptively identified on the basis of clothing and personal effects and where possible, these presumptive identifications were confirmed with anthropological data such as age, sex, height, and other ante-mortem data. Therefore, although the main objective of these exhumations is to collect evidence for the ICTY investigation, their exhumations do contribute to the resolution of missing persons cases.

Ms. Mary Ellen Keough is the Kosovo Project Director for a program conducted by Physicians for Human Rights to assist the families as they go through the identification process during the ICTY exhumations. This includes training local social workers to provide psychological and social support during the process. In addition, PHR has been collecting ante-mortem data on the missing and training others such as OSCE human rights monitors and local social work centres to collect such data. PHR operates with the generous support of the International Commission on Missing Persons and in co-ordination with ICRC. PHR strongly emphasized that it is every family's right to know what happened to their missing loved ones. Even though the news of a death can be difficult, families repeatedly say that they want to know whether their relatives are dead or alive.

b) Discussion Issues

Need for Centralization of Work

Participants were eager to discuss the issues. A number of individuals representing the Council for Defence of Human Rights and Freedoms or local war crimes commissions spoke of their work in documenting war crimes or assisting in the exhumation and identification of mortal remains. These individuals emphasized the need for a central office or commission under UNMIK to coordinate the exhumation and identification work and to assist the families of the victims of the conflict.

International Pressure

Participants agreed that those persons imprisoned by the authorities in relation to the conflict should be released, unless they have been charged with violating international humanitarian law in which case they should be prosecuted. Many expressed frustration that although the release of prisoners was explicitly mentioned in the Rambouillet accords, it was not explicitly addressed in Security Council Resolution 1244 nor in the Military Technical Agreement. Participants felt that the international community now has an obligation to exert strong pressure on Serbia to release prisoners. In the plenary session after the workshop, participants went so far as to suggest that national governments consider sanctions or expulsion of FRY ambassadors from host countries. International participants emphasized that, since there are missing persons of all ethnicities, pressure must be exerted on all sides – in Serbia and in Kosovo -- to release prisoners, provide information about the missing and stop the cycle of abductions, killings and disappearances. Kosovars indicated that peace and reconciliation among ethnic communities would not be possible until the issue of those imprisoned and missing persons is resolved.

Access Issues

Another major area of discussion was access to prison facilities and mass grave sites. Participants asked whether OHCHR and ICRC had access to all detention facilities, not just regular prison facilities. A number of participants referred to the rumours of “hidden” or “private” detention and asked whether there was any evidence to support these rumours. Other participants asked which organization had the ability to investigate mass gravesites in Serb-held areas of Kosovo or in Serbia itself.

In response to some of these questions, ICRC, ICTY and OHCHR provided more details about their work. ICRC has access to regular prison facilities in Serbia and has asked for access to military facilities. To date, the Serbian authorities have provided a list of 21 persons detained in military prisons in Serbia; however, authorities have not yet permitted ICRC to visit these individuals. ICRC has full access to detainees in Kosovo held in KFOR or UNMIK facilities; in addition, they seek access to any persons alleged to be detained by other authorities but this is more difficult to achieve.

Authorities in Serbia have an agreement with the OHCHR to provide access to all places of detention; however, the authorities have never permitted OHCHR to visit military detention facilities. As regards private detention centres, OHCHR stated that they had no hard evidence about the existence of these types of facilities. Both OHCHR and ICRC agreed that not all of the missing are in detention. In particular, ICRC emphasized that, given the large numbers of graves, some of the missing are no longer alive.

ICTY has access to mass grave sites throughout Kosovo, including those inhabited primarily by Kosovo Serbs. Whenever necessary, KFOR facilitates ICTY’s access to sites within Kosovo. ICTY follows up on all information about bodies which may have been disposed of in Serbia. However, ICTY does not have direct access to Serbia, so ICTY tries to work with others who do have such access. If ICTY access to Serbia

becomes possible in the future, investigations (including exhumations if necessary) will certainly be pursued.

Conditions of Detention

The primary goal of participants in the workshop was the release of prisoners; however, the condition of prisoners is also a worry. Ms. Genevieve Mayer, the Deputy Secretary to the European Committee on the Prevention of Torture, briefly outlined European mechanisms that are designed to help persons deprived of their liberty and improve their conditions. Standards have been developed which address police custody, imprisonment of children, psychiatric institutions, etc. A system of permanent monitoring in civil and military places of detention provides access to and information on all detainees. Unfortunately, this mechanism is not yet in place in the region.

Minority Concerns

A number of international participants emphasized that there are missing and detained of all ethnicities. The work of international organizations such as ICRC and others does not discriminate based on ethnicity. So, for example, ICRC tracing requests can be filed by families of any ethnicity in Serbia or Kosovo. Similarly, organizations like ICRC, OHCHR and others seek access to and facilitate the release of detainees regardless of ethnicity. Nonetheless, during the plenary session, a Roma representative took the floor to remind conference attendees that Roma and Ashkali have been abducted and are missing. These cases are often not addressed. The Roma representative appealed to all those individuals who committed crimes to come forward and relieve their communities of an unjustified burden of guilt.

5 Keynote Speeches

5.1 Mr Bertrand G. Ramcharan, Deputy High Commissioner for Human Rights, United Nations High Commission for Human Rights

Thank you chairman, congratulations Dr. Kouchner, congratulations Mr. Everts, ladies and gentlemen. The organisers have asked me to speak about the significance of Human Rights day here in Kosovo.

The first thing I would like to do is to think back over the last hundred years, beginning with the 1899 Hague Peace Conference. Here we saw a major quest: might it be possible to start systematising and to start codifying the basic rules of international behaviour to mitigate human suffering in war? It was the quest for peaceful settlement of disputes, the quest that societies should be governed by law and that their international relations should be governed according to law. This conference of 1899 and 1907 gave us the first set of international instruments. Then in 1919, the Versailles Peace Conference and the Covenant of the League of Nations is drafted. One proposal, which was not in the end accepted, was to include provisions for human rights and against discrimination; but the peace treaties did provide for a system for the protection of minorities. This helped us to develop international experience for human rights, despite the fact that the League of Nations failed and the Second World War broke out. Yet, while the war was raging, people were engaged in putting together the principles for human rights protection. Lo and behold, the powers at the time did not want this. But lo and behold the non-governmental organisations would make their weight felt at San Francisco and it was their influence which would give us the human rights provisions of the Charter of the United Nations.

I say this for a number of reasons: because I want to place before you a blue print; because I want to tell you about the significance of non-governmental organisations and because I want to tell you about the significance of occasions such as this one today.

Article 68 of the UN Charter makes express provision for the commission of human rights which was then charged with developing an international bill of human rights. If you look at the Charter and if you look at the Universal Declaration of Human Rights and if you look at the treaties which have been established between 1948 and now, they all tell the same message: that societies should be built on international human rights principles, that societies should be built on the basis of non-discrimination, peace and justice.

As I tell this story of 1899 to 1999, I think the first thing to say about the significance of Human Rights Day is this: it is the expression of the quest of human beings everywhere to live in peace and to live in dignity and to live in equality and to have their universal human rights respected.

At the time when the Human Rights Covenants were adopted in 1966, the president of the General Assembly was from Afghanistan and he said the following: "If the

United Nations can be said to have any ideology, that ideology must be that of human rights". And I would agree with Dr. Kouchner when he referred to the establishment of a human rights culture. Here we are in the aftermath of terrible atrocities, pledging ourselves to the notion of a universal culture of human rights.

I would like to give you the greetings of Ms. Mary Robinson, the High Commissioner for Human Rights, who is particularly pleased that the UNHCHR is co-sponsoring this conference.

To me the significance of this day here in Kosovo is to see that hundreds of thousands of people are back in their homes. Last night as some of us came across the frontier, I thought of those roads being the very roads on which people had to flee and on which they then returned. So I think that we must be thankful that these people are back in their homes. But, another significance of this day for me in Kosovo: there are still serious violations of human rights taking place here in society. And I feel we must pledge ourselves to bring these violations to an immediate end, so that all people from majorities and minorities can live their lives. If we look at post-1945 and the present situation we can see parallels and a message for us: out of the rubble of conflict can come tolerance.

I rarely resort to books of faith or philosophy, but I happened to be reading a book about the Buddha a few days ago. If we look at the teachings of the Buddha we can find relevant passages about tolerance in society. He says: what we are today comes from our thoughts of yesterday; and our present thoughts build our life of tomorrow; our life is the creation of our mind; if a person speaks or acts with an impure mind suffering will follow that person like the wheel of a cart follows the beast that draws the cart. If a person speaks or acts with a good mind, joy follows. If a person says you insulted me, you robbed me, you hurt me, you defeated me – such a person will never be free from hate. Hate is not conquered by hate, hate is conquered by love. The Buddha says, many do not know that we are here in this world to live in harmony – those who know this will not fight against each other. As Dr. Kouchner said, more suffering will not make the previous suffering vanish – and the parallels between these messages allow me to put you on the same level as the Buddha!

Today we commemorate the adoption of the Universal Declaration of Human Rights and allow me to continue by outlining some of the cardinal beliefs of the United Nations. The UN believes that we should live together as brothers, without fear of discrimination on grounds of race, sex, language or religion. The UN promotes the rights of each child to grow up and develop to his or her full potential in freedom and dignity. Human rights includes the rights of women and children, if we could build our societies on the basis of the Convention on the Rights of the Child then we are building our society on the basis of respect and justice. The UN strives to work against breaches of human rights wherever they take place in the world. As we could see when Ms. Mary Robinson mobilised for the people here very quickly. She sent personal envoys to the area immediately. She used our limited personnel in the area, headed by Ms. Barbara Davis, among the refugees. She herself visited the area twice. She reported regularly to the Commission on Human Rights and thereby documented abuses. She spoke out forthrightly against violations and she has not stopped working regionally for the protection of human rights.

The UN expects everyone to play a role in promoting and upholding human rights. We all should contribute.

Coming into the 21st century, next year the UN will be organising a world anti-racism conference. We need to remain ever-vigilant that universal human rights are really universal, for everybody. All have the right to practice their own culture.

Kosovo needs a vision, embracing all parts of the population, where a culture of human rights becomes a reality. Where continuous monitoring guarantees against violations of human rights, and every individual has the possibility of recourse against injustice.

Mr. Chairman, Dr. Kouchner, Mr. Everts, ladies and gentlemen, thank you for your attention.

5.2 Mr Hanno Hartig, Directorate General of Human Rights, Council of Europe

(Speech delivered by Mr. Michael Neurauter, Council of Europe's Pristina office)

Introduction

Ladies and Gentlemen,

Let me start by saying how honoured I am to be here and to represent the Council of Europe at the Kosovo International Human Rights Conference. None can overlook the symbolic significance of this event, or, indeed, of its timing [10 December], but I hope you will agree with me that it is time to look beyond symbolism and try and tackle a number of concrete issues concerning Kosovo and the human rights situation here. I would like to share with you this morning the views and impressions of the Council of Europe in fields such as the applicable law, ombudsman, police, media, gender and minorities – areas in which the Council of Europe is proud to play a constructive role in Kosovo.

But I should like to begin by expressing our sympathy with the people of Kosovo for their sufferings. It was their tragedy and hardship, in particular the displacement of a large part of the population, that put Kosovo on the world's human rights map. I also wish to pay tribute to the tremendous efforts of all the organisations working in Kosovo, and to the commitment of their staff in trying to bring peace and democracy to Kosovo. Remarkable progress has been made in many areas over the past 6 months – this conference alone, while a stark reminder of the events that brought the international community to Kosovo in the first place, is also an indication of how far we have come since June. Nevertheless, much work remains to be done and this gathering is a chance to outline some priorities for the coming months.

Law and order are pre-requisites for a safe and stable society. We are all keenly aware of the suffering imposed on the people of Kosovo, and, indeed, outraged on their behalf, but I wish to align myself with those who have stated that it is unacceptable that the violence and intimidation is continuing. Our response to acts of vengeance and terror should be unambiguous, regardless of why or by whom they are perpetrated. The international police force will hopefully be strengthened, and the Kosovo Police School successful in training professional, skilled, responsible local police officers, who act effectively in the face of all challenges.

Nurturing and consolidating a thriving *civil society*, which can become the foundation of democracy, constitutes another key task, as does the establishment of the Ombudsman institution.

Applicable law

Ladies and Gentlemen, one area urgently in need of attention is that of the applicable law in Kosovo. We know that, despite the clarification offered by UNMIK Regulation 1, the reality is that different laws are applied in different places by different bodies, - something that is contrary to all legal principles and to the rule of law. We also know that the Secretary General of the United Nations, Mr. Kofi Anann, in his report of 12

July 1999 stated that "...In assuming its responsibilities, UNMIK will be guided by internationally recognised standards of human rights as the basis for the exercise of its authority in Kosovo. UNMIK will embed a culture of human rights in all areas of activity, and will adopt human rights policies in respect of its administrative functions"¹ That is an unambiguous mission statement that internationally recognised standards of human rights will constitute the overriding yardstick for the performance of the legislative and executive powers vested in UNMIK.

A means towards achieving this would be to render the substantive provisions of the European Convention on Human Rights and its Protocols, as interpreted by the European Court of Human Rights, directly applicable in Kosovo, and to provide that they should take precedence over existing laws in case of conflict. Such a step, which the Council of Europe has recommended from the outset, would provide UNMIK with a precise set of legal guidelines by which to implement the legislative and executive powers vested in it in such fields as the penal and penitentiary systems, the judiciary, the police, property rights, mass media etc.

Let me add that the international community has already set a precedent in regard to the direct applicability of the European Convention on Human Rights in a territory which is not, as yet, integrated into the Council of Europe. The Dayton Agreements provide that the Convention, alongside a series of other European and world-wide human rights instruments, is of direct application in Bosnia and Herzegovina. It is widely acknowledged that this has not only assisted the international community in its efforts to press for legal and institutional reform, but also provided a basis for initiating the process of stabilisation and reconciliation within Bosnia and Herzegovina. It is to be expected that a similar "spin-off" stabilising effect would be generated in Kosovo.

The Ombudsman institution

As we heard earlier today from Ambassador Everts work is underway to establish an Ombudsman institution here, in accordance with the indications of the UN Secretary General in his July report.² The Council of Europe strongly supports this step. Over the past nearly twenty years, the Council of Europe has worked to promote the ombudsman institution throughout Europe, and to support nascent, as well as established, ombudsman institutions and other non-judicial human rights protection institutions.

We fully agree with the decision to introduce an ombudsman institution in Kosovo as early as possible. The fact that the setting up of an Ombudsman was considered by the UN Secretary General to be central in the post-conflict stabilisation process, and was identified in his report of 12 July as one of the most pressing needs in the development of the interim civil administration in Kosovo, bears testimony to the stabilising effect that an ombudsman office may have, and to the catalytic role it can play in fostering good administration and respect for human rights in a democratic society.

¹ Paragraph 42, Report of the Secretary-General on the United National Interim Administration Mission in Kosovo (S/1999/779) of 12 July 1999.

² Paragraphs 89-90.

The aim of the institution will be to ensure that all persons in Kosovo are able to exercise effectively the human rights and individual freedoms safeguarded by international human rights standards, and to develop and consolidate a culture of good, equitable and accountable governance, both through the handling of individual complaints, and by means of broader initiatives aimed at promoting and protecting human rights.

Policing in Kosovo

The keyword for any form of development in Kosovo is security. Without security there will be no development be it political, judicial, institutional, economic or social. Among the priority tasks of the Interim Civil Administration is therefore the building of an impartial police service that will be trusted by the community of Kosovo. Police has a crucial role in guaranteeing safety, security and lasting peace in a country. Against this background, the Council of Europe has examined how to contribute actively to the further development of policing in Kosovo. In doing so, we are able to draw on the substantial experience and knowledge in the field of police reform, training and integration of human rights into policing that has been built up through our pan-European programme "Police and Human Rights 1997–2000".

Media

Let me turn now to the media. Clearly, the media will play a vital role in the process of reconciliation and democratisation in Kosovo, and, more generally, in South East Europe as a whole, as it is the most powerful vehicle for the dissemination of views, ideas and opinions, also across frontiers. It is essential that a clear legal framework is established in order to guarantee and promote freedom of expression and information, in line with Article 10 of the European Convention on Human Rights.

In particular, the establishment of a genuine independent public service broadcasting organisation serving all interests of society, including minorities – as opposed to State broadcasting organisations which advocate certain political views – should be a priority. This is particularly true in Kosovo, since here, but also in many countries in the region, the public broadcasting organisation operating in the territory is the main source of information for the population. The work already undertaken by the OSCE, together with the European Broadcasting Union, towards that objective deserves praise and should obtain the full support of the international community.

Other areas that merit particular consideration when talking about a democratic legal framework for the media are, in my view, first of all, providing for rules on access to official information which promote open and transparent governance. Secondly, allowing the establishment of private broadcasting entities, under the supervision of an independent regulator so as to enhance pluralism; and thirdly, granting journalists a number of basic rights allowing them to fully perform their task, in particular as regards the protection of their sources of information.

Human rights awareness-raising campaign.

Speaking of public information, it will be exciting to see tomorrow morning the unveiling of the human rights awareness-raising campaign for Kosovo. The Council

of Europe has been closely associated with the development of the concept for this campaign. Its aim is to raise awareness about human rights in general, to try and evoke responses and trigger a process of reflection about human rights, to raise people's curiosity about human rights and to mobilise, hopefully, people to become actively engaged in working for the promotion and protection of human rights in Kosovo. We look forward to seeing the campaign implemented in many different forms, throughout Kosovo.

Gender issues

Another major objective for the Council of Europe is the recognition and respect throughout Europe of the equal dignity of women and men. We are all aware of the inhuman treatment imposed on a number of women during the crisis here earlier this year. Violence against women is an intolerable practice which should be fought constantly and everywhere, and also in Kosovo where, even before the conflict, the rate of domestic violence was estimated close to 70%. A recommendation currently under preparation by the Council of Europe's Committee of Ministers will include ways and means to combat violence against women and could serve as a platform for action in Kosovo and throughout South East Europe.

I would like to draw your attention also to the phenomenon of trafficking in human being for the purpose of sexual exploitation, which is a particularly odious form of violence against women. Trafficking expands rapidly, and it is already affecting Kosovo: NGOs working in this field around Europe report numerous cases of Kosovar women found in prostitution networks. The Council of Europe is working actively on this issue as well. We believe that we must continue to tackle these problems, and that joint action and international co-operation are indispensable in order to ensure the full and effective guarantee of women's human rights.

Minorities

The need for the protection of minorities has become even more apparent after the recent ethnic conflicts and killings in this region. The Council of Europe is striving to ensure that minority groups gain the right to be heard and be recognised as a valuable and positive part of each and every country. Respect for minority rights, recognition of difference, requires that the majority accept the basic needs of the minority to preserve, maintain and develop their identity.

Wrap-up

In conclusion, ladies and gentleman, a positive feature – and one among many I should add – to emerge in the course of the last six months has been the good co-ordination between the many international actors in Kosovo. This is encouraging, it is rational from the point of view of resources and it must continue. Furthermore, we must maintain the momentum that we have here in Kosovo, the drive that has ensured the progress we see now, compared to only August or September. We can never allow ourselves to become disillusioned because things take longer than we would prefer, and we must not abandon the goal of a democratic, tolerant, multi-ethnic Kosovo.

The people of Kosovo carry with them a history of suffering, but this is our chance to try and break that cycle - this is Year 1 in Kosovo. It is a unique opportunity to show what we stand for and to put our principles into practice when it matters. And we must do all of this together with the people of Kosovo. Otherwise it will never take root. We have seen with desperate clarity how wide-scale human rights abuses are often linked to a lack of internal stability in a country or a region. If we work for human rights, we work for lasting peace and stability, and thus for the future of Kosovo. The Council of Europe looks forward to co-operating with all our partners to meet this important challenge.

Thank you.

5.3 Ambassador Thomas Hammarberg, Ministry of Foreign Affairs, Sweden

"Building Peace and Human Rights", can we learn from others? The case of Cambodia

Tell us about Cambodia! That was the request of the conference organiser, obviously hoping that the experiences from that country in South East Asia would be of some relevance today in Kosovo. Maybe they are.

First, a short background. Cambodia, the former French colony, tried to stay neutral during the Indochina war in the sixties and seventies. However, Vietnamese forces used Cambodian territory for bringing down troops and military equipment to the south and the US response was heavy bombing over large areas of eastern Cambodia. Several hundred thousands were killed and the survivors were made refugees in their own country. This strengthened the armed Communist guerrilla, the Khmer Rouge, and weakened the corrupt right-wing military government set up by the Americans. The Khmer Rouge troops marched into the capital city, Phnom Penh, in March 1975.

The town was evacuated and year zero started for the new state. All symbols of the old society should be eradicated, including private property and money. People should go back to farming and all farms be collective. Everyone should be equal and obey Ankar, the "Organisation". Those who had worked for the previous regime were automatically suspect and many were executed. Complaints were seen as opposition and harshly punished. Terror reigned. Not even the party activists were safe, more than 12 000 of the *cadres* were brought to the Toul Sleng torture centre, a visit that only two inmates survived. All in all about 1,7 million people died during the less than four years of Khmer Rouge rule, through execution, starvation or diseases (the new agricultural policy failed).

A Vietnamese invasion during new year 1978-79 put an end to the Khmer Rouge dominance in Cambodia, though a war continued for years between the Vietnamese and several Cambodian factions. A Vietnamese-style socialist government was set up in Phnom Penh, lead by the party, CPP. Towards the end of the seventies the attempts to get negotiations going began to give result. Australia, France, India, Indonesia, Japan, Soviet Union, USA and others were involved in the talks as well as UN representatives. An accord was finally signed in Paris in October 1991. CPP, Cambodian People's Party, signed as did the monarchists close to Prince Sihanouk, a Buddhist nationalist party and - the Khmer Rouge.

UNTAC, a large UN mission, both military and civilian, would come to Cambodia to secure peace, demobilisation, peace building, human rights - and an election. In spite of a presence of more than 20.000 staff the UN failed to demobilise the armed groups and the Khmer Rouge broke away from the whole process, boycotting the elections. The UN in reality tried to co-govern with the CPP authorities and even had the authority to arrest and bring charges. A special Human Rights component was set up to do both institution building and monitoring, it was lead by Dennis McNamara.

A main task for the UN mission was to organise the elections in order for a new, democratic government to be formed. The poll could be held in May 1993 in spite of a terribly violent election campaign.

Half a year later the large UN mission was gone. The UN Commission on Human Rights, however, had decided that there should still be a UN human rights office in Cambodia under the then Centre for Human Rights in Geneva (now the office of the High Commissioner for Human Rights). Also, there should be a Special Representative of the Secretary-General for Human Rights in Cambodia (the post I now hold). Beside these structures there were to be a political rapporteur also representing the Secretary General. UN agencies who had been there would continue and others come, for instance UNDP, UNICEF and UNESCO.

There have been another round of elections (July 1998), the office of the political rapporteur will now be closed, but the human rights operation will continue for another two years, at least.

This might indeed be a good time to draw lessons from the case of Cambodia.

1. The first lesson I would draw is that it is absolutely essential to clarify what happened during the crisis period, to document the violations and to bring those responsible to justice.

The fact that the mass killings in Cambodia in the seventies were never addressed afterwards has cast a shadow over country ever since. Many people are still wondering what happened to their loved family members: There has been no public report or other account for these crimes and no official apology to the victimised families. The Cambodians have never got the chance to close this particularly painful chapter in their history and move forward. The trauma is still there. This, in turn, seems to have undermined the public morale in the country.

People ask why petty thieves are thrown into prison while mass murderers are free or even treated as VIPs. The fact that the Khmer Rouge crimes have not been seriously dealt with has made it much more difficult to establish respect for the justice system. To establish accountability and demonstrate that killings and torture are severe crimes is of course also an important signal to the coming generations - both for those in arms and those civilian.

A trial is not only about justice as such. It is also important that the historic record be documented. Not only must the truth come out, families need assistance in both remembering and forgetting. Memorials to honour the victims are important in this context. In Cambodia my friends are now preparing to develop the Tuoul Sleng torture centre in Phnom Penh into a genocide museum which would give information and education to future generations about what happened in the seventies.

Is there not a risk that truth commissions and trials will open new wounds and thereby lead to new conflicts? This is always what the perpetrators would say as long as they still have some grip of power. It was said in Chile by the circles around general Pinochet. It is said now by some former Khmer Rouge leaders in Cambodia.

Such statements are in fact nothing but attempts to blackmail. To give in for such pressure is not "forgiveness" or "reconciliation"

I do not want to belittle the problems of establishing truth and justice in such situations, it may well be dangerous to go ahead if the "other side" is still militarily strong. It may also for other reasons be necessary to wait for some time before people are prepared to accept such reviews of past crimes.

Amnesties should not be excluded, they could indeed help a process of reconciliation. However, amnesties should not be available for the worst criminals *before* the judicial process and thereby prevent steps to establish accountability. For genocide and other crimes against humanity there could be no amnesty.

There is now, at long last, a discussion in Cambodia about putting Khmer Rouge leaders to trial. In fact, I believe there *will* be a trial, probably starting already next year. The question now is the quality of the procedures. Whether organised on a national or international basis it is important that they are in full accordance with the strictest standards. For instance, there must be a genuine possibility of defence and appeal, the witnesses protected and evidence seriously tested. Sham trials on such matters will have a very negative effect on the healing process.

With this we are close to the next lesson from Cambodia:

2. Priority should be given to building a functioning system of justice, which is truly independent and free from corruption.

Impunity is still the number one human rights problem in Cambodia. The Khmer Rouge regime killed all lawyers who did not manage to flee, that left a vacuum. It did not help that the Vietnamese introduced their version of justice system, which held the courts accountable to the party and, in fact, acted on its behalf. Even when more political parties were allowed in Cambodia, all the judges continued to be members of the dominating party.

Leading politicians picked up the rhetoric about an independent judiciary, but they did not respect the principle themselves. Frightened and underpaid judges have sought advice from their political masters. Military leaders have made threats against the courts when officers have been charged.

The result is an under-resourced, incompetent and corrupt judicial system. The courts are today suffering the rage of the Prime Minister who has reacted against the release of several arrested hard core criminals and has ordered their re-arrest. Though strong measures are needed against crime in Cambodia, this initiative only undermines the court system further.

People have started to take justice into their own hands. The number of mob killings of captured persons who are suspected of being thieves have increased. Sometimes the police co-operate with such summary justice.

Corruption has also crept deep into the police. Too many policemen are too trigger-happy in situations of arrest, alarmingly often the bodies dragged to the police

stations are dead. They are arrogant and not at all behaving as servants of the people. On the whole the police has been of little help in the human rights battle, their methods have themselves too often amounted to violations. Ordinary men in Cambodia are afraid of the police.

All is not negative, however. There are now attempts to educate and reform the police forces; the UN office and non-governmental organisations do an important work on that front. New legislation is being drafted to support the courts and build a basis for a rule of law.

Cambodians have learnt that establishing of the rule of law is not a quick fix. If recent years could be replayed I am convinced that the Cambodians would invest much more in building an effective and impartial justice system. This would include a sound legal framework, education of key personnel, setting of high professional standards, designing an effective recruitment system, establishing internal discipline procedures and making clear that the executive branch should protect the impartiality of the - system, not undermine it.

There has been much discussion also in Cambodia about an independent national commission, or an ombuds office, for human rights. The parliament established within it a human rights commission, which has received complaints from ordinary people. The weakness of this commission, of course, is that it is run by politicians with their particular political interests.

The discussion about a genuinely independent commission has advanced slowly, as the UN office for human rights and the non-governmental groups to a large extent have taken an ombuds role. It has been concluded that the timing of the start of the independent commission, or ombudsman, should be such that people understand its role and that its integrity and independence can be truly protected. A bad start can corrupt a good idea for years.

3. Next lesson: allow non-governmental organisations to develop.

Much lip service is paid nowadays to what is called 'civil society'. However, the case of Cambodia demonstrates how immensely important the non-governmental groups could be. They began to develop during the UNTAC period 1992-93 but many of them continue until today, and new ones have started. They are active in all fields, including development, human rights, children's rights, women's rights and demining. They appear in different forms, as institutes or as member groups. They form alliances but run also separate programmes.

When the elections were prepared in 1998 many of the major NGOs wanted to be of assistance for voter education and monitoring of the voter registration and the balloting and vote counting themselves. They did a formidable job. One group, for instance, conducted no less than 6 000 meetings in the villages educating people about the basic principles and rules of the elections. During those weeks they made Cambodian democracy real.

Two factors have contributed to this extraordinary situation. One, they have been allowed by the authorities to develop and two, they have got support from outside. None of these factors were obvious.

Clearly, the government has been concerned about their strength and independence. Their activists have been threatened in some of the provinces and there was one court case against two of them in Sihanoukville earlier this year. More serious has been the threat to restrict their work through a new law. However, the content of the draft law leaked, was criticised and went back to the drawing board.

The government is also aware that the international community defends the independence of the non-governmental organisations and would react on a clamp-down.

The groups are cleaner and better run than in most countries. Still, there is a problem that they depend so heavily on foreign funding. This is not unusual in a poor country with little local market for fundraising to such purposes. Some of the groups are now discussing how to protect their integrity and independence also in relation to the funding community.

What remains is that these groups have given and continue to give a very particular contribution to the war-torn society. In reality they function as a democratic safety net when the political parties fail to service their electorates. With that conclusion we are close to the next lesson:

4. Human rights education is difficult but could be made meaningful. It is essential that people know that they have rights and what that means. Likewise, law enforcement staff and other key personnel should be instructed to behave in line with the respective ethical codes. The primary school should be given primary priority - that is investment in the future.

Cambodia has been somewhat of a laboratory on human rights education. The UN has played an important catalytic role but most of the work has been done by the non-governmental organisations. Group after group of new and old policemen have been going through courses and been "graduated" as human rights defenders. Inroads have also been made for such training into the military ranks.

However, the pedagogic approach could have been better, especially in the beginning. The teaching was too theoretical and legalistic. Gradually, however, the message and training methods got more practical. It was important to train trainees rather than having foreigners lecturing through interpretation.

Another problem has been that the top level officers have been less interested in such training and the gap of understanding has created problems. If the highest chiefs are not setting good examples when the education is to be tested, the result is of course reduced. Still, some positive effects have been noticed. Most policemen now know, for instance, that torture is banned. Hopefully, those informed will soon be the most senior in the ranks.

Positive leadership could also be exercised by the media. The Cambodian press, radio and television is no model for the rest of the world. The quality of reporting is clearly wanting. Still, it has proven important that they can print and broadcast. Indeed, the King himself has defended journalists who have written bad things about him - not because he was pleased, but to demonstrate the point that freedom of expression, a right enshrined in the Constitution, has to be taken seriously.

The human rights approach to the media in Cambodia has been that irresponsible journalism should be countered through media watch activities and, hopefully, through self-regulation and a Press Council. Detaining a journalist for his reporting violates the freedom of expression, the lifeline of all other human rights. With the growth of private media, the State broadcasting takes on a special role of being "official" - it should not be used for partisan propaganda purposes by the Government; it should be constructively impartial and, at the same time, promote human rights values.

These were, in a simplistic form, the lessons from the case of Cambodia that I wanted to highlight: that it is important to address as early as possible the abuses in the past; that a malfunctioning justice system is a cancer in society; that non-governmental organisations can be immensely important when building peace, democracy and human rights; that human rights education is a priority; and that ethical principles should be promoted in politics and in the media.

Of course there are other lessons to learn from the Cambodian experience, including on how we foreigners shall organise ourselves and behave when we come to the host country. Perhaps Cambodia will fare better in such evaluations than for instance the operations in Bosnia and Rwanda. Still, there are points to be made, lessons to be learned. Many of them relate to the original decisions on the mandate of the operations, the leadership appointed, the structure of co-operation established between the foreign actors and the back-up from Headquarters.

Decisions on these matters are, on the whole, made already during the planning and setting up of the operations. That is usually a period of acute time pressure. This is worsened by the fact that the international community still is ill-prepared for such operations and has little institutional memory. This means that we tend to start from the beginning each time. That is why I was so pleased to be asked to talk about another and concrete case. Thank you.

5.4 Ambassador Kai Eide, Chairman of the OSCE Permanent Council

Ambassador Eide gave an emotive speech, in which he spoke of his long-standing contacts with Kosovo. These contacts had been deepened following Norway's accession to the chairmanship of the OSCE Permanent Council in 1999. He was shocked to read the two reports published by the OSCE Mission in Kosovo outlining the events and human rights violations in Kosovo this year. He was also proud and paid tribute to Sandra Mitchell, the head of the OSCE's Human Rights Division in Kosovo, and her colleagues who had produced such detailed documentation under difficult conditions.

Looking to the future, Ambassador Eide, encouraged the human rights NGO community to build on their work from before the war in their efforts to reach the hearts and minds of the people, particularly the young. He praised the political leaders in Kosovo and urged them to have the courage also to fight for the rights of others.

[Editor's note: this is a summary version of Ambassador Eide's speech]

6 Closing Speeches

Ambassador Everts, whose speech is reproduced below, was joined in closing the conference by two individuals, one Serb and another Albanian. Father Petar, of the Prizren Diocese and Adem Demaçi, former President of the Council for the Defence of Human Rights and Freedoms, both passionately appealed for reconciliation and tolerance in Kosovo.

Ambassador Everts' concluding remarks

Ladies and gentlemen, friends, I think I can say after two days, I thank you. This conference has been a success, it has far exceeded our expectations and I give you a few reasons why.

First, there was a massive attendance, much more than we anticipated, from people who stayed until the very end. It was attendance from all of Kosovo and from abroad. It was an inclusive conference. Not perfect in terms of degrees of conclusiveness, but remarkable in these circumstances. It bodes well for future endeavours.

Secondly, we heard important messages from keynote speakers, they highlighted human rights principles, they also gave lessons to learn from the past and from elsewhere – as far away as Cambodia. They gave good counsel on the tasks ahead here in Kosovo.

Thirdly, and as important if not more important, we heard from many participants here in the workshops and in the plenary. Not just abstract policies, but very hard-hitting remarks and observations, as well as suggestions for concrete measures and steps that have to be made. There was discussion of them: frank and open. Remarkable when you know what the situation was six months ago.

Fourthly, there was a very good ambience. Throughout the conference there was a remarkable, positive spirit. And people listened, they listened to each other, and they discussed – things they had not done for a long time.

So what are the results? Because we should go on from here. As Ambassador Eide said a few hours ago, this is not just an event. So we will have conclusions of the workshops and the speeches recorded, published and disseminated within and outside Kosovo.

So I have this feeling that this conference may well be a turning point. It may be a watershed. Maybe what comes afterwards will be a lot better and promising than what we see at this moment. I hope so and I think that hope is shared widely. And we need this support to go towards that society that has not forgotten its past, but has overcome its past.

So, concretely, in response from many of you over the last two days, we have drafted a final declaration. A declaration based on consultation with many of you.

Before I read the declaration, I would like to thank all the people and organisations who have helped organise the conference.

APPENDICES

Appendix A Conference Programme

10 DECEMBER 1999

10:00 - 10:30	Opening Address – Dr. Bernard Kouchner Special Representative of the Secretary-General, United Nations Interim Administration Mission in Kosovo
10:30 - 11:00	Opening Address – Daan W. Everts Ambassador, Deputy Special Representative of the Secretary-General of the United Nations, Head of OSCE Mission in Kosovo
11:00 - 12:00	Keynote Speaker – Mr Bertrand Ramcharan, Deputy UN High Commissioner for Human Rights Keynote Speaker – Mr. Michael Neurauter (for Mr. Hanno Hartig, Head of Division, Directorate General of Human Rights, Council of Europe)
14:00 - 16:00	Workshops workshop subjects introduced by Mr. Rolf Welberts, Director of Human Rights and Rule of Law, OSCE Mission in Kosovo Protecting Minorities Post-Conflict Justice Preventing Torture
16:30 - 18:00	Workshop Reports – Plenary Session

11 DECEMBER 1999

09:00 - 09:20	Opening Remarks Human Rights Awareness Campaign Unveiling
09:20 - 10:00	Keynote Speaker – Ambassador Thomas Hammarberg, Ministry of Foreign Affairs, Sweden
10:30 - 12:00	Workshops Housing and Property Disputes Democratic Policing Children's Rights
13:30 – 13:45	Ambassador Kai Eide, Chairman of the OSCE Permanent Council
13:45 - 14:45	Workshop Reports – Plenary Session
15:00 - 16:15	Workshops Detainees and Missing Persons Human Rights Institutions Women's Rights
16:45 - 18:00	Workshop Reports – Plenary Session
18:00 - 18:15	Closing Addresses

Appendix B

List of Speakers and Facilitators

- Mr. Bertrand G. Ramcharan, Deputy UN High Commissioner for Human Rights
- Mr. Michael Neurauter (for Mr. Hanno Hartig, Head of Division, Directorate - General of Human Rights, Council of Europe)
- Ambassador Thomas Hammarberg, Ministry of Foreign Affairs, Sweden

Workshop Discussion Leaders and Facilitators

Protecting Minorities - facilitators Volker Turk - UNHCR Protection and Sandra Mitchell, Human Rights OSCE

- Mr. Marcel Courthiade, Section d'Etudes Rromani, INALCO
- Mr. Marcin Czaplinski, Senior Advisor to the High Commissioner on National Minorities, OSCE
- Mr. Nicolae Gheorghe, OSCE Office for Democratic Institutions and Human Rights
- Mr. Dennis McNamara, Deputy Special Representative of the Secretary General, Special Envoy of the UN High Commissioner for Refugees, Pristina

Post-Conflict Justice - facilitators Antti Routsalainen/Berry Kralj - Rule of Law OSCE

- Mr. Carl Alexandre, Director Overseas Prosecutorial Development and Assistance Training, US Department of Justice
- Mr. Roland Amoussouga, Legal Officer responsible for witness and victim protection, UN International Tribunal for Rwanda
- Mr. Martin Collins, President Britain and Ireland Human Rights Centre
- Ms. Nuala Mole, Director of the AIRE Centre, Advice on Individual Rights in Europe

Preventing Torture - facilitator Alison Jolly - Human Rights OSCE

- Dr. Pajazit Nushi, Chairman Council for the Defence of Human Rights and Freedoms, Kosovo

- Professor Sir Nigel S. Rodley, UN Special Rapporteur on Torture and other Cruel Inhuman and Degrading Treatment

Housing and Property Disputes - facilitator Winston Krone - Human Rights OSCE

- Mr. Hans Das, Senior Officer, Commission for Real Property Claims, Bosnia and Herzegovina
- Mr. Jorge Gavidia, Coordinator Disaster Management Programme, HABITAT
- Mr. Craig Jenness, Deputy Head of OSCE Mission in Kosovo
- Ms. Nekibe Kelmendi, Attorney at law, Pristina

Democratic Policing - facilitator Steve Bennett - Kosovo Police Service School OSCE

- Mr. Steve Bennett, Director Police Education and Development, OSCE Mission in Kosovo
- Mr. Michael Jorsback, Deputy-Commissioner of Police, UNMIK
- Mr. William G. O'Neill, Senior Advisor on Human Rights to the Special Representative of the Secretary General in Kosovo

Children's rights - facilitator Dan Seymour- Human Rights OSCE

- Ms. Sevdije Ahmeti, Centre for the Protection of Women and Children, Pristina
- Amb. Thomas Hammarberg, Ministry of Foreign Affairs, Sweden
- Mr. Stephen Johnson, Head of Mission, United Nations Children's Fund, Kosovo
- Ms. Jane G. Schaller M.D., President-Elect of the International Pediatrics Association, KARP Professor of Pediatrics, Tufts University

Detainees and Missing Persons - facilitator Laura Bowman - Human Rights OSCE

- Ms. Barbara Davis, Chief of Mission, Office of the UN High Commissioner for Human Rights - Federal Republic of Yugoslavia
- Ms. Mary Ellen Keough, Project Director Kosovo, Physicians for Human Rights
- Ms. Geneviève Mayer, Deputy Secretary to the European Committee for the Prevention of Torture, Council of Europe

- Ms. Susanna Swann, Deputy Head of Mission, International Committee of the Red Cross, Kosovo
- Mr. Clint Williamson, Senior Legal Advisor to the Kosovo Investigation, International Criminal Tribunal for the former Yugoslavia

Human Rights Institutions - facilitator Pirrko Koskinen - Rule of Law OSCE

- Mr. Bennett Freeman, Deputy Assistant Secretary of State for Democracy, Human Rights and Labor, US Department of State
- Ms. Pirkko Koskinen, Ombudsman Support Coordinator, OSCE Mission in Kosovo
- Mr. Heinrich Klebes, Chairman of the Governing Board of the International Institute for Democracy, Council of Europe
- Mr. Michael Meyer, Advisor for Kosovo and the Stability Pact for SEE, Office for Democratic Institutions and Human Rights, OSCE

Women's Rights - facilitator Corey Levine - Human Rights OSCE

- Ms. Sevdije Ahmeti, Centre for the Protection of Women and Children, Pristina
- Ms. Stephanie Farrior, Director of the Legal Office, Amnesty International, International Secretariat
- Ms. Kerstin Greback, "Kvinna till Kvinna" (Women to Women), Swedish women's rights NGO

Appendix C

AMBASSADOR EVERTS ON THE INPRISONMENT OF FLORA BROVINA: OUTRAGEOUS AND INTOLERABLE

OSCE Mission in Kosovo PRESS RELEASE

Pristina, 10 December, 1999

Statement of Ambassador Daan Everts, Head of the OSCE Mission in Kosovo, at a meeting with representatives of the prisoners kept in Serbian jails in front of UNMIK Government Building, Friday 10 December 1999:

Your concern is our concern. Both Dr. Bernard Kouchner and myself have responded very clearly to this unacceptable situation - to a situation that the world, the conference participants and ourselves should not forget about.

We both referred to the sentence of Flora Brovina, which we consider as outrageous and intolerable as far as justice and human rights are concerned.

We want to see action done and we will use this conference to increase the pressure. I can assure you that many participants came from far away, all over the world, and we will make sure that this message will ring in many capitals.

We also will make sure that your letter will be distributed among the conference participants. You have all our sympathy and our active support. We wish you strength in your struggle for justice.

For further information contact Roland Bless, OSCE Spokesperson, tel.+381 38 500 162 (ext. 260) / + 389 70 250 576

Appendix D

List of Non-Governmental Organisations for Information Kiosks

Council for the Defence of Human Rights and Freedoms
Centre for the Protection of Women and Children
Association for Democratic Initiative
Sloboda - women's group in Novo Brdo/Novo Bërdë
Jehona
Norma - women's group
Oxfam
Norwegian Refugee Council
International Committee of the Red Cross
International Organisation for Migration
Physicians for Human Rights
Kosovo Foundation for an Open Society
Association of Albanian Women (Centre of rehabilitation for mother and child)
United Nations Mine Action Centre
Cops for Kids

Appendix E

Cultural events during the conference

Thursday, 9 December 1999

(Reception)

19:00 - 19:30 Bashkimi Albanian folk music, Pristina/Prishtinë

Friday, 10 December 1999

16:00 - 16:25 Roma children dancers, Gnjilane/Gjilan

18:10 - 18:35 Collegium Cantorum choir, Pristina/ Prishtinë

Saturday, 11 December 1999

10:00-10:25 Bashkimi Albanian folk music, Pristina/ Prishtinë

13:00 - 13:25 Turkish music and dance group, Prizren

Throughout the conference: art exhibition by Arian Berisha and Faton Hasimja

Appendix F

Further background reading provided by facilitators and invited speakers

The following texts were provided by workshop facilitators and certain invited workshop speakers in support of their verbal presentations and are included here for further reading.

- i) Protecting Minorities**
 - *Understanding and improving conditions for multi-ethnic life*, Summary of paper delivered at workshop by Mr. Marcel Courthiades
- ii) Preventing Torture**
 - *Preventing Ill-Treatment*. Paper prepared by Ms. Genevieve Mayer
- iii) Post-Conflict Justice**
 - *The case of the International Criminal Tribunal for Rwanda as a response by the United Nations to contempt for fundamental human rights*. Paper prepared by Mr. Roland Amoussouga
 - *The peace process in Northern Ireland*, speaking notes prepared by Mr. Martin Collins
- iv) Democratic Policing**
 - *Training for Democratic Policing: the Kosovo Experience*. Paper prepared by Mr. Steve Bennett
 - *Remarks on Democratic Policing*. Paper prepared by Mr. William O'Neill
 - *Remarks on Democratic Policing*. Paper prepared by Mr. Michael Jorsback
- v) Housing and Property Disputes**
 - Background paper prepared by Mr. Winston Krone
- vi) Children's Rights**
 - Background paper prepared by Ms. Corey Levine
- vii) Women's Rights**
 - Background paper prepared by Ms. Corey Levine
- viii) Human Rights Institutions**
 - Background paper prepared by Ms. Pirrko Koskinen
 - *Remarks on Human Rights Institutions*. Paper prepared by Mr. Bennett Freeman
 - *Introductory Speech on Human Rights Institutions*. Paper prepared by Mr. Michael Meyer
- ix) Detainees and Missing Persons**
 - Background paper prepared by Ms. Laura Bowman

Appendix F (i)

Protecting Minorities

Understanding and Improving Conditions for Multi-Ethnic Life

Mr. Marcel Courthiades, Rromani Baxt Int. -- INALCO (Paris)

Summary of a paper delivered part in Albanian and part in Serbian at the workshop on protecting minorities

The first part of the paper deals with several points about which more understanding is needed to clear up the prevailing context of uncertainty about multi-ethnic life in Kosovia :

- 1) Rroma (a population of Indian origin) and Ashkali (probably of Egyptian origin) are distinct nations;
- 2) all ethnically based generalizations (“the Albanians... “, “the Serbs...”, “the Rroma...” etc.) have to be definitively rejected from all ways of thinking;
- 3) the solidarity of Serbian and Montenegrin pre-war settlers with Albanian families during the crisis should not be underestimated;
- 4) not all cultures are equally receptive to education against ethnic hatred. References to language and culture (soul, spirit) have to be supported against notions of blood and soil;
- 5) the return of all hostages, and especially of Flora Brovina, to Kosovia is a precondition for mutual confidence between the nations;
- 6) we Rroma have been suffering for centuries from "Gypsophobia", a sin against man and God, so we should combat all manifestations of “Albanophobia”, as manifestations of hatred;
- 7) when real "participation" is granted to Rroma in civil life, there will be no more need for "protection"; the same is true for Ashkali and other minorities;
- 8) almost all crimes today in Kosovia are common crimes and ethnic hatred is only a pretext;
- 9) one should bear in mind the seriousness of the crimes and the number of the victims from various nations – all victims of Milosevic's politics – as a precondition to a correct and respectful approach to the Kosovian tragedy;

The second part sets forth various proposals, on behalf of Rromani Baxt (an international Rromani NGO), for the restoration of inter-ethnic confidence and mutual respect in the area:

- 1) a well documented list of Rromani victims has to be published and systematically updated; all allegations of violence not mirrored in this list should be considered as manifestations of hate speech;
- 2) all Rroma and Ashkali who can help locate the corpses of the victims should feel bound to inform the families and contribute in this way in relieving their suffering;
- 3) reports of ransacking and looting of houses should be verified as widely as possible in order to minimize the various rumours which jeopardise the sincere attempts to restore common life;
- 4) Rroma and Ashkali all over Europe should participate in campaigns aimed at the return of all hostages currently held in Serbian jails;
- 5) a multi-ethnic music and poetry festival should be held in Prishtina in 2000, organized under the patronage of Rromani organizations and intended to especially promote songs rendering experiences of, and wishes for, multi-ethnic life;
- 6) accounts about common life and solidarity among the various nations in the past should be collected, especially from women, and granted wide publicity (books, films etc...);
- 7) a series of documentary short films should be shot and circulated about the everyday life and spiritual world (hopes, fears, feelings etc...) of children of all nations living in Kosovia;
- 8) the Rroma's experience acquired in the Nazi's genocide should be used to develop an efficient education for vigilance and detection of emerging forms of this sort of social diseases;
- 9) a solid occupational training in administration, law, education etc... as well as a sound sensitisation to universal moral values have to be achieved for future Rroma and Ashkali leaders of Kosovia. The INALCO (Univ. of Paris) could temporarily administer the first generation, until a chair of Rromani studies and a chair of Ashkali studies is created at the University of Prishtina;
- 10) quoting a Rroma participant from Gnjilan ("It was a tragedy to go through this hell, but it is also a great chance, since we can imagine a new model for the coming century"), the paper concludes that one of the main contributions to peace and stability should be to place Human Rights above matters of state or party. And for Rroma, who have no state of their own and no wish to have one, Human Rights must be placed above any links of blood and tradition -- be it genuine or not.

[Editor's note – other papers on this topic are available from the author. Please e-mail him at marcel.courthiade@wanadoo.fr]

XXXX

Appendix F (ii)

Preventing Torture

Preventing Ill-Treatment

Workshop paper prepared by Ms. Genevieve Mayer, Deputy Secretary to the European Committee for the Prevention of Torture

[Editor's note: this paper, prepared for the workshop on preventing torture, could not be delivered at the Conference due to the weather conditions in Skopje which caused Ms. Mayer's arrival to be delayed.]

On behalf of the President of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT), let me first of all express my gratitude to the organisers of this event for extending an invitation to the Committee to participate in such an important conference.

We have to devote this afternoon to a key issue: preventing ill-treatment. Is that feasible and how? Do mechanisms exist capable of eradicating ill-treatment? The challenge of preventing ill-treatment of persons deprived of their liberty was taken up in the eighties by the Council of Europe

It is not my intention to go into great detail about the origins of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment and of the CPT. Suffice to say that the experience drawn from the European Convention on Human Rights, and particularly its Article 3,[1] as well as the proposals made in the eighties for a universal preventive mechanism based on visits to places of detention by an independent body - clearly inspired by the activities of the ICRC, led the Council of Europe to establish a mechanism aimed at attacking the phenomenon of ill-treatment at its roots

The European Convention for the prevention of torture and inhuman or degrading treatment or punishment was adopted in 1987. Two years later it entered into force. For ten years now, prevention of all forms of ill-treatment of persons deprived of their liberty has been the task of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT), established by this Convention.

Its work is designed to be an integrated part of the Council of Europe's system for the protection of human rights, placing a pro-active non-judicial mechanism alongside the judicial mechanism of the European Court of Human Rights.

Prevention means permanent vigilance. It also means anticipation. This is subjacent to the CPT's activities.

The prevention function of the CPT is carried out in the field, in the very places where persons are being held. It is an on-the-spot monitoring system - carried out by a

multi-disciplinary committee of European experts: lawyers, forensic doctors, psychiatrists, prison experts, etc.

The spot-checks are done through visits to places of deprivation of liberty: police stations, prisons, detention areas in military barracks, holding centres for foreigners, psychiatric institutions. In short, any place "where persons are deprived of their liberty by a public authority". And this, at any time.

During its visits, the CPT examines all aspects of the treatment of the persons detained. In doing so, the CPT must ascertain whether there are general or specific conditions or circumstances that are likely to degenerate into torture or inhuman or degrading treatment or punishment, or are conducive to such inadmissible acts or practices. Of course, it will be particularly attentive to allegations of ill-treatment and abuses and will verify on the spot if they are founded. If necessary, it will recommend ways of stopping immediately the abuses and of preventing their re-occurrence in the future.

These visits are either periodic visits, i.e. visits carried out to all the Parties to the Convention (40 for the time being) on a regular basis - or ad hoc visits. Such ad hoc visits are organised whenever they appear to the CPT "to be required in the circumstances". They can be organised very quickly when the CPT receives information suggesting a need for prompt attention to a particular issue or place of detention - as well as in order to verify if and how - earlier recommendations made have been implemented. It can be said that, increasingly in recent years, the CPT has been organising short and targeted ad hoc visits.

Carrying out spot-checks is one thing; being able to do them in an efficient manner, is another matter. For this purpose, the CPT has been entrusted with wide powers under the Convention. They include: the access to the territory of the State concerned and the right to travel without restriction; unlimited access to any place, at any time where persons are deprived of their liberty - including the right to move inside such places without restrictions; access to full information on places where persons are deprived of their liberty; access to all persons deprived of their liberty and the right to interview them in private.

After each visit, the CPT draws up a report which sets out its findings, recommendations and other advice. This is the basis for an on-going dialogue with the State concerned, led by two guiding principles: co-operation and confidentiality.

Co-operation with the authorities is at the heart of the Convention. The task of the Committee is not to condemn States but to assist them in finding ways to strengthen the "cordon sanitaire" that separates acceptable and unacceptable treatment or behaviour. Therefore, its reports are confidential. However, almost all States have chosen to waive the rule of confidentiality and publish the report(s) that have been received. To date, 59 reports have been published in this way and can be considered as an useful source of information and guidelines to be used, for example, in the training of law enforcement officials, judges, lawyers or health care staff working in contact with persons deprived of their liberty.

Over ten years, the Committee has carried out 93 visits (by mid-December it will reach 95) of which 65 were periodic visits and 28 ad-hoc visits, to virtually all the 40 Parties. I have personally participated until now in 32 of these visits.

In the course of its activities, the CPT has developed a set of standards which it uses in order to assess situations and to encourage States to meet these criteria. These standards are often quite detailed and are permanently developed in the light of further experience. By now, standards have been set up on various substantive issues such as: training of law-enforcement officials; police custody; imprisonment; health care services in prisons; foreign nationals detained under aliens legislation; involuntary placement in psychiatric institutions; juveniles deprived of their liberty. All the standards have been summarised in its annual reports. Very recently, these substantive issues have been reproduced in one public document.

Allow me to make a brief reference to some of the standards developed over the years by the CPT in respect of the protection of persons held by law enforcement agencies, this being a domain where in its experience, the risk of physical ill-treatment and intimidation is high, especially during the period immediately following deprivation of liberty .

From the very beginning, the CPT has stressed that there is no better guarantee against the ill-treatment of a person deprived of his/her liberty than a properly trained police officer. It always recommends to States that the aptitude for interpersonal communication should be a major factor in the process of recruiting law enforcement personnel and that, during training, considerable emphasis should be placed on developing inter-personal communication skills, and on respect for human dignity. It now also encourages authorities to seek to integrate human rights concepts into practical professional training for handling high-risk situations, such as the apprehension and interrogation of criminal suspects. Indeed, this will prove more effective than separate courses on human rights.

Beyond the training, it appeared essential to the CPT that there be clear rules or guidelines on the conduct of police interrogations. Such rules or guidelines will also greatly contribute to underpin the lessons taught during training. These guidelines should address matters such as: the permissible length of interviews, rest periods/breaks during interviews, places where interviews may take place; whether a person may be required to stand while being questioned, the questioning of persons under the influence of drugs, alcohol or medicine or who are in a state of shock; the informing of the detained person of the identity of those present during interviews.

Much emphasis is also put on the crucial role played by judges and prosecutors in the context of the prevention of ill-treatment. It is of paramount importance that persons detained by the police are brought before a judge or a prosecutor. One of the most effective ways of preventing ill-treatment is for these authorities to carry out a thorough investigation of any complaint of ill-treatment and, where appropriate, to impose a suitable penalty. In this respect, the CPT has developed the approach they should follow when they receive complaints of ill-treatment or observe or obtain other information that persons appearing before them might have suffered such treatment. In summary, when confronted with a complaint of ill-treatment, judges and prosecutors should record the allegations in writing, immediately request a forensic

examination and take the necessary measures to ensure that the claim is duly investigated. This approach has to be followed regardless of whether the person concerned has visible bruises or not. Further, even in the absence of allegations, judges and prosecutors should on their own initiative request a forensic medical examination whenever they note that an apprehended person brought before them could have been the victim of ill-treatment.

The CPT also recommends to the States to expressly recognise three fundamental safeguards against the ill-treatment of persons detained by the police. These safeguards should apply from the very outset of deprivation of liberty, regardless of how the deprivation of liberty is described in a particular legal system.

First, persons detained by police/security forces should have the right to have the fact of their detention notified to a third party of his/her choice. I believe that the reasons for such a recommendation are self-evident. Second, such persons should have the right of access to a lawyer - a right which should include the right to contact and to be visited by the lawyer (in private) as well as, in principle, the right to have the lawyer present during interrogations. Third, such persons should have the right to request a medical examination including, if the person so wishes, by a doctor of his/her own choice, in addition to any medical examination carried out by a doctor called by the police forces.

Of course, it is axiomatic that persons detained by the police should be expressly informed without delay of all their rights.

I hope that, during the discussions this afternoon, there will be an opportunity to come back to standards elaborated by the CPT in order to prevent ill-treatment with regard to other forms of deprivation of liberty. It could also be of relevance during the discussion planned within the workshop on detainees.

Let me conclude by saying that in order to ensure the best prevention possible, the CPT always encourage the authorities to establish in their own national or regional system independent bodies entrusted with a similar mandate and powers.

Geneviève MAYER
Deputy Committee Secretary
Secretariat of the CPT
Human Rights Building
Council of Europe
F-67075 Strasbourg Cedex
France
Tel.: +33 3 88 41 23 88
Fax: +33 3 88 41 27 72
E-mail: cptdoc@coe.int
Internet: www.cpt.coe.int

XXXX

Appendix F (iii)

Post-Conflict Justice

The Case Of The International Criminal Tribunal For Rwanda As A Response By The United Nations To Contempt For Fundamental Human Rights

Presented by Mr. Roland K. G. Amoussouga, Legal Officer, Chief of the Witnesses and Victims Support Section, International Criminal Tribunal for Rwanda

Introduction

I am very honoured to have been asked to co-lead the workshop on post-conflict justice in the company of the facilitators (Antti Routsalainen and Berry Krajl of the OSCE). I am also honoured to be here in the presence of so many distinguished people who are doing such important things in the field of protection and promotion of human rights.

On the eve of a new millennium, in my capacity of former human rights activist who has dealt with post-conflict situations in various countries and now as an active participant to the work of the International Criminal Tribunal for Rwanda with the aim of enabling surviving victims of the genocide in Rwanda to participate effectively in the process of securing and meting out justice in the aftermath of the 1994 tragedy, I am truly delighted to take part in the discussion on the post-conflict justice.

I think that 1999 is marking an end to an exciting century (20th century), which has seen the greatest achievements of mankind in the field of international law with the adoption of the Universal Declaration of Human Rights, the Genocide Convention, the Geneva Conventions and various International Covenants. In the meantime, the same century is also one the darkest in the history of mankind during which millions of innocent people have been killed for various reasons and hundreds of international and internal gross violations of human rights have occurred, including those committed by dictatorial regimes.

Since the adoption in 1948 by the United Nations of the Universal Declaration of Human Rights following the Nazi Holocaust, many genocidal campaigns have claimed millions lives in Rwanda, the Former Yugoslavia and in Cambodia. As one could say that the world became a global village, it can also be said that heinous crimes of the magnitude of genocide do no longer know of any geographical or cultural barriers.

The preamble of the Universal Declaration of Human Rights provides to all of us that, « disregard and contempt for human rights which have resulted in barbarous acts which have outraged the conscience of mankind [leads to the conclusion] that human rights should be protected by the rule of law ». Unfortunately the lessons drawn from the repeated violations of human rights throughout the world in the last five decades were not seriously taken into consideration. In many instances, tolerance of impunity rather than enforcement of the rule of law has become the main response of the international community to such heinous crimes like crimes against humanity.

The first concrete steps taken recently by the international community for a prompt response to major human rights violations occurred in 1993 and 1994. The United Nations created ad-hoc international criminal tribunals for the former Yugoslavia and Rwanda. These achievements of the United Nations led the way for the international community to ensure that the concept of individual criminal responsibility at the international level is upheld. This was further confirmed by the new International Criminal Court whose treaty was recently adopted in Rome.

On the eve of the new millennium, the international community seems to be committed in providing legal strength to the rights set forth in the Universal Declaration of Human Rights. It is worth noting that the International Criminal Tribunal for Rwanda is now taking the centre stage where a development of international criminal jurisprudence in the field of grave violations of human rights is in progress. It is the reason why, I am privileged to provide you with insight and exposure on the work of the ICTR on protection of witnesses and victims rights as well as the contribution of the ICTR to substantive international law relating to post-conflict justice.

Contribution of the International Criminal Tribunal for Rwanda to substantive international law

On November 8 1994, The United Nations Security Council set up the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizen Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States, between 1 January 1994 and 31 December 1994.

The ICTR parallels the forum established in 1993 by the United Nations Security Council to tackle similar offences in the former Yugoslavia. Whereas in Rwanda, there was an internal armed conflict, the former Yugoslavia was the scene of both internal and international armed conflict.

The ICTR has achieved near-total success in effecting the arrest of individuals it has indicted. Of 45 persons indicted by the Tribunal, 39 have been arrested and are now in custody of the Tribunal. A unique success achieved by the Rwanda Tribunal is the level of the accused persons in its custody. These include 10 ministers in the former Interim Government of ex-Prime Minister Jean Kambanda, high ranking political, military and media leaders. Kambanda himself has pleaded guilty and was sentenced to life imprisonment (he has appealed against his sentence).

Without the ICTR most of these alleged architects of the genocide, who fled Rwanda after the genocide, would have escaped justice. This success should provide an inspiration to the international community in its efforts to bring to justice important individuals responsible for the violations of humanitarian law.

The ICTR, in the Akayesu judgement delivered the first ever judgement on the crime of genocide by an international tribunal. This decision is an important precedent for other international and national jurisdictions and the International Criminal Court. The Akayesu decision established other important precedents. For the first time, it defined

rape in international law and ruled that rape may constitute genocide to the extent it is committed with intent to destroy a national, ethnic, racial or a religious group. The judgement highlighted the importance of individual criminal responsibility for criminal acts of subordinates, if a superior knew or should have known of these acts and did nothing to prevent or punish them. The Tribunal's verdicts in subsequent cases have reinforced these contributions to international law.

These first two cases (Kambanda and Akayesu) represent the new accountability of political leadership, at a national level with regard to Kambanda, and at a local community level with regard to Akayesu who was held responsible for crimes such as rape, which he did not personally commit but in his capacity as mayor encouraged others to commit.

From the strengths of the ICTR, arises the hope for justice, which forms an integral part of peace. Justice which is done or is seen to be done in the post-conflict era is an important new avenue of recourse in a world which desperately calls for the implementation of the rule of law as a viable alternative to the use of deadly force, which is easily used by violators of human rights.

One major weakness of the ad-hoc international criminal tribunals derives from its inherent nature resulting from the political process of their creation, which was not strengthened by independent enforcement mechanisms. Like any other political device, the overall success of the ad-hoc international Tribunals depends to a great extent on the degree of political will and cooperation shown by Member States. In this respect, the ICTR has enjoyed more successes than its sister Tribunal for the former Yugoslavia, particularly in the arrest of the main political and military leaders who were indicted.

Awareness of the work of the Tribunal in Rwanda has increased exponentially as a result of the Tribunal's efforts. In the early days of the Tribunal, not much was known about its work in Rwanda. But, following the ICTR's outreach programme to the Rwandan people – the first of its kind in contemporary international justice – knowledge and awareness of the Tribunal's work are now much more widespread. This programme included the establishment of a Radio Rwanda bureau at the seat of the Tribunal at Arusha in early 1998, with office space and other logistical support provided by the ICTR.

Radio Rwanda's bureau at ICTR has since been broadcasting the proceedings and judgements of the Tribunal to the Rwandan people on a regular basis in Kinyarwanda language. These broadcasts have had a decisive positive impact on public awareness there, in particular the judgements and sentencing of Akayesu, Kambanda and Serushago. Another component of this outreach programme is a systematic facilitation by the Tribunal of visits to the Tribunal by Rwandan civil society (representatives of survivors groups, etc), parliamentarians, magistrates and other judicial officials. Efforts to increase even further the impact of this initiative are underway.

Protection of the rights of the witnesses and victims before the ICTR

Witnesses and victims are key components of the judicial process before the ICTR. One could even say that without witnesses there will not be any trial. It is of paramount importance to ensure that witnesses and victims are fully protected in their rights to enable them to participate indirectly or directly to the judicial process.

Testifying before the ad-hoc or any other tribunal shall not be a cause for further traumatization of victims. The testimony process must ensure that individuals who accept to testify, should be treated as decently and humanely as possible.

The Tribunal, through its Witness and Victims Support Section in the Office of the Registrar, provides impartial support to all witnesses at its proceedings, and protection to those for whom the Trial Chambers have so ordered. The Tribunal's achievements in this crucial area are all the more remarkable because there existed no culture of witness protection in the Great Lakes region or indeed at the international level before the establishment of both Tribunals (ICTY & ICTR). Unlike in other jurisdictions which may benefit from the experience and support of local law enforcement authorities, the Witness and Victims Support Section of the ICTR has had to develop its procedures from scratch and largely implements these measures by itself.

In spite of the complexity of making travel arrangements in the Great Lakes region in order to ensure the physical production of witnesses in Arusha, the ICTR has been able to facilitate the travel of over 200 witnesses (prosecution and defence) to Arusha from 17 African, European and American countries. A post-trial witness programme has already led to the relocation of 20 witnesses thought to be particularly at risk. Four witnesses have been relocated in countries outside Rwanda while 16 have been relocated within Rwanda. The intervention of the Witnesses and Victims Support Section in host countries of witnesses made it possible to resolve legal and practical immigration problems with Governments concerned, particularly in cases where the witnesses had no valid residence document or identification papers and so could not undertake international travel.

The lack of direct access to and representation before the ad-hoc Tribunals for the victims and the witnesses has also been criticised as a weakness of the ad-hoc Tribunals.

Thanks to the advocacy of the Registrar of the ICTR, there is now recognition of the principle of restitutive justice for victims as a component of the work of an international criminal tribunal. This has also contributed to the provision in the ICC Statute for this kind of justice and a trust fund for victims of crimes was established within the jurisdiction of the ICC. Furthermore, Article 68 (3) of the ICC statute provides not only for protection, but also for the participation by victims and witnesses in trial proceedings. Their active participation in post-conflict justice may contribute immensely towards raising awareness of the work of any Tribunals in the country of residence where the crimes occur.

Concluding remarks

As we review the current situation in the great lakes region in Africa, one would be tempted to raise the question as to why the ICTR was only given a limited jurisdiction over the events which took place in 1994 in Rwanda. Its expressly limited mandate prevents the ICTR from investigating and prosecuting crimes, which are taking place in neighbouring countries, or which might even take place in the future in the Great Lakes region. It is also an established fact that many people would like to see the ICTR look into what is going on in Burundi, the Democratic Republic of Congo and in the other Congo or even in Angola or Liberia. This, of course, would require an expansion of the jurisdiction of the ICTR through the same political process as above-stated.

These thoughts are certainly shared by all the human rights activists who have tirelessly worked for the establishment of a permanent international criminal tribunal with a universal jurisdiction shielded from any political biases and ad-hoc political concerns.

The pioneering work of the ad-hoc international criminal tribunals in post-conflict justice is a concrete step forward to the establishment of the rule of law at the international level, necessary for the accountability of those who are responsible at the highest level for massive human rights violations. This will certainly provide a credible vehicle capable of giving real life for the Universal Declaration of human Rights whose respect by all would ensure that the world lives in peace in the new millennium.

Thank you very much for your attention and thank you for having provided me as representative of the ICTR with an excellent forum to spell out the commendable work that we do in Arusha, in Tanzania.

XXXX

Appendix F (iii) (contd.)

The Peace Process in Northern Ireland

Speaking notes of Mr. Martin Collins, Britain & Ireland Human Rights Centre

The Britain and Ireland Human Rights Centre is a London-based NGO, working to protect and promote human rights in the context of conflict in Northern Ireland. In that context, and after thirty years of struggle, I bring a message of hope - that enemies can talk; that combatants can negotiate and intractable problems can be brought to an accommodation and move toward a settlement. Our motto is this: Remember the past; but build for the future.

About the challenges of peace, the Nobel Prize winner, John Hume said the issue tearing his country apart was not that of divided territory; but of divided people. Where peoples are divided, he said, there can be no absolute victory. The only real victory that can benefit all, is the victory of reaching an agreement to live in peace. Peoples, he said, have a right to self-determination; but where there is division, the way in which the right to self determination is exercised must first be agreed.

The authors of the Northern Ireland peace did not disguise the nature and sources of division in Ireland but believed each source of conflict and fear had to be addressed.

The Belfast Agreement - signed on the Christian festival of Good Friday in April 1998 and endorsed by referenda north and south of the disputed border - has three distinct strands:

- In Strand 1: the Agreement creates an elected assembly, a power-sharing executive and institutions to manage that section of the island and promote good relations between the Catholics or Nationalist people and their Protestant or pro-British neighbours in Northern Ireland;
- In Strand 2: it creates cross-border institutions to foster co-operation and increasing harmonisation between the British-administered state in Northern Ireland and the Irish governed Republic in the south;
- In Strand 3: it creates institutions in the form of an Inter-Governmental body and a British-Irish Council to strengthen the relations between the island of Ireland and the island of Britain.

Underlying all the institutions is a commitment to protection of human rights and equality, strengthened by the incorporation last year of the European Convention of Human Rights into British law.

In the sixteen months since the signing of the Agreement in Northern Ireland:

- Political prisoners are being released from jail since the organisations to which they belong are committed to pursue their political aims through wholly peaceful and democratic means;

- A powerful new equality commission will enforce a legal obligation to promote equality of opportunity in all spheres of life and to prevent discrimination on grounds of religion, nationality, race, gender, disability or sexual orientation;
- A human rights commission has been established charged with drawing up a new Bill of Rights, monitoring protection of human rights and investigating allegations of abuse;
- An independent office of police ombudsman has been established with responsibility to oversee police conduct and investigate complaints;
- An independent Commission headed by the former Governor of Hong Kong, Mr. Chris Patten, has drawn up proposals for root and branch reform of the police, providing for a representative and democratically accountable police service with a mission to protect human rights and a cultural ethos acceptable to all sections of the community. For the first time we have a vision of a world in which policing can be an opportunity for human rights and not a threat to them.

In the months and year ahead, we aim to create the political climate where all weapons of non-state bodies can be decommissioned, the British military presence removed and security apparatus dismantled. Early in the New Year, a review of the criminal justice system is due to report. A public inquiry is being held into the events of Bloody Sunday - where 13 human rights protesters were killed by the British army. A Consultative Civic Forum is to be created as an exciting new institution of civil society.

More change must come. We would like to see early moves to remove emergency legislation that still applies in Northern Ireland and the closure of interrogation centres. We will have to confront the range of issues arising from the search for truth and need for reconciliation.

I close on three lessons of peacemaking from our experience of political settlement:

- * It is necessary to address *ALL* the relationships that underlie conflict, however deep the initial mistrust
- * It is necessary to create a political process that is *INCLUSIVE* of all the parties to the conflict
- * It is necessary to create *INSTITUTIONS* to build upon the end of violence and move towards peace

XXXX

Appendix F (iv)

Democratic Policing

Training For Democratic Policing: The Kosovo Experience

Workshop presentation of Mr. Steve Bennett, Director of Police Education and Development, OSCE Mission in Kosovo

- Police leaders are quick to point out that performance in an organization has a direct link with the quality of training and the quality of trainee. Therefore, both become a priority and a challenge for the training managers and the Police leadership. They are both vital ingredients for success in building a police institution that will be guided by the principles of human rights and rule of law.
- In preparing for this challenge in Kosovo, the United Nations in cooperation with OSCE established a training plan. A plan based upon bringing the talents and experiences of the international policing community to Kosovo and providing the resources to develop and deliver a democratically oriented police training program.
- Between August and October 1999, a team of international trainers from thirteen countries has developed a curriculum based on democratic policing principles. They organized themselves for training management and have begun the task of teaching the future police officers in the Police School in Vucitrn.
- On October 16th, 1999 the first class of 176 Kosovo Police Service Officers graduated from the School and have taken their place alongside the UNMIK Police Officers in service of the citizens of Kosovo. They are the first generation of the future police service.
- When people ask me is democratic policing going to work in Kosovo - my response is confidently yes. My high level of confidence is based on my experience with the first class of officers. I would like to tell you something about these future police of Kosovo.
- They came from throughout the province. They represented every major ethnic group in Kosovo. They were eager to learn. They worked hard and long hours under very demanding conditions. They demonstrated respect for each other - in fact they have, proven to be one of the first examples of a successful multi-ethnic endeavour.
- This first class has also proven that women will be a strong component of the future Kosovo Police Service. There were thirty-nine (39) women in this first group and all thirty-nine graduated. Not only did they prove their capacity to master the course but four of the eight class Captains were women, and the academic excellence award was earned by a woman.

- Ninety-six percent (96%) of the class have a secondary education or higher. Thirty percent (30%) have university degrees. As a group they displayed a high level of team spirit and engaged all topics with an enthusiastic and positive attitude.
- In individual dialog with students their genuine interest, commitment, dedication, and excitement about this opportunity to be the new police of Kosovo was always evident. The pride in themselves and their accomplishment was very visible on graduation day and continues today as I observe them in their duties.
- The problems associated with moving training resources into Kosovo and the physical conditions of the training site proved to be very problematic. These conditions are changing daily and we are encouraged about the future prospects and our capacity to train over 3000 officers during the next twelve months.
- The second basic class has now convened with 178 students. Again they represent all ethnic groups with 28 Serbs, and thirteen other minorities. Thirty-one (31) students are women and fifty-eight (58) students have prior police experience. As they begin their first few days of training they appear to possess the same positive attitudes and enthusiasm as the first generation.
- As we begin the new-year in addition to continuation of the basic courses the School staff is busy developing the advanced and specialized training programs. Advanced programs will include the delivery of training for the supervisors and managers. We are planning a component of this training to involve international countries serving as host mentors for the manager trainees. The concept involves sending these trainees to international host countries, where they will experience first-hand democratic policing in action. The experience will also provide a mentor and liaison that will facilitate the networking of the new Kosovo Police Service leadership into the international police community.
- The specialized training programs will focus on the many complimentary skills required in support of modern police service. It will include community policing, traffic investigation, criminal investigation, narcotics enforcement, a wide range of forensics topics, organized crime, and many other specialized training opportunities.
- During the next year the School will proceed with integrating nationals into the faculty and staff. This will begin the process of transitioning capacity to assume the management of the School.
- Although the challenges have been and are still formidable, I believe the task of building this institution is attainable. Again my optimism grows from the involvement with the national professionals who are emerging. They have the spirit and belief in democratic values necessary to insure the vitality of policing in a multiethnic society.
- I'm uncertain of who once said that in order for evil to prevail good men need to do nothing. It is true. I also believe the opposite is true - that for good to prevail

good men need to do something. We have many good men and women in the emerging Kosovo Police Service and I remain confident that good will prevail.

XXXX

Appendix F (iv) (contd.)

Remarks On Democratic Policing

Workshop presentation by Mr. William G. O'Neill, human rights advisor to Dr Bernard Kouchner, Special Representative of the Secretary General, United Nations Mission in Kosovo

1. I will focus on the role of the community, civil society, and non-governmental organizations in democratic policing.
2. My main point: the best trained, most carefully selected, well equipped and highly motivated police force will not succeed in its mission without the help and support of the community it is charged with protecting and serving.
3. There must be trust and cooperation between the community and the police. This may be hard to achieve in a society where the police have abused human rights, acted in an arbitrary manner, were corrupt and more like an occupying army than a police force. This is unfortunately the experience in Kosovo where the police in the past have not respected human rights.
4. This legacy of distrust, even fear, can be overcome, but it takes a concerted effort by both the police and by the community. There must be a plan, a policy that makes creating a healthy community-police relationship a priority.
5. Called "community policing": this is a type of policing that emphasizes intense interaction between the police and community groups, where problems are identified and solutions proposed. Police participate in activities with the schools, sport clubs, and business associations. The emphasis is on preventing crime.
6. In my own neighbourhood in Brooklyn, New York, the police have adopted a very proactive approach to policing. I live in a diverse area; for example, at the local school the children speak 20 different languages at home. People have come from all over the world to live in this part of Brooklyn.
7. I know that Kosovo is not New York, but many of these activities are low cost, do not require expensive equipment, but rather reflect a philosophy of policing. For example, the police ride bicycles when they patrol in a large public park near my apartment. There are some other examples in the handout; this is just a sample, there are many more activities where the police work with the community. The crime rate in my neighbourhood dropped significantly since these programs started. See the NYPD website: <http://www.ci.nyc.ny.us/html/nypd/html/pct/ltr078.html>
8. You will see that many of these programs depend on the active participation of the community to succeed. The police need information, "feed-back" and cooperation to prevent and to solve crimes.
9. Take another example, in South Africa. There was a need to transform the South African Police Service and South African society as a whole following the

eradication of apartheid. The South African Police started Community Police Forums, which strive to change attitudes and overcome the inequalities and injustices of the past; there are programs to educate all members of the police and the community on human rights. The South African police worked with local human rights organizations to design human rights training materials for the police.

10. In Haiti, leading human rights organizations participated in human rights training activities at the new police academy. They came every week to discuss issues and some police cadets attend training sessions organized by the human rights groups.

11. A key element for the police is to take very seriously all complaints about police misbehaviour. Nothing will lose the community's trust faster than if the new police are seen to be acting like the old police and getting away with it. Police internal disciplinary procedures must be fair, effective and transparent. Complaints about the police must be investigated promptly, thoroughly and impartially. Kosovo will have an Ombudsman's office also to take up these kinds of complaints.

12. Police officers who abuse their powers must be punished; this could include dismissal from the force and even criminal prosecution. I have found in my work in other states, like Haiti, Rwanda and Bosnia, for example, that this is one of the most important factors in creating a democratic police force where none has previously existed.

13. To sum up, the police need the community's help and trust. Where there is a legacy of repression, where the police have traditionally been seen as the problem or the "enemy", this trust must be earned by the new police. Constant community outreach will help earn this trust, so will punishing any police officers that abuse their authority.

14. For democratic policing to succeed in Kosovo, the people must feel free to report crimes, provide information to the police and the police in turn must respond quickly, listen with respect to the community and always act professionally and with complete respect for human rights.

XXXX

Appendix F (iv) (contd.)

Remarks On Democratic Policing

*Workshop presentation by Mr. Michael Jorsback, Deputy Police Commissioner
United Nations Mission In Kosovo International Police*

Ladies and Gentleman,

This is the first time in world history when the United Nations is taking over the full responsibility for law and order in a conflict area. The United Nations Civilian Police component has a long and successful tradition in peacekeeping operations, our operations started in a more full scale already 1964 in Cyprus. So we have twenty-five (25) years experience of monitoring missions. Actually the United Nations Civilian Police component has one of the largest Human Rights components in previous monitoring missions. We have monitored the local police agencies from a purely Human Rights perspective, to ensure the local police are acting according to International Human Rights Standards for Law Enforcement Agencies and we have been involved to establish or re-establish new police forces and new working concepts.

In all other missions we had a local police to monitor. Not always a full and well functioning police force, but still some kind of a police force in an environment where we had legal institutions or at least de facto institutions. Now, we, the United Nations Civilian Police are the law enforcement agency. We have to execute law and order functions in an environment still under post conflict influence and still without all the legal institutions and legislation in place. That, Ladies and Gentleman is a huge challenge. We are right now setting the standards for future United Nations Civilian Police engagements. Truly this is not the last mission where the United Nations or a Regional Organization will face this kind of challenge.

This challenge has many important aspects. I am now going to raise all internal challenges regarding logistical support etc. but more the challenges seen from a legal point of view including Human Rights aspects. Police is one part of the judicial chain including prosecutors, judges, court system and prisons and all police functions must be conducted out of a legal framework. When we measure the effectiveness of the police we have also to include the entire legal system in our assessment.

The UNMIK Police is totally dependent on the other parts of the judiciary in order to be an effective law enforcement organization. In order to establish a Democratic Society there is a need to highlight the importance of establishing legal institutions as the basic fundament for creating a democratic society. The process of establishing the legal institutions must be the highest priority

This is especially important now when we are in the process of establishing a new Kosovo Police Service. This new police service must be based upon all democratic principles and International human rights standards for law enforcement agencies. The responsibility of creating such a police service includes all Kosovars regardless

of ethnical or political background. Why? Because no police service in the world can survive, or be effective, or democratic without the support of the community it serves.

The guiding star for all democratic police services is to SERVE and PROTECT. That's why it's so important that the police service first of all reflects the community it serves. Not only should the police officers be carefully selected and highly trained in their profession but also the composition of the service must include all ethnical groups regardless of political affiliation, it must include men and women. The police service must be representative of the community. "The recruitment, hiring, assignment and promotion policies shall be free from any form of unlawful discrimination. In protecting and serving the community, police shall not unlawfully discriminate on basis of race, gender, religion, language, colour, political opinion, national origin, property, birth, or other status." (Those are two examples of International Human Rights standards for Law Enforcement Agencies) The Police must also be responsive and accountable to the community as a whole.

The community must be able to trust the police service. That's why it's so important to emphasize accountability. The community must feel confidence that the police service take actions, provides help in accordance with laws and regulations and in full accordance to Human Rights standards. Police officers stepping over any legal borderlines must be punished. It's therefore important to have a transparent complaint mechanism in place. We are in the process of establishing an internal disciplinary mechanism for the Kosovo Police service. And we already have an internal investigation unit to investigate allegations where police officers are involved. Such mechanism also exists for the UNMIK Police. Police officers serving in the Kosovo Police service who have committed any unlawful act or and Human Rights violation will be punished and dismissed from the service.

Now, how can the Police Service achieve to serve the community? Especially here in Kosovo, in a post conflict environment, still with a high rate of violence against minorities and a very high crime rate that affects the whole community.

The Police must cooperate with the society, which means that the society also must cooperate with the police. But in this environment the Police must start the confidence building process. This process includes the introduction of different tools such as visibility meaning that the police must be close to the population, not distance themselves by patrolling only in cars, rushing from one job to another. In that way we only can be reactive and not proactive. A proactive approach means that the police must conduct foot patrols in their area of responsibility, try to learn the people in their area of responsibility, to learn the problems and the concerns. In that way the police together with the community can solve problems before it comes to crime. This is even more important when you have citizens from different ethnical backgrounds.

This includes a close cooperation with the local administration in order to be part of problem solving processes. I can take some good examples from my country Sweden, in one part of a city there was a very high rate of thefts from cars. The police identified the problem to be linked to the lack of street lamps at the parking lot and the problem could be solved involving the local administration to put up a sufficient number of lamps. It was done and the amount of thefts from cars decreased

dramatically. Another example, in one area there was some problems among youngsters creating disturbances in the neighbourhood. The Police, in their problem identification process, interviewed the youngsters and the result showed that the local administration had closed the only youth recreation centre in that area so they had no place to go. The youngsters had not the strength or understanding to address their concerns to the local administration. The problem was solved in the way that the police interacted with a local athletic club who invited the youngsters to their activities. This shows that the Police is not the only component to solve problems, also the community and individuals has a responsibility.

The tools to establish this close relationship includes also what normally is called community relation programs, which means that the police can involve themselves in schools and sport clubs or other associations. Not in order to control but to establish a close relationship. But we have also tactical tools, which means that we as police managers must be aware of the problem oriented police philosophy. We must deploy the police where it is needed, we must show high visibility where it is needed. Use all the different tools that we use to solve problems. It is not always a matter of having the latest technology, the most sophisticated equipment it is the matter of showing that we care about problems in the community and that we are able and willing to be involved to solve the problems before we have to be reactive.

Another tool to strengthen community relations is the establishment of community relation committees. This works as a forum for the public to address their concerns directly to police representatives in the committee. This concept is established in countries where you have adopted community-policing strategies. That strategy means that the police are working in smaller areas of responsibilities and their work is focused upon problem solving, a proactive approach.

Rights now its time to establish contacts and relationships with different local NGO's especially in the field of Human Rights. Those NGO's play an important role during this phase to strengthen the Human Rights efforts in the local community. Kosovo still face many problems such as violations against the minorities. It is not only the responsibility for the Police to solve this kind of criminal behaviour. That responsibility also lays in the hands of the population itself. Local NGO's plays here an important role in this process to build confidence and tolerance. They play also an important role to monitor the Human Rights situation, which includes the local law enforcement and their performance in the future as well as the whole judiciary system. This is one of the mechanism to establish a new democratic police service in Kosovo.

I have just mentioned some aspects of democratic policing strategies and the philosophy of problem oriented policing. The police as the professionals in conducting law enforcement know what they can do but again, in order to be successful, this process includes the engagement of the whole community. This workshop is one example how to start this challenging process, and I am sure that all of you during this workshop will raise interesting aspects for discussion and I am looking forward to hear your input.

Thank you.

XXXX

Appendix F (v)

Housing and Property Disputes

Workshop Background Paper on Housing and Property Disputes

Background paper by Mr. Winston Krone, Human Rights Officer (Property Issues), OSCE Mission in Kosovo

Introduction

This paper is designed to provide workshop participants with a background to the issues of property disputes in Kosovo and the methods proposed to resolve these problems. Given the restrictions of time, the workshop will concentrate on the crucial issue of residential property.

In conformity with proposed discussion areas of the workshop, this paper is divided into:

- The nature of property rights in general
- The property situation in Kosovo and the mandate of OSCE
- Types of dispute resolution for residential property issues
- The Housing and Property Directorate created by UNMIK

1. The Nature of Property Rights

The two main injustices that require immediate attention are those persons:

- who have lost their property rights at the hands of state authorities; and
- who now seek legal redress for the illegal actions of others.

First, this means that the International Community must ensure the applicable law in Kosovo does not conflict with internationally recognized human rights standards. This was expressly set out in the first UNMIK Regulation (Reg. 1999/1, Sections 3 and 4).

Also under that Regulation, at Section 2, all persons undertaking public duties in Kosovo are required to observe internationally recognized human rights standards and not to discriminate against any person on, for example, ethnic grounds.

Secondly, to quote the UN Secretary-General's report of 12 July 1999, "UNMIK will be guided by internationally recognized standards on human rights as the basis for its authority in Kosovo. UNMIK will embed a culture of human rights in all areas of activity, and will adopt human rights policies in respect of its administrative functions."

Any legal process for resolving housing and property disputes in Kosovo must be guided by International Human Right standards. A democratic society must get the balance right between the needs of society and private property rights. As a minimum, these include due process, non-arbitrariness, and respecting property rights as human rights.

What are these standards?

Right not to be deprived arbitrarily of property rights

There is a clear right in international human rights law not to be arbitrarily deprived of property (Art. 17 UDHR and Protocol 1, Art. 1 ECHR: "No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law".)

Non-Discrimination

There is a general requirement of due process in any judicial/ administrative determination. And where action takes place, there must be a legal basis and a lawful quality. Laws must be non-discriminatory not only on their face but also in their application.

This principle of non-discrimination is another clear right under international human rights law and is expressly enshrined in the ECHR (Art. 14).

Effective Remedy

Art. 13 ECHR: "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

For private acts, the general obligation to give effect to means that the State is obliged to organize a legal system to protect property rights.

It is for this reason that OSCE welcomes the creation of the Housing and Property Directorate as an impartial means of property dispute resolution available to all members of Kosovo's population.

There are also the related rights of:

Right of refugees to return

Right to protect "home" as an entity, not just bricks and mortar (Art. 8 ECHR)

Right to housing (Art. 25 UDHR)

These rights must be seen and accepted for what they are - i.e. universal and an entitlement for all, irrespective of ethnic background.

The overriding of these rights and the refusal to provide effective remedies by the Serbian authorities after 1989 laid the foundation for the tragedy of 1998-99.

2. *The Property Situation in Kosovo*

Prior to 24 March 1999, there were three types of property in Kosovo:

- State owned property

- Socially-owned property - the largest housing tenure type in the early 1990s, whereby residential properties were in effect owned by partially State controlled companies, and allocated to employees as a direct job benefit.³
- Private property – in urban areas, much private property was created in a series of privatizations in the early nineties. In particular, Kosovo Serbs were given significant discounts to encourage them to purchase State or Socially-owned properties. An estimated 95% of Serbs owned their homes. This has resulted in the perception that protection of post 1989 private property rights is a pro-Serb measure.

The property situation in Kosovo has been effected by three distinct factors:

- A decade of discriminatory property legislation and government action (1989-98), leading to the stripping of property rights, unregistered property transactions and multiple claims of ownership
- Armed conflict since February/ March 1998 leading to mass destruction of property and displacement of population
- Forced evictions and the unlawful occupation of vacant property since the conflict

Discriminatory Legislation and Government Action

After Kosovo's autonomous status was rescinded in 1989, the Serbian authorities issued a series of laws which were either discriminatory against Kosovo Albanians on their face, or in their application. Examples include:

- *The Yugoslav Programme of Measures to be Taken in Kosovo* (1990), under which sales of property to Albanians by departing Serbs were annulled retroactively;
- *The Programme for Establishment of Peace, Liberty, Equality, Democracy and Prosperity in the Autonomous Province of Kosovo* (1990), expressly favoring Serbs in the allocation of housing;
- *The Law Concerning the Functioning of Republican Government Bodies Under Special Circumstances* (1990), under which approximately 135,000 Albanians were dismissed from their jobs and lost their work-related apartments. In addition to lost housing, those evicted also lost personal monies deposited in housing funds and the right to buy the socially owned apartment;
- *The Law on Changes and Supplements on the Limitations of Real-Estate Transactions* (1991) a registration scheme whereby property purchases by Albanians were de facto prevented⁴. This led to a decade-long period of underground property transactions, which were never registered with the authorities, and a situation where housing and property records were incomplete and substantially inaccurate.

³ "The FRY system of self-management allowed enterprise and worker ownership of apartments. The State, which controlled the public enterprise, provided subsidies to the enterprise to purchase units in apartment buildings which would be allocated to the firm's workers. In some cases, after a worker was employed in an enterprise for a given number of years, he or she was entitled to an apartment. In other instances, a worker could contribute a portion of the funding and purchase a unit with its enterprise. In most cases, the ownership of the apartment belonged jointly to the worker and his or her respective employer." 1993 Helsinki Watch Report (p.48).

⁴ Property contracts were made contingent on official determinations by the State that the transaction did not contribute to the alteration of the ethnic make-up of the population or to the migration of a certain ethnic group. In effect, the law made it difficult for Albanians to buy housing or for Serbs to sell property. This law was repealed by UNMIK Regulation 1999/10 on 13 October 1999.

Armed Conflict (1998-99)

The deliberate destruction of houses was one of the traits of the violence carried out against the Albanian community by Serb formal and paramilitary forces⁵. Surveys indicate that, following the conflict, at least 35% of the Kosovo housing stock requires either repair or complete rebuilding. However, some regions are significantly more damaged. For example, in Pec/ Peja Municipality, 68% of the residential buildings in outlying villages were heavily damaged or destroyed.⁶

Such destruction and insecurity caused inevitable displacements of people, exacerbating the housing shortages as urban populations expanded with rural migrants. This was despite the fact that many of the towns were themselves badly damaged. In Pec/ Peja town, although it was 55% destroyed, the population rose from an estimated pre-war figure of 85,000 to more than 102,000.

A final result of the conflict has been the destruction or disappearance of large parts of the cadastre system, the official property registration for Kosovo.

Forced Evictions and Unlawful Occupation of Vacant Property

The destruction of housing stock has provided a justification, on the part of individuals and self-appointed authorities, to embark on a mass requisitioning of property across Kosovo. Frequently such seizures of property have been carried out by self-appointed authorities for alleged humanitarian grounds or to rehouse the victims of the hostilities.

In addition, the hostility and resentment resulting from the conflict and the preceding years of discrimination have led to well-documented examples of inter-ethnic violence and harassment since June 1999. While this aggression has manifested itself in forced evictions, it has also resulted in the looting and further destruction of housing stock⁷.

Harassment and destruction of property has led to mass displacements of people, either within Kosovo or resulting in migration outside the province⁸. The available figures for displacement, whether as IDPs within or outside Kosovo, do not reveal the scale of the problem in housing. Many residents, particularly minorities, while still living in the same area, have been forced to move out of their original homes. An example is Gnjilane/ Gjilan town where the estimated population of Kosovo Serbs

⁵ The deliberate destruction of civilian residences by Serb security forces had commenced well before the NATO air campaign. In the Pec/ Peja municipality, the villages of Gornji Streoc, Decani/ Decan, Prilep and Glodjane were completely destroyed in the Serb offensive of summer 1998.

⁶ UNHCR Damage Assessment report, 7 July 1999.

⁷ When the OSCE returned to Gnjilane/ Gjilan on 20 June 1999, only one house in the town had been destroyed. By the end of October, 280 houses (belonging exclusively to Kosovo Serbs and Roma) had been burned or destroyed. A similar pattern of destruction was reported in Prizren, where nearly 300 houses were burned by the end of October and 97% of the pre-war population of Kosovo Serbs had left.

⁸ Three examples include Pristina/ Prishtine where the pre-war population of Kosovo Serbs has decreased from 21,000 to less than 600 by the end of October (Source: UNHCR and the Centre for Peace and Tolerance); Podujevo/ Podujeve, where the population of Kosovo Serbs fell from an estimated 1,400 to 2 by the end of September; and North Mitrovica, where the estimated population of Kosovo Albanians has fallen from 9,000 pre-war to less than 2,000.

has fallen from 5,982 before the conflict to 3,225 in July and 2,100 at the end of October⁹. However, this masks the fact that the vast majority of the Kosovo Serbs remaining in Gnjilane/ Gjilan have left their original homes and moved into the neighborhood around the Church.

In the absence of effective protection of property rights, and in the face of continued pressure on housing stock, many minorities have abandoned or sold their properties at large discounts.¹⁰ The legal situation has been further confused by the expressed desire of some self-appointed authorities to retroactively annul post 1989 property sales. While this has mainly effected Kosovo Serbs, Kosovo Albanians who purchased from Serbs have also been threatened or denounced as "unpatriotic"¹¹.

The uncertainty as to the future is a clear impediment towards the return of refugees/ IDPs and the economic redevelopment of Kosovo.

3. *Types of Dispute Resolution for Residential Property Issues*

While recognizing there is no similarity between Bosnia and Kosovo in respect of discriminatory legislation, we can still focus on the lessons learned when establishing a property claims commission in Kosovo, e.g.:

- The International Community must not underestimate the importance of Property Rights especially in post ethnic-conflict situations. Even 4 years after Dayton and the massive efforts of the International Community, property problems were still the main hindrance to minority returns.
- The lack of flexibility in the CRPC mandate (it can only receive and make decisions) is a major problem. Unlike the UNMIK Housing and Property Directive, the CRPC cannot mediate, issue provisional measures, or refer claims to local bodies.
- Any property claims commission needs to be fully integrated into the other activities of the International Community (especially the reconstruction process)
- The CRPC did not have exclusive jurisdiction in property claims, resulting in parallel jurisdictions with local courts, and giving rise to practical problems. The UNMIK Housing and Property Directorate will have exclusive jurisdiction for most residential property claims in Kosovo, thus ensuring a consistency of approach and application.

4. *Property Resolution in Kosovo and the UNMIK/ OSCE Mandates*

UNMIK has a clear legal mandate to examine housing and property issues in Kosovo. This mandate is derived from:-

- the contents of UNSCR 1244, emphasizing the duty of UNMIK to protect and promote human rights (one of which is the right to adequate housing),
- UNMIK Regulation 1999/1

⁹ Information supplied by UNHCR to OSCE, 4 November 1999.

¹⁰ Kosovo Serbs have started to sell their properties at a fraction of their pre-war price. See OSCE Human Rights Report, Part II, *As Seen As Told*, p. 43.

¹¹ Broadcast by TV Gnjilane, November 1999

- The UN Secretary-General's report of 12 July 1999 indicating that "UNMIK will embed a culture of human rights in all areas of activity, and will adopt human rights policies in respect of its administrative functions."

The OSCE human rights mandate includes "unhindered access to all parts of Kosovo to investigate human rights abuses and ensure that human rights protection and promotion concerns are addressed through the overall activities of the Mission."¹²

Property and housing problems are the source of widespread security concerns throughout Kosovo and the source of resentment and future hostilities. The absence of effective legal remedies since the end of hostilities creates an environment conducive to violent solutions. In addition, the absence of an official resolution process for property claims has caused self-appointed and unofficial bodies to mushroom throughout Kosovo.

These unofficial bodies, as well as undermining UNMIK's authority and the Rule of Law, provide no guarantee of impartiality or fairness either to minorities or to Kosovar Albanians who lack political or military "connections". This has obvious implications for the return of refugees and future democratization in Kosovo.

Ideally, the resolution of property disputes in Kosovo should be a matter for the local courts. However, problems here include:

- disputes over the applicable laws
- the absence of complete and accurate cadastre records
- practical problems of enforcement
- the need for a Kosovo-wide approach to property dispute resolution

UNMIK therefore took the decision to:-

- Create a new property directorate to handle most residential property claims
- Administer the temporary use of vacant property through the UN Civil Administration, according to approved guidelines

5. *The Housing and Property Directorate*

On 15 November the Special Representative of the Secretary General (SRSG) signed Regulation 1999/23, establishing a Housing and Property Directorate (HPD) and a Claims Commission (HPCC) to resolve property disputes in Kosovo until local judicial bodies are fully functioning. The Regulation is now in force and has been announced in local media.

The HPD will handle claims concerning residential property in Kosovo for three categories of cases:

- Persons who lost residential property as a result of discriminatory legislation (subsequent to 1989)
- Persons who entered into informal contracts since 1989 and wish regularization of their rights
- Persons who lost property as a result of the recent armed conflict

¹² Report of the UN Secretary-General on the UN Interim Administration Mission in Kosovo S/1999/779, 12 July 1999.

The HPD will consist of:

- An Executive Secretariat - providing research and legal/ policy advice to UNMIK
- An Administrative Branch - supervising temporary use of abandoned property
- A Dispute Settlements Branch - receiving claims collected via regional offices and attempting to resolve disputes through mediation as an alternative to referring claims to the HPCC (below)

It is also envisaged that the HPD will have regional offices in order to interview and accept forms from claimants, and attempt to mediate disputes at a local level.

The HPCC will consist of:

- An independent and impartial decision-making body of several panels, each panel consisting of 2 internationals and 1 local expert
- Exclusive jurisdiction over the three claim categories above (as an exception to the jurisdiction of local courts)
- Final decisions of HPCC will be binding and not subject to review
- Ability to issue provisional measures during pending investigation
- HPCC will propose its own Rules of Procedure and Evidence (to be drafted in January and confirmed by SRSG)

Implementation of the Regulation:

- It is estimated that the HPD will begin distributing and processing claim forms by February 2000.
- OSCE and UNHCR will facilitate implementation by advising potential claimants of their rights under the HPD; and (in the case of UNHCR) distributing claims forms to claimants now residing outside Kosovo.

Conclusion

The widespread destruction of property during the conflict was only the latest in a series of property violations against the Kosovo Albanian population, which has seen the issue of property used as a weapon.

The deliberate destruction of Kosovo Albanian houses has led to retaliatory arson and looting. And the result of discriminatory legislation (1989-98) has been to create an environment where Albanians feel they are justified in meting out the same treatment to those who benefited (perceived or in practice) during the former regime.

Nevertheless, the OSCE does not accept that the correct response is to repeat these injustices.

The key to breaking the circle of violence with impunity is to develop a system which

- Provides redress for violations in the past
- Raises confidence that property rights will now be recognized and enforced

With so many Kosovo residents living as IDPs, in areas of insecurity, or with increasing uncertainty about the value or ownership of their property, further mass population movements next spring appear likely, unless situation changes.

Persons from all of Kosovo's ethnic groups – Albanians, Serbs, Roma, Gorani and others – have been subjected at various times to violations of housing and property rights. Therefore, any solution to the Kosovo housing crisis must be based on the principle that all persons – regardless of their ethnic origin – must be treated without discrimination and be guaranteed equal protection of their housing and property rights.

XXXX

Appendix F (vi)

Children's Rights

Children's Rights Workshop Background Paper

Paper prepared by Ms. Corey Levine, Human Rights Officer (Womens and Childrens Issues) OSCE Mission in Kosovo

Introduction

“All States and families should give the highest possible priority to children. The child has the right to standards of living adequate for its well-being and the right to the highest attainable standards of health, and the right to education. The child has the right to be cared for, guided and supported by parents, families and society and to be protected by appropriate legislative, administrative, social and educational measures from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including trafficking [and] sexual abuse... Countries should aim to meet the needs and aspirations of youth, particularly in the areas of formal and non-formal education, training, employment opportunities, housing and health, thereby ensuring their integration and participation in all spheres of society...”

Cairo Programme of Action: (International Conference on Population and Development) Principle 11, paragraphs 5.4 and 6.13

Children are the most vulnerable in society, particularly children in a post-conflict society, such as Kosovo. In order to get a clearer picture of the current state of children in Kosovo, the needs, the gaps, the priorities, OSCE convened a series of round table discussions throughout Kosovo held to coincide with the tenth anniversary of the Convention on the Rights of the Child, the first international legal document to exclusively the protection of children's rights.

On 20 November 1999, six workshops were held in the five regions of Kosovo – Pristina, Prizren, Gnjilane/Gjilan, Pec/Peja and two in Mitrovica – one on the north (Serb) side and one on the south (Albanian) side, the results of which are gathered here in the report. The report, as well as providing a snapshot of the situation with regard to children in Kosovo and identifying current trends, needs and gaps, also provides a blueprint for the future direction not only with regard to OSCE's work with children's rights, but pointing the way to strategies that address the issues identified below in conjunction with other agencies to address these issues on a collaborative basis. It will also form the basis for the discussion paper for the children's rights workshop at the first Kosovo International Human Rights Conference, 10-11 December in which potential solutions to the issues addressed below can be found.

The Right to Education:

- State Parties shall “make primary education compulsory and available free to all”... (Article 28, CRC)
- The education of the child shall be directed to “the development of... his or her own cultural identity, language and values”.... (Article 29, CRC)

Overview

Of all the rights discussed in the various roundtables, the right to education proved to be the most controversial. And as various protests and demonstrations around Kosovo since the start of the school year have indicated, the right to education has proven to be difficult to implement.

During the ten-year period of Kosovo Albanian resistance to the Serb authorities, the vast majority of Kosovo Albanians were educated in a non-official system that ran “parallel” to the state educational system. Many expectations have been created now that Kosovo Albanian children are returning to state schools. However, problems remain. Many schools were damaged or destroyed during the conflict, other schools have fallen into a state of disrepair. Others that are operational are being used by KFOR, thus reducing further the number of educational facilities accessible to children. Lack of operational educational facilities means that many schools are having to operate in shifts to accommodate all the students.

Lack of heating and water and intermittent electricity remain a problem for those schools that are operating. As well, a lack of equipment and resources for schools is also affecting the ability to provide quality educational services. Everything from a lack of desks and chairs to a lack of equipment for sports and other extracurricular activities and high tech educational tools such as computers have been cited as adding to the difficulties of providing a solid education.

However, more important than the lack of resources or facilities for educational needs, is the issue of access to education, particularly for minority children in the region as well as the right to be educated in one’s mother tongue. This is becoming more of an issue within all ethnic communities as Kosovo moves increasingly toward mono-communities. The right to education in one’s mother tongue has been particularly problematic for Roma children because there are no educational facilities in Kosovo that provide instruction in Romany. The language of instruction for Roma children, either Serbian or Albanian, depends on where they reside.

As well, although the educational system is viewed as an important avenue through which children can learn tolerance and to respect differences in culture, religion, etc. and is a useful tool to assist in preventing discrimination and hatred, the feeling generally expressed within local communities on all sides is that this can also be facilitated through unilingual schools as it is seen as too early after the conflict to begin with multi-lingual schools. As such, there was a general consensus that Kosovo is not yet ready for multi-ethnic schools but that steps can be taken to encourage co-operation and understanding through sports and cultural events between school from different ethnic communities. Rather, the emphasis should be on educating children rather than integration. Tied into this is how children and education are being used as a tool to score political points by all ethnic communities in Kosovo.

It is also being documented that many children are not attending school and/or university as they are working to help support their families, particularly in this post-war period when economic conditions are below normal and many families need extra income to rebuild their destroyed houses, replace lost property, livestock, etc. (this is addressed more in-depth below in the section on economic exploitation).

Another key factor in providing education is the commitment and skills of the educators. The selection and training of teachers remains a major challenge, particularly now when the children of Kosovo, in these post-conflict times need not only education within the classroom, but a supportive and healing environment that will take into account the stresses and difficulties associated with post-conflict trauma. Teachers are bearing the biggest burden outside of families in caring for children affected by the war and thus face a daunting task in providing quality education within these constraints.

Coupled with this is the fact that many of the most qualified and best teachers are being poached away to work at international organisations where the higher salary is a draw in the difficult post-war economic conditions.

It is also important to note that when discussing education, there currently exists a large gap between academic and social education in Kosovo. At present, value-oriented and harm-reduction education, such as health or sex education are missing from the school curriculum.

Finally, access to education continues to be unequal for males and females in Kosovo. There is still the perception, particularly in the rural areas of Kosovo, that education for girls is not a priority as they are married sometimes as early as 14 years of age and thus their development is viewed through their wife and mother responsibilities. Hence, many girls in the rural areas of Kosovo only finish primary school. Lack of employment is also seen as a factor in reducing the perceived importance for girls in receiving an education.

The right to health and well-being:

- “the right of the child to the enjoyment of the highest attainable standard of health”.... (Article 24)
- “A child temporarily or permanently deprived of his or her family environment,... shall be entitled to special protection and assistance provided by the State.” (Article 20, CRC)
- “State Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents or family members.” (Article 2, CRC)

Overview

There are many issues related to the right to health and well-being, including a healthy environment, the right to be cared for, the right to fully benefit from, and participate in, the economic, political and social life of society. However, it was pointed out time and time again in the round table discussions that it is much easier to ensure such rights when a society has material wealth and prosperity which is something currently lacking in Kosovo in this post-war period. Unfortunately, an

economically impoverished society impacts on children the most. As well, the constant repression and violence of the past 10 years has created a physical and psychological crisis in the life of the children of Kosovo in general.

The Psychological Consequences of the Conflict

The pictures the world saw in the international media during the conflict in Kosovo only told part of the story with regard to the situation of children; the real story was behind the cameras. Children were not fed or clothed properly during the war. They often lived in extreme conditions hiding in the mountains or in refugee camps. They lived under constant fear of death. Kosovo today continues to be littered with reminders of what happened during the conflict. These reminders include mines, destroyed homes and mass grave sites. While children have a lot of resilience and are able to overcome the physical and social effects of conflict easier than adults, it is the psychological impact of conflict which takes their toll, particularly on children.

The following story elucidates this particular point: A child was told by his father not to go into a mined area near his home in Klina. The child went anyway, and lost his leg when he stepped on a mine. When asked why he had gone to the mine field when explicitly told not to do so, the child replied that he had wanted to overcome the 'barriers' that had been placed around him. He wanted to be free to go where he wanted.

While post-traumatic stress syndrome has become a recognised symptom of conflict, and one in which a lot of programming resources are now devoted, it is also recognised there are both appropriate and inappropriate responses to the 'psycho-social' after-effects of war. In a society where outward expression of emotion is not necessarily considered an appropriate response, it is argued that the most important thing for children to overcome the effects of war, is to be free to play, to go to school, to have shelter and not to feel afraid; and that programs that work with children in a 'war-damaged' context can have unforeseen psychological consequences.

The other major legacy from the war can be seen in the streets of Kosovo - groups of children playing with toy guns and war games. For years, the children of Kosovo have been witnesses to fear, intimidation, harassment and human rights violations, all of which are continuing today. The level of violence in society is generally reflected in children's play. Given the level of violence that has existed for the past ten years and continues to exist today, there is a baseline of violence underlies the play of children which is also being increasingly acted out in violent acts. More and more there is concern about the lack of ability to break this circle of violence.

The children of Kosovo have also been affected by the issue of missing persons, which hangs like a shadow over the region. Almost every child in Kosovo has a relative or family friend whose whereabouts is unknown.

Access to Health Care

Like education, access to health care has become a politicised issue. Not only are there problems with lack of resources for medical care and inadequate facilities commonly associated with a post-conflict context; many children are being denied medical treatment simply because of their ethnicity. The city of Mitrovica is a case in point. The division of the city means that the hospital which is on the north side is

now inaccessible to the Kosovo Albanian population, who reside on the south side of the city. Thus, many Kosovo Albanian children from Mitrovica are having to travel to Pristina in order to receive medical treatment. However, for minority children living in or near Pristina, there are reports they have been refused or had inadequate treatment at Pristina hospital.

Freedom from Discrimination on the Basis of Parent's Nationality, Religion, etc.

In this conflict, children have been seen to be guilty by association. Simply because of the community they were born into, they are seen to be “traitors” or “collaborators” and as such, children have been, and continue to be, denied their basic rights. Rights, such as the right to be educated in the child’s mother tongue, the right to worship in the religion of one’s family, the right to have a nationality, etc. And while a child should not suffer for what their parents have done, it is a sad reality that many minority children living in Kosovo today are suffering the consequences of the actions of adults.

Children without families

A continuing problem for all post-conflict societies are children who become separated from their families, either through death of adult family members, forced separation, or abandonment and Kosovo is no exception to this problem. Many children have been found with no identification who are too young to know their names or where they are from. Although there are intensive family reunification efforts currently taking place in the region, there are still many children separated from their families for one reason or another. There are no mechanisms in place for formal adoption procedures making it hard to provide an alternative home for these children. Estimates vary, but there are at least several hundred children residing in hospitals and other institutions with no other place to go.

Freedom from Exploitation and Abuse:

- “State Parties shall take all appropriate measures to protect the child from all forms of physical or mental violence, injury or abuse, maltreatment or exploitation, including sexual abuse....” (Article 19, CRC)
- “the right of the child to be protected from economic exploitation...” (Article 32, CRC)
- “State Parties shall undertake all appropriate measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.” (Article 35, CRC)

Economic Exploitation

They form such a familiar part of the local environment, so much so that they seem to blend, almost unnoticeably, into the urban landscape. “They” are the children and youth on the streets and in the cafes and restaurants selling cigarettes, flashlights, CDs, and any number of assorted paraphernalia.

A recent Children’s Aid Direct (CAD) assessment of youth in Kosovo engaged in informal economic activity found that most are working because of the need to contribute to the family income, to rebuild destroyed livelihoods and homes. This is especially true for families from the rural areas temporarily displaced in the urban centres where the income generated by the youth is vital for the family maintenance,

particularly as there is less opportunity for gainful employment for the adult members of the family.

The sight of youth on the streets selling cigarettes in such large numbers dates back to 1990 when many Kosovar Albanians lost their means of employment and the money made from cigarette sales often provided the only family income. As adults were at risk of arrest by the authorities children were then used to sell cigarettes.

The assessment found that the rate of attendance at school for youth who are engaged in informal economic activity was lower than average. It was also pointed out that children and youth on the streets engaged in economic activity are even more vulnerable than their peers who are not to other risks, such as sexual or physical abuse, drugs, criminal activities, etc. As well, with informal economic activity increasingly being guided by criminal forces, especially with decreased border patrol, the smuggling in of goods has become easier. This has put the youth on the street even more at risk.

In an attempt to deal with the consequences of increased criminal involvement in these economic activities, KFOR have recently begun a licensing exercise for market booths. However, this has raised several concerns. The first is that the selling would be pushed underground if sellers were not able to obtain a licence. Another concern is with regard to the decision-making process. The question of who would receive a licence would be potentially open to abuse, rewarding those who have the money to obtain the licences illegally. Finally, would the need to compensate for the loss of the income for the family force other avenues of criminality and would the proposed sales licencing agreement have any impact on reducing the exploitation and vulnerability of these children?

Trafficking in Children

The trafficking of children is also becoming an increasing larger problem here. The children of Kosovo are particularly at risk for trafficking. This is due to the fact that most of the pre-conditions for trafficking exist in Kosovo: a war traumatised population; poor economic conditions; large population displacements; a lack of law enforcement; a lack of documentation of the population; existing patterns of human smuggling roads; and organised trafficking networks and groups in neighbouring countries.

Females between the age of 12 and 18 are the primary targets. Forms of trafficking includes: illegal adoption; kidnapping and abduction; the lure of a better life/jobs; the sale of children by their parents. Some of the consequences of trafficking include: involuntary separation from the family; forced migration; being forced to live in terrible conditions; no access to education; sexual and/or physical abuse and exploitation.

Juvenile Justice

- No child shall be deprived of his or her liberty unlawfully or arbitrarily. (Article 37.b, CRC)
- Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty... (Article 37.d, CRC)

In Kosovo, children under the age of 14 are seen as 'non-persons' in the criminal code and thus are not regarded as criminally responsible for their actions both under Yugoslav and international law. If children under the age of 14 are caught in any kind of criminal activity, they are returned to their parents or legal guardian. However, there is no system or services to assist those under 14 who come into conflict with the law at present; this leaves them free to re-offend or vulnerable to other abuses. And while there are youth facilities available for 14 to 16 year olds, after 16 years of age they are detained in adult prison. It is vital to ensure that there are support systems for children involved in criminal activities and that there is access to rehabilitation, education, support and protection systems, none of which Kosovo has at the moment.

But perhaps the most worrying trend identified with regard to youth and criminal activity is that many of the acts of intimidation, harassment and terror being committed against minorities, from stone throwing and name calling to grenade attacks and house burnings are being perpetrated by children and youth. However, there remains a question as to whether these activities are spontaneous acts, or are they being carefully co-ordinated and orchestrated by adults because of the laws regarding juvenile perpetrators and the black hole that currently exists with regard to the rule of law?

Conclusions and Recommendations

From the information contained within the report, one can observe that Kosovo fits into the pattern of a society struggling to come to terms with the post-war after-effects. All problems that are common in a post-conflict situation; an economy in ruins, physical and infrastructural devastation, post-traumatic stress, an uprooted population, etc. all impact on children the hardest. This is because children are often the invisible and marginalised victims of society's ills, post-war or not. It's a cliché to say that children are a society's greatest resource, but embedded in every cliché is an inherent truth. We must work not only to protect, but equip Kosovo's future generations so that the cycle of violence, oppression and hatred that has governed the region for so long can be broken.

Tabled below are concrete recommendations that came out of the round table discussions which will hopefully address some of the issues raised within this report:

- To establish within local government structures a department of children's welfare;
- A greater emphasis needs to be placed on community based policing;
- A comprehensive rehabilitation centre for war traumatised children should be established;
- To raise awareness in the community regarding the various influences and risks that youth engaged in informal economic activities are vulnerable to and how it is affecting their education;
- A comprehensive referral system should be set up in order for those on the front lines working with children and youth know who to contact – this was identified as a huge gap;
- A more systematic and co-ordinated approach to programs and services for children and youth needs to be established;
- To raise awareness on the issue of trafficking with an emphasis placed on prevention;

- Prevention also needs to be a focus with regard youth in the criminal justice system;
- Local NGOs should be playing a proactive role in Kosovo in terms of ensuring that children's rights are respected and integrated into the laws and structures of Kosovo society;
- Those who have contact with children on a regular basis, such as judges, lawyers, teachers, social workers, police etc. need to be informed about the CRC, how to implement it on a practical basis, and trained in children's rights in general;
- School curricula need a major updating in both the models of teaching and the materials used and should include harm reduction education;
- Judges specialising in juvenile justice issues should be appointed in all the regions.

XXXX

Appendix F (vii)

Women's Rights

Women's Rights Workshop Background Paper

Paper prepared by Ms. Corey Levine, Human Rights Officer (Women and Childrens Issues) OSCE Mission in Kosovo

Introduction

Although the overall situation in Kosovo has stabilised since the end of the air campaign in June 1999, the region continues to experience various problems and difficulties associated with a post-conflict situation, most of which directly or indirectly impacts on women and those often found in their care, children and the elderly. Six months after the conflict has ended, the humanitarian situation continues to be focused on trying to meet the basic needs of the population, such as food and shelter. Thus, many needs specific to women, such as reproductive health and natal care, or the needs of war widows are either not being met, or are being met at vastly inadequate levels.

Large numbers of women who experienced trauma during the conflict, including that of sexual violence, the death or disappearance of family members, the loss of home and destruction of property, robbery or physical assault, or who may have witnessed any of the above, have yet to have their health or psycho-social needs related to the conflict met.

As well, the large number of land mines scattered throughout the region, the heavy destruction of infrastructure such as electrical power supplies, water systems, clinics, schools, houses, bridges and roads, has impacted heavily on women's ability to carry out the functions traditionally associated with females either within the family or the community.

At a meeting convened by the OSCE that brings together a broad spectrum of women's groups in Kosovo, including both grassroots and political party representatives, on a bi-weekly basis, they identified the three most pressing issues facing women in Kosovo as:

- Political representation of women in the reconstruction and peace-building process of Kosovo;
-
- Violence against women, including trafficking and prostitution;
-
- The economic recovery and prosperity of women in the province, including the increased visibility of women in economic and other aspects of public life.

Issues

1. Violence against women

Violence against women is a universal and pervasive phenomenon [ie. domestic violence, sexual violence, sexual harassment, trafficking in women to name but a few forms], shadowing women in the workplace, the home and the street. However, in conflict and post-conflict situations, the issue of violence against women takes on added dimensions. Below are three forms of violence against women whose manifestations have broader implications in a conflict or post-conflict situation.

a. Sexual Violence

The systematic use of sexual violence against women as an integral weapon of wartime has been clearly used throughout all of the former Yugoslavia. In Kosovo, as in many other cultures, women who have experienced sexual violence are doubly traumatised; first when the assault occurs and then after by her family and community since as she is often seen as having brought shame upon the family or community and may be ostracised from the family or community. There are reports of women who were sexually assaulted being held in solitary confinement by their families, being rejected by their family and/or threatened with divorce by their husbands, or committing suicide after being raped. Many women are continuing to live with their trauma in shame and in secret.

Although the international community is well aware of the situation, it has been difficult to access women who have experienced sexual violence and set them up with the necessary services, which are just at the beginning stages. The International Criminal Tribunal for the former Yugoslavia has begun on-site investigations of sexual violence war crimes, however, their priority to date has been mass graves.

b. Trafficking in Women and Girls

Why the focus on Kosovo? Although accurate data is still hard to come by, especially given the clandestine nature of trafficking, most of the pre-conditions for trafficking exist in Kosovo: a war traumatised population; poor economic conditions; large population displacements; a lack of law enforcement; lack of documentation of the population; existing patterns of human smuggling roads; a large international presence creating a demand for prostitution and thus trafficking; a desire on parts of the indigenous population to migrate; and organised trafficking networks and groups in neighbouring countries. As well, the refugee camps in the Former Yugoslav Republic of Macedonia and Albania provided a perfect breeding ground in which to exploit vulnerable women and develop organised trafficking networks. Further compounding the situation, there are currently no laws specific to Kosovo protecting women and girls from organised trafficking.

Given this precarious context, there is an urgent need to understand and respond to the trafficking phenomenon in Kosovo, both those girls and women being trafficked *out* of Kosovo and those being trafficked *into* Kosovo. This will require a well co-ordinated and comprehensive approach that will balance a law enforcement approach with a human rights approach. It should also focus on prevention, such as addressing women's economic empowerment, as well as measures that address those who have been trafficked and the perpetrators. It should include public

awareness raising, laws to deal with the traffickers, co-ordinated border control, law enforcement training, and regulations and legislation to deal with the issue within the rule of law. Finally, prevention activities should also include those which address the “demand” side of the equation and not just the supply side.

However, most important of all, the operational side of the issue needs to be immediately addressed. This means a comprehensive humanitarian assistance approach to the problem of trafficking, from the provision of temporary, secure shelter for those being trafficked to comprehensive re-integration programs. This requires close co-ordination and collaboration between various service and support organisations, both local and international, policy and law enforcement structures and liaisons and networks operating within Kosovo, regionally and internationally.

c. Domestic Violence

Domestic violence is under-reported and tacitly accepted in Kosovar society. Adding to this is the fact that there is generally an increase in the levels of domestic violence both directly and indirectly as a result of armed conflict. The tensions and escalated violence in society as a whole are also reflected within the family. Compounding this problem is the fact that there are no direct support services for victims of domestic violence yet in the region.

2. *Political Representation of Women in Kosovo*

Women in Kosovo are not adequately represented in the political bodies and decision-making processes at all levels. This is reflected in the fact that there were no women appointed to the Kosovo Transitional Council (KTC), the body of local representatives from public life, working with the Special Representative of the Secretary-General (SRSG) to provide a decision-making authority in this transitional period. However, after a lobby campaign, the SRSG agreed to have three women who were chosen by their colleagues, join the KTC, although they have yet to join the Council and there are still some questions of which three women will be the representatives.

At the end of November, the OSCE convened a two-day workshop for women in politics and public life, which was organised at the request of Kosovo women’s NGOs. At the workshop, women expressed the need to increase the representation of women in politics and the decision-making processes of Kosovo; increase the visibility of women in public and economic life; and get issues that are of importance to women on the political agenda. Obstacles that they identified in terms of pursuing these goals included:

- Lack of economic opportunities and economic independence
- Violence within the family
- Pervasive and structural discrimination against women
- Lack of women in decision-making positions
- Lack of child care and kindergartens
- Lack of education and training
- Lack of functioning state institutions
- Lack of representation of women in the media

3. Economic Rights

This relates to the current lack of access to economic resources and potential livelihoods experienced by women in the region, which is partially related to the larger issue of economic recovery in the region. However, it is also related to the low socio-economic position women hold in the region. Women continue to be viewed through their traditional roles which puts the emphasis on household and child-rearing functions. As well, customary inheritance and property laws work against women in the region from becoming economically self-sufficient.

Within the broader context of economic recovery, as in other post-conflict situations much of the programming initiatives are aimed at the re-integration of demobilised soldiers. This type of initiative most often comes at the expense of women-headed household of which there are many in post-war Kosovo. As well, skills development, training and funding for women often tend to be ghettoised within women's traditional economic activities such as sewing and knitting for which not only is there a small market, but the prices which women are able to fetch also reflect the lack of value commonly associated with this kind of work.

XXXX

Appendix F (viii)

Human Rights Institutions

Workshop Background Paper on Human Rights Institutions

Background paper prepared by Ms. Pirkko Koskinen, Ombudsman Support Coordinator, Rule of Law Department, OSCE Mission in Kosovo

1. Concept and History of the Institution of the Ombudsman

Traditionally, an Ombudsman is a "citizen's protector" which aims to ensure the observance of the human rights of the individual and to prevent maladministration and abuse of authority.

This institution offers people an opportunity to have their complaints heard, evaluated and investigated by independent experts, who have no involvement in the outcome of the investigation. They can make a finding on the complaint and recommend to the agency a remedy to the situation.

The "citizen's protector" institution, which traces its formal beginnings to the first Ombudsman appointed by a Parliament in Sweden in 1809, has become incorporated into national institutions and expanded to promote and protect Human Rights.

At present these type of institutions have gained popularity in many parts of the world, including the new or recently restored democracies which are re-building societies based on the rule of law. There are common characteristics of the Ombudsman: the Ombudsman is an independent body, which is not a part of, or depending on the administration, he/she has access to all information needed, including confidential information, and individuals and legal entities will have direct access to the services of an Ombudsman.

2. The Institution of the Ombudsman in Kosovo

a) Legal Bases, Objectives and Justification

Establishment of the institution will be governed by Regulations adopted by the Special Representative for the Secretary General pursuant to Security Council Regulation 1244 (1999). The UN Secretary General's Report of 12 July 1999 puts forward the principles, which are used as guidelines for establishing the jurisdiction, powers and functioning of the institution. The Rambouillet agreement also has a part devoted to the creation of an Ombudsman Institution. A preliminary regulation has been drafted in cooperation with the Council of Europe (Directorate of Human Rights, the Commission for Democracy through Law, the "Venice Commission"), UNHCHR, The UN Interim Civil Administration, the Office of the UN SRSG, and OSCE.

The Ombudsman will be an independent institution that will endeavor to achieve mutual tolerance among the members of different ethnic, religious and linguistic

communities by promoting and protecting human rights and fundamental freedoms, as recognized in the international instruments. However, the Ombudsman institution may not be a substitute for courts, because it cannot make binding decisions.

b) Jurisdiction

It is foreseen in the draft regulation that the Ombudsman will have jurisdiction with regards to the protection and promotion of human rights, abuse of authority and maladministration committed by the Interim Civil Administration or any emerging local institutions or non-state actors claiming or exercising authority in Kosovo.

The Ombudsman may enter into an agreement with KFOR in Kosovo in order to regulate violations of human rights and fundamental freedoms allegedly committed by the KFOR police force.

c) Powers

i. The Ombudsman will receive and investigate complaints by individual and legal entities and act also on his/her own initiative, particularly in cases involving potential human rights violations committed by authorities. When the investigation reveals that a complaint is well founded the Ombudsman may make recommendations to the authority to adopt effective measures. He/she may also address the competent body on possible solutions to remedy the situation, including the payment of damages. If his/her recommendations are not complied with, he/she can draw the attention of the highest authority. Further, he/she may recommend that the competent authorities initiate disciplinary or criminal proceedings against any legal entity whom he/she considers guilty of deliberate unlawful conduct. Finally, he/she will include the matters in his/her annual or special report, and all the recommendations will be accessible to the public. He/she may also recommend amendments concerning the compatibility of the legislation in force in Kosovo with the international human rights standards.

ii. The Ombudsman is a mediator, whom a individual or legal entity can turn to before he/she goes to a court. This institution will seek an amicable solution in cases where a human rights violation has been found. At the same time, the most important feature of the Ombudsman's investigations is confidentiality.

d) Composition

According to the draft regulations, there would be one international Ombudsman and three deputies, one of them international and two locals.

XXXX

Appendix F(viii) (contd.)

Remarks on Human Rights Institutions

Workshop presentation by Mr. Bennett Freeman, Deputy Assistant Secretary for Democracy, Human Rights, and Labor, United States Department of State

I want to begin by thanking the OSCE and the other sponsors for organizing this important and timely conference. It is a privilege for me to contribute to this workshop on human rights institutions.

This past week, two organizations released authoritative human rights reports -- one by the OSCE, the other by the U.S. State Department -- documenting the record of atrocities, killings, disappearances, ethnic cleansing, and other human rights abuses that have been so willingly committed over the course of this tragic year and before. The facts made clear in those reports also reminds us why NATO intervened last spring and why the international community is now engaged in such a comprehensive effort to restore order, reconstruct civil society, and lay the basis for democratic self-government.

The painstaking documentation of human rights abuses in those reports also reminds us of the immense task facing human rights institutions as they are established in Kosovo -- to ensure accountability for human rights abuses that been committed -- and to prevent such abuses in the future.

There is understandable frustration on the part of Kosovars with the slow pace of some of the international community's efforts, but there are also reasons for hope -- hope because human rights institutions *are* being built -and hope because these institutions will have the potential to provide accountability and even help achieve, however slowly, reconciliation.

The OSCE, of course, is taking the lead on behalf of UNMIK and the international community in the design and establishment of these institutions. As Ambassador Everts and other speakers emphasized yesterday, the fundamental underpinning of respect for human rights is the rule of law -- the rule of law carried out through democratic policing and upheld through a functioning judicial system.

In building democratic police force, we are all constructing a force to police human rights. That is why more international police are being recruited, and why local police are being trained. The OSCE's police school in Vucitrn draws on human rights education and best practices in policing -- and seeks to bring together individuals from Kosovo's diverse ethnic communities. Well trained police will be the first line of defence for human rights for all Kosovars.

In building a functional judicial system, we are also constructing a framework for human rights protection. That is why the OSCE and UNMIK are putting emphasis on recruiting staff, monitoring court proceedings where they are occurring, training more judicial personnel, addressing working conditions, resources, and urgent issue of paying judges and other judicial staff. The judicial system will also function better as a

system for human rights protection for individuals as other key issues are addressed -- above all, as periods of pre-trial detention are reduced and defendants have the expectation of trial within a reasonable time frame.

These two examples of democratic policing and a functional judiciary should remind us that human rights must be protected systemically -- on the part of all the institutions of self-government and civil society. Human rights must also be protected on an integrated basis -- on the part of the police and judiciary working together to ensure that international standards are upheld for all Kosovars.

But ensuring that the police and judiciary function as human rights institutions, among other things, is not enough. That is why so many countries, whether long-established democracies or post-conflict states, have established a special human rights protection mechanism -- an ombudsperson.

As Pirkko Koskinen's excellent background paper makes clear, an ombudsperson is not a substitute for judicial mechanisms or remedies, but an alternative and complementary avenue for citizens that can provide access to justice, mediation of disputes, and human rights education. The ombudsperson must be, and be seen to be, impartial and independent; the ombudsperson must have access to all information necessary for to conduct impartial and independent investigation; and citizens from all backgrounds and communities must have equal and direct access to the ombudsperson.

Word of the establishment of a human rights ombudsperson early in the new year by the OSCE is a very encouraging development. That individual and institution will symbolize the central importance of human rights in the new Kosovo. It will help determine whether specific grievances have substance -- and help substitute a culture of accountability for a culture of impunity. It will also build bridges among the individuals, families, and communities of Kosovo by being open and accessible to all.

To be effective, Kosovo's ombudsperson will have to rely on the support of not only empowered citizens, but also on non-governmental organizations. It will rely on human rights monitors working for the OSCE and other institutions. The Ombudsperson must succeed -- and the international community must do everything it can to help.

The U.S. government attaches great importance to the quick launch of a viable ombudsperson. That is why we have provided the OSCE Mission in Kosovo with a discretionary fund totalling \$1.15 million, which should be directed towards the Mission's human rights priorities, especially the quick establishment of an ombudsperson.

Kosovo is a part of Europe, and the values of the European Convention on Human Rights are its birthright. Governments, international organizations, NGOs, and human rights advocates of all stripes must use the international community's presence here to build a culture of respect for human rights. If Kosovo is ever to integrate itself into contemporary Europe, it will start with respecting citizens and neighbours, and the ideas of the European Convention and the Helsinki Final Act.

Let me conclude by stating that the greatest responsibility for ensuring the success of human rights institutions and human rights protection lies with the people of Kosovo themselves. The events of last year are only the most recent and tragic incentive for them to create a culture of respect for the human rights of all Kosovars, regardless of ethnicity. The United States and the international community at large will stand with them as they meet this challenge in the months ahead.

XXXX

Appendix F(viii) (contd.)

Introductory Workshop Speech on Human Rights Institutions

Workshop presentation by Mr. Michael Meyer, OSCE Office for Democratic Institutions and Human Rights

The Office for Democratic Institutions and Human Rights (OSCE ODIHR) supports national Human Rights since some years. Since the time is limited, I will not explore all the aspects of the issue. I will just outline very briefly characteristics and requirements for a functioning national Human Rights Institutions and then raise some questions that should be interesting in the context of Kosovo.

Definition

Originally the definition of a national human rights institution was very broad, encompassing every national institution having an impact on the protection and promotion of human rights.

This definition was narrowed down. In 1991 a workshop was held, which developed some principles relating to national human rights institutions. These principles were endorsed by the UN General Assembly and became a main reference document in this field. The workshop had taken place in Paris so the document is called the *Paris Principles*.

According to the Paris Principles national human rights institutions have mainly three roles:

- Educational and promotional activities in the field of human rights
- Advice to the government on human rights
- Investigating and resolving complaints about human rights violations committed by the state by non-judicial means

This definition does not include Courts. The main difference between the judiciary and national human rights institutions is that the latter cannot usually make any legally binding and enforceable decisions.

The definition still leaves unclear cases, but the usual national human rights institution is a Human Rights commission or an Ombudsman.

Requirements for an effective institution

I will give a very brief outline of the requirements for an effective national human rights institution. There are important requirements, but in the context of Kosovo many issues are not so clear and I will discuss them afterwards.

Independence - This is obviously the single most important aspect. A human rights institution that is not independent will not be able to protect human rights against the state. Independence should be guaranteed by a couple of factors:

- by law (best in the constitution; distinct legal personality)
- financial autonomy (write its own budget, etc.)
- appointment and dismissal procedures: normally Parliament should appoint for not too short a term, dismissal should only be possible on narrow grounds which are clearly defined by law.
- Immunity

Accessibility - Citizens need to know the institution and what it does. It needs to be physically accessible and citizens should be able to make oral complaints, in order not to exclude illiterate persons, etc. If the circumstances require, complaints should be accepted in several languages.

Operational Efficiency-The Institution needs to have adequate resources, develop its own working method and appoint its own personal. The way of working should be flexible and unbureaucratic. There should only be minimal formal rules for filing complaints with the institution.

Accountability - The Institution uses state resources and must therefore be accountable. It is difficult to strike a balance between this requirement and the independence of an institution. A good way of accountability is the requirement (by law) for the institution to publish regular reports about its work.

Trust - If the conditions mentioned are met and a national human rights institution starts to function it can gain the trust of the citizens. Without trust such institutions cannot function. Citizens would simply not bring any complaints to such institutions. And also state institutions need to gain trust, that the national human rights institution is impartial and has no hidden political agenda. The human rights institution will gain this trust with well-argued recommendations based on equity and sometimes common sense. The first months and years of operation are the most important. If the institution fails to gain respectability then, it will have difficulties to avoid marginalisation in the public.

All these issues are relevant for Kosovo, but following are some considerations and questions with particular regard to Kosovo. These issues might be discussed in the Working Group.

Role in a post-conflict situation?

Most western national human rights institutions concentrate on maladministration, but in transition countries they have a broader scope in the protection and promotion of human rights at large. The state institutions, particularly the court system, are usually particularly weak and a human rights institution can help to bridge gaps. However, there are also some doubts to the role of a human rights institution in a post-conflict situation, which is still marked by an excess of violence and force and where civil discourse broke down.

Public activities can be based on force and on arguments. In a conflict, arguments cease to play a role and force prevails. However, also a normally functioning state relies on the use of force, but force is controlled and checked and is explained. E.g. a court judgement can be usually executed by force, but at the same time you have the judgement, which sets out the reasons and can be appealed.

A human rights institution has no enforcement power at all. It relies only on the power of the better argument, on persuasion, sometimes on the integrity of the Ombudsman or Commissioner and maybe on public pressure.

The question is whether in a post-conflict environment, used to violence and force, such an institution has any chance to succeed.

Surely building up the police and the judiciary should have the priority. A Human Rights Institution cannot fulfil their tasks. However, in certain areas - and that is a question of the mandate - a human rights institution can start to re-introduce a civilian discourse that relies on the better argument.

The Mandate of a Human Rights Institution in Kosovo

Human Rights institutions deal with the activities of the state and its bureaucracy. In Kosovo the obvious question is who is the state? Is the civilian administration and KFOR the state? How about acts of the self-styled government? Or should one wait before legitimate domestic institutions begin to operate? These are difficult questions without obvious answer. However, it seems that the plan is to include the activities of the civil administration and maybe KFOR into the mandate of the Ombudsman. I would very much welcome this. It would strengthen the administration and would also show that it is willing to apply standards of scrutiny to its own work in a very difficult environment. The Ombudsman could finally add to the mission success.

Legal Basis of the Institution, applicable standards?

It should be discussed what the legal basis for a national human rights institution would be. Another question is what the applicable standards would be. The UN Covenants are applicable in Kosovo and the incorporation of the European Convention on Human Rights into domestic law could be considered.

Appointment procedures

Who should appoint an Ombudsman in Kosovo and who could be appointed? Appointment procedures should take into account plurality and be set-up to ensure independence, but for the time being there are no institutional choices, because there are no domestic organs, so at the moment only the civilian administration could appoint the Ombudsman. The Ombudsman could be from Kosovo or an international, I understood that a mixed model is planned.

I mentioned the need for such institution to gain trust. Of course one main partner for such institutions are NGOs. Co-operation with NGOs is vital and this should be taken into consideration already at the stage of setting-up the institution. NGOs should be

integrated on consultations on that issue and maybe express their opinion of candidates.

Working in limited fields the Ombudsman could set standards of an open discourse based on the better argument and hopefully this practice would gradually spread to other, newly established domestic institutions.

XXXX

Appendix F (ix)

Detainees and Missing Persons

Detainees And Missing Persons Workshop Background Paper¹³

Paper prepared by Ms. Laura Bowman, Human Rights Officer / Chief of Missing Persons Unit, OSCE Mission in Kosovo

Background

The problem of missing persons in Kosovo began to grow significantly with the intensification in armed conflict in the beginning of 1998 and the further escalation of conflict in March 1999. Throughout this period, allegations of abduction, arbitrary arrest and detention, indiscriminate killings, forced expulsions and disregard for the proper documentation and burial of mortal remains have created a situation where family members can not learn the fate of their missing relatives.

The return of refugees in mid-June created the opportunity to resolve some of these cases. However, the violations mentioned above continue, mainly against minority community members. While these violations may not happen on the same scale or with the intimate involvement of the state, minority community members deserve the same right to know the fate of their relatives.

This puts us in the position of working to resolve missing persons cases while also working to prevent new cases.

Current situation in Kosovo

The return of refugees, the restoration of a more secure working environment for local and international organizations, and the move toward the restoration of the rule of law have created an environment where attempts can be made to systematically resolve missing persons cases.

No final figure can yet be given for the total number of missing. Numerous local and international organizations have collected information on the missing, but the most comprehensive list is likely to be published by ICRC. They have been actively seeking family members of the missing throughout Kosovo in an attempt to encourage them to file ICRC tracing requests. Family members of the missing in Serbia are also able to file tracing requests through ICRC offices in Serbia. This work is not yet complete; thus, the final number of missing is hard to estimate. What can be said is that approximately 2500 tracing requests have been collected to date.

The phrase “missing persons cases” covers a wide range of possible fates. Some of those persons who are missing may still be alive. Since June, a variety of organizations have made systematic efforts to locate missing persons who have

¹³ Note: the statistics included in this paper are valid as of the date of the conference and may have changed since.

been detained and indeed many have been registered by ICRC in Serbian prisons. The ICRC, OHCHR, UNMIK Police, OSCE, KFOR, the Humanitarian Law Center, and the Association of Political Prisoners and other organizations have all been involved in different ways in trying to ascertain the whereabouts of Serbs and Albanians who have been detained. As of October, ICRC had on its registration lists over 1900 Albanian prisoners detained in regular Serbian prison facilities, but taking into account the release of 332 prisoners from Serbia since June, the current number may currently be closer to 1700-1750.

Families of the missing believe that the total number of prisoners may be much higher; perhaps as much as 5000. For example, ICRC has sought but has not as yet been granted access to military prison facilities, so the possibility exists that additional prisoners could be found. Ironically, family members of all ethnicities believe in the possibility of "hidden" or "secret" detention. Rumors circulate in the Albanian community about prisoners being hidden during ICRC visits or about special "private" detention facilities in Serbia. Rumors circulate among the Serbian community in Kosovo and in Serbia about private detention facilities in Kosovo or northern Albania. The flames of rumor are fanned by unscrupulous con men who demand large sums of money to provide information on the whereabouts of missing persons, to arrange prison visits for families or to facilitate the release of prisoners. Although some prisoners insist that they were released as a result of monetary payments, most families that provide money rarely see the promised results.

In August and September, sizeable demonstrations in Pristina helped highlight the plight of those Kosovar Albanians imprisoned in Serbia. SRSG Kouchner initiated the creation of the Commission on Imprisoned and Detained representative of local Kosovar Serbs, Albanians and other minorities. This Commission is chaired by the Office of the High Commission for Human Rights and has become a regular forum to discuss actions related to those cases of persons missing and believed to be detained. On behalf of the commission, OHCHR has submitted a request to the Serbian authorities for the release of all vulnerable prisoners (considered to be women, children, the elderly and infirm). Some of these vulnerable cases have been released, others remain imprisoned.

In addition to chairing the Commission on Prisoners and Detainees, the OHCHR has been monitoring the judicial status of prisoners as well as the quality of trials. Numerous prisoners had been arrested in Kosovo before the airstrikes and additional arrests were made during the airstrike period. Prior to the entry of KFOR into Kosovo, these prisoners were transferred to jails in Serbia. Many prisoners have been held without charges for six months or more. Other prisoners have been charged, often with terrorism, and brought to court to participate in trials conducted with numerous procedural errors, on the basis of flimsy evidence and in a manner inconsistent with international legal standards.

The widespread belief that large numbers of prisoners are being held alive without access to ICRC or in "secret" or "hidden" detention facilities probably reflects, at least in part, a refusal by families to consider another more painful possibility -- that their missing loved ones may no longer be alive. The ICTY has investigated 195 of a reported 529 gravesites with the assistance of forensic teams from 14 different countries. In total, ICTY has exhumed 2,108 remains. Identification rates vary by

site, but an overall an estimated 70-80% of the mortal remains exhumed by ICTY have been identified. Although not the primary goal of the ICTY, these identifications have contributed to the resolution of a significant number of missing persons cases.

In addition, due to the absence of civilian administration and the rule of law, local organizations and individuals have taken the liberty of exhuming and identifying bodies on their own. This happened particularly often in the chaotic early days of return. Many families returned to their homes only to find mortal remains in their yards and wells. Others returned and sought to exhume and properly rebury relatives who had been killed in the conflict and hastily buried by community members. Others simply could not or would not wait for ICTY teams or the resumption of the legal system. Much of this activity has gone on in a haphazard manner without appropriate legal or scientific underpinnings and without the benefit of centralized record-keeping. It is, therefore, difficult to estimate how many remains have been exhumed and identified in this way or how accurate the identifications are.

Other local and international organizations have made active contributions in the area of missing persons cases:

Since June 1999, Physicians for Human Rights has been working with the ICTY exhumation teams to provide support and information to families involved in the identification process. PHR has provided additional training to local social workers, mental health workers and the Institute of Forensic Medicine with the goal of increasing local capacity to continue this work.

OSCE has been documenting the severe human rights abuses that often create a disappearance. In addition, wherever possible, OSCE has been documenting gravesite locations and both ICTY and local exhumations.

The International Commission on Missing Persons has been active in Kosovo, funding the work of Physicians for Human Rights and seeking to promote more effective local exhumation processes through the creation of a commission under the auspices of UNMIK.

KFOR and UNMIK Police have investigated disappearances and conducted exhumations of gravesites. UNMIK Police Missing Persons Unit is developing an ante-mortem database that can be used to help in the identification of remains.

UNMIK Civil Administration has increasingly devoted attention to missing persons issues related to civil administration, such as: death certificate documentation, grave registration, creation of a commission to better manage the local exhumation process and other administrative functions.

The self-styled Central Commission on War Crimes and Missing Persons has regional offices throughout Kosovo and had been collecting documentation relating to war crimes and conducting or facilitating exhumations in some regions.

The Council for the Defense of Human Rights and Freedoms has also been collecting of lists of those missing and killed in the conflict as well as documenting

war crimes and assisting in the exhumation and identification of remains in some areas.

The Institute of Forensic Medicine has conducted autopsies on remains exhumed in the local process and assisted in the identification of mortal remains.

The Association of Political Prisoners has been working for the release of prisoners in Serbia. In addition, they are concerned about the welfare of the prisoners and families both during their prison terms and after their release.

The Council of Parents of Gjakove represents perhaps one of the largest groups of missing persons. Over 1200 persons are missing from the Djakovica/ Gjakove area; several hundred of which have been registered by ICRC in prisons in Serbia.

The Humanitarian Law Center, with offices in Belgrade and Pristina, has been working with lawyers from Kosovo and Serbia to represent those Kosovo Albanians detained in Serbia. Within the last few days, one of those attorneys, Teki Bokshi, was arrested by MUP officials near Belgrade. His whereabouts are currently unknown although there are indications that he is alive.

The list above is by no means exhaustive. Numerous other local and international groups conduct activities which touch upon the missing persons issue in some way.

Issues for the future

With over 1700 prisoners remaining in prisons in Serbia and at the current rate of release, the issue of Kosovo Albanian detention in Serbian jails will remain a serious one. Questions related to the legal status of these prisoners are complicated. Can they be argued to be prisoners of war? If they are not prisoners of war, then what obligation is there to release them? Often the parties to a conflict enter into negotiations in the post-conflict period to arrange the release of detainees. Is that possible in these circumstances? What individuals or authorities could provide representation and accomplish the release of prisoners or information about the missing?

If there is no legal obligation to release the prisoners immediately, then perhaps there is a chance for their release via normal legal mechanisms. However, families are greatly frustrated by the severe inadequacies of the Serb judicial system. How, the families ask, can we expect justice from a society that is so clearly operating outside the norms of the rule of law? How can we expect methods of pressure such as sanctions to have an effect on a society that has already been subject to severe sanctions? Many family members of the missing doubt that complete releases are possible as long as Milosevic remains in power; however, they would like to see Europe, America and other concerned countries make a concerted effort to exert the maximum pressure possible on the government.

Kosovo Serb and Roma also express frustration. In the post-conflict environment, they have been disproportionately subject to crimes such as abductions and killings. Many feel that the international community is unable to protect them. There has

been little progress in resolving the whereabouts of those victims who may still be alive or in locating the mortal remains of those who may have been killed.

Although all family members hope that their missing loved ones are still alive, some acknowledge that the many graves in Kosovo will provide answers to the fate of the missing. Carla del Ponte, the ICTY Prosecutor, has clearly stated that the ICTY will continue to exhume graves next year but, the ICTY can not be expected to complete all the work. It is likely that local legal institutions such as the Kosovo judicial system, the police and local forensic experts will be called upon to exhume and identify remains from at least some of those sites which the ICTY does not investigate. In addition, although ICTY is attempting to identify remains, those remains not immediately identified will need further follow-up. This raises the question of how the local administrative and judicial processes can be supported to carry out this work in the best possible manner to preserve evidence of crimes and information leading to identification.

XXXX

Appendix G

Material on the Human Rights Reports, *As Seen, As Told*, Parts 1 and 2.

ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE

The Secretariat
Kärntner Ring 5-7, 1010 Vienna, Austria

For information - not an official document

No. 87/99

PRESS RELEASE

OSCE Releases Human Rights Reports on Kosovo

Vienna/Pristina, 6 December 1999 – The OSCE released two human rights reports today that document extensive human rights violations in Kosovo.

The first report, *Kosovo/Kosova - As Seen, As Told*, is an analysis of the human rights findings of the OSCE Kosovo Verification Mission. Hundreds of documents compiled in Kosovo up to 20 March 1999, and afterwards nearly 3,000 interviews with refugees in Albania and the former Yugoslav Republic of Macedonia, were examined by an expert team at the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw.

The report presents probably the most extensive and systematic survey to date of human rights in Kosovo in the first half of 1999. A grim catalogue of violations is described, illustrated by the experiences of hundreds of individuals and communities. In particular, the report powerfully conveys a picture of Kosovo in the period of the NATO air campaign against Yugoslavia. Examining the actions of both sides to Kosovo's internal armed conflict, the report concludes that there was no semblance of balance in the human rights abuses committed. Overwhelming, it was the Kosovo Albanian population that suffered.

The second report, *As Seen, As Told, Part II*, documents the period between 14 June and 31 October, when more than 800,000 Kosovar Albanian refugees returned to a war-torn Kosovo under KFOR protection and UN administration. The report analyses human rights conditions and events in each of the five regions of Kosovo and notes that the desire for revenge has been the primary motive for the vast majority of human rights violations. Kosovo Serbs, Roma, Muslim Slavs and others have been targeted by elements of the Kosovar Albanian population for expulsion, harassment, intimidation, house-burning, abductions and death.

The second report calls for thorough investigations into allegations as well as for an increase in international police and judicial experts to help break the cycle of violence

in Kosovo. The report notes that deficiencies in law enforcement capabilities and the administration of justice have contributed to the climate of impunity within which human rights violations are more likely to occur.

The reports, together numbering more than 900 pages, will be distributed today at 10:00 in Pristina at a press conference at OSCE Mission Headquarters. The reports are available on the internet at www.osce.org/kosovo/reports/hr

XXXX

Appendix G (ii) (contd.)

OSCE Press Background Paper "As Seen, As Told" Part I & II

6 December 1999

Release of OSCE human rights reports on events in Kosovo

The OSCE has produced two human rights reports that extensively document the human rights violations in Kosovo reported by OSCE field officers. One report covering the period October 1998 to 9 June 1999 contains an analysis of the findings of the OSCE Kosovo Verification Mission (OSCE-KVM). This report, entitled "As Seen, As Told", pertains to the human rights situation in Kosovo during the broken cease-fire and armed conflict, including the whole of the NATO air campaign. The report is derived from the OSCE-KVM human rights files compiled in Kosovo up to the mission's withdrawal on 20 March, and nearly 2,800 victim and direct witness statements taken by OSCE human rights officers in the refugee camps of Albania and the former Yugoslav Republic of Macedonia during the NATO air campaign. The second report "As Seen, As Told Part II" documents the period of 14 June to 31 October 1999, when more than 800,000 Kosovo Albanian refugees returned to a war-torn Kosovo under KFOR protection and UN administration. Publishing the reports in conjunction does not in any way suggest that the abuses of the past and the violations of today can be equated. The sheer scale and the involvement of the State make the former of a structurally different order than the latter. We give a full account of both, impartially reporting all violations regardless of when they were committed or who committed them. The two reports are summarised below.

"As Seen, As Told". Period covered: October 1998 to June 1999

The report first analyses the nature of the broad range of human rights and humanitarian law violations committed in Kosovo in the reporting period. The report, prepared by a team of experts, shows that summary and arbitrary killing of civilians was committed by both parties to the conflict in the period up to 20 March. On the part of the Serbian forces, their use of mass killing as an instrument of terror was shockingly demonstrated at that time, and escalated after 20 March as one of the tactics to expel Kosovo Albanians. Other grave violations are also extensively reviewed including the use of arbitrary arrests and detentions as a means of intimidating the entire Kosovo Albanian population; rape and other forms of sexual violence, sometimes carried out as a weapon of war; and forced expulsion on a massive scale, accompanied by deliberate property destruction and looting. The report estimates that more than 1.4 million people were displaced from their homes by 9 June.

The report then examines the impact of the conflict on different communities and groups in Kosovo society. Among the findings is the specific focus on young Kosovo Albanian men of fighting age for killing, detention and torture, based on the perception of them as potential "terrorists." Throughout the conflict women were

placed in positions of great vulnerability and suffered violence specifically targeted at their gender. There are cases of children being deliberately killed, and, more widely, they were victims of and witnesses to violence and intimidation. Serbian forces specifically targeted prominent, educated, wealthy, politically or socially active Kosovo Albanians. There are well-founded reports that local staff of the OSCE-KVM, and others associated with the OSCE Mission, were harassed, forcibly expelled or killed after the Mission's withdrawal on 20 March 1999. Kosovo Serbs were also victims of humanitarian law violations committed by the UCK, particularly in the matter of the many Kosovo Serbs missing following abductions. Other minority communities also had specific experiences of the conflict.

Finally, the report provides a human rights "map" of Kosovo, a municipality-by-municipality account of violations as they occurred in hundreds of communities.

The conclusions of the report's analysis are that clear strategies lay behind the human rights violations committed by Serbian forces; that paramilitaries and armed civilians committed acts of extreme lawlessness with the tolerance and collusion of military and security forces whose own actions were generally highly organized and systematic; and that the violations inflicted on the Kosovo Albanian population on a massive scale after 20 March were a continuation of actions by Serbian forces that were well-rehearsed, insofar as they were taking place in many locations well before that date. While both parties to the conflict committed human rights violations, there was no balance or equivalence in the nature or scale of those violations - overwhelmingly it was the Kosovo Albanian population who suffered. The report also notes that persistent human rights violations lay behind the security breakdown which plunged Kosovo into armed conflict and a human rights and humanitarian catastrophe.

"As Seen, As Told Part II." Period Covered: 14 June to 31 October 1999

"As Seen, As Told Part II" reviews the human rights situation in Kosovo from the establishment of the new OSCE Mission in Kosovo until October. It is a period characterised by acts of revenge, committed in a climate of lawlessness and impunity. The report, produced under difficult field conditions, documents human rights violations in Kosovo since the end of the air campaign and the return of more than 800,000 refugees. It analyses human rights conditions and events in each of the five regions of Kosovo, and shows that the desire for revenge has been the primary motive for the vast majority of human rights violations that have taken place. Kosovo Serbs, Roma, Muslim Slavs and others who are perceived to have collaborated actively or passively with the Serb security forces, have been targeted for killing, expulsion, harassment, intimidation, house-burning and abduction. This has led to an exodus of these communities from Kosovo. As detailed in the other report, there is no doubt that many Kosovo Albanians suffered traumatic human rights violations for a decade before the conflict that left no family unscarred. However, whatever the context, the human rights perspective does not accept that the response to one injustice is the initiation of another.

Two iniquitous trends documented in this report are the targeting of vulnerable, elderly Kosovo Serbs and the increasing participation of juveniles in human rights violations, underlining the growing intolerance that has emerged within the Kosovo

Albanian community. Rights of Kosovo Albanians to freedom of association, expression, thought and religion have all been challenged by other Kosovo Albanians. The report reveals that opposition to the self-styled municipal administrations, often dominated by the (former) UCK, has sometimes led to intimidation and harassment.

The report contains many witness statements concerning UCK involvement in the violence, both before and after the demilitarisation deadline of 19 September ranging from reports of UCK "police" to more recent accusations about intimidation by persons claiming to be members of the nascent Kosovo Protection Corps (TMK). It is clear that the highest levels of the former UCK leadership and current provisional TMK hierarchy have formally distanced themselves from any connection of their members to the violence that has taken place. They highlight the ease with which criminal elements who were never part of the UCK had exploited the UCK umbrella for their own nefarious purposes. Despite such denials, it seems clear that the extent of UCK (and now provisional TMK) involvement is of such a nature and scope that the question of explicit or tacit involvement by the leadership requires close examination by the international community.

The report notes that deficiencies in law enforcement capabilities and the administration of justice have contributed to the climate of impunity within which human rights violations occur. The OSCE calls for thorough investigations into the allegations documented and for an infusion of more international police and international judicial experts to help break the cycle of impunity in Kosovo. The human rights documentation and investigations detailed in the two reports represent part of the OSCE's commitment to assisting in the rebuilding of a Kosovo which is founded on the principles of respect for human rights and fundamental freedoms. These principles can only be realised through the continued monitoring and reporting of the human rights situation and the establishment of the rule of law - a mandated task for the international community in Kosovo.

XXXX

Appendix G (iii) (contd.)

Warsaw, 6 December 1999

KOSOVO/KOSOVA As Seen, As Told

An analysis of the human rights findings of the OSCE Kosovo Verification Mission

Part 1: October 1998 to June 1999

EXECUTIVE SUMMARY

About the OSCE-KVM Human Rights Division

In 1998, after more than six months of escalating armed conflict between Yugoslav and Serbian forces and the Kosovo Liberation Army (UCK), the UN Security Council, in Resolution 1199, called for an immediate cease-fire in Kosovo, an international presence to monitor it, the withdrawal of "security units used for civilian repression", and dialogue on the future of the province. On 16 October 1998 the OSCE Kosovo Verification Mission (OSCE-KVM) was established to monitor compliance with Resolution 1199 and with the cease-fire. The Human Rights Division within the OSCE-KVM became operational in December 1998, and was deployed extensively across Kosovo by the end of January 1999. A core activity of the OSCE-KVM Human Rights Division was to monitor, investigate, document and report allegations of human rights abuses committed by all parties to the conflict in Kosovo.

With the collapse of the Rambouillet peace process, the OSCE-KVM was withdrawn from Kosovo on 20 March 1999, in the face of an untenable situation of deteriorating security, including additional large-scale deployments of Yugoslav and Serbian military and security forces, and armed irregulars, into Kosovo, as well as the imminent internationalization of the conflict. The Human Rights Division was redeployed in Albania and the former Yugoslav Republic of Macedonia, and continued its collection of victim and witness evidence of human rights abuses by conducting interviews among refugees from Kosovo over the next two-and-a-half months, until it was stood down by decision of the OSCE Permanent Council, on 9 June 1999.

A mass of data about the prevailing human rights situation in Kosovo was collected by the OSCE-KVM in the two phases of its deployment, including hundreds of individual case reports, daily and weekly reports compiled by human rights officers at its Regional Centres and field offices during the period to 20 March, and 2,764 interviews with refugees in Albania and the former Yugoslav Republic of Macedonia.

This report is the product of an analysis of that data carried out at the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) in Warsaw.

Analysing the OSCE-KVM's human rights findings: the OSCE/ODIHR's approach

The analytical methodology and reporting strategy applied by the OSCE/ODIHR, as described in more detail in the Introduction, is driven entirely by the data collection of the OSCE-KVM. Consistent with this methodology, the report does not therefore address itself to human rights violations that were beyond the reach of the OSCE-KVM's investigation and reporting efforts. Similarly, the report does not address itself to events that have occurred after the end of the mandate of the OSCE-KVM, except to the extent of incorporating specific information about investigative follow-up to the primary data of the OSCE-KVM.

There are clearly other human rights reports to be written on Kosovo, and on Yugoslavia, covering the same period as is covered here, and beyond.

Violations, their impact on Kosovo society, and the human rights map of Kosovo

The OSCE-KVM's findings are presented by the OSCE-ODIHR from three perspectives. Approaching this data from any of these perspectives, the analysis reveals clear patterns and strategies of human rights violations.

The first perspective is an analysis of the nature of the human rights and humanitarian law violations that were committed in Kosovo. This reveals that:

- Summary and arbitrary killing of civilian non-combatants occurred at the hands of both parties to the conflict in the period up to 20 March. On the part of the Yugoslav and Serbian forces, their intent to apply mass killing as an instrument of terror, coercion or punishment against Kosovo Albanians was already in evidence in 1998, and was shockingly demonstrated by incidents in January 1999 (including the Racak mass killing) and beyond. Arbitrary killing of civilians was both a tactic in the campaign to expel Kosovo Albanians, and an objective in itself.
- Arbitrary arrest and detention, and the violation of the right to a fair trial, became increasingly the tools of the law enforcement agencies in the suppression of Kosovo Albanian civil and political rights, and – accompanied by torture and ill-treatment – were applied as a means to intimidate the entire Kosovo Albanian society.
- Rape and other forms of sexual violence were applied sometimes as a weapon of war.
- Forced expulsion carried out by Yugoslav and Serbian forces took place on a massive scale, with evident strategic planning and in clear violation of the laws and customs of war. It was often accompanied by deliberate destruction of property, and looting. Opportunities for extortion of money were a prime motivator for Yugoslav and Serbian perpetrators of human rights and humanitarian law violations.

The second perspective is to look at the specific and different ways in which communities and groups in Kosovo society experienced human rights violations during the conflict. Findings include:

- There was a specific focus – for killings, arbitrary detention and torture – on young Kosovo Albanian men of fighting age, every one of them apparently perceived as a potential “terrorist”.
- Women were placed in positions of great vulnerability, and were specific objects of violence targeting their gender.
- There is chilling evidence of the murderous targeting of children, with the aim of terrorizing and punishing adults and communities.
- The Kosovo Serb community were victims of humanitarian law violations committed by the UCK, especially in the matter of the many Serbs missing following abduction. However, many Serb civilians were active participants in human rights violations, alongside the military and security forces, against the Kosovo Albanians. Other national communities and minorities also had specific experiences of the conflict.
- Prominent, educated, wealthy or politically or socially active Kosovo Albanians were a prime target to be killed. Local staff of the OSCE-KVM, and other people associated with the mission were harassed or forcibly expelled, and some were killed, after 20 March.

The third perspective is a geographical human rights “map” of Kosovo. Proceeding municipality by municipality, the report presents descriptions of events in hundreds of communities across Kosovo. In some cases the descriptions are of events on a single day or within a short time period, and reveal how the most characteristic human rights violations of the entire reporting period – forced expulsion, inevitably accompanied by deliberate property destruction, and often by killings or other violence, or extortion – could be visited on a community with little or no advance indication, with great speed, and with great thoroughness. Such experiences were replicated in rural areas all across Kosovo, and would be repeated if villagers attempted to return to their homes. In other locations, particularly the towns, communities of Kosovo Albanian civilians experienced an onslaught over many days or weeks combining arbitrary violence and abuse with an overall approach that appeared highly organized and systematic.

Everywhere, the attacks on communities appear to have been dictated by strategy, not by breakdown in command and control.

Indicators of a strategy well rehearsed, and brutally implemented

Most tellingly, the analysis of some of the most prevalent human rights and humanitarian law violations, as well as the analysis of their geographical organization and their impact on communities, demonstrate how the violations inflicted on the Kosovo Albanian population after 20 March were a continuation of actions by Yugoslav and Serbian military and security forces that were well rehearsed, insofar as they were already taking place in many locations in Kosovo well before 20 March. The mass killing at Racak on 15 January 1999 most graphically illustrates the descent into violence amounting to war crimes and crimes against humanity, and was to become a precedent for numerous other atrocities recounted to the OSCE-KVM in the period after 20 March.

Other key events in this regard in the period before 20 March were the killings of Kosovo Albanians by police at Rogovo and Rakovina later in January, the launch of Yugoslav army “winter exercises” involving the shelling of villages and the forced expulsion of villagers in Vucitrn/Vushtrri municipality in February and March, a military and police offensive in Kacanik in February, in which a tactic of burning and destroying civilian homes to clear the area of the UCK was employed, and a violent police crack-down in an Albanian quarter of Pristina/Prishtina in early March after the killing of two police officers. Alongside the Racak killings, these events reveal patterns of grave abuses by Yugoslav and Serbian forces against the civilian population. Such patterns of abuse recur after 20 March in the descriptions given by refugees.

The scale on which human rights violations recur is staggering. It is estimated that over 90 per cent of the Kosovo Albanian population – over 1.45 million people – were displaced by the conflict by 9 June 1999. The death toll as yet can only be guessed at, but the prevalence of confirmed reports and witness statements about individual and group killings in this report is indicative. The violence meted out to people, as recounted vividly, particularly in the statements of refugees, was extreme and appalling. The accounts of refugees also give compelling examples of the organized and systematic nature of what was being perpetrated by Yugoslav and Serbian forces, and their tolerance for and collusion in acts of extreme lawlessness by paramilitaries and armed civilians.

The commission of human rights and humanitarian law violations during the internal armed conflict in Kosovo during the time it was being monitored by the OSCE-KVM was not one-sided. All parts of this report look at violations committed by both parties to the internal conflict. It must be stressed, however, that an obvious conclusion of the analysis is that there was certainly nothing resembling balance or equivalence in the nature or the scale of the human rights violations committed by each side. Suffering in Kosovo in the period monitored by the OSCE-KVM was overwhelmingly Kosovo Albanian suffering, at the hands of the Yugoslav and Serbian state military and security apparatus.

A catastrophe rooted in the long-term disregard for human rights and fundamental freedoms

A guiding principle of the OSCE is that respect for human rights and fundamental freedoms, democracy and the rule of law is an essential component of security. A consistent pattern of human rights violations in Kosovo led eventually to a breakdown in security. The deterioration into a security crisis, armed conflict and a human rights and humanitarian catastrophe in Kosovo might have been avoided if the Yugoslav and Serbian authorities, rather than engaging in the persistent violation of the human rights of the Kosovo Albanian population in the past decade, had sought to construct in Kosovo an open and inclusive society founded on the principles of respect for human rights and fundamental freedoms.

XXXX

Appendix G (iv) (contd.)

Pristina, 6 December 1999

KOSOVO/KOSOVA As Seen, As Told

An analysis of the human rights findings of the OSCE Mission in Kosovo

Part 2: July 1999 to October 1999

EXECUTIVE SUMMARY

Introduction

The OSCE Mission in Kosovo (OMIK) was established through OSCE Permanent Council (PC) Decision 305 of 1st July 1999, following the dissolution of the OSCE Kosovo Verification Mission (KVM) on 9th June 1999. PC Decision 305 determined that OSCE would constitute a distinct component within the overall framework of the United Nations Interim Administration Mission in Kosovo (UNMIK) and as such derive its legal authority from United Nations Security Council Resolution (UNSCR) 1244 (1999). Despite a change-over from KVM to OMIK, the human rights component ascribed to OSCE remains essentially unchanged. OMIK assumes the lead role in matters relating to institution-building, democratisation and monitoring, protecting and promoting human rights. OMIK's human rights mandate includes "unhindered access to all parts of Kosovo to investigate human rights abuses and ensure that human rights protection and promotion concerns are addressed through the overall activities of the Mission."¹⁴ This report, *Kosovo/Kosova: As Seen, As Told Part II*, was produced under field mission conditions to complement *Kosovo/Kosova: As Seen, As Told*, a compendium of human rights violations documenting the OSCE-KVM period from October 1998 to June 1999. Together, the reports provide an extensive insight into the tragic events that have taken place in Kosovo over the last 12 months.

The report contains a foreword by the Special Representative of the UN Secretary-General, Bernard Kouchner, outlining the UN's response to the sober contents of the report. There is an introduction by the Head of the OSCE Mission in Kosovo, Ambassador Daan Everts, critically appraising the environment in which the human rights violations catalogued in the report have taken place. There is also an overview of the OSCE field operation and the institutional framework to provide information on the context within which the events have taken place.

Structure of the Report

This report documents human rights violations committed during the period from mid-June 1999 until the end of October 1999. The information contained was gathered first-hand by OSCE officers in the field, many of whom were experienced from the

¹⁴ *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/1999/779, 12 July 1999*

time of the OSCE-KVM. OMIK Regional Centres have been established in Pristina/Prishtine; Pec/Peje; Kosovska Mitrovica/Mitrovice; Prizren/Prizren; and Gnjilane/Gjilan mirroring the field deployment of other elements of UNMIK and of KFOR. This OMIK organisation is reflected in the report format. The report comprises a substantive body of the text, which is a human rights analysis by the five regions, and three annexes. The Regional Centre components of the report each provide information and analyses under the headings of overview; security situation; civil administration; and human rights trends and patterns. This report framework illuminates the discernible patterns across Kosovo/Kosova while also revealing the regional-specific, or regionally magnified human rights violations. The first annex of the report provides a chronology of alleged human rights violations and events from mid-June to 31st October 1999. The second annex highlights two of the gravest classifications of alleged human rights violations: the right to life and threats to physical integrity. The third annex includes a listing of gravesites from the recent conflict that have been documented by the OSCE in co-ordination with local organisations and the International Criminal Tribunal for the former Yugoslavia (ICTY).

Findings of the Report

In the period covered by *Kosovo/Kosova: As Seen, As Told Part II*, no community has escaped breaches of human rights, including the Kosovo Albanians. Particularly in the Kosovska Mitrovica/Mitrovice area, their freedom of movement and rights of access to education and healthcare have been violated. The report testifies to this and does not minimise the effect on the individuals concerned. However, the overwhelming weight of evidence points to violations against non-Albanians.

One discernible leitmotif emerges from this report. Revenge. Throughout the regions the desire for revenge has created a climate in which the vast majority of human rights violations have taken place. Through the assailant's eyes, the victims had either participated, or were believed to have participated, in the large-scale human rights abuses described in *Kosovo/Kosova: As Seen, As Told*; or they were believed to have actively or tacitly collaborated with the Yugoslav and Serbian security forces. Within this climate of vindictiveness a third category of victims emerged: those individuals or groups who were persecuted simply because they had not been seen to suffer before.

While the desire for revenge is only human, the act of revenge itself is not acceptable and must be recorded and addressed. The effects on the Kosovo Albanian population of accumulated discrimination and humiliation over the past decade is documented and cannot be doubted. Neither can it be doubted that the ethnic cleansing during the war had a deeply traumatic impact on the Kosovo Albanian community, leaving virtually no family untouched. Given this stark backdrop to the post-war setting, only a strong law enforcement system can prevent the climate of vindictiveness that perpetuates violence. The absence of such a robust response has contributed to the lawlessness that has pervaded post-war Kosovo/Kosova, leaving violence unchecked.

The first, obvious, group that suffered revenge attacks are the Kosovo Serbs. Despite the generally accepted premise that many of those who had actively

participated in criminal acts left along with the withdrawing Yugoslav and Serbian security forces, the assumption of collective guilt prevailed. The entire remaining Kosovo Serb population was seen as a target for Kosovo Albanians. The report repeatedly catalogues incidents throughout the area where vulnerable, elderly Kosovo Serbs have been the victims of violence. The result of this has been a continuous exodus of Kosovo Serbs to Serbia and Montenegro and an inevitable internal displacement towards mono-ethnic enclaves, adding fuel to Serb calls for cantonisation.

Other particular victims of violence documented in the report are the Roma and Muslim Slavs. Many Kosovo Albanians labeled the Roma as collaborators: accused of carrying out the dirty work, such as disposing of bodies, they were tainted by association with the regime in Belgrade. The report documents the decimation of the Roma community in many parts of Kosovo/Kosova, driven from their homes in fear of their lives. The Muslim Slav community, largely concentrated in the west of Kosovo/Kosova, may share the same faith as the Kosovo Albanians, but they are separated by language. To be a Serbo-Croat speaker in Kosovo/Kosova is to be a suspect and can be enough in itself to incite violence. Other non-Albanians that feature in the report as victims of human rights violations include the Turks and Croats.

A disturbing theme that the report uncovers is the intolerance, unknown before, that has emerged within the Kosovo Albanian community. Rights of Kosovo Albanians to freedom of association, expression, thought and religion have all been challenged by other Kosovo Albanians. The report reveals that opposition to the new order, particularly the (former) UCK's dominance of the self-styled municipal administrations, or simply a perceived lack of commitment to the UCK cause has led to intimidation and harassment. A further aspect of inter-Kosovo Albanian intolerance has been the challenges made in the Pec/Peje area to the rights of Catholic Albanians to express their religion.

Violence has taken many forms: killings, rape, beatings, torture, house-burning and abductions. Not all violence has been physical, however, fear and terror tactics have been used as weapons of revenge. Sustained aggression, even without physical injury, exerts extreme pressure, leaving people not only unable to move outside their home, but unable to live peacefully within their home. In many instances, fear has generated silence, in turn allowing the climate of impunity to go unchecked. The report shows that not only have communities been driven from their homes, but also that the current climate is not conducive to returns. As a result, the spiral of violence has driven a wedge between Kosovo/Kosova's communities, making ever more elusive the international community's envisioned goal of ethnic co-existence.

The report highlights that although many incidents were disparate, individual acts of revenge, others have assumed a more systematic pattern and appear to have been organised. The evidence in part points to a careful targeting of victims and an underlying intention to expel. This leads to one of the more sensitive areas of the report, namely the extent of UCK involvement in the period from June to October 1999. A consistent reporting feature has been assumed UCK presence and control. The report is littered with witness statements testifying to UCK involvement, both before and after the demilitarisation deadline of 19th September ranging from reports

of UCK “police” to more recent accusations of intimidation by self-proclaimed members of the provisional Kosovo Protection Corps (TMK). It is clear that the UCK stepped in to fill a law and order void, but this “policing” role is unrestrained by law and without legitimacy. The highest levels of the former UCK leadership and current provisional TMK hierarchy have openly distanced themselves from any connection of their members to the violence that has taken place. They highlight the ease with which criminal elements who were never part of the UCK are now exploiting the UCK umbrella for their own nefarious purposes. Close scrutiny by the international community is needed to prove, or disprove, the veracity of these claims.

The report also highlights many instances of other human rights violations, such as denied access to public services, healthcare, education and employment which have also been used as a tool by both the Kosovo Albanians and the Kosovo Serbs to prevent the integration of traditionally mixed institutions. Restricted access to education, with its long-term implications for the life-chances of those affected; poor healthcare; limited employment opportunities – these are the emerging elements that lock segments of the population into a cycle of poverty and divide communities both on ethnic and on economic grounds. They constitute violations of civil, political, economic, social and cultural rights.

Conclusions

It is clear that the deficiency in the law enforcement capability provided by the international community and the lack of sufficient assistance in the administration of justice has fostered the climate within which the human rights violations documented in this report have taken place: impunity for the acts committed has resulted from failures to conduct serious investigations and this impunity, in turn, has perpetuated the violence. Establishing the rule of law is an essential element of OMIK’s institution building mandate. Whoever the victims are, and even if they were themselves responsible for human rights or humanitarian law violations, their rights are inalienable and cannot be negated: life, liberty, security of person, freedom from harassment and a fair trial are rights, not privileges. For those who perpetrated, encouraged and organised the violations listed in this report, those rights also pertain. Additional investigative resources must therefore be put in place urgently, including investigators and forensic teams and the facilities to enable them to function. The legal and judicial framework must be strengthened so that periods of pre-trial detention can be reduced and trials conducted in a timely manner. The infusion of more international police and international judicial experts would greatly assist in ending the cycle of impunity.

The international community, through UNMIK, has the opportunity to positively influence the development of civil society in Kosovo/Kosova. Support for UNMIK’s efforts to establish the rule of law is central, and critical, to this. With the rule of law comes the redress of grievance and freedom from arbitrary and discriminatory action. The OSCE Mission in Kosovo is committed, together with its UNMIK and Kosovo/Kosova partners, to work for the improvement of human rights conditions in the area. By identifying and denouncing the violations that have been committed to date, we are all better positioned to construct a Kosovo/Kosova that is founded on the principles of respect for human rights and fundamental freedoms.

Appendix H

Contact information

OSCE Mission in Kosovo (OMIK) has Regional Centres and Field-Offices throughout Kosovo. Its headquarters are at:

Beogradska 32, 38000, Pristina

Telephone: 381 38 500 162 (Sat): +870-762 138 676.

Fax: 381 38 500 188 (Sat): +870-762 138 677

press@omik.org

www.osce.org